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Centenary of the Juvenile Justice System

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Foreword

ONE HUNDRED years ago, the American juvenile justice system was born of a growing understanding of the differences between youthful offenders and adults, married to can-do late 19th century confidence in the ability to solve tough problems and make whole marred lives. A century's experience with the juvenile justice system has included many success stories. But it has also tempered and subdued much of the earlier optimism of the judicial system and criminal justice professionals. Contributing to this mood of realistic rethinking has been the decade-by-decade acceleration, especially in the post-World War II era, of family breakdown and drug and alcohol abuse, and the attendant increase in the number of kids in trouble.

This special Juvenile Justice Issue of *Federal Probation* has been produced under the guest editorship of Judge Theodore McMillian, who currently serves on the U.S. Court of Appeals for the Eighth Circuit. From his wealth of experience in earlier years as a juvenile court judge, he contributes the opening article, reflecting on what he has seen and what can be learned from it.

Alarming instances of youth violence bring before Congress the recurring suggestion of turning more categories of juvenile crime over to federal jurisdiction. David N. Adair, Jr. and Dan Cunningham, both of the Administrative Office of the U.S. Courts, present the background and legislative history of this past year's attempt to "solve" juvenile crime by federalizing it. They point out the drawbacks and likely unintended consequences—including strained resources and lack of facilities—of this thus far unsuccessful shifting of jurisdiction. In this they accurately represent the long-held considered opinion of the judiciary that federalizing increasing numbers of crimes, and shifting increasing numbers of under-age offenders into adult courts, is neither wise law nor prudent policy.

In September of 1997, for example, the Judicial Conference reaffirmed its "long-standing position that criminal prosecutions should be limited to those offenses that cannot or should not be prosecuted in state courts," stressing that "this policy is particularly applicable to the prosecution of juveniles." Chief Justice William Rehnquist has publicly called efforts to extend federal jurisdiction over juvenile crime "especially troubling" because they would "eviscerate" the time-honored American legal tradition of deferring to state prosecution of juvenile offenders, "thereby increasing substantially the potential workload of the federal judiciary."

Alarmists afraid of skyrocketing youth violence in the wake of tragic events like the Columbine High School shooting last year should find special interest and reassurance in Berkeley Professor Franklin Zimring's recent book *American Youth Violence* (reviewed in this issue of *Federal Probation*), which examines the statistics to reach very different conclusions.

Howard Snyder of the National Center for Juvenile Justice has recently completed a report for the Office of Juvenile Justice and Delinquency Prevention, Juvenile Offenders and Victims: 1999 National Report, summarized in *Federal Probation's* "It Has Come to Our Attention." He marshals a wealth of data supporting Zimring, pointing out that instances of youthful violence have significantly decreased in recent years, even while the youthful population has registered slight year-by-year increases, and that the prediction of a coming wave of "superpredators" dating from the 80's and early 90's spike in violent crime does not seem justified by the evidence.

The contributors to this issue of *Federal Probation* describe in great variety the challenges, successes, and failures of those in probations and corrections concerned with young people in general and youthful offenders in particular. No one here can claim to have "the answer" to juvenile crime or the all-powerful secret to successful rehabilitation. Instead, the authors and reviewers document initiatives that have yielded or seem likely to yield benefits, and consign to the dump heap programs or components of the system that have proven counterproductive. Readers should find much to reflect upon in the sometimes complementary, sometimes conflicting views of these writers.

The judiciary and the criminal justice system will always operate within a larger society that affects both them and those under their jurisdiction. Confronting those leading destructive and unproductive lives certainly has its dispiriting aspect. This is especially true when those lives have barely begun, when the comparison between what is and what might be is especially painful. Yet, success stories still exist, and those who read this issue may take heart from the authors as they seek to rescue communities and their young people from harm's way.

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Federal Probation

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This Issue in Brief

TO THE READERS:

This Special Issue of *Federal Probation*, marking the 100th anniversary of the Juvenile Justice system in this country, has been produced under the guest editorship of the Honorable Theodore McMillian, of the Eighth Circuit Court of Appeals. Prior to serving on the 8th Circuit, Judge McMillian was a Missouri Court of Appeals judge, and during that period he heard cases in the juvenile court of St. Louis for several years. Out of Judge McMillian's experience with the juvenile court, he has contributed observations and reflections for the lead article, "Early Modern Juvenile Justice in St. Louis." We thank Judge McMillian for graciously consenting to be guest editor on this important anniversary, and for sharing the benefits of his experience.

ELLEN WILSON FIELDING
Editor

* * *

Early Modern Juvenile Justice in St. Louis.—The juvenile court system, on both the state and federal levels, has gone through many changes in its 100-year existence. Among these are the extension of legal protections to juveniles as a result of *In re Gault* and the increase in the prosecution of children as adults for certain offenses. The Hon. Theodore McMillian, who serves as guest editor of this issue of *Federal Probation*, describes some of the changes he observed and participated in first as a state trial judge and then as a circuit judge assigned to the juvenile division in St. Louis, Missouri in the 1960s.

Pending Juvenile Legislation.—Traditionally in our legal system, the primary responsibility for apprehending, adjudicating, and treating juvenile criminals has rested with the states. In recent years, Congress has considered bills expanding federal jurisdiction over juveniles. This past year, interest in such legislation was heightened by violent events such as the shootings in Columbine High School in Littleton, Colorado. Authors David N. Adair and Daniel A. Cunningham discuss provisions of the House and Senate versions of the 1999 juvenile crime bills considered by Congress.

Punitive Juvenile Justice Policies and the Impact on Minority Youth.—As more than 40 states have amended their laws to allow for the increased prosecution of children in adult court, minority youth are over-represented at every stage of the juvenile justice system. Many states have

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begun to recognize this problem and are establishing creative partnerships to address the over-representation of minority youth in the juvenile justice system. Authors Michael Finley and Marc Schindler discuss punitive policies regarding youthful misconduct, the impact of these policies on minority youth, and some of the strategies employed by states to address the problem.

Successful Strategies for Reforming Juvenile Detention.—Despite a hostile policy environment, three jurisdictions that participated in a foundation-supported comprehensive juvenile detention reform initiative made significant strides in reducing inappropriate admissions, shortening processing times, and improving failure-to-appear and pretrial re-arrest rates. Author Bart Lubow offers their experiences as evidence that collaboratively conceived, data-driven policies and programs can transform many of today's chronically crowded, idiosyncratic detention systems into models of fairness, efficiency, and effectiveness.

Lessons Learned from Boston's Police-Community Collaboration.—In the past decade, Boston has both dramatically reduced its homicide rate and improved police-community relations. In contrast, New York City has succeeded in reducing crime, but at the cost of substantial protests, particularly from minorities, at police behavior. Authors Jenny Berrien and Christopher Winship look at the path Boston has taken and four lessons that may be drawn by other municipalities seeking to replicate the Boston experience.

Interagency Collaboration in Juvenile Justice: Learning From Experience.—Beginning in the early 1990s, researchers and funding agencies began to focus on collaboration as a key element to successful programs aimed at decreasing crime and other problem behaviors in at-risk youth. As the new millennium begins, funding entities for justice programs continue to push for interagency collaboration. In this article, authors Jodi Lane and Susan Turner lend guidance to juvenile justice personnel who are developing new collaborative programs by discussing some of the lessons learned by South Oxnard Challenge Project personnel in developing and implementing a new interagency juvenile justice program in Ventura County, CA.

Juveniles and Computers: Should We Be Concerned?—The computer age has brought numerous changes, greatly facilitating communication and increasing educational opportunities for our youth. Unfortunately, it has also opened up new opportunities for delinquency. Juveniles are now using computers to commit fraud and counterfeiting offenses that were once only adult offenses, expanding the monetary costs of delinquency. In addition, juveniles can now use computers to commit offenses across the country or even around the world. Author Arthur L. Bowker explores the ramifications of "computer delinquency" and why it needs to be addressed in this article on a brave new world of offending.

Multicultural Implications of Restorative Juvenile Justice.—Restorative Justice practices–particularly various forms of victim, offender, family, or community dialogue–are proving especially useful in juvenile justice settings. Authors Mark S. Umbreit and Robert B. Coates believe the field must become more sensitive to differing cross-cultural perspectives. Working with persons of different cultures can be replete with potential dangers and pitfalls. In this article, the authors present pitfalls that may hamper restorative justice efforts carried out within cross-cultural contexts, along with ways of increasing the likelihood of positive interactions when working with persons of differing cultural backgrounds.

A Developmental Perspective on Serious Juvenile Crime: When Should Juveniles Be Treated as Adults?—At a time when more juveniles are being tried as adults, many questions are raised about who should qualify for adult criminal status. Authors Laurence Steinberg and Elizabeth Cauffman, whose backgrounds are in psychology and psychiatry, add the perspective of developmental psychology to this debate. They describe formative stages of psychological and intellectual maturity and accountability, and also discuss "amenability," or the extent to which an individual's nature has the possibility of changing. The youth or adolescent's greater potential for rehabilitation may affect the kinds of punishment, interventions, and treatment options considered for him

Biosocial Risk Factors and Juvenile Violence.—Author Patricia Brennan outlines the role that biological factors may play in the prediction of juvenile violence. Early life risk factors such as perinatal complications are reviewed, as well as recent work on brain functioning and violence. Physiological functioning and responsiveness to stress are considered as possible predictors of violent behavior in two different types of juvenile offenders–those whose behavior occurs in response to provocation and those who appear to be relatively unresponsive to stress and threats in the environment. The interactive nature of biology and environment is discussed along with potential implications for treatment and prevention of juvenile violence.

Juvenile Justice in Transition: Is There a Future?—Author Alvin W. Cohn tracks the course of the juvenile justice system through stages in which rehabilitation and treatment concerns predominated to the current more adversarial and punitive model. He focuses on the extent to which strategic changes in juvenile justice operations have been externally imposed by superordinates, elected officials, and legislators, rather than internally generated by reflection on successes and failures in management structures and approaches. While change is probably needed in the juvenile justice system, it should be guided and controlled, and neither reactive nor proactive but coactive through strategic planning and evaluative research.

The Unique Circumstances of Native American Juveniles Under Federal Supervision.—Native Americans not only constitute the bulk of federal juveniles currently under supervision, but present unique challenges for probation and pretrial officers seeking to acknowledge and to some degree incorporate traditional Indian percep-

tions of wrongdoing and methods of dealing with crime. For example, Indian communities traditionally favor education, mentoring, and treatment over punishment, and their concept of family is more extensive than that of the larger culture. Author Brenda Donelan discusses these and other differences and suggests ways federal probation and pretrial officers can best supervise this unique population.

Legal Issues in Juvenile Drug Testing.—Juvenile drug testing is used throughout most of the juvenile justice systems in the country for juveniles on probation and in institutions. Drug testing of both juveniles and adults has been discussed in a number of recent court cases because of potential issues of self-incrimination, unreasonable search and seizures, and the like. Authors Rolando V. del Carmen and Maldine Beth Barnhill survey these and other legal issues in juvenile drug testing, and provide recommendations for establishing a legally defensible drug testing program for juvenile justice.

Early Modern Juvenile Justice in St. Louis

By Hon. Theodore McMillian*
U.S. Court of Appeals for the Eighth Circuit

IN EARLY June 1961, while I was still a state trial judge but before my experience in the Juvenile Division (1964–1970), I was approached by Judge David A. McMillan, a judge sitting in the Juvenile Division of the City of St. Louis Circuit Court, about joining a committee consisting of Judges John C. Casey and Ivan Lee Holt. The committee's purpose was to be two-fold: 1) to conduct a study on the case loads and working conditions of the deputy juvenile officers and 2) to plan a new juvenile court and select a building site.

For many years the juvenile court for the City of St. Louis operated out of the Children's Building at 14th and Clark Streets. In 1916 when the Children's Building was opened, it was nationally acclaimed as one of the country's best facilities serving the needs of young people, their families and the community. Unfortunately, with the passage of time, the Children's Building deteriorated and became an eyesore. The elevator was constantly in disrepair; the plumbing and electrical systems became obsolete; space for juvenile officers and detention facilities for the children became cramped; the administrative offices were outdated and overcrowded; and, finally, the courtroom facility was outmoded and grossly inadequate. Almost daily there were mechanical and physical breakdowns or both that far exceeded the budgetary allotments. Woefully, the exercise space and the children's detention quarters more and more resembled a Dickens novel about Victorian England. This was the picture, and the challenge, presented to the juvenile court committee. Yet, with the support of all the judges of the 22nd Judicial Circuit, as well as that of Mayor Raymond Tucker and later Mayor Al Cervantes and their respective administrations, the challenge was successfully met.

In the late 1950s and early 1960s, during the time that the committee was looking for a site for the new juvenile court facility, almost all the neighborhoods in the City of St. Louis were undergoing vast changes. Unfortunately for the neighborhood, but fortunately for the juvenile justice system, Vandeventer Place was declared "blighted" and the site at Vandeventer and Franklin Avenues became available. Vandeventer Place was one of the many exclusive residential "suburbs" developed after the Civil War. It was platted and developed in 1870, contained only three houses in 1875, and reached its fashionable zenith in the 1890s. After the Vandeventer Place site was acquired, Judge McMillan was able to retain Sherwood Norman, a nationally known architect, to design the new juvenile detention facility.

The design of the facility was innovative in many ways: 1) the large courtroom had a half-moon-shaped bench and, more importantly, the judge, the deputy juvenile officer, and the children and their families were all on the same level; 2) individual offices for each supervisor and deputy juvenile officer; 3) a large conference room; 4) a large gym and outside exercise area; 5) a dining facility and cafeteria; 6) individual rooms for each detainee; 7) a secure facility designed so that the entire unit was under surveillance and officers could monitor the movement of detainees and court personnel from one unit to another; 8) classrooms for the detainees; and 9) adequate public parking and secure parking for the staff. The entire facility was air-conditioned.

Before the building was completed, the committee was able to obtain a $25,000 funding commitment from the city administration to commission the National Probation and Parole Agency to conduct an in-depth study and report its findings to our committee and to the circuit court en banc.

The National Probation and Parole Agency's report not only pointed out what the committee had suspected, but also what the committee knew, that is, our juvenile court was woefully understaffed and that staff was severely overworked. The report noted that the national optimum caseload was 35 cases per social worker. Yet our caseload was as much as 100 to 110 cases per social worker. The report also noted that most of our deputy juvenile officers were recent graduates whose salaries were lower than those of police officers and school teachers; our court had neither a training program nor a plan to subsidize additional education. Equally important, the report noted that we had too many detainees in custody, and that, instead of being detained for 10 to 12 days before being placed into a permanent program, detainees were held in detention for weeks, sometimes months, before their cases were heard. Finally, the report found that our detention facility's sleeping accommodations were arranged like a barracks and that detainees were not properly segregated by age or offense.

Armed with this report, the committee went to the city administration. First, we pointed out that, because of the extremely high caseload, detainees who needed school the most were being deprived of their education. In many instances, instead of being able to hear cases within 10 to 12 days, we were holding children for weeks, if not months. The city administration was impressed by the report and, with their support and the help of Dr. William Kottmayer, the city school superintendent, the committee convinced the St. Louis City School Board to give the juvenile court its first elementary school. The Grissom Elementary School consist-

***Judge McMillian is guest editor of this special edition of *Federal Probation* on the 100th anniversary of juvenile justice in the United States.**

ed of 5 regular classrooms and the gymnasium. The School Board also assigned 6 certified teachers and a principal, Dr. John A. Wright, the present superintendent of the Ferguson-Florissant School District and Chair of the St. Louis Community College District. The juvenile court now had classrooms for 4th to 9th grades, and occasionally 10th grade. Because of the length of time children were held in detention, our classrooms kept detainees from falling farther behind their classmates.

In the early 1960s, the juvenile court doubled the number of deputy juvenile officers, obtained salary increases, and reduced the caseload per officer almost by half. With the support of the city administration, we were permitted to subsidize additional education programs by paying for Masters in Social Work courses at St. Louis University and Washington University. For each year of tuition paid for by the juvenile court, the officer made a commitment to serve a year with the juvenile court, thus improving the professionalism of the juvenile court staff.

At the same time that the juvenile court was moving into the new Juvenile Detention Center and we were improving the quantity and quality and professionalism of our staff, the juvenile court committee was able to hire Louis McHardy as the newly-created Director of Court Services. (After many years, Mr. McHardy left to become the first director of the new National College of Juvenile Justice in Reno, Nevada.)

Later, Judge Noah Weinstein, of the Juvenile Division of the 21st Judicial Circuit, in St. Louis County, and I were able to obtain funding from the Missouri Bar Foundation, the Sears Roebuck Foundation and the Danforth Foundation to study and draft rules of practice and procedure for the juvenile courts in Missouri. The rules committee was composed of Judges Noah Weinstein, Andrew Higgins, Douglas Green, and Marshall Craig, and attorneys Alden Moss and Hess. The draft Rules for Practice and Procedure were reviewed and adopted by the Missouri Supreme Court.

On my first full assignment to the juvenile division in the early 1960s, I called a press conference where, out of sheer ignorance, I declared that I was not going to "mollycoddle" juvenile offenders. Nor was I going to continue slapping them on the wrist. In other words, I suffered from that "back to the woodshed" mentality; that is, I believed that "you can beat goodness in and beat badness out"! After less than six months, however, having seen and dealt with the myriad of problems presented by the juvenile justice system, I called another press conference and publicly admitted my sheer ignorance in making my earlier press statement. It was evident that, at my first press conference, I did not have a clue as to the problems facing our young people, their families and the shameful lack of support and resources to address their problems.

Quite early I found out that neither Booneville nor Missouri Hills was adequately staffed or funded or had even the basic programs to handle and deal with the kinds of problems that children from cities like St. Louis, Kansas City or Springfield were experiencing. The vocational programs were obsolete. For example, the automotive equipment dated from the 1940s and 1950s; the printing equipment had been donated by the *Globe-Democrat* newspaper and not only broke down frequently but was perilously close to the state of technology used by Gutenberg! Imagine city kids being taught farming and how to milk a cow. Girls were taught domestic skills such as hair-dressing and sewing.

Understandably, the executive and legislative branches, like the judiciary, do not fully appreciate the importance of the juvenile justice movement. Young people are our nation's most valuable natural resource, more important to our nation's future than the mineral wealth, forests, air, and water. And yet, the juvenile courts and juvenile facilities, like adult prison facilities, are relatively low on the list of budget priorities. Therefore, in competing for limited budget dollars, juvenile facilities must fight for legislative attention with education, highways, hospitals, and other public needs. Sometimes, when I take a good look at some of our juvenile facilities and other children's placement facilities, I note that, if we judged these facilities by the same standard used to remove children from their parents for neglect and dependency, we too could easily be charged with institutional neglect.

1999 is the centennial of the juvenile justice system in the United States. Prior to the opening of the juvenile court in Cook County, Illinois in July 1899, juvenile offenders were prosecuted under the same laws and in the same courts as adult offenders. The common law did not differentiate between adults and minors who had reached the age of criminal responsibility, which was age 7 at common law and in most states 10 to 12 years of age. In other words, the fundamental thought in our criminal jurisprudence at the turn of the 20th century was not, and in most jurisdictions is not, reformation or rehabilitation but punishment—punishment for the offense and punishment as a warning to others. (*See* Mack, *The Juvenile Court*, 23 Harv. L. Rev. 108 (1909).) To get away from the idea that children are to be treated as criminals—and to save even the most delinquent children from the brand of criminality, a stigma that often follows one for life, to take them in hand and reform and protect them—this was the objective of the new juvenile justice systems.

To carry out the new reform and rehabilitation objective, the role of the juvenile court judge became critically important. The juvenile court judge needed to be interested in children's issues, broad-minded, patient, tolerant, and, perhaps most importantly, possessed of great faith in humanity and the potential for goodness in each child. The Supreme Court of Utah stated this very succinctly:

> The judge of any court, and especially a judge of a juvenile court, should be willing at all times, not only to respect, but (also) to maintain and preserve, the legal and natural rights of persons and children alike…. The fact that the American system of government is controlled and directed by laws, not men [or women], cannot be too often or too strongly impressed upon those who administer any branch of or a part of the government,… where a proper spirit and good judgment are followed as a guide, oppression can and will be avoided…
>
> The juvenile court is of such vast importance to the state and society that it seems to us it should be administered by those who are learned in the law and versed in the rules of procedure, to the end that the beneficent purposes of the law may be made effective and individual rights respected. Care must be exercised both in the selection of the judge and in the administration of the law. Mills v. Brown, 88 P. 609 (1907).

In addition to the observations made by the Supreme Court of Utah, I venture to add that judges of the juvenile courts must be trained in psychology, social welfare, and the behavioral sciences. Moreover, when judges assume the responsibility for the operation of the juvenile courts, they should make unannounced visits not only to their own detention facilities but also to every detention facility to which children from their court are assigned or transferred.

By the enactment of a typical juvenile justice court act, a state undertakes to remove the detriment and stigma of a criminal proceeding against children and promises to provide them with the essentials of parental training, care, and custody which were not provided by their own parents. Because of these assurances on the part of the state, the juvenile offender has been stripped of the constitutional protections traditionally afforded to adults charged with criminal offenses. (*See* Oram W. Ketcham, "The Unfulfilled Promises of the Juvenile Court,[7] *Crime & Delinquency* 97 [1961].) Judge Ketcham lists the five unkept promises of the juvenile justice system as 1) the promise that the consequences of a finding of delinquency will, in fact, be noncriminal and that the stigma of a criminal "record" will not obtain; 2) the promise that the hearing itself will be promptly held, easily understood, fair, and compatible with, if not part of, the treatment process; 3) the promise that family ties will be strengthened and the child removed from the home only when the child's welfare or the interest of the community demands such action; 4) the promise that the child's treatment subsequent to a finding of delinquency will approximate as closely as possible that which the child should have received from the child's parents; and 5) finally, that in cases where removal from the home and close supervision are required, the promise that the deleterious effects of imprisonment upon habits, attitudes, and aspirations will be minimized by therapeutically, rather than punitively, oriented restrictions.

Judge Ketcham noted that the cornerstone of *parens patriae* is the concept that the interest of the state and the welfare of the child are in harmony, not in conflict, that is, that the state, acting as a substitute parent, will act considerately and in the best interests of the child and will competently control and raise the child. When the state has failed to make good on its promises, all children in need of protection, care, and training will have given up their precious rights of individual freedom under law for the tyranny of state intervention whenever the state considers its interests threatened.

Looking back, I feel very privileged to have been part of the revolution in juvenile justice in St. Louis. During my years as a juvenile court judge, juvenile justice was fundamentally changed by the landmark decision, *In re Gault*, 387 U.S. 1 (1967), which held that the constitutional due process guarantees of notice, the right to counsel, the privilege against self-incrimination, and the right to confrontation applied to the adjudicatory phase of juvenile delinquency proceedings. These rights have since been extended beyond juvenile delinquency proceedings. (The following summary and discussion is based in large part on B. James George, Jr., *Gault and the Juvenile Court Revolution* 29–39 (1968).)

A few background facts about the *Gault* case will put it in perspective. Today the case seems almost trivial. The case began when a neighbor complained to the police that Gerald Gault and another boy had made an obscene phone call. The police picked him up. His parents were at work at the time and apparently no attempt was made to contact them after Gerald was taken into custody. They apparently learned about his arrest that night from the parents of the other boy. They went to the detention home and were informed that a hearing would be held the next day.

The police officer in charge filed a petition for the hearing to be held that day. No copy of the petition was served on the parents. The petition contained only legal allegations and no facts. The hearing was held in chambers; the complaining neighbor did not appear and no sworn testimony was taken. There was no record of the proceedings. The only information about the hearing was found in the record of a *habeas* proceeding brought after the juvenile court proceedings. Gerald was released from custody two days later. The police notified Mrs. Gault that another hearing would be held three days later.

At the second hearing the judge apparently relied on admissions about the phone call that the police reported that Gerald had made. Mrs. Gault asked that the complaining neighbor attend the hearing, but the judge ruled that the neighbor's attendance was not necessary and her version was reported in court on the basis of her telephone conversation with the investigating officer. The judge also had a probation "referral report," but it was not shown to either Gerald or his parents. The judge committed Gerald to the state industrial training school "for the period of his minority, unless sooner discharged by due process of law." Because Gerald was 15, he would have been in custody until he turned 21.

No direct appeal was authorized. However, about two months later, a *habeas* proceeding was filed in the Arizona Supreme Court, which ordered a hearing in the superior court. The superior court denied *habeas* relief on the ground that there was no denial of either constitutional or statutory rights. The Arizona Supreme Court affirmed, *Application of Gault*, 99 Ariz. 181, 407 P.2d 760 (1965), and the Supreme Court reversed.

The Supreme Court first reviewed the history of the juvenile justice system and its aim of protecting the juvenile against the harshness of the adult criminal system. The juvenile justice statutes had been consistently upheld as constitutional as an exercise of the state's *parens patriae* power, that is, as inherently civil or equitable proceedings to which the procedural guarantees of a criminal trial were inapplicable. The Court noted, however, that "failure to observe the fundamental requirements of due process has resulted in instances, which might have been avoided, of unfairness to individuals and inadequate or inaccurate findings of fact and unfortunate prescriptions of remedy." 387 U.S. at 19–20. In other words, juvenile proceedings violated due process.

The Court recited some interesting statistics in support of its extension of due process guarantees to juvenile proceedings. For example, the Court noted that the rehabilitative goals of juvenile proceedings were not being met, citing recidivism rates as high as 56 percent and 61 percent in recent studies, which suggested that the absence of constitutional procedural guarantees did not mean that efficiency promoted rehabilitation. In addition, "delinquency" was not supposedly to be equated with "criminality," but in actual practice the term "delinquent" had come to carry the same stigma and produce as many instances of continued discrimination as the term "criminal." Moreover, unfairness was not reduced through limiting access to juvenile court records. Although juvenile court records were confidential, in actual practice the records were widely accessible to public and private agencies and the police.

The Court ultimately concluded that juvenile court proceedings would not be undermined by the application of due process guarantees. The Court explained that

> [w]e confront the reality of that portion of the juvenile court process with which we deal in this case. A boy is charged with misconduct. The boy is committed to an institution where he may be restrained of liberty for years. It is of no constitutional consequence—and of limited practical meaning—that the institution to which he is committed is called an Industrial School. The fact of the matter is that, however euphemistic the title, a "receiving home" or an "industrial school" for juveniles is an institution of confinement in which the child is incarcerated for a greater or lesser time. . . .
>
> In view of this, it would be extraordinary if our Constitution did not require the procedural regularity and the exercise of care implied in the phrase "due process." Under our Constitution, the condition of being a boy does not justify a kangaroo court.…The essential difference between Gerald's case and a normal criminal case is that safeguards available to adults were discarded in Gerald's case. The summary procedure as well as the long commitment were possible because Gerald was 15 years of age instead of over 18. (387 U.S. at 27–29.)

The Court specifically held that notice of the charges had to be provided to the juvenile and his or her parents. The notice must be in writing, must contain the specific charge or allegations of fact upon which the juvenile proceeding is to be based, and must be given as early as possible and "in any event sufficiently in advance of the hearing to permit preparation." 387 U.S. at 33. The Court also held that the juvenile has a right to representation by counsel or, if he or she cannot afford counsel, a right to representation by appointed counsel. 387 U.S. at 41. The right to counsel acknowledged the fact that juvenile proceedings are inherently adversarial; the juvenile officer represented the state and not the juvenile and the juvenile court judge could not serve as both arbiter and defender of the juvenile. Lay adults often cannot understand legal proceedings, particularly criminal proceedings (*Gideon v. Wainwright*, 372 U.S. 335 (1963)) and are unable to protect their own interests; this is even more so in the case of juveniles. The Court also held that the right to confrontation was as important in juvenile delinquency proceedings as in criminal trials.

Finally, the Court held that the privilege against self-incrimination applied to juveniles. The Court noted that "[i]t would indeed be surprising if the privilege against self-incrimination were available to hardened criminals but not to children." 387 U.S. at 47. Adopting what would later be known as textual analysis, the Court held that "[t]he language of the Fifth Amendment, applicable to the States by the operation of the Fourteenth Amendment, is unequivocal and without exception. And the scope of the privilege is comprehensive…." 387 U.S. at 47. In effect, the Court extended the Fifth Amendment to juvenile proceedings. As a result, the state could no longer prove delinquent acts merely by questioning the juvenile in court. More importantly, the Court extended *Miranda* (384 U.S. 436 (1966)) to the custodial interrogation of juveniles.

> We conclude that the constitutional privilege against self-incrimination is applicable in the case of juveniles as it is with respect to adults. We appreciate that special problems may arise with respect to waiver of the privilege by or on behalf of children, and that there may well be some differences in technique—but not in principle—depending upon the age of the child and the presence and competence of parents. The participation of counsel will, of course, assist the police, juvenile courts and appellate tribunals in administering the privilege. If counsel is not present for some permissible reason when an admission is obtained, the greatest care must be taken to assure that the admission was voluntary, in the sense not only that it has not been coerced or suggested, but also that it is not the product of ignorance of rights or of adolescent fantasy, fright or despair. (387 U.S. at 44.)

In particular, the Court expressed its skepticism about the credibility of juvenile confessions. The Court noted that

> Evidence is accumulating that confessions by juveniles do not aid in "individualized treatment," as the court below put it, and that compelling the child to answer questions, without warning or advice as to his [or her] right to remain silent, does not serve this or any other good purpose…. [I]t seems probable that where children are induced to confess by "paternal" urgings on the part of officials and the confession is then followed by disciplinary action, the child's reaction is likely to be hostile and adverse—the child may well feel that he has been led or tricked into confession and that despite his [or her] confession, he [or she] is being manipulated. (387 U.S. at 51–52.)

Of course, there were many other changes in juvenile justice during those early years, changes that did not involve *Gault*. For example, I was involved in two cases that at the time set new and controversial precedents in St. Louis—I approved the first single-parent adoption and the first adoption by a blind couple. Today neither situation seems that unusual.

Unfortunately, one hundred years later, the current trend in most American jurisdictions is the opposite of the principal objective of juvenile justice reform to treat children differently from adults. Forty-five states now permit the prosecution of children as adults for certain offenses; in 17 states there is no minimum age for prosecution as an adult. (Statistics reported on the ABC Evening News, Sunday, Oct. 24, 1999.)

Pending Juvenile Legislation

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THE PRIMARY responsibility for the apprehension, adjudication, and treatment of juvenile offenders has traditionally rested with the states. Accordingly, it is the states that have the resources and expertise for handling these difficult and sensitive cases. The federal criminal justice system has clearly had a role in the treatment of juvenile offenders, but it has for the most part been a minor one. It is true that, in recent years, the federal juvenile case load has been growing. For example, in FY 1994, juvenile delinquency proceedings were commenced against only 77 juveniles in the federal courts. By FY 1997, that number had increased to 218, and in FY 1998, to 245. Still, of the total number of defendants against whom federal criminal proceedings were commenced in 1998 (78,287), juvenile cases comprised a mere .31 percent. Thus, it is clear that, even despite these recent increases, the federal role is very minor.

There are indications, however, that the federal role in the treatment of juvenile offenders may expand significantly. In recent years, Congress has expressed considerable interest in amending the federal statutes governing the prosecution of juveniles and has proposed a number of bills that would result in significant changes to the existing juvenile provisions, including a potential increase in the number of juvenile proceedings. While none of the proposals has been enacted into law as of this writing, the degree of interest suggests that attempts to amend the laws will continue. The various proposals differ in some respects, but the issues upon which they focus are similar. The two major juvenile bills currently pending in Congress are typical in this respect: S. 254, the "Violent and Repeat Juvenile Offender and Rehabilitation Act of 1999," introduced on January 20, 1999 by Senator Orrin Hatch (R-UT), Chairman of the Senate Judiciary Committee, and H.R. 1501, the "Consequences for Juvenile Offenders Act of 1999," introduced on April 21, 1999, by Representative Bill McCollum (R-FL), Chairman of the House Judiciary Committee's Subcommittee on Crime.

Both bills amend the current law regarding the determination to prosecute a juvenile action in federal as opposed to state court, the prosecution of a juvenile as an adult, time limits for juvenile proceedings, the disposition or penalties of a juvenile determined delinquent, and the openness of the proceedings and records of the juvenile action. Accordingly, it may be helpful to become generally familiar with those provisions that would most affect the duties and responsibilities of United States probation and pretrial services officers.

The current provisions that stipulate when juveniles may be prosecuted in federal court express a clear preference for state prosecution by providing that a juvenile alleged to have committed an act that would be a federal criminal offense if committed by an adult "shall not be proceeded against in any court of the United States unless the Attorney General certifies" that: 1) the state refuses to assume jurisdiction; 2) the state does not have adequate programs and services available for the needs of juveniles; or 3) the offense charged is a crime of violence or serious drug offense, and there is a substantial federal interest in the case or the offense. 18 U.S.C. § 5032. This certification has generally been held not to be subject to review by the court, but it does make clear that state prosecution of juveniles is the norm and federal prosecution the exception. This preference maintains the traditional role of the state and federal criminal justice systems, and generally reflects the views of the Judicial Conference of the United States, which at its September 1997 meeting reaffirmed its "long-standing position that criminal prosecutions should be limited to those offenses that cannot or should not be prosecuted in state courts" and affirmed that "this policy is particularly applicable to the prosecution of juveniles."[1] In fact, bills similar to S. 254 and H.R. 1501 were described as "especially troubling" by the Chief Justice of the United States.[2] During an address before the American Law Institute on May 11, 1998, the Chief Justice warned such legislation would "eviscerate" the traditional deference to state prosecution of juvenile offenders, "thereby increasing substantially the potential workload of the federal judiciary."[3]

As with most of the juvenile bills introduced in the last several years, S. 254 and H.R. 1501 change the current certification requirement to reduce the level of the preference for state prosecution. Instead of requiring that juvenile proceedings be brought in state court *unless* certain facts are certified by the United States Attorney, S. 254 provides that the prosecutor must "exercise a presumption" in favor of referral to the state or Indian tribe that has jurisdiction over a juvenile unless the prosecutor certifies that the state or tribal authorities cannot or will not assume jurisdiction and there is a substantial federal interest in the case. This may be a subtle distinction, but it reduces the clarity of the preference and could signal to prosecutors that more juveniles should be proceeded against in federal court.

The amendments that would be made in this balance by H.R. 1501 are not so subtle. That bill would provide that,

except for certain minor offenses that occur in the special maritime or territorial jurisdictions of the United States, which may always be brought in federal court, a juvenile may be proceeded against in federal court if the government certifies that the juvenile court of the state or the Indian tribe does not have jurisdiction or declines to assume jurisdiction, or there is substantial federal interest in the case. This iteration eliminates all preference language and allows the prosecutor to determine to prosecute solely on the basis of the prosecutor's assessment of the federal interest, particularly since the bill would explicitly provide that the certification is not reviewable by the court.

Other provisions of the proposed legislation also indicate an interest in increasing the involvement of the federal criminal justice system in juvenile offenders. For example, S. 254 would amend 42 U.S.C. § 5611 to create in the Department of Justice an "Office of Juvenile Crime Control and Prevention" that would replace the current "Office of Juvenile Justice and Delinquency Prevention." There are a number of changes in the wording of the mission of the new agency, but of particular interest is the specific requirement that the Administrator of the agency advise the Attorney General on "the policies relating to juveniles prosecuted or adjudicated in the federal courts." A number of other references in the section also suggest that the office's mandate should include more active oversight of federal juvenile prosecutions and adjudications as well as state juvenile delinquency policies than the current statutory mandate provides. This in turn suggests an intent that there be more of an active federal role in the prosecution and adjudication of juveniles.

Recent legislative proposals have also reflected Congressional interest in allowing, or, in many cases, compelling adult prosecution of juveniles accused of certain offenses. Current law provides that a juvenile who commits a crime of violence, a controlled substance offense, or certain firearms offenses after the juvenile's fifteenth birthday may be transferred to adult status upon motion of the government. Certain more serious offenses committed by a juvenile of over thirteen may also result in such a motion, as may second offenses for a number of numerated offenses committed by a juvenile over sixteen years old. 18 U.S.C. 5032.

S. 254 would require adult prosecution of any person over age 14 charged in federal court with a federal offense that (1) is a crime of violence as defined in 18 U.S.C. §16, or (2) involves a controlled substance offense for which the penalty is a term of imprisonment of not less than five years. Juveniles of not less than 14 years of age may be tried as adults at the unreviewable discretion of the United States Attorney if the United States Attorney finds that there is a substantial federal interest in the case or the offense warrants the exercise of federal jurisdiction. The court, however, may entertain a motion to transfer a juvenile between the ages of fourteen and sixteen.

H.R. 1501 would provide for adult prosecution if the alleged offense was committed after the juvenile had attained the age of 14 years, and if the offense was a violent felony or a serious drug offense, unless the government certifies that the interests of public safety are best served by proceeding against the juvenile as a juvenile. The Attorney General would be authorized to prosecute as an adult a juvenile of 13 years who would be proceeded against as an adult if 14 years old. The commission of certain other offenses could lead to trial as an adult if committed by a juvenile of 14 years.

Proposed juvenile legislation has consistently attempted to extend the procedural time periods, or juvenile speedy trial provisions. S. 254 would amend 18 U.S.C. § 5036, to require that a juvenile being prosecuted as a juvenile and who is detained prior to disposition be tried within 70 instead of the current 30 days from the date detention commenced. Speedy Trial Act exclusions would apply to this period. It would also amend the disposition provisions of 18 U.S.C. § 5037 to add a requirement that the court determine a disposition of the juvenile within 40 days after conviction. H.R. 1502 would require that a juvenile being prosecuted as a juvenile and who is detained prior to disposition be tried within 45 instead of the current 30 days from the date detention commenced. Speedy Trial Act exclusions would apply to this period. Like S. 254, it would give the court 40 days after conviction to determine disposition of the juvenile.

The bills also amend the provisions that set out the possible dispositions for juveniles adjudicated delinquent by extending periods of criminal justice supervision and adding adult sentencing options. Currently, a juvenile may not be placed on probation or incarcerated beyond the juvenile's twenty-first birthday, or in the case of a juvenile sentenced between her eighteenth and twenty-first birthday, three years. No supervised release after imprisonment is authorized and there is no authority to impose sentences of fines or restitution.

S. 254 would for the first time require that a predisposition report be prepared by the probation office. Currently, such reports are prepared in some cases, but without any statutory requirement that they be prepared. The bill would permit the court to impose a term of probation up to the term that would be available if the juvenile had been convicted as an adult. The court could impose detention not to exceed the earlier of the delinquent's 26th birthday or the term that would be available if the juvenile had been convicted as an adult. Supervised release would be available on the same terms and conditions as an adult. The restitution provisions of 18 U.S.C. § 3663 would be applicable to juveniles. This limited reference would appear not to include mandatory restitution.

H.R. 1502 is similar. It would also require a predisposition report. The court could impose probation up to the term that would be available if the juvenile had been convicted as an adult. The court could impose detention not to exceed the lesser of the term that would be available if the juvenile had been convicted as an adult, ten years, or the juvenile's 26th birthday. Restitution pursuant to 18 U.S.C. § 3556, which includes mandatory restitution, would be included in the sanctions. Supervised release would also be available

for a term of up to five years under the same conditions as adult supervised release. The Sentencing Commission would be required to develop a list of possible sanctions for juveniles adjudicated delinquent.

The proposed legislation would significantly relax the level of confidentiality that currently protects the use of juvenile records. S. 254 would amend the provisions of 18 U.S.C. § 5038 for persons proceeded against as juveniles to add educational institutions to the list of entities that have access to juvenile records and would permit full access to any juvenile records by a United States Attorney in connection with a decision to prosecute a juvenile. H.R. 1502 would simply make juvenile records available for "official purposes."

While not technically part of the amendments to the juvenile delinquency provisions of federal law, the bills including such amendments have routinely included closely related provisions that would impose criminal sanctions for certain gang-related activities. Because these activities primarily involve juveniles, any increased prosecution for those activities would inevitably result in more federal juvenile cases. Both S. 254 and H.R. 1502 include several of these kinds of provisions. Both would add a new section 522 to title 18, United States Code, which would prohibit the recruitment of gang members. This is a modest enough expansion of federal criminal jurisdiction, but S. 254 would establish the authority in the Attorney General to designate certain areas as "high intensity interstate gang activity areas." Task forces could be created within such areas to coordinate investigation and prosecution of criminal activities of gangs. The bill would authorize appropriations of $100,000,000 for each of five years for the effort. While not specified in the bill, it is certainly possible that some of the task forces' prosecutions could end up in federal courts. But the bill would also provide grants for additional state prosecutors to "address drug, gang, and youth violence." Authorization of appropriations of $50,000,000 would be provided for this purpose for each of five years.

In addition, H.R. 1502 would amend 18 U.S.C. § 521, which currently provides a sentencing enhancement of up to 10 years for the commission of certain offenses involving criminal street gangs. The amendment would broaden the definition of "criminal street gang" and expand the number of offenses to which the enhancement might apply.

Both bills would also amend the Travel Act (18 U.S.C. § 1952) to prohibit travel or use of mail or other facility in interstate or foreign commerce with the intent to perform *and* the subsequent performance or attempt to perform any of the following: committing a crime of violence in furtherance of unlawful activity, distributing the proceeds of unlawful activity, or promoting, managing, establishing, carrying on, or facilitating any unlawful activity. Unlawful activity is defined as any business enterprise that involves controlled substances, gambling or liquor without payment of taxes, prostitution, a number of listed (mostly violent and obstruction of justice) offenses, or money laundering.

While neither of these bills has been enacted into law, they have been under active consideration during this Congress and have received considerable attention. The consideration of both bills was expedited dramatically as a result of the shooting incident at Columbine High School in Littleton, Colorado. During debate on the Senate floor, S. 254 was heavily amended with a number of gun control provisions, passing the Senate on May 20, 1999 by a vote of 73 to 25. Extensive gun amendments were voted down in the House, and on June 17 the House passed H.R. 1501 on a vote of 287 to 139. Although a House/Senate Conference Committee has been trying to work out a compromise bill since early August, final passage of a juvenile crime bill did not pass during this past session of Congress, due to the lack of agreement on the contentious gun control issues. But Congress may reconsider this proposed bill in the next session.

Regardless of the immediate prospects for the current legislation, Congressional interest in the juvenile arena will likely remain strong. Indeed, the general concepts contained today in S. 254 and H.R. 1501 are likely to be considered again in the future, and may one day become federal law.

NOTES

[1]Sept. 1997 *Report of the Proceedings of the Judicial Conference of the United States*, p. 65.

[2]*Rehnquist: Is Federalism Dead?*, Legal Times (Washington, D.C.), May 18, 1998, at 12.

[3]Id.

Punitive Juvenile Justice Policies and the Impact on Minority Youth

By Michael Finley and Marc Schindler*

While juvenile crime, including violent crime, has *decreased* in recent years,[1] legislators throughout the country have supported increasingly punitive responses to youthful misconduct. Thus, despite the fact that in an average year less than one-half of one percent of juveniles in the U.S. are arrested for a violent offense, more than 40 states have changed their laws to allow increased prosecution of juveniles in adult criminal court. They have done this in a variety of ways: 1) by increasing the number of offenses for which juveniles can be transferred to adult court after a judicial hearing; 2) by lowering the age at which juveniles can be transferred; 3) by designating certain offenses for which juveniles are automatically prosecuted in adult court; 4) by saying that for some offenses there is a presumption that the juvenile should be prosecuted in adult court, but the juvenile can try to prove that he is amenable to treatment, and get waived into juvenile court; and 5) by giving prosecutors the authority to decide in individual cases whether young people should be charged in juvenile court or adult court.

In a related "get tough" effort, Congress has enacted legislation through the appropriations process which requires that states consider further changing their laws to allow for easier transfer of youths to the adult criminal justice system. In addition, as of October 1999, Congress is also considering legislation which would allow juveniles in the federal system to be held in adult jails, right next to (and subject to verbal harassment from) adult inmates (H.R. 1501, 1999).

These legislative changes are taking place despite clear evidence that more punitive approaches do not reduce crime. Indeed, careful research in Florida, New York, and New Jersey has demonstrated that juveniles sent into the adult system are significantly *more* likely to be rearrested than those kept in juvenile court, commit new offenses *sooner*, and commit *more serious* offenses than juveniles kept in juvenile court.[2] Yet many legislators and other policymakers ignore the research, and there is little informed public debate on juvenile justice issues. Equally disturbing, the evening news is regularly filled with stories of young (usually minority) perpetrators, sometimes even referring to these youth as "superpredators."[3] Consequently, the public consistently ranks "fear of crime" among its highest concerns, drops in crime notwithstanding.[4]

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Minority Youth Get Hit the Hardest

The great weight of these punitive juvenile justice policies falls disproportionately on minority youth, who are overrepresented at every stage of the juvenile justice system. For example, although African-American youth age 10 to 17 constitute 15 percent of the U.S. population, they account for 26 percent of juvenile arrests, 30 percent of delinquency referrals to juvenile court, 45 percent of juveniles detained in delinquency cases, 40 percent of juveniles in corrections institutions, and 46 percent of juveniles transferred to adult criminal court after judicial hearings.[5] As the numbers indicate, the disproportionality is greater as youth go deeper into the system. In 1997, the custody rate for African-American youth in residential facilities was nearly five times the rate for white youth.[6] Thus, little has changed since 1995 when minorities constituted over 68 percent of the incarcerated population in training schools—the most restrictive, most secure public institutional environment for juveniles—and yet they were just under 32 percent of the general youth population.[7]

It would be easy to simply attribute this large discrepancy to the fact that young people of different racial groups commit different types of crimes. In fact, among *all offense categories*, black youth were more likely to be detained than white youth during every year between 1987 and 1996.[8] Minority youth are also more likely to be removed from their families than white youth. For example, between 1987 and 1991, out-of-home placements for *non*-white youth *increased* significantly for property, drug, and public order offenses (29 percent, 30 percent and 32 percent, respectively). During that same period in these same categories, out-of-home placements for *white* youth noticeably *decreased* (by 1 percent, 29 percent and 15 percent, respectively).[9]

These same trends are evident when looking at the number of detained youth. Thus, the number of minority youth held in detention centers increased by 71 percent from 1987 to 1996, while the number of white youth increased by only 18 percent.[10] In a single-day census of all youth detained in residential facilities on October 29, 1997, minorities made up *two-thirds* of the population.[11] Indeed, a study of the juvenile justice system in California found that Latino and African-American youth consistently receive more severe dispositions than white youth and are more likely to be committed to state institutions than white youth *for the same offenses*.[12]

Importantly, African-American youth are not the only juveniles disproportionately impacted by the juvenile justice system. Research in this area specific to Latino youth, how-

ever, is scant because many state and national studies place Latino youth in inconsistent categories. Thus, the Office of Juvenile Justice and Delinquency Prevention's 1996 national report on juvenile offenders and victims, reflecting data collected by the states, includes Latino youth as "white" when counting violent crime and transfers to adult court, then lists them as "minority" in its confinement statistics. As a result, data on the extent to which Latino youth are overrepresented in the juvenile system are incomplete.

Nevertheless, the 1996 OJJDP report found disproportionate confinement of Latino youth in secure detention facilities and in secure corrections institutions in a majority of the states that provided separate data. The states with the largest proportions of Latino youth in their adolescent populations—New Mexico, California, Texas, and Arizona—all reported disproportionate confinement of Latino youth in secure detention, or secure corrections, or both.[13]

The disproportionate impact of the justice system on minority youth raises particular concerns in the context of the new laws increasing prosecution of juveniles as adults. The changes in state "transfer" laws (and the changes proposed by pending federal legislation) will allow for the continuation of a disturbingly large number of children, particularly minority youth, to be detained in adult prisons. More than 12,000 juveniles are transferred to adult court by judges each year, and many more are prosecuted as adults as a result of increased direct filings in criminal court by prosecutors. The most recent data indicate that more than 200,000 children a year are prosecuted in general criminal courts nationwide; in June 1997 over 7,000 children who were being prosecuted in the general criminal justice system were held in adult jails (more than double the number in 1993); and in 1995 more than 11,000 children were in adult prisons and other long-term adult correctional facilities, with more than 2,600 of them under 16 years of age.[14] In 1996, African-American youth represented nearly half of all judicially waived cases, including 70 percent of transfers for persons offenses, 75 percent of drug offenses, and 78 percent of robbery offenses.[15]

Unfortunately, with the trend towards increased use of "prosecutorial waiver," both in the states and possibly in the federal system as proposed by Congress, we should expect to see many more youth of all races prosecuted and incarcerated in the adult criminal justice system in coming years. For example, Florida is in many ways the pioneer (and one of 15 states) which currently employs a system of "prosecutorial waiver" where the prosecutor makes the decision of whether a youth is tried in juvenile court or adult criminal court.[16] The experience in Florida demonstrates that turning this critical decision over to a prosecutor, as opposed to a neutral judge making the final decision, results in many more youth being sent to the adult system. Thus, in 1995 alone Florida prosecutors sent 7,000 youth to adult criminal court, nearly matching the 9,700 cases waived by judges nationwide.[17]

The effect of these incredibly high rates of incarceration on minority families and communities is profound. These disparate rates of involvement in the juvenile justice system, leading to incarceration, have a dramatic impact on minority youth as they become adults. The Sentencing Project has reported that one-third of all African-American males age 20 to 29 in the United States are under the jurisdiction of the criminal justice system—either in jail, in prison, on probation, or on parole.[18] In some cities, such as Baltimore and Washington, DC, the number actually approaches 50 percent.[19] The primary factors contributing to this extraordinary level of social control over young black men are drug enforcement policies and prior criminal records of minority defendants. Since minority youth are disproportionately impacted by the juvenile justice system, where they pick up those prior records, the juvenile system in effect acts as a feeder system for minority youth into the adult criminal justice system.

Moreover, a consequence of an adult felony conviction in most states is the loss of voting rights for a period of time, and sometimes for life. Thus, as a result of increasing numbers of young black males being supervised in the criminal justice system, currently approximately 1.4 million black males (which represents 14 percent, or one in seven, of the 10.4 million black males of voting age) are now either currently or permanently disenfranchised from voting.[20] It is clear that the cumulative impact of such large numbers of black males being excluded from the electoral process will increasingly dilute the political power of the African-American community. Another significant impact of incarceration (or even simply arrest) is the reduction of potential future wage earning and employability. For example, Richard Freeman's study of the impact of imprisonment on earnings potential concluded that among a sample of youth incarcerated in 1979 there was a 25 percent reduction in the number of hours worked over the next eight years.[21] Therefore, as we see increasingly disparate and astoundingly high rates of incarceration for minority youth and adults, the result is likely to be a similarly disparate and devastating impact on the minority communities in which many of these young men live, with the removal of large numbers of potential wage earners, a disruption of family relationships, and a growing sense of isolation and alienation from the larger society.

Unfortunately, at the same time that policy makers at the federal level are considering changes which will likely result in more minority youth being transferred to the adult system, they are also considering repealing the current federal disproportionate minority confinement (DMC) language requiring states to assess whether and why minority youth may be disproportionately represented in their juvenile justice system, and to develop intervention strategies to address the causes for disproportionate minority confinement. Thus, the Senate-passed bill in the 106th Congress deletes all reference to "minority" and instead refers to "segments of the juvenile population." By removing the language of the current law, the widespread disparity in treatment would be significantly minimized and current efforts in the states to collect this data and remedy the disparate treatment of minority youth would be seriously undermined.

States are unlikely to continue to address the problem in the absence of the DMC language in current law.

Dangers of Incarcerating Youth in Adult Facilities

Youth who are detained in the adult system face a very real threat of danger from the adult population. A 1997–98 survey of state adult correctional systems conducted by Amnesty International found that 40 states reported housing children in the general population. Further, most of these states did not provide the children with age appropriate programs.[22] Children placed in adult institutions are five times as likely to be sexually assaulted, twice as likely to be beaten by staff, 50 percent more likely to be attacked with a weapon, and eight times as likely to commit suicide as children confined in juvenile facilities.

These statistics can only begin to illustrate the senselessness of horrible tragedies that could have been avoided. For example, a 15-year-old girl in Ohio ran away from home and returned voluntarily, but was ordered into the county jail for five days by a judge "to teach her a lesson." On the fourth night she was sexually assaulted by a deputy jailer. Seventeen-year-old Chris Peterman was held in the jail in Boise, Idaho, for not paying $73 in traffic fines. Over a 3-day period, he was tortured and finally murdered by other prisoners in the cell. Robby Horn, 15 years old, was repeatedly ordered into jail in Kentucky for truancy and running away from home. After an argument with his mother, he was ordered back into the jail by a juvenile court judge. Within half an hour, he hanged himself. Kathy Robbins, also 15, was locked in the county jail in rural California for being in the town square on Saturday night after the 10:00 p.m. curfew. After a week in jail, she hanged herself. Another girl in Indiana was locked in jail for stealing a bottle of shampoo. She had a history of mental health problems, but the staff did not pick that up, and she, too, hanged herself (S. Rep. No. 105–108, 1997). More recently, in Ohio, six adult prisoners murdered a 17-year-old boy while he was incarcerated in the juvenile cellblock of an adult jail (Delguzzi, 1996).

Policy makers must recognize that the placement of children into adult facilities in the presence of adults is an invitation to rape and assault; locking them up in "protective" isolation or administrative segregation for long periods (many have multi-year sentences) is a guarantee of severe mental and physical deterioration.

Beyond the Statistics

While clearly these numbers tell the story of a generation of minority youth being arrested and incarcerated at frightening rates, this is really only part of the story. What the numbers do not and cannot reveal is the physical brutality, danger, and hopelessness of a system that treats young minority youth as if they are animals needing to be restrained and placed in cages. Yet, without actually seeing the inside of an institution or talking with a youngster who has been confined in an adult facility, we cannot really appreciate these statistics. Minority youth are not ignorant of the rehabilitative goals of the juvenile system. One study revealed that youth recognized that the juvenile system "is all about rehabilitation and counseling. …[and] we have people to listen to when you have something on your mind…and need to talk. They understand you and help you."[23] Conversely, youth who were placed in the criminal system expressed the view that in the adult system "they tell me I am nobody and I never will be anybody." And what about what is happening on the streets of our nation's cities? Knowing that a black youth in Baltimore is 100 times more likely to be arrested for a drug offense than a white youth is clearly disturbing, but these numbers don't tell the story of young black and Latino youth being harassed, intimidated, and sometimes beaten in the name of curfew enforcement and neighborhood drug sweeps. The numbers also do not tell the story of what is happening on "the other side of town," and how the treatment of white youth in our communities and justice systems may "look and feel" decidedly different from the way minority youth are treated.

Building a Constituency for Change

To have a reasonable chance of successfully addressing the challenges discussed above will require a multitude of sustained and varied strategies. Since there are no models to reduce minority overrepresentation at either the state or federal level, the importance of multi-faceted efforts to address the problem cannot be overstated.

In an effort to move forward effectively in these areas, the Youth Law Center has developed a major new initiative to protect minority youth in the juvenile justice system and promote rational and effective juvenile justice policies. Titled "Building Blocks for Youth," the initiative combines research on the impact of new adult-court transfer legislation in the states; assessment of the legal and policy issues in privatization of juvenile justice facilities by for-profit corporations; analyses of decisionmaking at critical points in the justice system; direct advocacy on behalf of minority youth in the system, particularly with respect to conditions of confinement and effective legal representation; constituency-building among African-American and other minority organizations, as well as religious, health, mental health, law enforcement, corrections, and business organizations at the national, state, and local levels; and development of effective communications strategies to provide timely and pertinent information to these constituencies. Each of these components "builds" on the prior ones. Thus, the research, analysis of decisionmaking, and direct advocacy will all yield information and products that will support the constituency-building and communications components.

In this multi-year effort, the Center will collaborate with a coalition of organizations, including the Communications Consortium Media Center, the Juvenile Law Center, Pretrial Services Resource Center, the National Council on Crime and Delinquency, the Center on Juvenile & Criminal Justice, Minorities in Law Enforcement, and the Center for Third

World Organizing. The effort will be funded by several major foundations and federal agencies. Fortunately, more initiatives are being created to address this issue throughout the nation.

As part of the Building Blocks initiative in Seattle, an advisory board consisting of law enforcement officials, prosecutors, defenders, city council members, judges, community groups, and youth was created to analyze how choices made by the police and other key decisionmakers may have a disparate impact on minority youth. The board will help develop alternative decisionmaking criteria to address this problem. In addition to the Youth Law Center's work, many states are attempting to address the issue of disproportionate confinement of minority youth.

In North Carolina, Disproportionate Minority Confinement committees were established in ten pilot counties after an initial study revealed that minority youth were overrepresented at each stage of the juvenile justice process within those counties.[24] The committees worked to identify factors contributing to the overrepresentation problem, to develop and implement new policies specific to that issue, and to improve the overall delivery of services to youths in the system.

Similarly, in one county in Oregon, minority juvenile justice specialists worked with young minority offenders to provide counseling and additional mentoring support in response to analysis that indicated that African-Americans were overrepresented at every stage of the juvenile justice process. This effort is part of a larger statewide effort that has led to a 3 percent reduction in the number of African-American youth inmates over the past five years.

In Iowa, although African-Americans represented 2 percent of the population, research demonstrated that they were overrepresented in secure facilities and they tended to be confined in secure facilities for longer periods of time than white juveniles. Consequently, a task force of juvenile justice professionals collaborated with state agencies to develop community-based solutions.

Officials in Arizona created a partnership between a behavioral health provider, city and state agencies, the Arizona Supreme Court, the Arizona Juvenile Justice Commission, and the Governor's Division for Children to address inequities in the juvenile justice system. In addition to expressing the need for better training of staff, better wages, and improved cultural diversity programming, officials have established classes such as Street Spanish language for corrections employees who deal with Hispanic gang members.

All of these promising efforts include the participation, on some level, of the local community. Any potential solution should involve local staff who are more knowledgeable about the dynamics of their community and who are aware of the availability of resources to address the problem of the disproportionate confinement of minority youth. Moreover, any effort to address this problem must include all of the key stakeholders in the system, including law enforcement officials, probation officials, corrections officials, judges, prosecutors, and defenders.

Conclusion

Clearly, a small percentage of youth need to be placed in secure facilities for the sake of public safety. However, even these young people should never be mixed with adults. Politicians and policymakers must recognize that senseless tragedies, such as those described above, can be avoided by never mixing children and adults. In addition, our elected officials must stop using fear and stereotypes to justify an increasingly and unnecessarily punitive juvenile justice system that disproportionately impacts minority youths and communities. Instead, our nation's leaders must work with advocates and key stakeholders on the national, state, and local level to incorporate the concept of rehabilitation and detention alternatives back into a juvenile justice system that has come to represent a system of hopelessness and despair for too many people.

NOTES

[1]Federal Bureau of Investigation, Uniform Crime Reports for the United States 1995 216 (1995); Michael A. Jones and Barry Krisberg, Images and Reality: Juvenile Crime, Youth Violence and Public Policy 37 (National Council on Crime and Delinquency 1994).

[2]Donna M. Bishop, *et al.*, "The Transfer of Juveniles to Criminal Court: Does It Make A Difference," 42 *Crime and Delinquency*, 171 (1996); Jeffrey Fagan, "Separating the Men From the Boys: The Comparative Advantage of Juvenile Versus Criminal Court Sanctions on Recidivism Among Adolescent Felony Offenders," *A Sourcebook on Serious, Violent and Chronic Offenders* (Sage Press 1995).

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[10]Sickmund and Snyder, p. 154.

[11]*Id.* at 195.

[12]Jones and Krisberg, *Images and Reality*, at 6.

[13]Donna Hamparian and Michael J. Leiber. Disproportionate Confinement of Minority Juveniles in Secure Facilities: 1996 National Report. Washington, DC: Office of Juvenile Justice and Delinquency Prevention, p. 14–15.

[14]Amnesty International, *Betraying the Young*.

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[16]Griffin, P., Torbet, P., and Szymanski, L, 1998.

[17]Butts, J. and Harrell, A., 1998.

[18] Marc Mauer (January 1997). Intended and Unintended Consequences: State Racial Disparities in Imprisonment. The Sentencing Project.

[19]*Hobbling a Generation: African American Males in the District of Columbia's Criminal Justice System* (NCIA, Washington, DC, March 1992); *Hobbling II, African American Males in Baltimore's Criminal Justice System* (NCIA, Washington, DC, June 1992).

[20]Marc Mauer (January 1997). Intended and Unintended Consequences: State Racial Disparities in Imprisonment. The Sentencing Project.

[21]*Id.*

[22]Amnesty International Report: United States of America: Betraying the Young, November 1998, p. 39.

[23]Donna Bishop and Charles E. Frazier, Office of Juvenile Justice and Delinquency Prevention, 1998, and keynote address, National Association of Sentencing Advocates Conference, Miami, Florida, April 15, 1999.

[24]Lessons Learned article.

Successful Strategies for Reforming Juvenile Detention

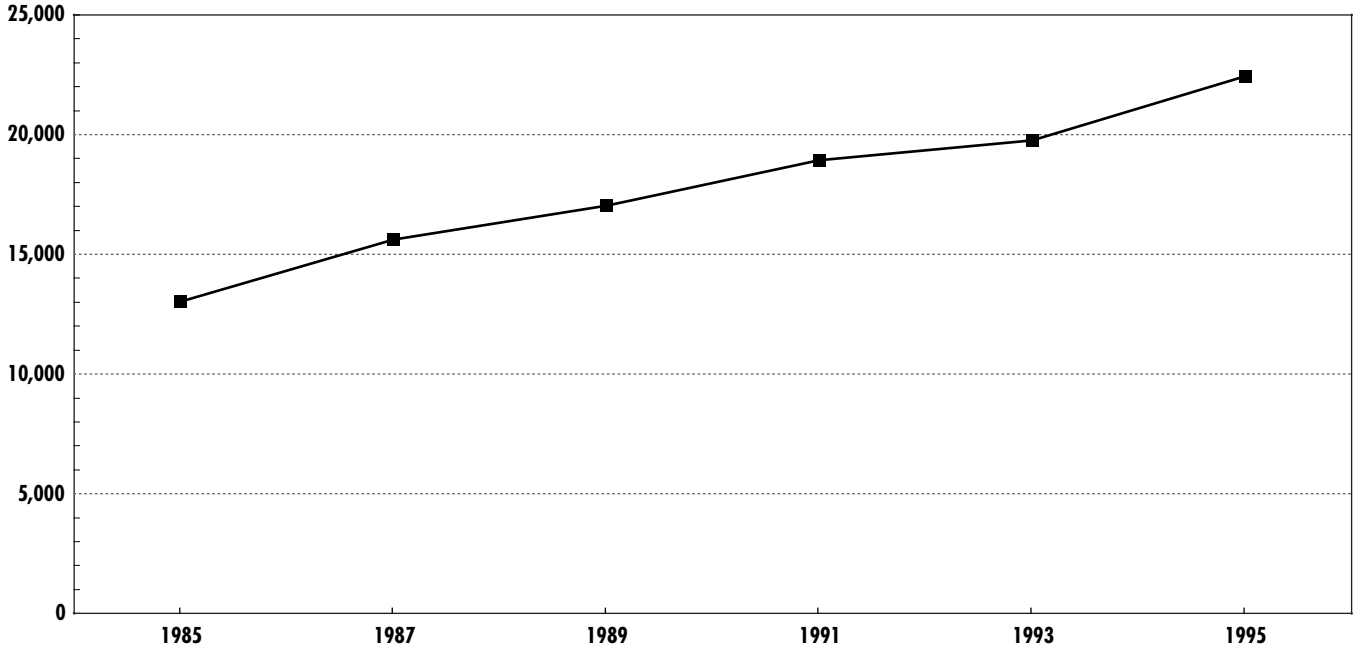
By Bart Lubow
Senior Associate at The Annie B. Casey Foundation

Introduction

In 1993, THE Annie E. Casey Foundation launched the Juvenile Detention Alternatives Initiative (JDAI), an ambitious multi-year, multi-site project undertaken to demonstrate that jurisdictions can reduce reliance on secure detention without sacrificing public safety. The decision to invest millions of dollars and vast amounts of staff time to detention reform, a long-neglected component of juvenile justice, was stimulated by data that revealed a rapidly emerging national crisis in juvenile detention.

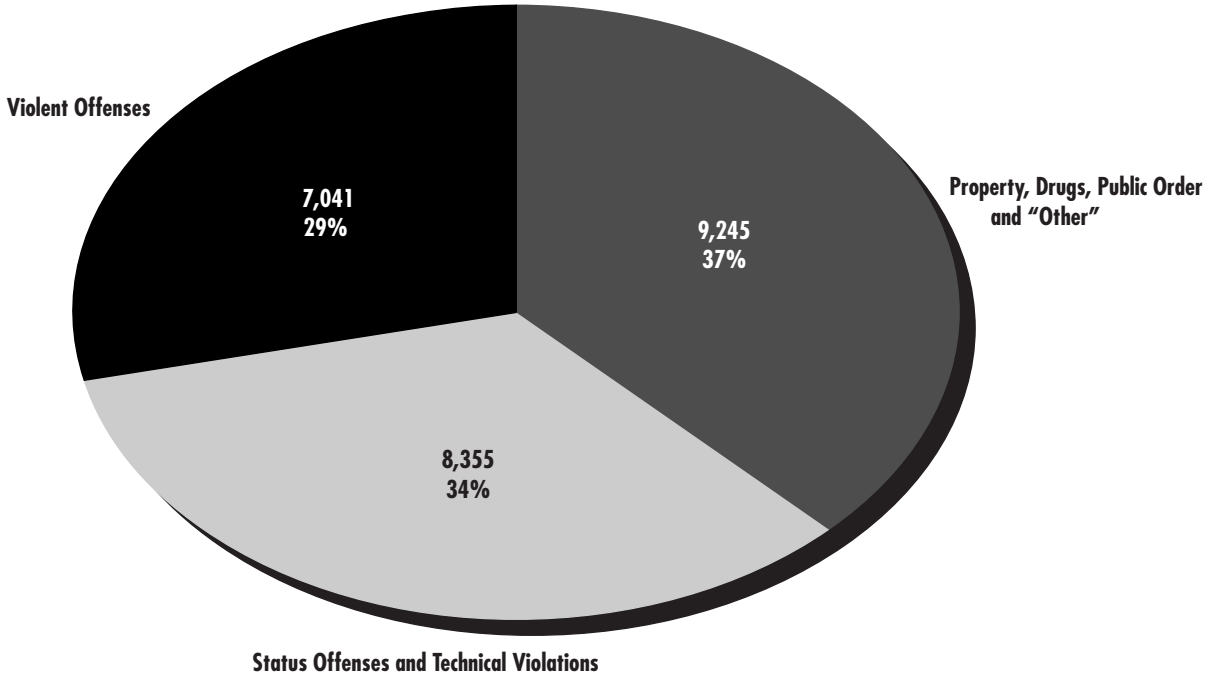
From 1985 to 1995, the number of youth held in secure detention nationwide increased by 72 percent (Figure 1). This increase might be understandable if the youth in custody were primarily violent offenders for whom no reasonable alternative could be found. But other data (Figure 2) revealed that less than one-third of the youth in secure custody (in a one-day snapshot in 1995) were charged with violent acts. In fact, far more kids in this one-day count were held for status offenses (and related court order violations) and failures to comply with conditions of supervision than for dangerous delinquent behavior. These increases, moreover, were wildly disproportionate across races. In 1985, approximately 56 percent of youth in detention on a given day were white, while 44 percent were minority youth. By 1995, those proportions were reversed (Figure 3), a consequence of greatly increased detention rates for African-American and Hispanic youth over this ten year period.[1]

FIGURE 1.
AVERAGE DAILY POPULATION OF JUVENILES IN U.S. PUBLIC DETENTION CENTERS
1985–1995



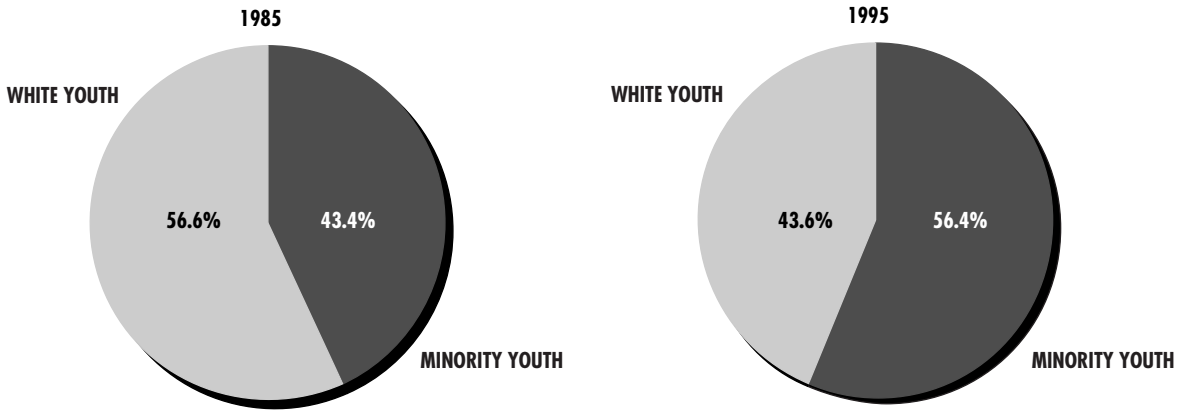
Source: Census of Public and Private Juvenile Detention, Correctional and Shelter Facilities, 1985–1995.

FIGURE 2.
ONE-DAY COUNTS IN DETENTION FACILITIES, 1995
BY OFFENSE CATEGORY



Source: Census of Public and Private Juvenile Detention, Correctional and Shelter Facilities, 1985–1995.

FIGURE 3.
OVERREPRESENTATION OF MINORITY YOUTH IN PUBLIC DETENTION CENTERS:
1985 & 1995



Source: Census of Public and Private Juvenile Detention, Correctional and Shelter Facilities, 1985–1995.

As juvenile detention utilization escalated nationally, crowded facilities became the norm, rather than the exception. The number of public facilities operating above their rated capacities rose by 642%, from 24 to 178, between 1985 and 1995 (Figure 4), and the percentage of youth held in overcrowded detention centers rose from 20% to 62% during the same decade (Figure 5). By mid-decade, therefore, most youth admitted to secure detention found themselves in overcrowded places that research, case law and practical experience all reveal cannot provide the appropriate custody and care that are the obligation of every jurisdiction that locks up a child.

Pathways to Juvenile Detention Reform

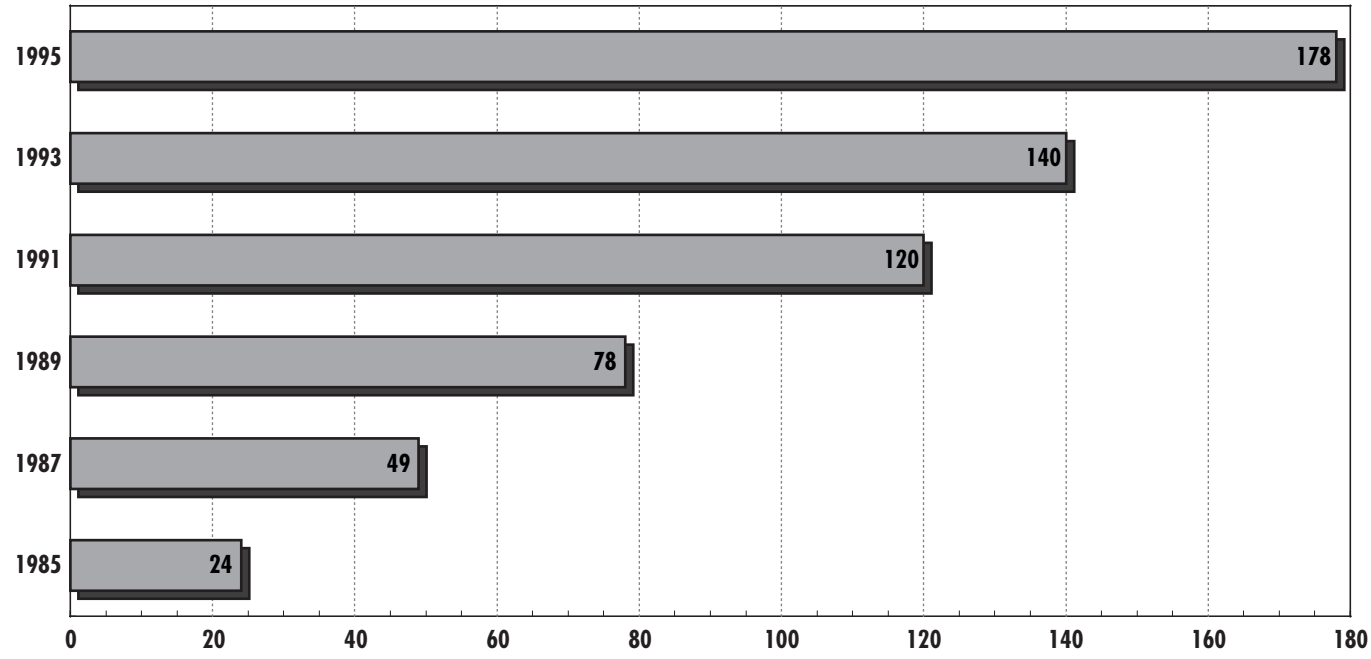
JDAI was developed as an alternative to these trends. Its purpose was simple: to demonstrate that jurisdictions can establish more effective and efficient systems to accomplish the purposes of juvenile detention. The initiative had four basic objectives: 1) to eliminate the inappropriate or unnecessary use of secure detention; 2) to minimize failures to appear and the incidence of delinquent behavior; 3) to redirect public finances from building new facility capacity to responsible alternative strategies; and 4) to improve conditions in secure detention facilities. In effect, JDAI was designed to test the proposition that jurisdictions could control their detention destinies by changing the ways in which the system's participants made decisions, coordinated activities, and held themselves accountable.

JDAI's various strategies can be thought of as a series of pathways to reform at the policy, system, and practice levels (Figure 6).[2] The first strategy was collaboration, bringing together juvenile justice system stakeholders and other potential partners (like schools, community groups, mental health providers) to confer, share information, develop system-wide policies, and to promote accountability. Collaboration was essential for sites to build a consensus about the limited purposes of secure detention: *to ensure that alleged delinquents appear in court and to protect the community by minimizing serious delinquent acts while their cases are pending*. It was also critical to ensure that individual agencies or stakeholders did not sabotage other reform strategies.

Collaboration and clarification of purpose, in turn, helped to build capacity for reform in two ways. First, individual agencies examined their internal policies and programs to determine if they were consistent with these newly defined purposes. Second, the collaborators identified capacities that needed to be built, such as information systems that could provide timely, accurate data essential to understanding the system's operations and the impact of reforms.

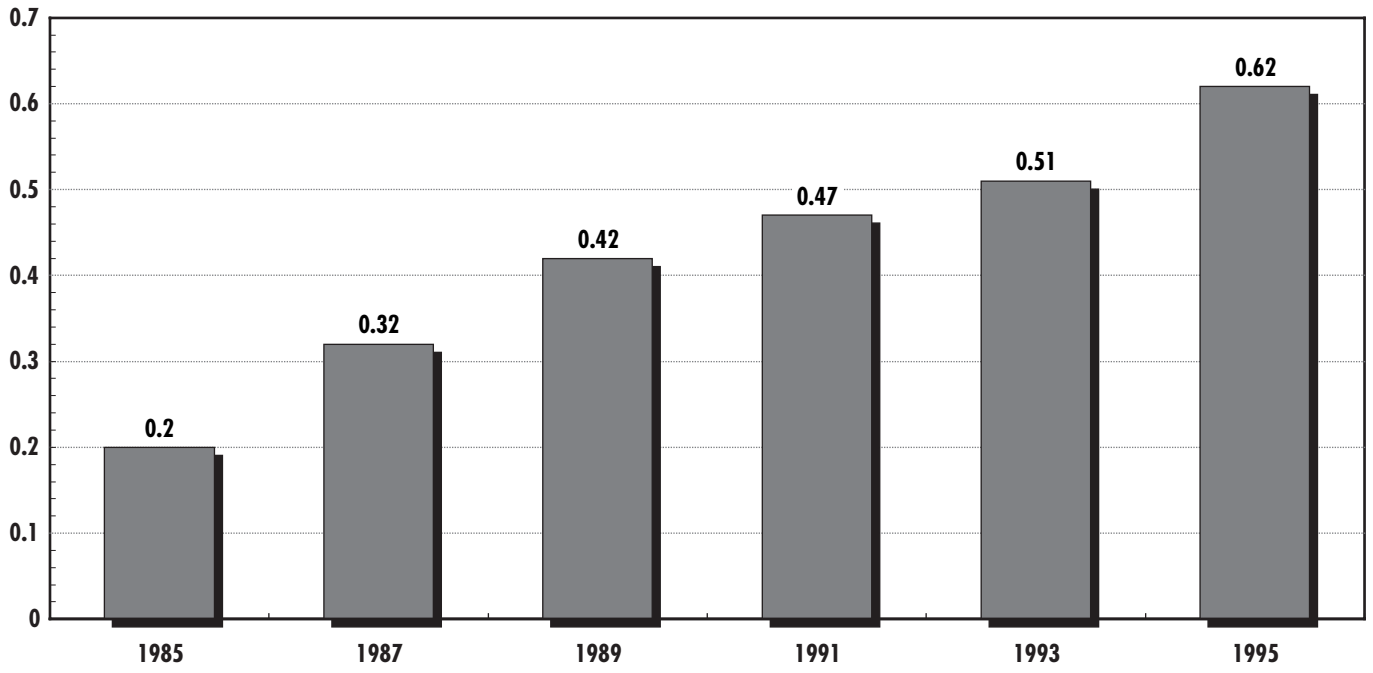
Armed with a clearer sense of purpose, better information and the power of a common, collaboratively agreed upon reform agenda, the sites began transformation at the practice level, first by gaining control of who was admitted to secure detention. This was accomplished by developing objective criteria to clarify which arrested youth were eligible for detention and screening instruments to distinguish

FIGURE 4.
NUMBER OF OVERCROWDED U.S. PUBLIC DETENTION CENTERS
1985-1995



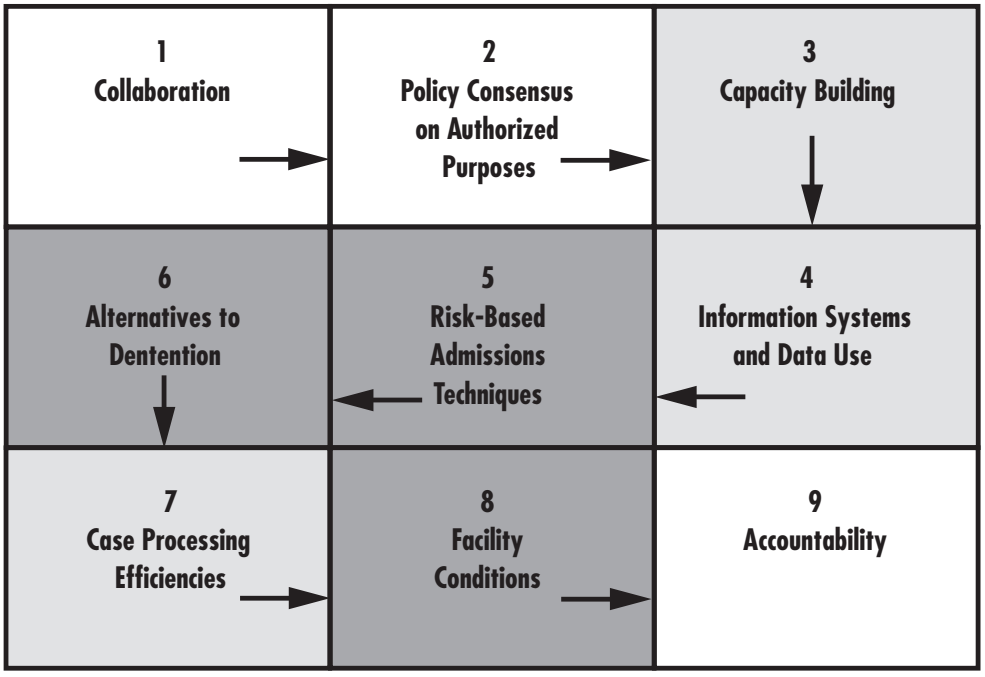
Source: Census of Public and Private Juvenile Detention, Correctional and Shelter Facilities, 1985–1995.

FIGURE 5.
PERCENTAGE OF JUVENILES IN OVERCROWDED U.S. PUBLIC DETENTION CENTERS
1985-1995



Source: Census of Public and Private Juvenile Detention, Correctional and Shelter Facilities, 1985–1995.

FIGURE 6.
PATHWAYS TO JUVENILE DETENTION REFORM



Legend: Policy Reforms System Modifications Practice Innovations

which detention-eligible youth were or were not likely to appear in court or re-offend. These new tools replaced idiosyncratic or subjective approaches that often failed to distinguish high-risk from low-risk youth, frequently frustrated law enforcement officials (who could not figure out which kids would be detained), contributed to disparate rates of admissions across races, and left the system unable to explain its own decisions.

These new admissions instruments also enabled the participating jurisdictions to more effectively identify appropriate youth for new or expanded alternative-to-detention programs. JDAI sites generally developed or expanded three different kinds of alternatives: home detention (also called house arrest, community detention or home confinement), day- or evening-reporting centers, and temporary, non-secure shelters. Some programs were contracted out to non-profit, community-based agencies; others were operated by local probation departments. Program activities were designed to maximize the likelihood that kids would appear in court when scheduled and not commit new offenses while their instant cases were pending. As a general rule, program restrictiveness was increased or decreased as a function of the youth's behavior. Adherence to conditions of supervision in home detention, for example, might result in later curfews or fewer daily contacts, while non-compliance would lead to tighter controls.

Another strategy was to increase case processing efficiency so that cases moved more quickly, especially for youth in secure confinement or alternative programs. These types of system improvements reduce lengths of stay and, therefore, lower facility population levels. They also speed the administration of justice and allow for the redeployment of staff to other functions. Once JDAI site participants began to critically dissect how cases flowed through their systems, they became particularly creative in these endeavors, finding numerous ways to expedite cases by reducing the time between court hearings, facilitating more timely placements, etc.

To improve conditions in detention facilities, each site agreed to rigorous annual inspections by outside experts who analyzed facility records, interviewed staff and children, observed programming, reviewed operations at all hours, and examined every nook and cranny of the physical plant. These inspectors then prepared detailed reports that highlighted conditions for which the site could be found legally liable, as well as improvements that should be made consistent with best practices. Deficiencies were corrected at site expense so that confined youth were at least held in constitutionally required conditions. Several sites came to welcome these annual inspections. They provided a "report card" that administrators could use to improve operations and they served as evidence when advocating for resources.

Finally, each site took steps to increase system accountability by measuring and reporting outcomes to determine if detention's authorized purposes were effectively accomplished and whether its programs, policies, and practices were of high quality and reasonable cost. Prior to JDAI, none of these sites knew what their failure-to-appear or pretrial re-arrest rates were. Today, they routinely keep track of these essential detention system outcome measures and can provide timely feedback on the "success" rates of their non-secure programs.

Preliminary Results

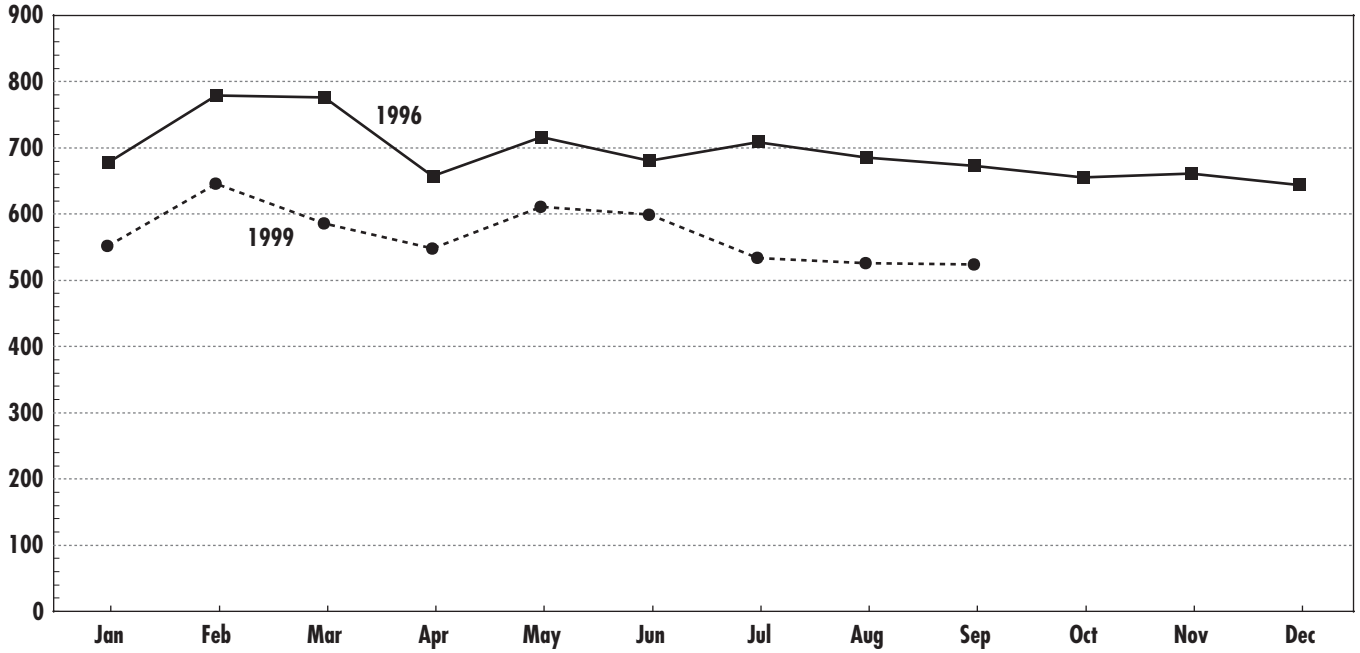
In practice, these reform strategies proved much easier to design than to implement. JDAI began with five sites: Cook County, IL; Milwaukee County, WI; Multnomah County, OR; New York City; and Sacramento County, CA. Just when implementation activities were about to begin, a dramatic shift occurred in the nation's juvenile justice policy environment. High-profile cases, coupled with reports of significantly increased juvenile violence, spurred media coverage and "get tough" legislation antithetical to JDAI's core notion that some youth might be "inappropriately or unnecessarily" detained. Political will for the reform strategies diminished as candidates tried to prove they were tougher on juvenile crime than their opponents. In some JDAI sites, legislation was enacted that drove up detention utilization.

Still, by the end of 1998, three of the JDAI sites (Cook, Multnomah and Sacramento counties) had not only persevered; they had genuinely transformed their detention systems by implementing this complex array of reform strategies. Did these changes make a difference? Preliminary data certainly indicate that they have.[3]

Cook County, for example, was the most severely crowded detention center of the JDAI sites, with a 1996 population peak of over 800 youth crammed into a facility designed for 498. Over the past three years, Cook County reduced its average monthly population from a high of 779 in February 1996 to a low of 524 in September 1999 (Figure 7). These reductions were accomplished by lowering the percentage of detention screenings resulting in secure custody from 70 percent to approximately 40 percent and by decreasing overall case processing times for youth who were detained at some point in their cases by 39 percent. Significantly, these changes were made without increases in pretrial re-arrest rates and with a significant (50 percent) decrease in failure-to-appear rates.

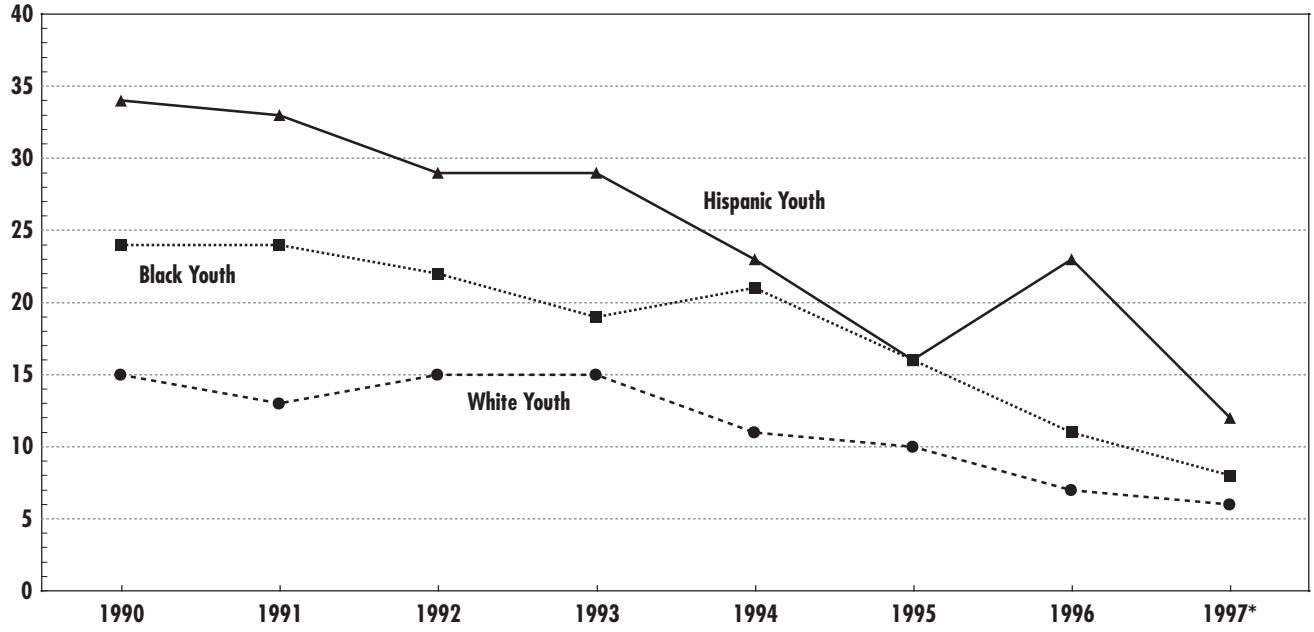
Multnomah County was able to keep its average daily population below facility capacity despite new "waiver" legislation that mandated detention for youth prosecuted in adult courts (where the slower pace also increased their lengths of stay). Objective admissions screening enabled Multnomah to decrease its detention rate by approximately 20 percent. These new practices also reduced disparities in the likelihood of detention across races (Figure 8). Case processing innovations in Multnomah's unusually fast juvenile court further reduced average case processing times (for cases involving detention) by one-third. Again, these population reduction strategies were implemented without sacrificing appearance in court or pretrial re-arrest rates.

FIGURE 7.
COOK COUNTY JUVENILE TEMPORARY DETENTION CENTER
AVERAGE MONTHLY POPULATION 1996 & 1999



Source: Census of Public and Private Juvenile Detention, Correctional and Shelter Facilities, 1985–1995.

FIGURE 8.
MULTNOMAH COUNTY
Proportion of Delinquency Referrals with Pretrial Detention
By Year and Race/Ethnicity of Juvenile



Source: Census of Public and Private Juvenile Detention, Correctional and Shelter Facilities, 1985–1995.

Sacramento County reduced the percentage of detention referrals it admitted to secure custody by 24 percent, while also decreasing its pretrial re-offending rate by approximately the same amount (Figure 9). It also reduced case processing times for detained cases by about 43 percent from 1994 to 1997. Despite these impressive results, Sacramento's average daily population remained relatively constant over the course of JDAI, largely because of significant increases in the number of post-disposition detention cases, especially those of youth awaiting placement in residential facilities. Absent their detention reform efforts, however, Sacramento's detention facility would be horribly overcrowded right now.

All three sites also made progress in other areas of detention reform. They developed genuine, sustainable collaborative bodies, composed of the system's major stakeholders, that now enable them to collectively identify system problems and solutions. Their use of data to make program and policy choices increased substantially. New alternative programs were implemented, including some operated for the first time by community organizations located in the neighborhoods where the youth live. System-wide training was provided to reduce disproportionate minority detention. Unique strategies to address "special" detention cases (e.g., youth held on warrants and violations of probation) were devised and implemented. Finally, all three sites made substantial and, in some instances, dramatic improvements in conditions of confinement for those youth who continued to be securely detained.

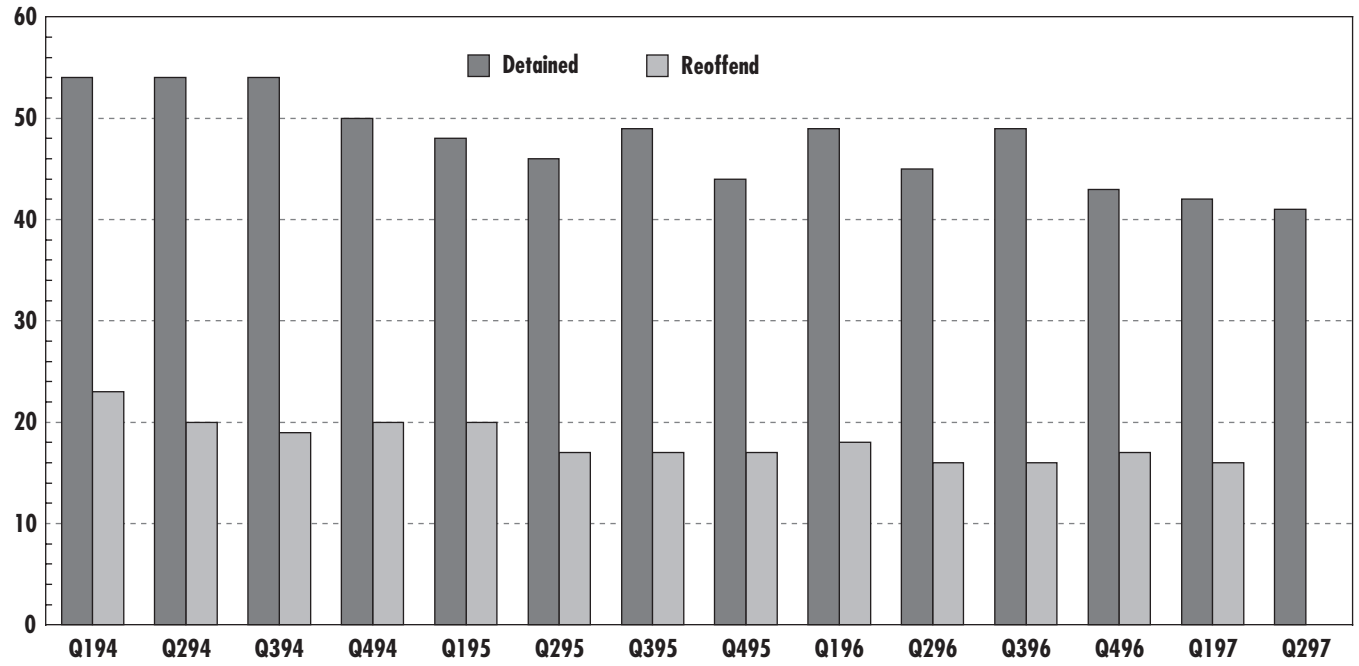
Some Lessons Learned

The work done by the JDAI sites was extremely challenging, often frustrating, but rich in innovations and lessons. This article is too brief to summarize even the most significant of the innovations, much less to summarize the many lessons learned by policymakers and staff over the past six years. Many of these innovations and lessons are documented in a forthcoming series, *Pathways to Juvenile Detention Reform*. What follows, therefore, is but a brief summary of some of the key lessons that this project taught its participants.

Collaboration is foreign and difficult, but worth it.

As noted, a key JDAI strategy was to organize collaboratives of key policymakers and practitioners to undertake the planning and oversee the implementation of detention reforms. As most people in the field acknowledge, juvenile justice is hardly a coherent, united system. Rather, the typical juvenile justice system is a collection of independent agencies, with separate budgets, individual policy-making authority, and little history of cooperation. Collaboration was deemed critical to ending these fragmented, uncoordinated, often contentious arrangements and replacing them

FIGURE 9.
SACRAMENTO COUNTY PERCENT OF DETENTION REFERRALS ADMITTED VERSUS QUARTERLY RE-OFFEND RATE



Source: Census of Public and Private Juvenile Detention, Correctional and Shelter Facilities, 1985–1995.

with a structure that enabled key participants to confer, share information, develop policies from an interagency perspective, and hold each other accountable. Collaboration, in short, was deemed essential for raising the odds in favor of change.

Given the unsystematic nature of juvenile justice, it should be no surprise that JDAI collaborative members found themselves on unfamiliar ground. Prosecutors and defenders were unaccustomed to developing policy jointly. Judges were not used to having their decisions challenged. Detention administrators had rarely been able to challenge probation intake decisions. Years of operating independently, combined with misunderstandings and disagreements too old to document, meant that collaboration was simply unnatural.

As time passed, however, the virtues of this approach revealed themselves. Indeed, the sites now testify that it would have been impossible to accomplish the changes they made without collaboration. Comprehensive detention reform is a complicated dance, involving many steps and many partners. If one agency fails in its responsibilities, everyone is at risk of tripping over him or herself. JDAI stakeholders found that if they worked together they could generate more momentum to overcome systemic inertia, while also providing each other with the political cover that this kind of risk taking often requires.

Judicial leadership is essential.

While creating and sustaining collaboratives was crucial to JDAI site success, individual leadership remained critical, none more so than that of the presiding juvenile court judge. Regardless of the governmental structure of the locality's juvenile justice system (e.g., whether probation and/or detention are under the executive or judicial branch), the presiding juvenile court judge must embrace detention reform and act decisively to support the new policies and programs. New admissions screening practices, accurate targeting of cases to alternative-to-detention programs, and case processing modifications are just a few detention reform components that require the blessing of the judiciary. And, given highly valued notions of judicial independence, only a committed presiding judge can ensure that his or her colleagues on the bench will apply the new approaches consistently.

The three most successful JDAI sites had outstanding judicial leadership that played an active role in designing system changes and supporting their implementation. Moreover, each of these sites successfully handled the thorny problem of judicial rotation. In fact, new presiding judges seemed to provide new impetus for the initiative, often because they sought to put their own imprimatur on the reform effort.

Capacities for reform must be grown.

JDAI sites were selected because they appeared to have both the political will and the administrative capacity to implement changes that would reduce reliance on secure confinement. But those strategies are relatively uncommon (or we would not have a detention crisis in this country), and the skills and experiences essential to using them are rarely taught or written about. Even highly effective administrators will have difficulty planning and implementing policies and programs that are unfamiliar.

At the outset of this initiative, for example, JDAI stakeholders had infrequently relied upon data to drive policy and program choices, had no experience designing and using risk assessment instruments, had not developed many alternatives to detention, and had rarely been challenged to scrutinize court processes to make them more efficient. These participants, despite their years of distinguished service, faced a steep learning curve, one that they were reluctant to acknowledge at the outset of the project. Over the long haul, however, they learned that comprehensive system reform of this type, by virtue of its intention to replace the old ways of doing things, must include significant retooling of both individuals and agencies.

The dearth of data can be deadly.

At the start of the initiative, JDAI sites, like most places, had virtually no timely, accurate data available to describe what was happening in their detention systems. They could not summarize the characteristics of the detained population, much less the system's failure-to-appear or re-arrest rates. Using data to make policy or program decisions was foreign to their efforts because there were no data to use.

Without data, however, anecdotes and unproven generalizations, not to mention worst-case scenarios and most-egregious cases, dominate planning and assessment. Without data, disagreements about whether the jurisdiction is "inappropriately or unnecessarily" detaining some kids are not resolvable. Without data, it is impossible to know what impact a particular strategy might have on facility population levels, or whether the strategy increases or decreases re-offending rates. Trying to reform detention systems without data, they learned, is like trying to drive a car while blindfolded.

JDAI sites had lots of trouble getting and using data. At certain points in the initiative, momentum was lost for want of timely quantitative feedback. At other times, the whole reform enterprise was at risk because it had no evidence with which to defend itself. Meaningful attention must be paid to fostering information system improvements and new analytical capacities if the planning and implementation of detention reforms is to succeed.

Significant change is possible.

Politicians, the public at large, and perhaps even system personnel seem skeptical about the potential for meaningful change in juvenile justice. This cynicism is at the heart of the policy shift best described as the "criminalization of delinquency" (e.g., increased transfers of juvenile cases to adult courts and corrections, or the lowering of the age of majori-

ty). Unfortunately, there have been few practical demonstrations in recent years of the potential for systemic reform.

Despite the fact that JDAI sites found themselves in as hostile a policy environment as juvenile justice has seen in quite some time, they achieved major reductions in admissions, case processing times, and facility population levels without increasing failures to appear or pretrial re-arrests. They made their systems fairer, smarter, more efficient, effective and accountable. New leadership was identified and nurtured. New relationships within and outside the system were built.

The lesson here is simple: detention reform is doable. It may be painful and anxiety producing, but JDAI clearly demonstrated that significant change is possible. If jurisdictions can successfully transform this component of their juvenile justice system, then it must certainly follow that other parts can also be reformed by building upon these changes.

Detention reform is very fragile.

Lest the previous lesson be seen as Pollyanna-ish, it is worth noting in conclusion that these efforts were highly vulnerable, especially to political changes and to those horrible cases that invariably seem to occur. In one of the JDAI sites, a mayoral change dramatically diminished the political will for detention reform. In another site, a hotly contested district attorney's race threatened the project for almost a year. In one jurisdiction, several highly publicized cases provoked major increases in the detention population as system actors scurried for cover.

This fragility is inherent in the effort, but it need not be incapacitating. Indeed, JDAI sites found that their reforms made their system's policies and practices more understandable and defensible. Where once they could not explain why a youth was or was not released from detention, now they had consistent, data-driven approaches to explain their decisions. Previously, these sites could not produce information that showed their effectiveness; now they can. Where notorious cases previously resulted in lots of finger pointing between the system's agencies, now their collaborative practice promotes a system-wide explanation of events and the real opportunity to make timely change if circumstances warrant reconsideration of policies or procedures.

Comprehensive systemic change is risky and, therefore, fragile. JDAI sites, however, learned that this brittleness can be decreased over time through the implementation and institutionalization of reforms that make juvenile justice practices smarter, fairer, and more effective.

NOTES

[1]In 1985, white youth were detained at the rate of 45 per 100,000, while African-American and Hispanic rates were 114 and 73, respectively. By 1995, rates for whites had decreased by 13 percent, while the rates for African-Americans (180 percent increase) and Hispanics (140 percent increase) had skyrocketed. Wordes, Madeline and Sharon M. Jones. 1998. "Trends in Juvenile Detention and Steps Toward Reform," *Crime and Delinquency*, 44(4):544–560.

[2]Space does not permit a full exploration of these various strategies or their complexities. However, the Casey Foundation is publishing a series of monographs, *Pathways to Juvenile Detention Reform*, that describe in great detail these components of change and that utilize practical examples from JDAI and other sites. Copies of *Pathways to Juvenile Detention Reform* are available free of charge from the Foundation.

[3]A full evaluation of JDAI, prepared by the National Council on Crime and Delinquency, will be available by approximately the end of 1999. Site outcome data presented here are taken from preliminary reports prepared by the evaluators.

Lessons Learned from Boston's Police–Community Collaboration

By Jenny Berrien and Christopher Winship*

Introduction

There's lots in common among reform-minded police departments across America. They all have a base of community policing. They're all delegating authority to fairly small police districts. They're all targeting high crime pockets, some by using the New York developed Compstat computer analyses.

There are differences: Boston for example, limits zero-tolerance crackdowns on minor offenses to high-crime neighborhoods; in New York the police crack down on minor offenses nearly everywhere. And Boston's work with minority communities is much deeper and systematic (Peirce 1997).

BOTH BOSTON and New York City have enjoyed great success in reducing violence levels in their respective inner-city communities. The homicide rates have dropped by 58.7 percent in Boston and 56.1 percent in New York between 1990 and 1996 (Federal Bureau of Investigation 1991–1996). Both cities have used innovative, aggressive law enforcement tactics, but there was a major difference. While New York City's crime reduction success has occurred with virtually no community involvement, Boston has been heavily praised for engaging a community-based network of partners. In fact, Boston has managed to get strong backing for its innovations from people who had been among the most vocal critics of its Police Department.

New York City's police administration has been under fire of late due to several instances of highly publicized abuse and corruption. In many respects, the NYPD's current situation resembles that of the Boston Police Department in the late 1980s and early 1990s, when it was attacked for overly aggressive policing and discrimination against minority inner-city residents. Public outcry in Boston during that period eventually led to major overhauls within the department. As the Boston Police Department has rebuilt its public image and redirected its violence reduction approach, a key emphasis has been the engagement of community partners, especially those from the black clergy community.

Elsewhere, we have argued that the widespread community involvement and public support of Boston's recent law enforcement tactics could result in the long-term viability of these initiatives (Berrien and Winship 1999; Winship and Berrien 1999). We also suggested that New York City's attack on violent crime, which has been successful thus far, may be undermined by a growing public perception that the administration shows too little concern for individual civil liberties.

In fact, over the past year, the homicide rate in Brooklyn has risen 8 percent (Kaplan 1999). In response to this rise, Brooklyn is turning to Boston for ideas:

> After six years of dramatic reductions in crime, murder is back on the rise in Brooklyn, and the chief law-enforcement officers are returning to where they turned for help the last time they had these troubles—Boston…. The new idea, put in motion by Martin and Boston's current police commissioner, Paul F. Evans, involves more systematic coordination among police, probation officers, and community groups to clamp down on gang members (Kaplan 1999).

Boston may possibly be a source of knowledge for other cities as well on how to create effective community-supported police partnerships.

Below, we first briefly describe current relations between New York's law enforcement agencies and the community. We then take a more in-depth look at the Boston situation in order to understand the process through which the city's impressive violence reduction and community collaboration has been achieved. Finally, based on the Boston story, we identify four lessons that may inform other cities on how to achieve community-supported police innovation.

New York City's Success and Rising Public Concern

New York City has perhaps received more media attention than any other city for its accomplishments in reducing violent crime. Significant increases in money and manpower have facilitated the implementation of various labor-intensive strategies to sustain aggressive law enforcement initiatives. Some notable examples of such approaches are the successful and innovative uses of computers to target and attack hot crime spots as well as a "model blocks" program which focuses intense attention on a particular city block until crime is shut down in the defined area.

In the model block program, the police first implement an "all-out drug sweep," then create "checkpoints at both ends of the street, post officers there around the clock, paint over graffiti and help residents organize tenant groups and a block association." Between two and eight police officers patrol the block twenty-four hours a day, seven days a week for the two months following the initial occupation of

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the block. Once it is determined by police officials that drug activity is sufficiently suppressed and formal community organizations are solidified, "model block" status is achieved—meaning that crime has been sufficiently shut-down in that particular block (Halbfinger 1998).[1]

Improved relations between the inner city community and the police have not, however, accompanied New York's crime rate successes. According to the *New York Time*s report on the police department's model blocks program:

> Wary of one another, people hardly put their faith in the police. Tensions between the two have been worse in Washington Heights than anywhere else in the city, from the full fledged riots that followed a police officer's fatal shooting of an unarmed man in 1992, to the April 1997 death of Kevin Cedeno, shot in the back by an officer who was named "cop of the month" by his colleagues soon after. "At least the drug dealers are not here to hurt you—they're here to make a profit," said Yvonne Stennett, who heads the Community League of West 159th Street…increasingly aggressive police tactics have convinced many law-abiding residents that officers see them as criminal suspects first (Halbfinger 1998).

Some residents may even prefer the former levels of crime activity to their current fears of police abuse and discrimination. African-American leaders throughout the city have echoed these complaints. In May 1998 the Reverend Calvin O. Butts III, a prominent Baptist minister from Harlem, went so far as to call Mayor Giuliani a "racist who is on the verge of creating a fascist state in New York City" (Barry 1998). Although some of the city's black leaders did not condone Butts' labeling of the mayor as a racist, they often echoed his complaints regarding Giuliani's treatment of the black community. Several prominent blacks have used confrontational language to criticize policies that they assert are harmful to their community. Both Allen Sharpton and David N. Dinkins, the former mayor, said that they have been leveling essentially the same charges against the Giuliani administration for years. Community outcry against these tactics has been fueled by well-publicized cases of alleged, and in many cases proven, police brutality and corruption.

The forceful and public response to various incidents, including the killing of Amadou Diallo, an unarmed Haitian street vendor in February of 1999, indicates great skepticism by some regarding aspects of current policing tactics in New York City. Mayor Giuliani remains a staunch supporter of his police department. However, the sentiment that the city's impressive crime drop has come at the cost of serious losses in civil liberties may force the mayor to reevaluate his position. If public dismay continues to escalate, the lack of community-based support for police efforts may eventually force a curtailment of current NYPD strategies, in spite of their statistical success.

The Boston Story Part I: The Early Years

Crack and Gangs. Although Boston has never been considered a violence-plagued city to the same extent as Los Angeles or New York, in 1990 a record-breaking 152[2] homicides stunned Boston with the realization that it had a serious violence problem. The roots of this violence took hold with the introduction of crack-cocaine into Boston's inner city in 1988, relatively late in comparison to other major U.S. cities. As the crack market developed, so did turf-based gangs. Rival gangs turned to firearms to protect and defend their turf and gang identity. With firearms serving as the primary means of aggression, the level of violence grew to a rate and severity never before seen in the Boston area.

Because Boston law enforcement agencies had little experience with turf-based violence and criminal gang activity, their initial response to the situation in the late 1980s and early 1990s was disorganized. Until 1990, a department-based policy directed police officers and administration to publicly deny the existence of a "gang problem." Because homicide traditionally has been handled on an individual case basis, the police department became primarily focused on making the "big hit" and arresting the "big player," rather than addressing the significance of the group-based quality of gang violence.

In 1988, the City Wide Anti-Crime Unit, traditionally responsible for providing intense, targeted support across district boundaries of the city, was permanently assigned to the most violent neighborhoods of Boston's inner city. The following year the Police Department issued a policy statement that any individual involved in a gang would be prosecuted to the full extent of the law. The department had now acknowledged the existence of a "gang problem." According to one current police captain, the CWACU was expected to "go in, kick butts, and crack heads" and adopted a mentality that "they could do anything to these kids" in order to put an end to their violent activity.

Community Backlash. Two events in 1989, the Carol Stuart murder investigation and the Stop and Frisk scandal, focused community attention on the Police Department's initial approach to the violence crisis. Carol Stuart, a pregnant white woman, was murdered in the primarily African-American neighborhood of Boston's Mission Hill. Her husband, Charles Stuart, who was with her at the time of her death, reported that a black male committed the crime. Relying on Charles Stuart's account, the Boston Police Department "blanketed" the Mission Hill neighborhood looking for suspects. There were widespread reports of police abuse as well as coerced statements that implicated a black male suspect, William Bennet. Charles Stuart himself was later identified as the alleged perpetrator of the crime, but committed suicide before an investigation could be completed. The Boston Police Department's unquestioning acceptance of Charles Stuart's story about a black assailant, and subsequent mishandling of the murder investigation, created an atmosphere of extreme distrust of the department within Boston's African-American community.

This community suspicion was further intensified by the Stop and Frisk scandal, which also occurred in 1989. A public statement by a precinct commander that labeled the then-current police approach to gang-related violence as a "stop and frisk" campaign shocked the community and solidified the public's suspicion of the Boston Police Department. There is some disagreement within the police

department about the extent to which their policy was to indiscriminately stop and frisk all black males within high crime areas, a policy known as "tipping kids upside down." Accusations of stop and frisk tactics led to a court case in the fall of 1989 in which a judge threw out evidence acquired in what he viewed as an instance of unconstitutional search and seizure.

As a result of the Stuart case and the Stop and Frisk scandal, the CWACU was disbanded in 1990. The department, however, began to see significant rewards from their aggressive street policies as Boston's homicide rates fell from 103 in 1991 to 73 in 1992 (Federal Bureau of Investigation 1991-1996). This drop reinforced belief in the efficacy of their heavy-handed tactics. The police continued to view their actions as simple compliance with departmental orders. Despite this success, however, most officers acknowledged that the department's aggressive actions during this time brought community mistrust to an extremely high level.

These two scandals, combined with smaller-scale, less visible incidents, eventually led the Boston press to question the Police Department's capacity to effectively handle even basic policing activities. In 1991, the *Boston Globe* published a harshly critical four-part series called "Bungling the Basics" (Globe Staff 1992) that detailed a succession of foul-ups by the Boston Police Department during the previous few years. Subsequent stories reported serious failings in the department's Internal Affairs Division. Misguided investigations, problematic policing, and bad press eventually led to the appointment of the St. Clair Commission to conduct a thorough review of the Boston Police Department and its policies.

At this point, the Boston Police Department was in desperate need of an overhaul to deal with all the negative publicity. Steps were taken to publicly exhibit a changeover in law enforcement policy in Boston. "Bad-seed" cops were weeded out. The disbanded CWACU was reorganized into a new unit, the Anti-Gang Violence Unit (AGVU), which took a "softer" approach, sharply curtailing the aggressive and indiscriminate street tactics of the past. Apparently as a result, the decrease in homicides during 1991 and 1992 was followed by a sharp increase in 1993. In 1993, Mayor Flynn resigned, and Bill Bratton from the New York Police Department replaced Police Commissioner Mickey Roache.

The Boston Story Part II: Later Years

Innovation in Police and Probation Practices. Bratton brought a new philosophy and a commitment to innovation to the Boston Police Department. Fundamental shifts occurred in its overall operations. The newly organized Anti-Gang Violence Unit looked for new ways of managing gang activities. First, they realized the need for community support and thus were determined to exhibit "squeaky-clean" policing strategies. Previous strategies had also failed to include collaboration with other agencies, so the AGVU began to pursue an increasingly multi-agency approach to combat youth violence. In 1993, the AGVU was changed to the Youth Violence Strike Force, retaining the same key members (Kennedy 1997b).

Other agencies within Boston's law enforcement network were concurrently revamping their activities. Certain individuals within the probation department in particular became quite disillusioned with the "paper-shuffling" nature of their jobs. Fearful of the extreme levels of violence in certain Boston districts, probation officers had completely abandoned street presence and home visits. Consequently, there was no enforcement of probation terms such as curfew, area, and activity restrictions. Without enforcement of probation restrictions, a term of probation became viewed as a "slap on the wrist" within the law enforcement community and was essentially ineffectual in combating youth violence.

A few probation officers began to respond to this crisis of ineffectiveness and took strong, proactive measures to readjust their approach. Informal conversations between probation officers and police officers who regularly attended hearings at Dorchester District Court led to an experimental effort in agency collaboration. A strategy labeled "Operation Night Light" was developed to enable probation officers to resume the enforcement component of their job.

On the first outing of the Night Light team, three probation officers and two police officers went out in a patrol car on the night of November 12, 1992. With the protection of their police companions, probation officers were able to venture out after dark and enforce the conditions placed on their probationers. Youths began to realize that they could no longer blatantly disregard the terms of their probation, because their PO might be out on the streets, at their house, or at their hangouts after curfew to check on them. Probation violations would have repercussions, such as lengthened probation sentence, stricter probation terms, or ultimately time in jail. Operation Night Light eventually became an institutionalized practice of Boston law enforcement agencies and has been heavily praised by policy experts and the media across the country.

Inter-agency collaboration to address the issue of youth violence has become standard practice in Boston. Participation of policy researchers (primarily David Kennedy and his associates at the John F. Kennedy School of Government) also served a vital role in bringing about the fundamental overhaul of Boston's policing strategies. The Boston Gun Project, begun in 1995, was a three-year effort that brought together a wide range of agencies including the Police Department, Bureau of Alcohol, Tobacco, and Firearms, Probation Department, Boston School Police, Suffolk County District Attorney, and many others to address youth violence (Kennedy 1997a).

The Boston Gun Project was innovative, not only for its collaborative nature, but because it utilized research-based information to address the youth violence problem from a new angle. The Gun Project coalition was able to attack the problem at the supply side by cracking down on dealers of illicit firearms. On the demand side, Gun Project research led to the specific targeting of 1300 individuals who represented

less than 1 percent of their age group citywide but were responsible for at least 60 percent of the city's homicides.

This type of inter-agency collaboration helped implement a variety of additional innovative strategies. In 1994, "Operation Scrap Iron" was initiated to target people who were illegally transporting firearms into Boston. Gun trafficking within certain areas of the city was shut down. Additionally, "area warrant sweeps" were used to target dangerous areas. For example, police would arrest all outstanding warrants within a particular housing project. Multi-agency teams of youth and street workers then came in to provide follow-up once police presence subsided. As one police officer noted, these strategies made sure that "everyone was involved and brought something to the table. Everyone had a piece of the pie and, therefore, would get the benefits" (Berrien 1998). Even more impressive is that, according to this same police officer, not one civilian complaint was filed in response to the warrant sweep tactic.

In May of 1996, this collaboration culminated in Operation Cease-Fire. Operation Cease-Fire fully institutionalized inter-agency collaboration among Boston's crime-fighting agencies—Police, Probation, Department of Youth Services, Street Workers, and others. Key community members, primarily from faith-based organizations, were also involved.

Community-based Change. Individuals within Boston's religious community were some of the most vocal and publicized critics of the police department's aggressive tactics during the late 1980s and early 1990s. Reverend Eugene Rivers, in particular, became a controversial figure in the media during these years because of his harsh criticism of both local law enforcement agencies and the city's black leaders. Remarkably, these same religious leaders later became active participants in law enforcement agency strategies such as Operation Cease-Fire.

Boston's faith-based organizations did not begin working together as a group until 1992. Until then, most African-American clergy leaders in Boston had been following separate agendas. Their activities did not generally involve much street-oriented action to address youth violence within their communities. Although Reverend Rivers was on the street establishing strong outreach to gang members and other community youth, his constant criticism of other clergy leaders made his effort a partnerless endeavor.

A tragic event in May 1992 finally spurred collaborative action within Boston's African-American clergy. Violence broke out among gang members attending a funeral for a youth murdered in a drive-by shooting. The shootout and multiple stabbing in the Morning Star Baptist Church threw the service and the congregation into chaos.

The brazenness of this attack, taking place within a church sanctuary, inspired Boston's black clergy to take action. They realized that they could no longer effectively serve their community by remaining within the four walls of their churches and ignoring the situation on the street. Instead, youth and others in the surrounding troubled neighborhoods needed to become extensions of the church congregations.

This incident led to the founding of The Ten-Point Coalition, a group of some forty churches, with Reverends Ray Hammond, Eugene Rivers, and Jeffrey Brown as the key leaders. A "Ten-Point Proposal for Citywide Mobilization to Combat the Material and Spiritual Sources of Black-on-Black Violence" (Jordan et al. 1992) was drawn up and published as a call to churches to participate in the effort to address the violence crisis in their communities. The creation of the Ten-Point Coalition represented a major step towards active collaboration within Boston's African-American religious community.

The three key pastors in Ten Point serve different types of congregations and have very different personal styles. Reverend Rivers is the pastor of the Azusa Christian Community with a congregation of around 40 members that mostly live within the Four Corners neighborhood of Dorchester. It is sometimes labelled a "store-front church" because of the surprisingly small congregation. Rivers tends to be the most politically outspoken and controversial of the three ministers. Reverend Hammond oversees the Bethel AME church in Dorchester, a much more populous church that attracts people from a variety of neighborhoods to its congregation. Hammond is described as less controversial than Rivers, but equally strong in his convictions and drive for social change. Jeffrey Brown is the minister at the Union Baptist Church in Cambridge. Brown's congregation has several hundred parishioners, but like Rivers, he remains very active in street-based outreach. Brown is sometimes referred to as the "most mature" of the three because he seems able to further his own objectives while maintaining congenial relationships with everyone involved.

As of 1992, the relations between the African-American community leaders and Boston's law enforcement agencies were very strained and often antagonistic. Reverend Rivers was constantly "in the face" of Boston law enforcement and was viewed as a "cop basher" in police circles. He established a constant presence in the troubled streets of Dorchester and made repeated contact with the same kids as the Anti-Gang Violence Unit. As an aggressive advocate for local youth, both in and out of the courts, Rivers had many confrontations with AGVU and other patrol officers.

In time this antagonism would subside and be replaced with effective collaboration. The turnaround resulted from a combination of influential events and the strong effort made by key law enforcement officials to show that the Boston Police Department had a new attitude. In 1991 shots were fired into Reverend Rivers' home in Four Corners, one of the most violent areas of Dorchester, making him painfully aware of the dangers of carrying out a solitary campaign against youth violence. He has acknowledged that seeing the lives of his wife and children placed in jeopardy caused a shift in his attitude. He became more open to the possibility of allying with both other ministers and individuals in the law enforcement community.

When Reverend Rivers and other key clergy members such as Ray Hammond and Jeffrey Brown formed the Ten-Point Coalition in 1992, their public stature and media influ-

ence increased. They wielded their power effectively to maintain a check on police practices in Boston by establishing an organized, community-based, police monitoring group, the Police Practices Coalition.

The Ten-Point Coalition, and especially Reverend Rivers, had habitually criticized the Boston Police Department. Increasingly positive interactions with individual officers, however, began to convince the clergy group that the department could change their behavior. The ministers acknowledged the department's progress in an awards ceremony called the "People's Tribunal," initiated in 1992 to publicly honor "good cops." These positive steps eventually led to collaborative efforts like the previously mentioned Operation Cease-Fire. Cooperation among law enforcement agencies and clergy leaders, as well as various community-based groups, has continued to evolve and expand during recent years.

Boston Story Part III: Current Relations

Currently, there is extensive inter-agency and community-based collaboration in Boston. A primary venue for this work is the Bloods and Crips Initiative. It was established in Spring 1998 as an aggressive street-level mobilization of lay and pastoral workers to intervene in and prevent youth involvement in Bloods, Crips, or any other gang activity. By combining the effort of a wide range of agency representatives, the Initiative aims to approach the problem comprehensively.

Boston Police, Boston Probation, Department of Youth Services, clergy members, city Street and Youth Workers, Mass Bay Transit Authority Police, the School Department, and School Police meet weekly to share information on important developments on the street. For example, several disturbing incidents of sexual assault and harassment have occurred recently on the city's public transportation system. MBTA police and city youth workers as well as clergy brought up the importance of addressing these incidents at the weekly Bloods and Crips Initiative meetings. A task force on sexual harassment and assault was established in order to address these issues effectively. School presentations on the subject are planned in the future.

Another objective of this collaboration is to exhibit strong, supportive, and unified authority to the targeted youth. This is achieved through the participation of multiple agencies and clergy representatives in all of the initiative's activities: school visits and presentations, home visits to youth suspected of gang involvement, regular street patrols, and a strong presence in popular "hang-out" areas during peak hours. The collaborative approach serves to notify youth of alternative options and brings them into contact with a network of resources designed to serve their specific needs.

More informal cooperation among the wide array of agencies and community groups participating in operations such as the Bloods and Crips Initiative plays an important role in achieving quick responses to tense situations, and effective distribution of resources to problematic "hot-spots" in the city. In 1998, for example, a particular youth repeatedly instigated dangerous confrontations in Dorchester—holding a gun to another youth's head; firing shots in the air in the midst of young "trick-or-treaters"on Halloween night, shooting holes in parked cars—all within a period of a couple of weeks. Each incident had the potential to aggravate pre-existing tensions among various neighborhood "crews" and destroy any sense of community security. Because of this risk, Reverend Rivers utilized his connections with law enforcement to ensure a quick and effective handling of the situation.

Lessons Learned

Significantly, Boston has been praised as much for its effective partnership with community leaders as for its reduction in homicide rates. Clergy representatives have served as the primary community partners, and with their support the Boston Police Department has been able to use innovative tactics without provoking a backlash. Four factors in particular were critical to the success of the Boston experience: 1) preemptive and direct communication with community partners; 2) identifying and channeling the power of a catalytic/focus event; 3) establishing and nurturing legitimacy in the eyes of former critics representing the community perspective; and 4) acknowledgment of mutual responsibility for improving the situation of violence on the street.

Forceful criticism from the public can paralyze police efforts; it can also lead to dramatic change. Public and media criticism surrounding the Carol Stuart murder investigation did much to bring about the disassembly of an entire police unit (the CWACU), and helped trigger the installation of a new police administration. Boston's crime fighting agencies are now an emblem of success in the field of community-based engagement in police endeavors.

Preemptive and Direct Communication. Key decision-makers in the Boston Police Department now consult Reverend Rivers and other members of the Ten-Point Coalition prior to any major police action in their neighborhood. This preemptive action has three benefits. First, the key community members feel that they are being included in major decisions and that their needs are being considered by law enforcement officials. In addition, clergy representatives have first-hand knowledge of the situations on the street that may lead law enforcement officials to redirect their approach or change their tactics. Finally, regular conversations with each other solidify relationships and build trust between the two groups.

A recent example of this preemptive communication is the handling of a surge in violence within Boston's Cape Verdean community. Law enforcement officials and community members alike were alarmed at the shocking number of violent incidents that had already taken place early in 1999. Some sort of action from law enforcement was necessary. Leaders of the Youth Violence Strike Force were contemplating a forceful action that would consist of an INS sweep, with the threat of deportation for certain youth. This was a targeted attack; the police conducting the sweep

were sure they "had the right guys," each with several offenses.

Before taking such a potentially controversial action, however, the lead police officer in this investigation consulted members of the Ten-Point Coalition and leaders from the Cape Verdean community. First, he wanted to find out how such a move would be received: Were people so fed up with the level of violence that they were open to a forceful and decisive action? Second, he hoped that conducting outreach in the Cape Verdean community would help prepare them for the shock of such an aggressive enforcement approach. Although the move was controversial, advance communication helped abate community concern and cope with potential resentment.

Channel the power of a catalytic event. Several crucial events, such as the shooting at the Morning Star Baptist Church and the McLaughlin murder investigation, had much to do with Boston's progression towards partnership and successful innovation. It was not the events themselves, however, but the effective responses by the key ministers and law enforcement leaders which led to great progress.

One example is the way that Boston law enforcement officials and Ten-Point Coalition ministers used their response to the McLaughlin murder to solidify and publicly display their new-found cooperation. On September 25, 1995, a white Assistant Attorney General, Paul McLaughlin, was shot and killed on his way home from work. The murder appeared to be a "hit" in retaliation for McLaughlin's work against gangs. Soon after the crime, the police released a vague, controversial description of the assailant as a "black male, about 14 or 15 years old, 5 foot 7, wearing a hooded sweatshirt and baggy jeans" (Chacon 1995). There was immediate concern that this description could easily be applied to many young black males. Many law enforcement personnel and inner-city residents feared that this would escalate to the same kind of explosive, racially charged situation that arose during the Carol Stuart murder investigation.

Instead of allowing the incident to chip away at their new collaboration, law enforcement and the black clergy community responded in a manner that actually helped solidify their standing as partners in the effort to stop youth violence. Like the Morning Star Shooting, the McLaughlin Murder was a very well-publicized event. Both law enforcement officials and the leaders of the Ten-Point Coalition came out early and publicly to express their sadness about the crime, as well as their mutual support for a fair, well-run and effective investigation.

The day after the murder occurred, the executive committee of the Ten-Point Coalition publicly condemned the murder at a press conference. They expressed concern for the McLaughlin family and placed strong emphasis on bringing the city together to avoid the threat of polarization:

> "We ask the city as a whole to step back and not allow their conscious or unconscious fears to drive what happens," Rev. Hammond said, "This is a time for the city of Boston to come together and to make it clear that we will not be held hostage by either perpetrators of violence or by those who would exploit the fear of violence to promote more racial division" (*The Ten Point Coalition*, 1995).

Ten-Point ministers also forcefully advocated an aggressive, but fair investigation of the murder: "Thus we wholeheartedly support all legal efforts to apprehend the perpetrators of this brutal crime" (The Ten Point Coalition 1995).

The ministers' stance indicated that a group that had previously been highly critical of the Boston Police Department now had faith in the fairness of their enforcement strategies. According to one police source, by the time of the McLaughlin murder, the "clergy viewed them (the police) as a much different police force," and were confident that the department would carry out a "professional investigation." Clergy representatives say that there was a profound "attitudinal change" behind their resolution to allow the police force to conduct the investigation without voicing opposition. The leaders of the black community felt that there had been a fundamental change in police practices that enabled them to "back the case," according to law enforcement officials and ministers involved.

The tactics and investigative approach of Boston's law enforcement officials during this tense period showed marked differences from the time of the Stuart murder. Both clergy and police representatives were very sensitive to the delicate implications of a racially charged case. Police Commissioner Paul F. Evans immediately made a statement to address community fears about a repeat of the chaos that surrounded the Stuart investigation. "I'm concerned about the potential for this limited description (of the assailant) to become divisive. We're not going to let that happen. This will be a professional investigation" (Anand and Grunwald 1995). The commissioner spoke on a radio station with a largely black audience soon after the murder, to emphasize the limited value of the vague assailant description, and to say that an effective investigation depended on cooperation between the police and the community. The commissioner also joined the ministers at the Ten-Point Coalition's press conference in an additional illustration of police cooperation, rather than antagonism, with the African-American community. Thus, both the ministers and law enforcement officials responded in a way that emphasized the extent of their partnership, made the cooperation public, showed the community that they worked together and that each was respected by the other. They also used media attention, which was readily available, to show that the precedent had changed in police-community interaction; there would be no more repeats of the Carol Stuart investigation.

Gain legitimacy in the eyes of former critics. Reverend Rivers and other members of the Ten-Point Coalition were some of the harshest critics of Boston police during the early 1990s. After the department's controversial handling of the Carol Stuart murder investigation and the Stop and Frisk scandal during the early 1990s, they became very suspicious of police intentions, and were quick on the trigger in attacking police actions. As the Ten-Point Coalition gained more influence, its attacks garnered widespread media political attention. Reverend Rivers had a rep-

utation as a "cop basher" who found fault with most police activities, so improving the legitimacy of the police force in his eyes was an important prerequisite to enabling community-supported police innovation.

Reverend Rivers gives former Police Commissioner Bill Bratton a good deal of credit for realizing that he needed to make his relationship with the black clergy of Boston a priority. Although gaining the trust of a former adversary is not a straightforward task, certain identifiable tactics were used by Boston Police's key figures. After much upheaval, the Boston Police Department in 1993 was finally reorganizing its enforcement efforts to be more oriented towards community-based and problem-oriented policing. However, the department had to *prove* it had reformed before the critics would really believe it.

With both the Morning Star Baptist Church shooting and the first shooting at Reverend Rivers' house, probation officers from the Dorchester District Court were able to identify the perpetrators. The Boston Police and Probation Departments handled these investigations promptly and successfully. By taking extra care in carrying out these investigations, Boston's law enforcement agencies were able to exhibit both their respect for the black clergy community and their revamped enforcement strategies.

Commissioner Bratton also made a special effort to invite clergy members such as Reverend Rivers to important meetings regarding incidents that would be of interest to, and would benefit from the input of, local community leaders. According to Rivers, "Bratton was shrewd enough to know that if he gets the backing of the black community, then he can do aggressive law enforcement." He targeted the clergy community because they were outspoken, powerful, had direct ties to the *Boston Globe* editorial section, and were respected by the wider inner-city community. Because this particular community had been harshly critical of the police department in the past, their endorsement carried more credibility. By acknowledging their importance and working hard to gain their trust, Bratton decreased the bad press circulated about the Boston Police Department and revamped the department's tarnished public image.

Acknowledge mutual responsibility. A unique and crucial aspect of the Boston partnership is that both law enforcement and Ten-Point leaders acknowledged they have a mutual responsibility to create a solution to youth violence. This responsibility entails both supporting youth and maintaining enforcement and discipline when youth overstep boundaries. Typically, leaders of inner-city communities see themselves primarily as "protectors" of their communities against police actions. Racial tension and past injustices have led to the assumption that local law enforcement cannot be trusted to act fairly or in the best interest of the community. For their part, police typically focus their actions on the punitive side and do not often offer preventive alternatives to youth offenders. In Boston over the past few years, the local clergy and law enforcement have found an alternative standard of behavior in which they take on mutual responsibility as both advocates and enforcers.

Ten-Point ministers formed their coalition in large part to advocate for inner-city youth. When Reverend Rivers first began his outreach work in 1988, he wanted to provide strong, vocal support for those without advocates: young black males. He believed even offenders were entitled to his support, because they had no one else on their side. However, after gaining more experience with a wide spectrum of youthful offenders, and having his own house shot at four times, Reverend Rivers and his colleagues discovered that there were some they could not reach, who were simply too dangerous to remain on the street. This realization led them to become more selective about who they fought for in court.

As the clergy community began to have more trust in the fairness and legality of the Boston Police Department's tactics, they no longer felt the need to defend their community's youth indiscriminately. The leaders of the Ten-Point Coalition remain staunch supporters of local youth. However, when a particular individual is out of control and becomes a clear danger to the surrounding community, and repeated efforts to reach out have been unsuccessful, clergy may be willing to assist the police in removing that individual from the street. Sometimes getting a severely out-of-control youth off the street means saving his or her life and possibly the lives of their neighbors. Increased trust in local law enforcement, therefore, has allowed the ministers and their colleagues to be more realistic and selective in their advocacy efforts. By acknowledging that not all youth can be saved through outreach and mentoring efforts, they have increased their credibility when they do support specific youth.

At the same time, the Boston Police Department has made efforts to offer preventive alternatives for inner city youth. The department has helped provide several hundred summer jobs for high-risk youth throughout the city. It has set up a basketball league for local youth, which includes a game between community youth and police officers. An example of the increasingly preventive nature of the Boston Police Department's approach is the Bloods and Crips Initiative, in which personnel from the Youth Violence Strike Force, Probation, the Department of Youth Services, and clergy representatives have visited all of the Boston Public Schools to talk about the perils of gang involvement. During these presentations the officers offer their help in finding alternatives to gang activity. They also encourage the youth to visit the member churches of the Ten-Point Coalition for support, mentoring, outreach activity and information about job opportunities.

Through each group's acknowledgment of the necessity of the other's traditional role, they gain mutual credibility and trust for each other. Ministers acknowledge that some youth's needs are beyond the scope of their outreach work, and for the safety of themselves and the community, a particular youth may need to be removed from danger, and sent to jail. Likewise law enforcement officers acknowledge that certain youth might better be turned around by mandatory community service in Reverend Rivers' church, rather than jail. The partnership is strengthened because they respect

each other's purpose and intentions. Youth are better served, because their needs are being more carefully thought through and met. This mutual acknowledgment has been crucial to the successful partnership found in Boston's crime fighting collaboration.

Conclusion

First and foremost, the Boston story teaches that community support is crucial to creating a positive public reception to police innovation. Although there is no easy way to achieve such an exemplary situation of community-based partnership as found in Boston, in this paper we have identified four "lessons learned" that can potentially help other cities work towards that objective. By engaging in preemptive and direct communication with their community partners, taking advantage of the energy behind catalytic events, working to gain legitimacy in the eyes of a former critic, and acknowledging mutual responsibility to reduce violence, Boston has come to a unique and highly effective strategy for long-lasting violence reduction.

As evidenced by Brooklyn's recent decision to pursue the "Boston Plan," long-lasting success in crime reduction is difficult to achieve without some level of community-based support and input.

> Throughout New York City, all felonies except murder are continuing their slide downward. The murder rate is up 8 percent in the last year—and most of that rise is from a few precincts in Brooklyn, where youth gangs are suddenly acting boldly and guns are flowing freely again… "We always had the Boston Plan on the back burner," Hynes (Brooklyn District Attorney) said after his news conference. "But everything seemed to be working well"—until last summer. So he asked Martin to come down and brief New York's police commissioner, Howard Safir. (Kaplan 1999)

New York, a city that has gained national attention for dramatic reductions in violence, is turning to Boston for advice. Boston has found a way to achieve dramatic reductions in violent crime while making equally strong efforts to build partnerships with the community. Computer-based technology, aggressive initiatives, and preventive tactics are all important. However, if the community is at odds with local law enforcement agencies, these innovations will be less likely to bring about long-term improvement. Without community input and collaboration, local law enforcement efforts may be hindered by community backlash, and they will miss out on the benefit of community input during their investigations and planning processes.

Notes

[1]A more in-depth discussion of New York City's Model Block program can be found in McCoy (1999).

[2]The Federal Bureau of Investigation Uniform Crime Reports state that 143 homicides were committed in Boston in 1990. However, current Boston Police statistics and current police officers report 152 homicides for the record breaking year.

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Interagency Collaboration in Juvenile Justice: Learning from Experience

By Jodi Lane, Ph.D. and Susan Turner, Ph.D.*

Introduction

STARTING IN the mid-1980s, juvenile violence became an important topic for policymakers, as illicit drug markets prompted increasing juvenile homicide rates and as experts predicted that demographic shifts in the youth population were likely to create even more crime in the future (Blumstein, 1995; Fox, 1996). Academics and practitioners quickly intensified their efforts to find better ways to decrease crime; one result was a focus on interagency collaboration as a promising mechanism for reducing juvenile offenses. In 1992, Hawkins, Catalano, and Associates published their influential *Communities that Care*, a comprehensive social development model for reducing juvenile delinquency (Hawkins, Catalano, and Associates 1992; see also Catalano and Hawkins 1996). This strategy was designed both to *decrease* environmental and individual risk factors for children (e.g., neighborhood social disorganization, poor parenting practices) and *increase* protective factors (e.g., social bonds, ability to resist peer pressure) for youth. The authors argued that one of the important requirements for this model to work effectively was a "high level of coordination and cooperation among service-providing professionals and concerned community members" (Hawkins, Catalano, and Associates, 1992: xiv).

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) soon began to recommend components of the *Communities that Care* model, including collaboration, as part of their comprehensive strategy for working with serious, violent, and chronic juvenile offenders (OJJDP 1995). The collaborative model is promoted widely for community agencies, such as probation, mental health, drug treatment programs, and other social service organizations (OJJDP 1999b). Some of this encouragement comes in the form of making interagency collaboration an important requirement for funding programs. For example, an objective of one recent OJJDP funding notice was to "[e]ncourage collaborative working relationships among researchers, practitioners, and policymakers in the field of juvenile justice" (OJJDP 1999a: 40679).

In recent years, the state of California has provided funding to county probation agencies to develop new, collaborative approaches to reduce juvenile crime in their local communities. This was partly in response to concerns that unchecked juvenile crime would add pressure to state prison populations through Three Strikes (Little Hoover Commission 1998). In 1996, the California legislature created the Juvenile Crime and Accountability Challenge Grant Program, designed to fund comprehensive, interagency programs as a method of decreasing juvenile crime rates and increasing successful completion rates of probation, restitution, and community service among juveniles in the system. The Challenge Program provided competitive three-year demonstration grants administered through the Board of Corrections to probation agencies that joined with other local service providers to render a wide range of services to at-risk youth in their communities.[1]

Ventura County was awarded $4.5 million over three years to implement the South Oxnard Challenge Project (SOCP). SOCP was designed as a collaborative, restorative justice program for youth 12–18 years of age, on probation, and living in South Oxnard, a largely Latino working-class area with the highest crime rate in the county. Among the goals of SOCP are reducing juvenile delinquency, increasing emphasis on families, and enhancing participation in juvenile justice by local residents. SOCP collaborating agencies include a range of county agencies, local community-based organizations, and community representatives—Ventura County Probation Agency is the lead agency and collaborates with Department of Child and Family Services, Behavioral Health Department (mental health and alcohol and drug programs), City Corps (community service), Oxnard Recreation Department, Oxnard Police Department, El Concilio De Condada De Ventura (a non-profit Latino advocacy organization), Interface Children Family Services (a non-profit social service organization), Palmer Drug Abuse Program, Ventura County Schools and some local residents and elected officials.

As part of the Challenge Grant program, all selected counties are required to collect implementation and outcome measures for participating youth. Ventura County contracted with RAND and Dr. Joan Petersilia to conduct a randomized field experiment, in which approximately 500

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youth were randomly assigned to SOCP or routine juvenile probation between January 1, 1998 and June 30, 1999. Data collection is still ongoing for the evaluation.

Throughout the evaluation, RAND staff have conducted participant observation of meetings and other project activities. This on-site involvement has allowed researchers to gain a detailed understanding of the process involved in creating new collaborations. In this article, we discuss the following implementation issues, which SOCP experience illustrates are critical to collaboration approaches:

- Collaborative Arrangement and Leadership
- Creating and Maintaining a Program Vision
- Daily Decisionmaking in a Collaborative Arrangement

Based upon lessons learned at SOCP, we hope to provide guidance to juvenile justice participants developing new programs involving interagency collaboration. As funding sources continue to push for interagency collaboration in the new millennium, we think it is important to build a knowledge base about the process involved in establishing effective and productive relationships.

Collaborative Arrangement and Leadership

Collaborative arrangements create unique challenges for participating agencies, even those who have a history of working together in previous projects as Ventura County does. SOCP experience indicates that the program's leadership and relationship structures are critical concerns at the outset when the program is initially envisioned and created. Important issues in the collaborative arrangement include the designation of lead and participating agencies, the levels of participation and role responsibilities, the scope and goals of evaluation, and interagency staff training.

Lead and Participating Agencies

Funding sources for justice programs now often require collaboration among certain types of agencies (e.g., government and community-based organizations) but expect one agency (often probation) to take the lead in applying for funding and administering the project. This initial grant structure can cause implementation problems for the lead agency in collaborative projects, because this agency maintains all fiscal responsibility to the funding entity but often shares decision-making and service implementation with other participants. Because of the implications of a shared power structure for daily project activities, the lead agency might carefully consider which specific agencies and community groups to include in joint projects. The choice of participants is especially crucial because the success of the project depends upon the ability of staff to work together toward a common vision and to administer services in a shared environment.

Collaborative projects are richer in content because they involve people with differing backgrounds and perspectives, but these inherent differences among participants can cause unique conflicts regarding program design and implementation (which we discuss in later sections). SOCP experience illustrates that for collaboration to work well, participants must believe the joint project will serve their individual interests. In addition, "stakeholders must perceive that they have both high stakes and a high degree of interdependence with others that prohibits the unilateral solution of a problem" (Wood and Gray, 1991: 161). In essence, those involved must care a lot about the success of the project *and* be willing to trust that others involved can not only work toward that goal but are necessary to reaching it (Wood and Gray, 1991).

For example, SOCP experience indicates that without a financial stake in the outcome, agencies frustrated with the process may feel the perceived freedom to put less energy toward making the project work, toward following agreed-upon methods of practice, and toward ensuring staff cooperation with onsite management. SOCP also found that if people can agree on the bigger issues, such as the project's philosophical underpinnings and the importance of working together to solve the problem at hand, they may strongly disagree about the details but will still support each other in serving clients. In some locales, this ability to trust others will be colored by longstanding previous relationships among participating service providers (probation, schools, mental health, nonprofit organizations), which can greatly affect the ability of the agencies to work together. Participating agencies must be able to let go of previous animosities and compromise some of their individual interests for the greater needs of the project and its clients. Some collaborators in SOCP have found it difficult to forget about previous experiences with each other (i.e., to trust each other again) and to let go of the possible consequences of the current, temporary relationship on future relationships. For people or agencies who must work together in some capacity for many years (e.g., probation and the schools or city or county governments), short-term gains for projects like the three-year Challenge projects may not seem that important in the face of risking longer-term working relationships.

Another key decision is how to include community residents as collaborative partners. Community representatives add a new dimension to justice programs, and the community segment selected determines the "flavor" of the change. If the community is to be included, it is absolutely critical to define the relevant community (e.g., elected officials, business owners, activist organizations, ethnic leaders or populations, religious leaders, client parents, or the broader community as a whole) before beginning recruitment. Once the "community" is defined, collaborators could make strong efforts to recruit representative members of the chosen group. It helps to make this decision early to avoid confusion or false expectations later.

Another important consideration with respect to participating agencies and segments of the community is determining the length of the relationships. New projects might consider at the outset whether the contractual agreements between the parties will be for the entirety of the project or

whether they may change from year-to-year or as the project's components evolve. Part of the developed leadership structure should include provisions on which agency or agencies have the power to end relationships with participating agencies or particular staff should this become necessary.

Levels of Participation and Role Responsibilities

Once the agency and community participants are chosen, it is important to define very early the levels of participation they will have and what their roles will be. SOCP found that two levels of involvement were ideal—those who were centrally involved in project decision-making and those who were contracted to deliver specific services. For example, the SOCP model uses an interagency management team, consisting of primarily off-site managers from key participating agencies, who are responsible for making decisions about project philosophy, service delivery, and hiring line staff. Agencies that are interested in helping create a new vision and ensuring the project reaches its goals are important members of this broad management group. SOCP managers believe that this decision-making body is one of the strengths of the collaborative arrangement (see Wood and Gray, 1991).

Once the level of involvement is set, it is crucial to determine and agree upon the specific roles of all participants—agencies, managers, and line staff. New projects might consider the following questions. What specifically will partner agencies be expected to contribute? For example, will they simply provide staff to be managed by the lead agency or will they be expected to participate in managing them? Will they be expected to participate in decision-making about project implementation details? If managers are more involved, will they manage only their own staff or share these responsibilities? SOCP found joint on-site management by a subset of the larger management group was the ideal as long as communication and support among these supervisors was strong. And they found that their roles blurred as managers worked together to manage the blended group of staff. For example, probation managers consistently work with staff from other agencies, because most other managers are not housed on-site. Because line staff work in teams, managers from other agencies also work with probation officers and other staff to develop new ways to implement treatment strategies.

Defining and agreeing upon roles for line staff at the beginning is perhaps even more critical to maintaining program design integrity. Because collaborations are also usually "new," many staff will feel they are on "uncharted ground" and will not know how to go about their work. Even most professional service providers have experience only within their disciplines—e.g., probation, mental health, or alcohol and drug treatment. Other staff (e.g., students, new college graduates) may not have any social service training or work experience at all. Without clearly defined roles when they start, many of them will find the newness disconcerting and each may develop his or her job description by default. This can lead to inconsistency among staff in the implementation of the services and can lead to morale problems among staff who need more guidance or conflict among staff who believe others are not "doing their jobs." This definition of roles in a written procedural manual is especially important in new joint projects because it creates a structure and guidelines for staff who will face not only new but difficult tasks as they learn to work with each other and implement new strategies for clients. They may be expected to be "creative" and "innovative," but need a basis from which to develop new ideas. However, as the program evolves, roles may change based upon experience and may blur as staff work together toward common ends. Consequently, these defined roles must allow for flexibility and employees should be warned to expect their roles and job descriptions to evolve as agencies gain experience in the program.[2]

In addition, in working out role expectations, it is important to remember that managers and their staff may face conflicting role expectations from the project and their home agencies, so participants may find this a difficult although rewarding arrangement. For example, treatment staff may be expected both "to share" information (by the project) and "to protect" information (by their agency). Probation staff may be expected to work with families and victims (by the project) *and* focus specifically on the youth's compliance with court-ordered conditions (by the agency). Or the probation agency may expect surveillance to be a primary goal while the project sees treatment as the best approach.

Defining the community's role before individual members are recruited is also important, because it may prevent misunderstandings about their power at a later date. The new marriage between the justice system agencies and the community may be uncomfortable for all parties at the outset if the groups are not used to working together or if they have distrust or animosities toward each other. For example, if the community believes they have not gotten "enough" or "good" services from these agencies, they may be angry and find that their inclusion in the collaborative is opportunity to "right" the "wrongs" they perceive. Or, they may be genuinely interested in helping both the system and the clients but may not know how. Because the project is designed with a vision in mind, it is helpful to define the community's role clearly in writing and to give this description to them when they are recruited. For new collaborations, there are important questions to consider. For example, how will the community group be constructed (e.g., leadership structure, number of members, meeting schedules)? Will they be advisory only or will they have binding decision-making power regarding project implementation? Will they be expected to contribute services to the project (e.g., volunteer hours with clients, market the project to the community, raise funds) and, if so, how much? Will they gain access to specific information about clients and their cases?

Scope and Goals of Evaluation

Once the collaborators and their roles are determined, it is important to consider whether or not an evaluation com-

ponent will be included. Many granting agencies now require new justice programs to include evaluation components, as the Challenge Grants did. SOCP experience indicates that including the evaluators very early, before implementation, and including the evaluation plan in the project design was a valuable way to ensure that researchers understood and were measuring what agencies want to know and that data were being collected in a reliable manner (see Altschuler 1998). In SOCP, program staff and researchers worked together closely to determine the goals of the evaluation and the specifics of how important variables would be collected. This approach created a "team" relationship between the program staff and the researchers, ensuring more cooperation and trust between the parties. This trust was a key factor in the researchers' ability to see the "real" program experience and practice, rather than a glossy description designed for our view. Even with the trust between staff and evaluators, differences between program implementation strategies and evaluation goals continue to arise, but we are better able to work out the details of disagreements cooperatively. Because evaluators and research requirements can put a special "strain" on the practical approaches to program implementation (e.g., random assignment, increased documentation of services and outcomes), SOCP experience shows that training on the practical importance of evaluation and its rules also eased some of the frustrations that might otherwise build about the constraints of research.

Interagency Staff Training

Training of interagency staff is an unusual challenge, because most of those involved in the project probably will not have much, if any, experience in collaborative arrangements. Unlike probation services, which have strict legal guidelines regarding job duties and safety requirements, new projects rarely have a "template" to use as a training structure. Consequently, projects might consider hiring someone experienced in interagency collaboration to train both management and line staff early about the accomplishments and hurdles they might face and strategies for ensuring project success. SOCP found that training each discipline individually about their new roles and then training the entire group about the practical blending of these roles—i.e., how they fit together—was a valuable approach to setting the structure for the future.

Other training details that are important to consider at the outset are case management strategies and expected safety precautions. In SOCP, staff came to the project with different experience and abilities for case management and different expectations about the level of safety precautions necessary in working with at-risk youth. Managers found themselves working closely with line staff about these details on a daily basis. For example, as part their usual routines, some agencies did not necessarily remove weapons such as mace from clients but rather watched youth more closely when they were on-site. Others were unaware of the need to separate some youth due to gang rivalries. Probation had liability concerns regarding these safety issues and required participating staff to follow more stringent rules regarding staff and client safety.

Creating and Maintaining a Project Vision

The project vision and its mission and goals are essential elements of the project and will guide the development and implementation of the program as it evolves over time. In collaborative projects, developing this vision is difficult and time-consuming because people from differing backgrounds, experience, and worldviews come together to develop a shared idea about what the project is supposed to accomplish and how participants should reach these goals. Participants in SOCP found that two of the central hurdles were differing views of the meanings of collaboration and the goals of joint programs (Wood and Gray 1991). Some members of the management team, including the probation manager, felt collaboration should involve a consensus view of project vision and goals, joint and consensus decisionmaking about implementation, and a willingness to change how the disciplines "usually" conduct business. The hope was that the project would be new, innovative, and would encourage "thinking outside the box." Others felt that collaboration meant networking and cooperation in planning services for youths (e.g., interagency referrals, program support) but that each service would maintain its original design structure (e.g., caseload size, treatment group content, expectations for completion of the component's services) and essentially provide their respective services independently while notifying other team members of their decisions about specific cases. But, because all were speaking the same vocabulary—e.g., "collaboration," "teamwork," and "case management"—the differences did not become apparent until implementation began.

In addition, in SOCP's case, because there were many managers working together, the interagency management team found it important to remind themselves not to focus on their own philosophical (and sometimes valid) agendas but rather the project's philosophy as a whole. SOCP was developed as a "restorative justice" project based upon Clear's Corrections of Place model (Clear, 1996) and therefore indicated a different way of thinking about working with youth on probation. Although staff were initially trained on the principles of this theory, the managers found that initial training was inadequate, in part because there were no "rules" for theory implementation and staff needed hands-on experience at making the new approach work. Posting the vision and the "guiding principles" on the walls as reminders also did not ensure they were implemented. Rather, the managers learned that staff needed constant reminders to use the vision as a guide for all project decisions and changes. For example, they often reinforce the vision daily by challenging the staff to consider how their case decisions "fit" within the project's philosophy. In this way the new philosophy was more likely to become a "way of business" rather than something filed away while staff

went about their "usual" duties.

Participants in new projects might carefully consider what their hopes for the program are and work out a shared understanding about implementation before it begins. For example, what are the individuals' definitions of collaboration? Does it mean collective on-site management, shared or blended roles regarding clients, or each service provider contributing a separate but important piece of the program? How will differences in definitions be worked out? What do participants believe the goals are and how will the project and observers know when these goals have been met—by the level of shared decision-making or service delivery, by the number of clients or victims who participate, the number of therapy "sessions" held, a decrease in client arrests for violent crimes, an increase or decrease in institutional commitments, etc.? In addition, ensuring that agency heads and upper-level management "buy into" the project philosophy once it is developed may decrease the likelihood of misunderstandings later (Altschuler, 1998).

Daily Decision-Making in a Collaborative Arrangement

In this section we discuss both broader decision-making strategies and some important details to consider early to make project management easier in the long run. One of the first considerations here is the method the collaborative group will use to make decisions about project philosophy and daily details—i.e., will decisions be made by consensus or majority vote or by the lead agency after advisement from the other managers? Will the interagency management team address all issues, or will a smaller on-site operations team work out the problems that arise daily?

"True" collaborative arrangements imply equal power and therefore consensus or majority vote. SOCP experience indicates that reaching "consensus" in a diverse group may be very difficult and may even be impossible on some issues. While consensus is a "noble" goal, it is very hard work in practice and presents some unique challenges. A consensus approach requires considerable time and energy for everyone—involving long meetings and discussions and considerable compromise. It is important to determine what method the program will use to reach consensus and whether all key participants must be present to make critical decisions—especially if some managers have most of their time allotted to other duties. A skilled outside facilitator who has no "stake" in the outcome might help decrease the drain on participants' time and help them arrive at consensus more efficiently. To date, SOCP uses participating managers to lead meetings and these leaders find it difficult to participate in the discussion and ensure that time is used efficiently by keeping meeting participants on the topic at hand. This is especially true if "conflict" arises in meetings and the leader for the day has important opinions to include in the discussion. It is important also to decide how difficult conflicts about project philosophy and implementation will be remedied. Due to its financial accountability to the funding entity, the lead agency may want to maintain the power to make final decisions about controversial issues.

If the entire interagency management team prefers to address all operation issues (e.g., daily issues that arise among staff and regarding clients), it may be difficult to devise methods for ensuring that issues are handled quickly and efficiently. One meeting per month, for example, cannot address or solve the many issues that arise during this time period in an ever-changing project. SOCP chose to have an on-site operations team consisting of a subset of the interagency management team that reports to the broader team but that has freedom to make quick, on-site decisions when necessary. This operations team determines issues such as how treatment teams are structured, how case management is delineated, and how office space is allocated, but asks for the entire team's input on these decisions. When emergencies arise in SOCP regarding specific clients, for example, the on-site operations team is able to make decisions quickly without waiting for input from other managers.

Personnel decisions in collaborations are also unique. Projects must decide how staff will be hired—e.g., will participating agencies all have input or will the hiring agency make the decision? SOCP found that hiring by interagency team decision (usually a 3–4 member panel) worked well because this group was able to ensure the new staff had the personalities and skills to work within the program vision and to fulfill the agreed-upon roles. Other issues arise, however. For example, SOCP found it necessary to make agreements about the provision of staff supplies—such as the use of cell phones or county or other agency vehicles to transport clients—because of financial and liability concerns. New projects might answer the following questions early. Will all staff be able to drive probation-owned cars or use their cell phones? Who will pay for car insurance for staff? Will all staff be able to use computers that have on-line access to databases with confidential information about clients who are not in the program or even clients who *are* in the program?

It is very important to consider how and when interagency staff will share information about specific clients. The SOCP design calls for a "team approach" to case management and calls for open sharing of case details among relevant staff. SOCP found that the initial step was to have the parent and youth sign a confidentiality agreement allowing program agencies to share information about them, but this has not ensured free-flowing information among service providers. SOCP still continues to struggle with the fact that probation case files are accessible to other staff but most other case files are not (e.g., mental health, alcohol and drug treatment). This is in part because even with signed agreements, the treatment agencies feel safer following their own (and sometimes state) guidelines about client confidentiality and in part because treatment staff worry about possible punishment consequences for youth who may be violating their terms and conditions of probation. In dealing with these daily details, staff may lose sight of the overall project vision—possibly in hopes of "saving" one youth. New proj-

ects must determine when and in what circumstances staff will be "required" to report violations of probation to the probation officer, and if so, how they will ensure staff comply with this expectation.

Another challenge in collaborative arrangements is the details of "teamwork" with multiple agencies. Team approaches to decision-making about both project implementation (for managers) and client cases (for line staff) are time and resource intensive and can easily lead to "burnout." Staff who are used to making quick, on-the-job decisions often are expected in a collaborative venture to wait and discuss case details in team meetings. These meetings take a lot of time, especially if the multi-agency team must discuss many cases each week. SOCP found that in the early stages of the project, new job duties coupled with the new approach to client case management prompted many long meetings among staff teams, which took time away from face-to-face contact with clients and their families. To partially address this concern, SOCP hired a team leader who was better able to organize the meetings and facilitate the group process. Based on their experience, SOCP would also recommend that new projects begin with a small number of staff (maximum 15) and smaller than usual caseloads (maximum 35 for probation officers and even fewer for treatment personnel) to make the process more manageable.

Collaborative arrangements also can increase the appearance that the project is very costly. Due to the collaborative arrangement, service providers will have the same youth on their caseloads—e.g., a probation officer, alcohol and drug treatment counselor, and mental health social worker may all count a particular youth as part of their caseloads. So, the total number served by the project may appear small due to the number of staff working with each individual youth; therefore, the cost per youth may seem high to observers. One strategy to alleviate observer concerns might be to determine the total cost per youth when the typical strategy of referring youth out for services is implemented. It may be that the individual agencies when working separately "together" spend the same or more per client and that collaborative arrangements just "look" more expensive because the funding is usually from one source.

Conclusions and Discussion

Unlike some counties, Ventura has a long history of innovative programs and of working together to ensure their implementation. For example, during the 1980s, the county created the "System of Care" or "Ventura Model," in which mental health, schools, and probation joined together to provide services to delinquent youth. Nevertheless, SOCP participants have reported that collaboration has been a difficult task at best and is much more arduous than anyone anticipated at the outset. Collaborative arrangements hold great promise for affecting the youth crime problem and can be rewarding for staff (Catalano, Hawkins, and Associates, 1992). However, they also are time and resource-intensive and can be emotionally draining for those involved. These service providers must not only do the usually difficult task of working with "troubled" youth and their families but also spend a lot of time working with "different" service providers who may have contrasting working styles and ideas about program implementation. SOCP managers found that a good management tool is to "celebrate" small successes—both in young clients who may face setbacks in striving for their goals and in staff who will no doubt face struggles they would not face otherwise. They also found that small details, such as allocation of office space and seating arrangements, can convey unintended symbolic messages about the "presence" of a hierarchical structure in a project that in reality sees service provision as a task among equal partners.

In sum, Ventura County's experience implementing a new, collaborative program for youth on probation illustrates some lessons that are unique to collaborative arrangements and may be useful to other newly developing programs. Some of these lessons are:

- Because of the implications of shared power structures and the need for an "equal" stake in the program's outcome, an "ideal" collaborative arrangement would include all agencies committing financial resources as well as their disciplinary expertise to the project.
- Clearly defined and agreed-upon leadership and relationship structures and project roles as well as careful consideration of existing relationships among participating agencies are critical to project success.
- Defining the scope of the evaluation and including evaluators early will increase the likelihood that the researchers will understand the new program and therefore will be able to devise appropriate and maybe new ways to measure implementation variables that are important to local practitioners.
- Creating the project "vision" requires clear distinctions about the meanings behind the shared language used by key actors. Maintaining this project vision is an ongoing, daily task that must be reinforced in every program decision, from major implementation decisions to expectations of specific clients.
- Working out the daily details of collaborative arrangements and the teamwork involved is very difficult and time intensive for all participants and may lead to frustration and quicker burnout among staff. Consequently, projects may consider taking special precautions to boost morale and help staff deal with stress.

True efforts at interagency collaboration in a comprehensive approach to intervention and treatment are rewarding and likely more successful when implemented well (Krisberg and Howell, 1998). However, they can be uncomfortable, time-consuming, and stressful for people who work in them day-to-day. Perhaps new projects may find

lessons from the South Oxnard Challenge Project helpful as they work together toward the common goal of providing better, more intensive services to today's at-risk youth.

Notes

[1]The state had $50 million for grants for which counties applied. In 1997, fourteen counties were awarded grants. In 1999, seventeen counties received monies from a second wave of funding.

[2]In the evaluation of Intensive Supervision Probation (ISP), RAND found that similar issues about staff roles arose within programs run solely by one agency, in that case Probation. But, it seems these problems might increase when different agencies are working together.

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Juveniles and Computers: Should We Be Concerned?

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JUVENILE DELINQUENCY and its rehabilitation have been studied extensively over the years. Much of the interest in this topic has centered around the possible escalation of delinquent acts into adult criminal behavior and the impact of delinquent acts on society, particularly violent and drug offenses. Federal corrections have not been as focused on juvenile delinquency as in years past, due in large part to the small number of federal juvenile offenders. The advent of the computer delinquent* may change many of the concepts of juvenile offenses and rehabilitation, including the lack of federal interest. Consider for a moment the following comments of U.S. Attorney for the District of Massachusetts Donald Stern:

> Computer and telephone networks are at the heart of vital services provided by the government and private industry, and our critical infrastructure. They are not toys for the entertainment of teenagers. Hacking a computer or telephone network can create a tremendous risk to the public and we will prosecute juvenile hackers in appropriate cases, such as this one. (*Newsbytes News Network*, March 26, 1998)

In May of 1998, the first federal prosecution of a juvenile computer crime occurred in the District of Massachusetts. Subsequent federal prosecutions of computer delinquents occurred in the Southern District of New York, the Northern District of California, and the Northern District of Alabama. By the end of 1998, at least five juveniles had been federally prosecuted for offenses ranging from stealing passwords to hacking computers at the Pentagon and NASA, to accidentally shutting down an airport's runway lights and communications. Based upon 1995 figures, this represents 4 percent of all juveniles adjudicated federally and 19 percent of all delinquents federally adjudicated for property offenses (BJS, 1997).

But is this really the start of the federalization of the computer delinquent? Martha Stancelgen, Deputy Chief in the Computer Crime Section, U.S. Department of Justice, notes that federal prosecution of juveniles for computer offenses may be necessary. Specifically:

> I think for many federal prosecutors and investigators, pursuing cases that involve juveniles looks like not very serious work. It looks as if those cases don't merit the same sort of attention as offenses committed by adults. Well, we want our prosecutors and our agents to feel, to understand, that time invested in these cases is time very well spent, because juveniles have the skill and some of them will do a lot of damage.(Adams, Rajaun, and Wertheimer, 1999)

***Computer delinquency in this article refers to any delinquent act committed by a juvenile where a computer was the tool used in the offense, the target of a delinquent act, or contains evidence of a delinquent act.**

There are also signs that computer delinquents are having an impact on state juvenile justice systems. Consider the following cases:

- A 16-year-old in Chesterland County, Virginia pleaded guilty to computer trespassing for hacking into a Massachusetts Internet provider's system, causing $20,000 in damages (*Richmond Times-Dispatch*, June 25, 1999).
- Two youths, ages 14 and 17, pleaded guilty to charges that they scanned real money and printed counterfeit money in Bedford County, Virginia (*Roanoke Times & World News*, May 28, 1999).
- A 13-year-old boy from Pomona, California admitted to making threats against a 13-year-old girl with a computer. The boy had created a website which included a game featuring the girl's picture with the caption: "Hurry! Click on the trigger to kill her." The website also included a petition calling for her death (*San Diego Union Tribune*, May 9, 1999).
- A 14-year-old boy in Mount Prospect, Illinois pleaded guilty to possession of child pornography. The boy was downloading child pornographic images onto his computer (Gordon, 1999).

There are numerous factors that combine to make the computer delinquent a serious topic for corrections officials. Technologically, young people are more advanced than any previous generation. Specifically, advances such as the personal computer and the Internet have been today's reality for over 15 years—that's as far back as today's youth can remember. As a result, today's young people have a firm grasp of the potentials of these and other new technologies. In addition, an increasing number of juveniles have direct access to a computer and the Internet. According to Newsweek, 47 percent of the nation's teenagers were using computers to go online in 1999. Newsweek (1999) projects that by the year 2002 almost 80 percent of the nation's teens will be online. Unfortunately, the same article reports that many parents do not provide careful oversight of this computer use. Depending upon the age group, 9 to 38 percent of these youths have their parents sitting with them while they are online. Between 43 and 68 percent of parents of online children know which websites their children are visiting. In addition, between 54 and 75 percent of the parents permit online access whenever their children want.

Young people also seem to show an ethical deficit regarding the appropriate use of a computer. For instance, a recent study by Fream and Skinner (1997) of 581 undergraduate students found that 34 percent had pirated software in the previous year. Sixteen percent had gained illegal access to a computer system to either browse or exchange information. This study confirmed the extent of illegal computer use by college students that another study done five years earlier uncovered. Fream and Skinner's analysis revealed that parents and even teachers, by word and action, may be advocating the commission of certain computer crimes—most notably, software piracy—and this may increase the frequency of piracy and other computer crimes among the students. The study also noted:

> As with other types of deviance, one of the major predictors of computer crime is associating with friends who engage in the activity. Friends who are successful at certain activities or in scholastic areas are generally the ones whom other students seek out for help and advice. Also, friends are usually more willing to share such information or challenge others to beat them at their new games, programs or techniques. Thus, it comes as no surprise that learning computer crime is primarily peer driven. (Fream and Skinner, 1997, p. 503)

In years past the peer culture that most directly impacted youth was school and neighborhood friends. With the advent of the Internet, the peer culture does not have to be so close in proximity. There are numerous websites advocating such social plagues as pedophilia, drugs, and hate and racist groups. In addition, there are websites and chat rooms that are devoted to computer hacking and at least implicitly support the break-in of computer systems. McEwen (1991) notes with regard to hackers:

> …young hackers' beliefs about computers and information come from associations with other hackers, not family members and teachers. Few schools teach computer ethics, and parents of arrested hackers are usually unaware that their children have been illegally accessing computer systems.

Computers also provide delinquents with numerous opportunities that were unavailable in the past. Specifically, the use of the computer over the Internet can conceal age and provide a degree of anonymity that was previously impossible. It also opens up the range and scope for delinquent behavior. For instance, a youth who is not old enough to drive can use his or her computer to break into a computer several states away or even in another country. Young people can commit break-ins from their bedrooms, after curfew. Additionally, the power of the computer makes offenses that once required massive printers, such as counterfeiting or check fraud, now literally "child's play."

Because of our society's increasing dependence upon computers, the losses or damages that can be inflicted by a delinquent have dramatically changed. Losses, injuries, and/or deaths due to the acts of one delinquent have typically been quite low. In the past it was practically impossible for a juvenile delinquent to steal the amount of funds that a white-collar criminal, such as an embezzler, could purloin. However, a delinquent today can easily use a computer to facilitate a five-figure fraud or other high-tech crime (*Associated Press*, 1997). Even more horrific is the potential loss of life. For instance, a disturbed youth could use a computer to disrupt safety functions, such as traffic signals, air traffic control, or floodgates, making recent school massacres pale in comparison.

Indirect costs due to computer delinquency are also worth noting. Supposedly "innocent" juvenile exploration into computer systems can cause expensive systems to crash and inflict financial costs to bring the systems back. Because of the prevalence of computer intrusions, companies are required to take additional security measures, adding to the cost of goods and services. Computer delinquency also wastes investigative resources that could be better utilized. For instance, a computer attack against defense computers could be the work of a juvenile "exploring" or an adult terrorist bent on destroying systems or stealing technology. Only a costly investigation can tell. The expense and the "substantial federal interest" (see 18 U.S.C. §5032) make it more than likely that these young offenders will be prosecuted federally.

The jurisdictional concerns of technological crimes also make adjudicating computer delinquents even more complicated than the typical delinquency case. Normally, adjudicating a delinquent takes place at the local level. Juveniles usually lack the means to travel great distances to commit crimes unless they are engaged in stealing cars. A juvenile hacker can cross state boundaries and even international boundaries with ease. Who handles the case: the local authorities where the juvenile resides or the state or country of the target computer? Also, is there some federal interest in prosecuting the case? Is one of the correctional systems better equipped than others to deal with the supervision of this type of delinquent? Who decides which jurisdiction will prosecute the case and later supervise the delinquent after adjudication?

Finally, some computer delinquents are likely to become adult computer offenders. For instance, Kevin Mitnich, currently in federal custody for his second federal computer offense, started hacking at the age of 17 (Shimomura and Markoff, 1996). Another federal computer offender, Mark Abene of Masters of Deception infamy, also started computer offending at a young age (Quittner and Statalla, 1996). Robert J. Morris, the college student who released a "worm" that crashed approximately 6,000 computers on the Internet, began hacking into university computers as a juvenile (Hafner and Markoff, 1995). McEwen (1991) indicates:

> One conclusion from the studies is that persons involved in computer crimes acquire their interest and skills at an early age. They are introduced to computers in school, and their usual "career path" starts with illegally copying computer programs. Serious offenders then get into a progression of computer crimes including telecommunications fraud (making free long distance calls), unauthorized access to other computers (hacking for fun and profit), and credit card fraud (obtaining cash advances, purchasing equipment through computers). (p.9)

With these issues in mind, how does the typical probation officer, who may be barely computer literate, supervise a juvenile hacker, who can write his own software programs? One easy answer is to prohibit the delinquent's

access to a computer. But how does that impact the youth's education and development in a society that values computer proficiency? Is this a realistic condition for a delinquent with easy access to computers at home, schools, libraries, etc.? Will traditional efforts at rehabilitation work with computer delinquents? Are they different from the "traditional" juvenile offender, and if so how? Will the explosion of new technologies bring an increase in computer delinquency? These are questions that both federal and state corrections need to consider.

Obviously, the best solution is to prevent youth from gravitating into computer delinquency. Some efforts have been made to instill appropriate computer behavior in our youth. In 1990, the National Institute of Justice, with the cooperation of the U.S. Department of Education (DOE), invited concerned parties representing education, industry, law enforcement, and the government to a two-day meeting to address ethical issues surrounding technology. The group reached a consensus that ethics regarding the new technologies needed to be instilled in our youth. Specifically:

> With the rapid infusion of computers, software and related technologies into homes, schools and businesses, we initially focused our energies on learning about the technologies and how to use them. We now need to focus our attention on the ethical issues surrounding technology to insure that we and our children understand and practice values important to all of us—respect for others, their property, ownership, and the right to privacy. (Alden)

In response to this conference, the Computer Learning Foundation (CLF) (http://www.computerlearning.org), with DOE and the Department of Justice (DOJ), began emphasizing the need to teach responsible computer use to children. In 1991, the CLF began disseminating information to schools on methods for teaching children to be responsible computer users. In addition, the CLF developed the Code of Responsible Computing (Figure 1). Both the DOJ and the FBI's websites (http://www.usdoj.gov and http://www.fbi.gov) have pages for kids covering appropriate computer use. DOJ's website also has a lesson plan for elementary and middle school teachers to use when covering computer crime and ethics with their pupils.

As "agents of change" we need to be prepared at both the state and federal level when efforts at preventing computer delinquency have failed. Only additional study and focus on this new area of delinquency will arm us with the information and strategic thinking to cope with this new generation of delinquency.

FIGURE 1

CODE OF RESPONSIBLE COMPUTING

Respect for Privacy

I will respect others' right to privacy. I will only access, look in or use other individuals' organizations' or companies' information on computer or through telecommunications if I have the permission of the individual, organization or company who owns the information.

Respect for Property

I will respect others' property. I will only make changes to or delete computer programs, files or information that belong to others, if I have been given permission to do so by the person, organization or company who owns the program, file or information.

Respect for Ownership

I will respect others' rights to ownership and to earn a living for their work. I will only use computer software, files or information which I own or which I have been given permission to borrow. I will only use software programs which have been paid for or are in public domain. I will only make a backup copy of computer programs I have purchased or written and will only use it if my original program is damaged. I will only make copies of computer files and information that I own or have written. I will only sell computer programs which I have written or have been authorized to sell by the author. I will pay the developer or publisher for any shareware programs I decide to use.

Respect for Others and the Law

I will only use computers, software, and related technologies for purposes that are beneficial to others, that are not harmful (physically, financially, or otherwise) to others or others' property, and that are within the law.

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Multicultural Implications of Restorative Juvenile Justice

By Mark S. Umbreit and Robert B. Coates*

"The hell you say. I won't stand for it." Banging the table with his fist, the black store owner shouted, "You're not gonna get off that easy!" The Native American teen shoplifter cowered in silence. She worked hard at keeping her lips from trembling and her stare fixed on an old picture hanging on the wall to the right of the black man. With churning stomach, the Anglo mediator believed the entire mediation was torpedoed by the store owner's angry outburst. He tried to think of a way of aborting the session with some semblance of civility. Frustrated, the black man looked with disgust at the other two. He expected, he wanted a response. But neither individual looked alive. How could justice ever come out of this mishmash?

RESTORATIVE JUSTICE practices—particularly various forms of victim, offender, family, or community dialogue—are developing in numerous communities throughout North America and many other countries, chiefly in juvenile justice settings, though they also can be used successfully with adult cases (Bazemore & Umbreit, 1998; Umbreit & Greenwood, 1998; Zehr, 1997). It is vital that the field become increasingly sensitive to differing cross-cultural perspectives. Worldviews, perceptions of justice, and communication styles are greatly influenced by one's cultural milieu (Myers and Filner, 1993). Working with persons of different cultures, particularly in attempts at conflict resolution, can be a challenge replete with potential dangers and pitfalls. Even when all parties are well intentioned, natural ways of speaking and behaving, when misunderstood, can destroy the best efforts and hopes of restoring and repairing relationships.

We will begin with a brief overview of the concept of restorative justice and a cursory glance at some programs which to varying degrees attempt to concretize those principles. We will then proceed to consider various pitfalls and dangers that may hamper restorative justice efforts carried out within cross-cultural contexts. Finally, we will look at ways of increasing the likelihood of positive interactions when working with persons of differing cultural backgrounds. We believe firmly that practitioners attempting to adapt restorative justice principles to their work must be clearly aware of their own sensitivities toward cross-cultural differences and help those with whom they work deal with theirs.

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Restorative Justice: Scope and Framework

The phrase "restorative justice" implies both process and outcome (Bazemore and Pranis, 1997; Bazemore & Umbreit, 1995; Umbreit, 1997; Zehr, 1990; Zehr & Mika, 1997; Van Ness, 1997). It is not a particular program, although programs and practices may be classified by the extent to which they further restorative justice. Principles shaping restorative justice can be considered within six clusters: 1. the nature of crime; 2. the goal of justice; 3. the role of victims; 4. the role of offenders; 5. the role of the local community; 6. the role of the formal juvenile justice system. While most restorative justice policies and practices have developed within the juvenile justice context, most are equally appropriate for adult offenders as well, with an increasing number of initiatives beginning in the criminal justice system.

1. Crime violates social relationships, both personal and those resulting from being members of communities. Crime is not merely an act of lawbreaking; it tears the social or community fabric; it is the violation of one human being by another.

2. The proper goal of justice is to repair the damage done and restore relationships, personal and communal, to their original state to the extent possible.

3. To have a chance at restoration, victims of crime must have the opportunity to choose to be involved in the process of justice. Such involvement may include: information, dialogue with the offender, mutual resolution of conflict with offender, restitution, reduction of fear, heightened sense of safety, partial ownership of the process, getting the experience resolved, and renewing hope.

4. To have a chance at restoration, offenders committing criminal acts must have the opportunity to accept their responsibilities and obligations toward individual victims and the community as a whole. Such an opportunity may lead to: participation in defining their obligations, safe face-to-face encounters with victims, understanding the impact of their own actions, creative ways of providing restitution, identifying their own needs, partial ownership of the process, getting the experience resolved and renewing hope.

5. To have a chance at restoration, the local community and its resources must be brought to bear on the needs of victims and offenders (and their families) as well as in prevention of delinquent and criminal acts.

6. To have a chance at restoration, the formal justice system must continue to work to ensure victim, offender, and family (of both) involvement which values genuine engagement of all participants without coercion. It must continue to monitor each case. With a focus upon offender accountability to their victim(s), the formal justice system must exhaust least restrictive interventions before moving toward incarceration alternatives as it seeks to promote restorative justice in the community.

Restorative Justice: Program Adaptations

Illustrative program models which reflect these "restorative justice principles" to varying degrees would include: reparative probation, family group conferencing, circle sentencing, and victim-offender mediation (Bazemore and Griffiths, 1997; Bazemore & Umbreit, 1998). There are many others.

Reparative community boards as practiced in Vermont and several other locations encourage victim involvement; the extent of actual participation is quite variable. In Bemidji, Minnesota, juvenile offenders appear before a panel of community members who discuss with them the impact of the crime and the need to repair the harm caused to the individual victim and community. Reparative community boards have responsibility for monitoring contract compliance either when offenders have worked out with victims appropriate restitution or after such has been established by the board or some other judicially empowered authority. These boards often refer victims and offenders to mediation; such suggestions are not, however, mandated.

The focus within the family group conferencing model being developed in Australia and New Zealand and replicated in the United States and elsewhere is heavily on the needs of young offenders to face the consequences of their criminal behavior and to be reintegrated into the community. While it is important to meet with interested victims (not necessarily the specific victims of the offender's actions) and representatives of the larger community, the emphasis appears to be on educating the offender. The more the victim perspective is developed as a counterbalance, that is, the more attention is added to victim participation, reparation, empowerment, and support, the more strongly it will inculcate the restorative framework.

Circle sentencing places considerable emphasis on victim needs. The impetus for the program comes from the community. Victims, family members, representatives of the community, and elders meet with the offender. Victims are encouraged to tell their stories to their neighbors in the context of the circle. Offenders are present and may also have friends and relatives present. Maintaining some balance between offender, victim, and community needs is a continuing struggle.

Victim-offender mediation strives to balance victim and offender needs. It is practiced in a variety of ways in more than 1,200 programs throughout North America and Europe. In most of these programs, the victim meets with the offender only after a separate pre-mediation meeting and preparatory work with each of the participants. Emphasis is on sharing the stories of the victim and offender experience and working out some way for the offender to repair damages to the victim/community. Most victim-juvenile offender mediation sessions involve parents in the process (Umbreit & Greenwood, 1998).

Each of these programs, along with many others, pursues restorative justice frameworks in real-world settings. Because of the constraints of the existing formal justice system, expectations of key participants, and resistance to change, the implementation of restorative justice principles, despite considerable progress, remains an uphill undertaking in many communities.

Potential Cross-Cultural Pitfalls and Dangers

The continuing movement toward adaptation of restorative justice frameworks can only be enhanced if practitioners, advocates, and policymakers become increasingly sensitive to and knowledgeable about cross-cultural dynamics which impinge upon the practice of such programs and upon the very notion of justice. Often the cultural background of victim, offender, and program staff member are different, sometimes leading to miscommunication and feelings of being misunderstood or worse, re-victimized.

The opening narrative of this article dramatizes one brief exchange between people of differing cultural backgrounds which left each person feeling dissatisfied and used. Each would walk away from such an experience turned off by efforts to "humanize" the justice system.

A great danger when speaking of things cross-cultural is that of over-generalization. There are likely to be as many differences within cultures as between cultures. For example, significant customs, communication styles, and shared values distinguish the rural white from the urban white; the upper class black and the lower class black; the Mexican Latino from the Puerto Rican Latino; the reservation Native American and the non-reservation Native American. We will return to this question of within-culture differences later. It is sufficient for the moment to note that such differences do exist as we begin to consider variations across cultures.

Differences between persons raised/living in varying cultures will likely be reflected in communication styles. Those differences will typically be as evident in the way points of view are communicated as in the message being relayed. Let us take a moment to consider some possible pitfalls in understanding one another's non-verbal statements. The following information draws considerably from research-based findings reported by D.W. Sue and D. Sue in *Counseling the Culturally Different* (1990).

Proximity

Depending upon one's cultural experience one may be most comfortable talking face to face or at a distance. Generally, Latin Americans, Africans, black Americans, Indonesians, Arabs, South Americans, and French are more comfortable speaking with less distance between conversants than are Anglos. In mediation or conversation, the Anglo staff person is often seen backing away, possibly feeling confronted or attacked. The Latin-American victim will appear to be chasing the mediator across the room, believing the mediator to be aloof, thinking "he believes he's too good for me." Both participants are misreading cues and taking actions which will only reinforce misunderstandings. Another example of the use of space is the frequent desire by many white Americans to keep a desk between themselves and the person they are trying to help. In contrast, some Eskimos prefer to sit side by side when talking of intimate matters rather than across from each other.

Body Movements

Body movements often speak louder than words. Posture, smiling, eye contact, laughing, gestures and many other movements communicate. How we interpret what we hear and see may vary greatly from culture to culture. Asians may be puzzled and offended by a white mediator who wants to express herself—her likes and her dislikes—with facial grimaces and smiles. The white mediator may interpret the Asian who has been taught to tightly control his feelings as having no feelings. It may be inappropriate to expect an individual raised to value control of emotions to shed tears as signs of remorse for having burgled a home, even if that person may be feeling very remorseful.

How many times have mental health professionals interpreted avoidance of eye contact to mean avoidance of an issue, poor self-confidence, submissiveness, or guilt and shame? In many traditional Native American cultures it is disrespectful of authority to look an elder in the eye. In the classroom, Native American students often fail to look at the professor when speaking; many prefer not to speak at all. Blacks make more frequent eye contact when speaking than when listening. The lack of eye contact when listening leads some practitioners to describe their black clients as resistant and disinterested. Whites, on the other hand, tend to hold eye contact more when listening than when speaking. One must wonder how this contrasting use of eye contact contributes to misunderstandings that may impinge upon the process of justice-making.

Paralanguage

Paralanguage or other vocal cues, such as hesitations, inflections, silences, loudness of voice and pace of speaking, also provide ample opportunity for misinterpretation across cultures. Rural Americans tend to talk at a slower pace than their urban counterparts. Put a northern Minnesota farmer in the same room with a New York City taxi-cab driver and they may find it difficult to speak with each other not because they don't share things in common, but because they don't have the patience to work at communicating with each other. The New Yorker would feel that an eternity had gone by before the Minnesotan had completed a thought. The latter would have difficulty straining to listen to the fast-paced patter of the former.

In Native American culture silence is valued as sacred. Each person must have the opportunity to reflect, to translate thoughts into words, to shape the words not only before taking a turn at speaking, but while speaking. Anglo-Americans often feel uncomfortable with silence. A Frenchman might regard silence as a sign of agreement. To an Asian silence may be considered as a token of respect or politeness.

Related somewhat to pace and silence is hesitation. For persons who speak rapidly and feel uncomfortable with silence, hesitation on the part of another is a cue to begin speaking. To the one who hesitates, such an action might be taken not as an interruption but as an intentional, grievous insult.

Asians are given to speaking softly as if not to be overheard; many find U.S. speakers brash and loud. Arabs on the other hand may find U.S. speakers soft-spoken. The Arab prefers volume.

Similarly, persons of Asian descent may find Anglo-Americans too direct, blunt, and frank. The former will go to great lengths not to hurt feelings; the latter is often unaware when feelings are hurt.

Density of Language

Density of language also differentiates speakers from different cultural backgrounds. Blacks tend to be sparse and concise. In exchanges between blacks many shared codes are used requiring little further information. Even the simple "uh, huh" is loaded with meaning when taken in the context of the social situation. To outsiders blacks may appear terse, uninterested.

Asians and Native Americans will often use many more words to say the same thing as their white colleagues. The poetry of the story may be more important than the content of the story, and may actually be the point of the story. Much patience is required of blacks and whites to hear what is being said when conversing with Native Americans or Asians. We can readily see potential problems for doing mediation work across these groupings which possess very contrasting communication patterns.

Looking at these communication styles through a somewhat different lense, Sue and Sue (1990) regard Native American, Asian American, and Hispanic manners of expression as low-keyed and indirect. Whites seem objective and task-oriented; blacks affective, emotional, and interpersonal. Blacks will interrupt or take a turn at speaking when they can. Whites will nod to indicate listening or agreement. Native Americans and Asians seldom provide cues to encourage the speaker; they listen without a lot of non-verbal engagement.

In addition to these potential pitfalls of misunderstanding based on different communication styles, other meta factors loom over the attempts to build restorative justice with persons of differing cultures. For example the emphasis on individualism, competition, taking action, rational linear thinking, "Christian principles and Protestant work ethic," may to a large extent reflect values of the dominant U.S. white culture, but not values particularly shared by all whites, let alone persons of other cultures. Asians, Hispanics, and Native Americans are likely to place more emphasis on valuing the community fabric and kinship networks than on reifying the place of the individual. Native Americans and others would move a step further by cherishing the place of the individual within the context of the entire natural world. Without the latter the individual has no value.

Persons from religious perspectives other than Christianity, which emphasizes "individual salvation," may see the individual as equal to all living things, as journeying toward individual fulfillment, or even as insignificant in the total scheme of things.

We are not suggesting that any one worldview is the correct one to have. We are simply noting that differing worldviews often clash (too often literally in the course of wars) and may undermine attempts to repair wrongs experienced as a result of crime.

Broader than the scope of this work is the question of how the idea of justice may vary across cultures. It is not difficult, for example, to imagine that traditional Native Americans would seek to restore more than the personal relationship after commission of a crime. Most importantly, the communal or tribal relationship would need to be repaired, and likely even the relationship of the individual with the universe, for violations within the tribal context rip the fabric of the whole that holds all together.

We wonder how we can promote restorative justice without knowing how the various participants within a given conflict understand and value justice.

Differences Within Cultures

As noted above, a significant danger involved in discussing cross-cultural differences is over-generalizing between culture differences and overlooking within-culture differences. Another way of viewing this is to recognize subcultures existing within larger cultures. Some cultural characteristics may be shared by most whites, yet whites raised in poor, rural Appalachia may vary considerably as to values, mannerisms, and communication patterns from whites raised in San Francisco. Likewise, middle-and upper-class blacks of Los Angeles will share certain characteristics with blacks raised in the blighted areas of south Los Angeles, yet vary considerably regarding values, mannerisms, and communication patterns. The same can be said of Asians raised in the dense inner-city conclaves versus those who move to small-town America. Or of the Ute who is raised on a reservation far from the urban world compared with the Ute raised in the fast pace of a metropolis.

Race, social economic status, ethnicity, gender, religion, sexual orientation, rural vs. urban, and many other defining characteristics will shape how an individual views the world and his or her place and chances in that world. All of these will color the propensity to blame the offender, the victim, or the community for crime. They will color whether participants come to a "justice program" seeking revenge or seeking repair; desiring to act or desiring to be acted upon; expecting hope or expecting defeat.

Chances for restoring justice can only be enhanced when those who work in justice programs make the time, expend the energy, and take the risks of coming to understand themselves better regarding cultural understanding and misunderstandings.

Racism as a Subset of Cultural Conflict

While race and culture are very intertwined, they are not one and the same. As we have indicated above, speech patterns, intensity of communication, interpretation of non-verbals and many other nuances of interaction are influenced by the mix of race and culture. While it would be a mistake, for example, to assume that blacks from different social classes and different regions of the culture communicate and handle conflict in the same ways, the fact of being black is likely a key determining factor in how they perceive the world and how others perceive them.

To the extent that they are aware of being overtly or covertly subjected to prejudice and discrimination because of the pigmentation of their skin, they will be more likely to let this awareness influence communication and conflict resolution with persons of other races. Being on guard, lack of openness, being passive or aggressive, choosing what role to play in an interaction will be affected by previous experiences of individual or institutional racism.

The impact of racism will be a potential contextual variable in restorative justice programs where participants are of different races. Where there is a political power imbalance associated with race, one may expect to find resources for schools, recreation, police, and so on differentially weighted to the group with the most political clout. In the United States this often means that whites have more resources as representatives of their racial group are most often in positions of political power. However, in some locations the consequences of racism may be felt where, for example, blacks have more political power than Hispanics, or Hispanics have more political power than Native Americans, or Asian Americans have more political power than whites. Racism is not the prerogative of persons of only one skin color.

Staff—paid or volunteer—will need to analyze their own behaviors for residual elements of racism subtly apparent in their nonverbal behaviors or assumptions about the worlds of the victim and the offender. For example, do nonverbal actions such as folding of arms, scooting a chair backwards, shuffling papers indicate discomfort and a desire to be somewhere else? Each of these behaviors may simply be acceptable given the ongoing flow of communi-

cation, or they may suggest prejudice. Do we assume that the Native American youth offender sitting before us comes from a broken family of alcoholics, is lazy, and has no goals? These descriptors may, in fact, describe a particular youth. But when they are assumed because of the youngster's skin color, then we have a racist attitude. And when actions are taken based on those assumptions, such as withholding educational services because the youth is lazy, or failing to acknowledge the strengths of the existing family structure because "it's not normal," then we have discrimination resulting from erroneous prejudicial assumptions based on race.

Program staff must not only examine their own beliefs and actions, but also be alert to the imbedded racial biases of offender and victim. Racism may be a justification used by the offender for committing the crime. Racism may play into why and how the victim wants not an "ounce of flesh," but a "pound of flesh." Where racist assumptions or accusations are likely between offender and victim, the mediator will need to be prepared to act as interpreter or buffer during separate pre-mediation meetings and during any actual face-to-face encounters be they in the form of mediation, healing circles, conferences, community boards, or other restorative justice programs.

While race cannot be equated with culture, it can be such a powerful determining factor of communication and interaction patterns that it should not be ignored as we are sorting out cultural differences.

Cultural Skills for the Restorative Justice Practitioner

In their work on *Counseling the Culturally Different*, Sue and Sue (1990) identify five characteristics of the culturally skilled counselor. We offer them to the reader as necessary cultural skills for the restorative justice practitioner. We have substituted "restorative justice practitioner" for "counselor." They are:

1. The culturally skilled restorative justice practitioner is one who has moved from being culturally unaware to being aware and sensitive to his/her own cultural heritage and to valuing and respecting differences.
2. The culturally skilled restorative justice practitioner is aware of his/her own values and biases.
3. Culturally skilled restorative justice practitioners are comfortable with differences that exist between themselves and their clients in terms of race and beliefs.
4. The culturally skilled restorative justice practitioner is sensitive to circumstances (personal biases, stage of ethnic identity, sociopolitical influences, etc.) that may dictate referral of the minority client to a member of his/her own race/culture or to another counselor.
5. The culturally skilled restorative justice practitioner acknowledges and is aware of his/her own racist attitudes, beliefs, and feelings. (Sue and Sue, 1990, pp. 167–168)

Avoiding Dangers and Pitfalls

It is likely that whatever we do to reduce the consequences of cross-cultural misunderstandings, we will not be able to remove all such misunderstandings and consequences. These attempts to identify the pitfalls and dangers of cross-cultural differences that impinge upon restorative justice efforts may only reduce the probability of further conflict or disrepair because of these differences. In human interaction, even where awareness is increased and behavior modified, there is plenty of room for matters to go awry. For example, where the antagonists are embittered by age-old conflicts passed on from generation to generation it is likely that our short-term efforts at understanding and amelioration will fall short of achieving full reconciliation. Such extreme cases, however, should not deter us from taking steps to learn, to inform, to model, and to seek supportive roles in helping others restore themselves to more harmonious relationships.

We believe that those of us who work in the "justice" field have a special obligation to reduce the likelihood of such bias and discrimination. The following is a simple list of suggested steps. These are not meant to be exhaustive. Each reader should add freely to the list.

Know Thy Self

We begin with ourselves. Reflect upon, study our own behaviors and communication styles. Are we comfortable with silence? Do we interrupt frequently? Can we stand closer to someone or further away than we usually do when speaking? And can we do this comfortably? Do we over interpret straying eye contact? Can we talk to someone without staring them directly in the eye if our listener appears to be offended by it? Do we carry imbedded, learned prejudices toward persons of different skin color than our own? Or toward persons of the same skin color, who are less educated or better educated than ourselves? Do we expect persons who live in certain parts of the city to be law violators?

It might be helpful to keep a journal of our interactions with others, recording our speech patterns and theirs, those things which make us comfortable or uncomfortable, our use of and response to gestures, to intensity of conversation, and our overall assessment of the extent to which clear, mutual communication was achieved. Do patterns vary over time depending on whether we are speaking with someone of our own culture or of a different culture?

We might consider taking pencil and paper inventories to identify our own biases. Bias is part of human life and will likely always be so. Some people like rock and roll music, some like blues, some like rap, some like classical, some like country and so on. Having biases—or likes and dislikes—is not the problem (Duryea, 1994). The problem is when those biases, intentionally or unintentionally, lead to discriminatory practices. It behooves each of us to be open to discovering our own biases so these won't wind up hurting others or ourselves.

Getting To Know The Participants

Don't make quick assumptions about others. It is difficult to know ourselves; it is impossible to fully know another person. A tatter-clad young woman with bright pink spiked hair shows up for a mediation session to meet with an elderly conservatively dressed couple about theft of property from an unlocked car. As mediator, do we say, "Oh no, why didn't I stay home today"? Or do we move ahead, assuming that we can help these folks, who appear very different and who have already experienced conflict due to the stolen property, to find some common ground from which to communicate and possibly even reach understanding, receive restitution and restore some semblance of justice?

If we were to take this case cold without talking to the individual participants previously (which ideally will not occur often), we might be surprised by any number of possibilities. The young woman might be quite cooperative. After all, she is likely to be somewhat aware of how her appearance may affect others. Perhaps it is the elderly woman who would be turned off by someone of her gender "not caring how she looks." Or perhaps the elderly man would find the young woman attractive and flirt with her. Or perhaps things would just progress quite smoothly (it does happen occasionally). In any case, making assumptions based on appearances without any previous information or contact with a person is likely to result in stereotypical assessments and outcomes, leaving many to wonder about the principles of justice guiding such experiences.

Look at the world through the eyes of another. Every participant is unique. Cultural influences may be quite evident, yet each individual will reflect a cultural heritage somewhat differently. We must understand the client as an individual within the context of culture (Ridley, 1995). If we are going to work with clients within a restorative justice framework, then we will need to take the time to meet with them to listen and learn how they see their world. Doing this prior to victim/offender dialogue is very important in facilitating a restorative justice process sensitive to the needs of crime victims and culturally sensitive to all parties. What meaning did the burglary have for the single mom: loss of mementoes, invasion of privacy, eroding her sense of community, planting seeds of fear and so on? How does she view the offender: as vermin, as someone gone astray, as someone with potential? What is her idea of justice: getting her pound of flesh from the offender, having her possessions returned or replaced, the offender making restitution to the community, the offender being helped so future criminal acts are less likely, and so on?

We can ask similar questions of the offender: view of victim, remorse, sense of justice, motivation to change, willingness to repair the community fabric harmed by his or her own actions, blame or placement of responsibility for actions.

Likewise, if other community members will be involved, such as in circle sentencing, we will want to know how these persons see themselves vis-a-vis the victims and the offender: their notions of justice and restoration; their willingness to accept or reject possible resolutions to a conflict which has embroiled individuals and the community as a whole.

In the process of seeking answers to these kinds of questions, we will also want to pay attention to communication styles. Does the victim speak slowly and haltingly, taking time to form thoughts and sentences? Does the offender speak in staccato fashion using few words? Does the elder speak in story form letting each listener discern his or her meaning? Does the offender avoid eye contact? If so, is this a possible sign of shame, or is it characteristic of his/ her culture to defer to persons of authority by not looking at them directly? Remember, we will be perceived by many as persons of some authority. Will the participants be comfortable sitting around a table, or more willing to communicate if only open space separates them? Does the fact that the victim speaks loudly, seeming to shout at times, mean she's angry or is this communication style representative of her culture? Will such loudness intimidate other participants?

In the course of human interaction where the stakes are as high as they are when matters of justice are being decided, we must know the key participants as well as we can so the process leading toward a just resolution is not derailed by what may initially appear to be incompatible points of view and communication styles. Gaining this knowledge requires spending ample time with each participant; asking appropriate questions; listening thoroughly; adapting one's own communication style to that of the participants. For example, if silence is a significant part of speaking for the victim, we will need to slow down at least to tolerate silence, if not to appreciate it for what it brings to us.

It is difficult to imagine how we can help persons repair relationships and restore a sense of justice, if we are insensitive to their viewpoints and their culturally learned ways of communicating: non-verbal and verbal. A restored sense of justice is enhanced by our ways of interacting as well as those of the offender and the victim. After all, one of the driving forces of restorative justice is the humanizing of the justice system. In these programs, we represent the justice system. Our actions not only shape and influence specific outcomes, they either enhance or diminish the sense of the system being responsive, considerate, fair, and just.

Listen to key informants. It is often helpful to nurture relationships with individuals in a community or culture unfamiliar to us in order to check out our assumptions about how persons work out conflicts and communicate with one another in that particular community or culture. This has been a common practice of cultural anthropologists and sociologists involved in qualitative field studies. Key informants—not all of them in the professional justice community—can provide rich information that may prevent us from making foolish errors. They may include the black mother who manages an informal delinquency prevention agency out of her apartment; the Asian elder who wants to help his grandchildren make their way in the larger culture while appreciating and holding on to traditional ways; the Latino teenager who is curious about our presence and at least willing to test our sincerity.

If we are genuinely willing to listen to these people, we may surprise ourselves with what we will learn. Not many people take the time to listen to their stories, or to our stories for that matter. Being willing to listen to another person's story initiates a bond of mutuality.

Certainly we will not forge total mutuality. We are not naive enough to assume that even by genuine, respectful listening we will be permitted into a fully mutual relationship. Nor do we assume it is possible to fully understand another person or another culture.

Likewise, while these key informants provide a potential wealth of information as to cultural values and mores, such individuals may at times be so ingrained in their ways of doing things that they are unable to step back and see, and therefore share, how values are actually shaped and imposed, or how the nuances of communication styles play out in day-to-day living. Still, they offer much potential to the outsider seeking to have a positive impact on their community.

Preparing The Participants

As indicated above, so much of the work of bringing persons together to interact around issues of conflict needs to be done before that encounter happens. As we get to know the values and behaviors of the various potential participants, we may be able to foresee possible difficulties that could easily abort any movement toward restoration.

If so, it will be necessary for us to try to help participants understand the viewpoints and different communication styles that they will be exposed to when they meet each other. Sharing this awareness and nurturing such sensitivity may fall on deaf ears, and then again, it may make a lot of difference. At least the participants receive some information which may help them prepare for the encounter and what they might normally regard as insulting or disrespectful behaviors. Also, each participant may be moved to some self-awareness, thereby tempering behaviors that might be interpreted as offensive by others.

We realize that the latter statement may be overly optimistic. It is easier to expect persons to increase their awareness of how others speak and behave than to change their own behaviors, particularly in situations that may become tense and conflictual. Any increased awareness or sensitivity to other cultural values or communication styles is a gain; any positive change in participant behavior is an added bonus.

To illustrate some possibilities of preparing the participants for cultural differences, let us return to our brief opening scenario involving a black male store owner, a female Native American shoplifter, and an Anglo mediator. In that illustration, the mediator had done no homework on himself or others.

Now, let us assume he has spent a fair amount of time with the store owner. He has absorbed the businessman's sense of invasion and loss. He knows that the man wants to work with the teen to prevent a repetition of shoplifting, but neither does he want to see her dealt with harshly. The man volunteers that he grew up on the streets and knows how difficult it is. His casual conversation is punctuated by gestures. His voice booms, particularly as he speaks of how the system generally rips off kids and people of color in general. The man wants his economic loss recovered and the girl helped. Essentially, he is sympathetic to meeting with the teenager for his benefit as well as hers or he wouldn't "take the time out of a busy schedule to do so."

When our mediator meets with the Ute teenager, he discovers a very different way of communicating. She is more subservient than he is comfortable with. She will answer only direct questions. There is much spacing between her sentences. Sometimes he thinks she is done speaking when she adds still another thought. Rarely does she make eye contact with him. The mediator leaves the young woman perplexed, feeling that he is not yet ready for these two to meet face-to-face.

Through a mutual friend, the mediator is able to identify and connect with an elder of the band to which the teen belongs. He asks questions. He listens, seldom to direct answers, but he gets the information he needs. The mediator comes to understand that the girl was not being surly or uncooperative. She was demonstrating respect by not looking him in the eye. She did not ask questions because such an insult would have suggested that he had not been thorough in his work with her. Her slow speech pattern was consistent with her upbringing and culture. The silences he experienced demonstrated how important it was to her to answer his questions as well as she could.

After gaining the kind of appreciation for the participants that he needed, he was ready to proceed. He went back to each participant in turn. With the girl, he shared how the black man would likely be perceived by her as coming on quite strong. The man would speak rapidly to her, seeking to make direct eye contact, and he would probably raise his voice, but these things would not mean he was angry with her or trying to put her down. They were simply his ways of conversing about things important to him.

The mediator informed the girl that he did not expect the store owner to change his ways, but that she should focus more on what the man was saying than on the mannerisms and style which would make her want to recoil.

With the black store owner, the mediator talked of how the Ute girl would not look the store owner in the eye. In her culture, it was a sign of respect not to challenge authority. And certainly she would view the man whose store she violated as being in a position of authority. He encouraged the man to refrain from interrupting the girl until she had worked through her thoughts and spoke her mind. Again, the slowness of speech did not indicate a learning disability or any other weakness, it simply reflected the speech patterns of her culture.

As the mediator moves back and forth between the victim and the offender, he is also working on his own awareness of how cross-cultural differences may impact his efforts to work with these two. With new information, he is also exploring his own reactions: his initial discomfort with

the black man's seeming abrasiveness, with the Ute teen's excessive meekness and seeming inability to articulate, with his wonderings about his own ability to work with two people so diametrically opposed in style, if not worldview.

Relieved and enlightened by all these discoveries, the mediator is now ready to bring the two participants together. Having prepared, the mediator is comfortable and better prepared for the usual unpredictable directions that such encounters take, and hopeful that positive resolution will be agreed upon by persons who had very little in common other than sharing opposing sides of a conflict.

Conclusion

To repair or restore relationships, personal or communal, damaged by criminal or delinquent acts is a challenging goal in any circumstances. When participants—including victims, offenders, family members, support people, and program staff—are of differing cultures, typical patterns of communicating and expressing values can lead to confusion if not complete disruption of the process. In order to arrive at a just and healing response to the crime by those most directly affected by it, the views of all involved parties need to be considered. It is our belief that the likelihood of repair and restoration of relationships is increased by the extent to which we take the time to know and understand the differing communication styles and worldviews of the participating individuals. It is hoped that not only will the restorative justice-oriented programs be enhanced by such awareness and sensitivity to cultural differences, but that openness to diversity will enrich the lives of all who choose to participate.

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A Developmental Perspective on Serious Juvenile Crime: When Should Juveniles Be Treated as Adults?

By Laurence Steinberg, Ph.D. and Elizabeth Cauffman, Ph.D.*

DEBATES OVER how society should respond to serious juvenile crime can be framed from many vantage points. Within a moral framework, one might very reasonably raise questions about fairness and justice, and probe whether treating juvenile crime in a particular way strikes an acceptable balance between the rights of the offender, the interests of the offended, and the concerns of the community. Within a legal framework, the discussion might focus on the ways in which a given approach to juvenile crime fits within the broader compass of the law, and on the logic of the legal analysis that undergirds the proposed policy. From a political perspective, deciding how to respond to serious juvenile crime raises an entirely different set of concerns: What does the larger community want to accomplish, what sorts of social and legal policies might achieve these goals, which of the inevitable trade-offs are acceptable, and what are politicians willing to do to satisfy their constituents? And from a practical point of view, one might raise questions about the short- and long-term consequences of one set of policies versus another: Does a given approach to juvenile crime strike a satisfactory balance among the community's legitimate, but often conflicting, interests in public safety, retribution, deterrence, and rehabilitation?

Regardless of the perspective one uses to examine the issues, the fact that juvenile crimes—even very serious and very violent crimes—are committed by individuals who are not adults adds an element to the discussion that cannot be ignored. The moral, legal, political, and practical concerns that one brings to the table for a discussion of juvenile crime may be very different from those that are raised in a discussion of adult crime, simply because of the developmental status of the offender. A fair punishment for an adult may seem unfair when applied to a child who may not have understood the consequences of his actions. The ways we interpret and apply laws may rightfully vary when the specific case at hand involves a defendant whose understanding of the law is limited by immaturity. The practical and political implications of sanctioning offenders in a particular fashion may be very different when the offender is young than when he is an adult.

The purpose of this article is to add the perspective of developmental psychology to the current debate about the appropriateness of transferring serious juvenile offenders to adult court. Generally speaking, a developmental perspective examines the soundness of age-based legal policies in light of scientific research and theory on psychological development. It asks whether the distinctions we draw between people of different ages under the law are sensible in light of what we know about age differences in legally-relevant aspects of intellectual, emotional, or social functioning.

Our primary task in the pages that follow is to examine the evidence on the development of legally-relevant competencies, capacities, and capabilities and to suggest whether, on the basis of what we know about development, a jurisdictional boundary should be drawn between juveniles and adults, and if so, at what age it should be drawn. Although we shall indirectly address whether considerations of public safety, deterrence, and retribution are so compelling that they outweigh any claims that can be made on the basis of observed differences between adolescents and adults, a direct examination of this issue does not fall squarely within the bailiwick of developmental psychology. It is crucial to ask whether transferring juveniles to the adult criminal justice system in fact makes for more effective deterrence, community safety, or public confidence in the fairness of the legal system, and it is even more important to ask whether these goals are more worthwhile than preserving the legal distinction between juveniles and adults because of differences in their developmental status. Although a developmental perspective can inform the discussion of these moral, political, and practical questions, it cannot answer them.

The Science of Developmental Psychology

Developmental psychology, broadly defined, concerns the scientific study of changes in physical, intellectual, emotional, and social development over the life cycle. Developmental psychologists are mainly interested in the study of "normative" development (i.e., patterns of behavior, cognition, and emotion that are regular and predictable within the vast majority of the population of individuals of a given chronological age), but they are also interested in understanding normal individual differences in development (i.e., common variations within the range of what is

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considered normative for a given chronological age) as well as the causes and consequences of atypical or pathological development (i.e., development that departs significantly from accepted norms). To the extent that the issues under consideration in the waiver debate are framed as part of a discussion about *policy*, the focus of a developmentally-oriented discussion must be primarily on normative development, since the logic of drawing distinctions between adolescents and adults under the law must be based on age differences that characterize the population in general. As we shall make clear, differences among individuals, whether within or outside the normal range, are clearly relevant to legal practice (e.g., where a determination that an individual acted in a certain way because of mitigating circumstances or mental illness is relevant to his or her adjudication), but differences among individuals who are the same chronological age generally are not relevant to policy. From the vantage point of developmental psychology, then, one asks whether the study of normative development indicates that there are scientific reasons to warrant the differential treatment of young people and adults within the legal system.

With regard to public policy in general, and to the transfer debate in particular, the period from 12 to 17 is an extremely important age range, for three interrelated reasons. The first and most important is that this age is an inherently transitional time, during which there are rapid and dramatic changes in individuals' physical, intellectual, emotional, and social capabilities. Indeed, other than infancy, there is probably no period of human development characterized by more rapid or pervasive transformations in individual competencies, capabilities, and capacities. There is therefore good reason to believe that individuals at the point of entry into adolescence are very different from individuals who are making the transition out of adolescence.

A second feature of adolescence that makes it relevant to the transfer debate is that it is a period of potential malleability, during which experiences in the family, peer group, school, and other settings still have a chance to influence the course of development. Unlike infancy, during which much of development is dictated by biology and influenced only by extreme environmental variations, and unlike adulthood, by which time most intellectual, physical, emotional, and social development is more or less complete, adolescence, like childhood, is a period of potential plasticity in response to changes in the environment. To the extent that this plasticity is great, transferring juveniles into a criminal justice system that precludes a rehabilitative response may not be very sensible public policy. To the extent that plasticity is limited, however, transfer is less worrisome.

Finally, adolescence is an important formative period, during which many developmental trajectories become firmly established and increasingly difficult to alter. Events that occur in adolescence often cascade into adulthood, particularly in the realms of education and work, but also in the domains of mental and physical health, family formation, and interpersonal relationships. As a consequence, many adolescent experiences have a tremendous cumulative impact. The importance of this fact for the present discussion is that bad decisions or poorly formulated policies pertaining to juvenile offenders may have unforeseen and possibly iatrogenic consequences that are very hard to undo.

The transitional, malleable, and formative nature of adolescence provides a sound rationale for focusing on this age as the age period during which we might attempt to establish legally defined age-related boundaries between developmentally immature and developmentally mature individuals. Indeed, if developmental psychology were able to point to a given age at which individuals made the shift from immaturity to maturity, it would make the designation of a jurisdictional boundary that much easier. Unfortunately, adolescence does not lend itself to such a precise partitioning on the basis of chronological age, for several reasons.

First, adolescence is a period of tremendous intra-individual variability. Within any given individual, the developmental timetable of different aspects of maturation may vary markedly, such that a given teenager may be mature physically but immature emotionally, socially precocious but an intellectual late bloomer. In addition, development rarely follows a straight line during adolescence—periods of progress often alternate with periods of regression. This intra-individual variability makes it difficult, if not impossible, to make generalizations about an adolescent's level of maturity on the basis of any one indicator alone. A tall, physically mature juvenile with an adult appearance may very well have the decision-making abilities of a child. An adolescent who carries himself like an adult today may act like a child tomorrow.

Variability *between* individuals in their biological, cognitive, emotional, and social characteristics is more important still, for it means that it is difficult to draw generalizations about the psychological capabilities of individuals who share the same chronological age. Unlike infancy and most of childhood, for example, during which developmental maturity and chronological age are closely linked, most research suggests that from early adolescence on, chronological age is a very poor marker for developmental maturity—as a visit to any junior high school will surely attest. Another way to put this is that differences *within* a given age group—differences among 14-year-olds, for example—are likely to be greater than differences between this age group and the adjacent ones (i.e., differences between 14-year-olds and either 13-year-olds or 15-year-olds). The psychological heterogeneity of the adolescent population makes it difficult to develop policies, including transfer policies, that are based on bright-line distinctions made on the basis of age.

The highly variable nature of development during adolescence makes it a fuzzily bounded, confusing, and moving target for policy-makers. It calls for caution on the part of developmental experts with regard to the sorts of generalizations one can make about adolescents of a given age. Nevertheless, an approach that focuses on age-related changes in legally-relevant competencies, capacities, and capabilities can help to articulate the inherently develop-

mental nature of the questions at the very core of the transfer debate. Even if it is not determinative, developmental evidence can provide a sensible backdrop against which various legal, policy, and pragmatic considerations can be raised, analyzed, argued, and decided upon. Several years ago, the authors of this article, along with a number of other members of the MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice, initiated a series of conceptual analyses and empirical research projects designed to integrate developmental considerations into analyses of transfer policies. What follows is a summary of our thinking to date.

Adjudicating Adolescents as Adults: A Developmental Perspective

In our view, transferring a juvenile to criminal court has three sets of implications that lend themselves to a developmental analysis: those that involve the legal process, those that involve legal standards, and those that involve the possible outcomes of an adjudication. First, transfer to adult court alters the legal process by which a minor is tried. Although there are certainly exceptions to the rule, criminal court is based on an adversarial model, while juvenile court has been based, at least in theory, on a more cooperative model. This difference in the climates of juvenile versus adult courts is significant because, as we shall discuss later, it is unclear at what age individuals have sufficient understanding of the ramifications of the adversarial process and the different vested interests of prosecutors, defense attorneys, and judges.

Second, the legal standards applied in adult and juvenile courts are different in a number of ways. Although the standards for due process protections are clearer in criminal court than in juvenile court, it is not clear whether the protections afforded in adult court are adequate for juvenile defendants. For example, competence to stand trial is presumed among adult defendants unless they suffer from a serious mental illness or substantial mental retardation. We do not know if the presumption of adjudicative competence holds for juveniles, who, even in the absence of mental retardation or mental illness, may lack sufficient competence to participate in the adjudicative process (Grisso & Schwartz, in press). Standards for judging culpability (that is, the extent to which an individual can be held accountable or blameworthy for damage or injury he or she causes) may be different in juvenile and adult courts as well. Again, in the absence of mental illness or substantial deficiency, adults are presumed to be responsible for their own behavior. We do not know the extent to which this presumption applies to juveniles, or whether the validity of this presumption differs as a function of the juvenile's age.

Finally, the choice of trying a young offender in adult versus juvenile court determines the possible outcomes of the adjudication. In adult court, the outcome of being found guilty of a serious crime is nearly always some sort of punishment within a correctional facility designed for adults. In juvenile court, the outcome of being found delinquent may be some sort of punishment, but juvenile courts typically retain the option of a rehabilitative disposition, in and of itself or in combination with some sort of punishment. The difference between possible rehabilitation and certain punishment for the minor who is waived to adult court has two significant ramifications. The first is that the stakes of the adjudication are raised substantially. Rather than face a limited amount of time in a training school, the juvenile on trial in adult court for a serious offense faces the very real possibility of a long period of incarceration in prison, with potential iatrogenic consequences and increased risk of recidivism after release (Fagan & Zimring, in press). Although this argument may not carry weight with those who favor harsh consequences for young offenders for purposes of retribution, from a utilitarian perspective, a punishment that ultimately results in increased offending does not make very much sense. Thus, even if one were to argue that adolescents have the competencies necessary to participate in an adversarial court proceeding and to be held culpable for their actions, one could still question the wisdom of imposing adult-like sanctions on young offenders. The second consequence concerns the presumption of amenability. In juvenile court, offenders generally are presumed amenable unless the prosecutor demonstrates otherwise. In adult court, however, amenability is not presumed, and must instead be demonstrated by the defendant's counsel.

Our argument, then, is that the significance of having a jurisdictional boundary inheres in the different *presumptions* about age and its relation to development that decision-makers within the juvenile and criminal justice systems bring to the table, because different procedures and options derive from these presumptions. The juvenile court operates under the presumption that offenders are immature, in three different senses of the word: their development is incomplete, their judgment is callow, and their character is still maturing. The adult court, in contrast, presumes that defendants are mature: competent, responsible, and unlikely to change.

Viewing the Transfer Question Through a Developmental Lens

In our view, because transfer has implications for the legal procedures, standards, and outcomes a juvenile defendant will encounter, the key developmental questions concern differences between juveniles and adults with respect to their competence, culpability, and amenability to treatment. In particular:

1. *When do individuals become competent to be adjudicated in an adversarial court context?* Adjudicative competence, broadly defined, refers to participation in a criminal proceeding and includes the ability to assist counsel in preparing a defense, to enter pleas, to retain or dismiss counsel, to consider plea agreements, and so forth. In *Gault*, it was argued that as long as one was subject to adult-like (i.e. punitive) penalties, even if administered by a juvenile court, one had the due process rights of adults as well, an

argument that can be extended to other competence-relevant issues (e.g., providing confessions, entering pleas, etc.). Given the adversarial nature of criminal court proceedings, at what age are adolescents likely to possess the skills necessary to protect their own interests in the courtroom and participate effectively in their own defense?

2. *When do individuals meet the criteria for adult blameworthiness? Put differently, is there an age before which individuals, by virtue of "normal" psychological immaturity, should be considered to be of "diminished culpability" and therefore held less accountable, and proportionately less punishable, for their actions?* The longstanding "infancy defense" holds that individuals under the age of 6 are incapable of forming criminal intent and are therefore not culpable for any offenses in which they are involved. Less clear is how the development of accountability progresses between the ages of 6 and adulthood, however. We know that under certain conditions—for instance, in cases in which a defendant is diagnosed as mentally ill—an individual's culpability may be viewed as inherently diminished by virtue of deficiencies in cognitive or emotional functioning. Analogous concerns have seldom been raised about deficiencies in cognitive or emotional functioning that are *developmentally normative* but that have no less an impact on an individual's behavior or decision-making. Thus, it is reasonable to ask at what age one can expect a person to have the maturity and perspective to differentiate between wrong and right, foresee the consequences of his decisions, and appreciate the effects of his decisions on other people.

3. *Is there a point in development at which individuals cease to be good candidates for rehabilitation, by virtue of the diminished likelihood of change in the psychological and behavioral characteristics thought to affect criminal behavior or because of diminished amenability to treatment?* A fundamental tenet of the juvenile justice system is that juveniles can be rehabilitated, because their characters are not yet fully formed. Amenability is therefore a factor in most waiver determinations, because if an individual is deemed to be unlikely to change or not amenable to treatment, a rehabilitative disposition will serve no useful purpose. In general, children are presumed to be more malleable than adults, but is there a predictable timetable along which individuals change from relatively changeable to relatively unchangeable?

In several other articles, we have reviewed the empirical and theoretical evidence regarding the development of competence, culpability, and amenability. Here, we summarize the results of these analyses. We begin with an examination of the development of adjudicative competence and the capabilities presumed to underlie it.

Research and Theory on Adjudicative Competence

Numerous cognitive and social-cognitive competencies change during the adolescent years that likely underlie the development of adjudicative competence, among them the ability to engage in hypothetical and logical decision-making (in order to weigh the costs and benefits of different pleas), demonstrate reliable episodic memory (in order to provide accurate information about the offense in question), extend thinking into the future (in order to envision the consequences of different pleas), engage in advanced social perspective-taking (in order to understand the roles and motives of different participants in the adversarial process), and understand and articulate one's own motives and psychological state (in order to assist counsel in mounting a defense). Developmental research indicates that these abilities emerge at somewhat different ages, but that it would be highly unlikely for an individual to satisfy all of these criteria much before the age of 12. At the other extreme, research suggests that the majority of individuals have these abilities by age 16 (for analyses of these and other relevant abilities, see Grisso, 1997; Scott, Reppucci, & Woolard, 1995; Steinberg & Cauffman, 1996).

Although direct research regarding adolescents' understanding of court proceedings is fairly limited, there is ample evidence to raise concerns regarding the competence of adolescents under age 15 to participate in criminal trials. Among individuals age 15 and younger, scores on standardized competence measures generally fall short of the thresholds below which competence is deemed questionable by experts. General knowledge regarding trials and the roles of various participants, however, appears to be fairly well developed by age 13, although increases in familiarity with courtroom concepts continue beyond that age. Even at age 15, a significant fraction of adolescents should not be assumed competent to protect their own interests in adversarial legal settings (Grisso, 1997).

It is our view, therefore, that the available evidence regarding the development of capabilities relevant to adjudicative competence indicates that no youngster under the age of 13 should be tried in adult court. On the other hand, although more research is needed, especially on samples of poor and nonwhite youth, it is likely that the majority of individuals older than 16 would satisfy broad criteria for adjudicative competence. On the basis of this evidence, it seems reasonable to recommend that individuals who are between the ages of 13 and 16 should be evaluated to determine their adjudicative competence before a waiver decision is made (similar conclusions were reached by Grisso, 1997).

Research and Theory on Culpability

The adult justice system presumes that defendants who are found guilty are responsible for their own actions, and should be held accountable and punished accordingly. Historically, those who are guilty but less responsible for their actions (e.g., because of one or more mitigating factors) receive proportionately less punishment (Zimring, forthcoming). It is therefore worth considering whether, because of the relative immaturity of minors, it may be justified to view them as being less blameworthy than adults for the very same infractions—that is, whether developmental immaturity should be viewed as a relevant mitigating

factor. If, for example, adolescents below a certain age cannot foresee the consequences of their actions, or cannot control their impulses, one should not hold them as culpable for their actions as one would hold an adult.

The rehabilitative ideal of the juvenile court argues against adjudicating a juvenile who is characterized by sufficiently diminished responsibility in a criminal court whose only response can be punitive. The argument for keeping juveniles in the juvenile system is that rehabilitation is a more reasonable disposition than punishment for a less than fully accountable individual. This argument hinges on two assumptions, however: (1) that juveniles are less blameworthy than adults; and (2) that the juvenile court inherently has more or better mechanisms for meting out a proportionately less severe punishment than does the criminal court. Our interest, as developmental psychologists, is in the first of these assumptions—that there are age differences in blameworthiness that are substantial enough to affect legal judgments about culpability.

Some of the same cognitive and social-cognitive capabilities relevant to the assessment of blameworthiness are also relevant to the assessment of adjudicative competence. In order to be fully accountable for an act, for example, a person must commit the act voluntarily, knowingly, and with some ability to form reasonable expectations of the likely or potential consequences of the act (Scott & Grisso, 1997). In this respect, logical decision-making and ability to foresee the future ramifications of one's decisions are important in determining blameworthiness, just as they are in determining adjudicative competence. As we indicated earlier, it is reasonable to assume that the average individual would be unlikely to have developed these abilities before age 12, but that the average individual would have developed these abilities by age 16.

There also has been some research examining age differences in decision-making, in an effort to see whether adolescents and adults differ with respect to their judgment (e.g., Fischoff, 1992). These investigations find few cognitive differences between adolescents as young as 12 or 13 and adults, consistent with both developmental theory and research on the development of logical reasoning (e.g., Office of Technology Assessment, 1991; Ward and Overton, 1990). In addition to these cognitive abilities, however, culpability implies certain capabilities that are more interpersonal or emotional in nature, among them, the ability to control one's impulses, to manage one's behavior in the face of pressure from others to violate the law, or to extricate oneself from a potentially problematic situation. Deficiencies in these realms would likely interfere with individuals' abilities to act in ways that demonstrate mature enough decision-making to qualify for adult-like accountability (e.g., Cauffman & Steinberg, in press; Scott, Reppucci, & Woolard, 1995; Steinberg & Cauffman, 1996). Although less is known about the development of these social and emotional competencies, it does appear that few individuals demonstrate adult-like psychosocial maturity and, consequently, adult-like judgment much before age 12. Indeed, many individuals do not demonstrate adult-like psychosocial maturity or judgment even at age 17.

Because research on psychological development makes it quite clear that children as young as 9 have the capacity for intentional behavior and know the difference between right and wrong (Rest, 1983), there is no reason why children of this age should be held blameless for their conduct. At the same time, it is also clear that the vast majority of individuals below the age of 13 lack certain intellectual and psychosocial capabilities that need to be present in order to hold someone *fully* accountable for his or her actions *under certain circumstances*. These circumstances include situations that call for logical decision-making, situations in which the ultimate consequences of one's actions are not evident unless one has actually tried to foresee them, and situations in which sound judgment may be compromised by competing stimuli, such as very strong peer pressure to violate the law. Once individuals have reached a certain age—17 or so—it is reasonable to expect that they possess the intellectual and psychosocial capacities that permit the exercise of good judgment, even under difficult circumstances.

When a juvenile offender under consideration is younger than 17, developmentally-normative immaturity should be added to the list of *possible* mitigating factors, along with the more typical ones of self-defense, mental state, and extenuating circumstances. Whether developmental immaturity is enough of a mitigating factor in a specific offender's case to diminish his or her blameworthiness cannot be determined without having additional information about the circumstances of the case. Nevertheless, the need for this additional information argues for a more individualized approach to both transfer and sentencing of juveniles, and argues against policies that do not permit such flexibility, such as transfer via legislative exclusion.

Research and Theory on Amenability

In legal practice, amenability refers to the likelihood of an individual desisting from crime and/or being rehabilitated when treated with some sort of intervention. To developmental psychologists, however, amenability refers to the extent to which an individual's nature has the possibility of changing, regardless of his or her exposure to an intervention, and regardless of the type of intervention that is applied.

Although these different definitions of amenability are similar, they present different standards by which to judge an individual's likelihood of desistance. An offender may be at a point in development where he or she is still malleable, but may have little likelihood of desisting from crime given the individual's life circumstances (e.g., the individual lives in a community with few opportunities for legal employment). Thus, an offender may be developmentally malleable but may be unlikely to desist from crime unless exposed to an intensive intervention.

Although some understanding of age differences in malleability is useful in describing general developmental trends in amenability, it is impossible to evaluate a specific

individual's amenability without considering the nature of the intervention to which he or she is going to be exposed and whether there is reason to believe that this particular intervention will be effective for this particular individual. Rather than make amenability judgments on the basis of age, therefore, developmental research would indicate that such judgments should be made on the basis of past experience. A youngster who has been exposed to certain types of interventions in the past and who has not responded to them effectively is relatively unlikely to respond to them in the future.

In essence, it is not possible to draw reliable generalizations about differences in amenability as a function of an offender's age. As a consequence, we cannot recommend the implementation of age-based policies regarding the treatment of serious juvenile offenders solely on the basis of research and theory on amenability. More specifically, it is incorrect to suggest that there is an age below which individuals should be treated as juveniles because they are especially likely to be amenable to change, or an age beyond which we should assume that individuals are too hardened to be helped. Amenability decisions should be made on a case-by-case basis and should focus on the prior history, rather than the chronological age, of the offender.

A Developmental Perspective on Transfer

A developmental perspective can inform, but cannot answer, the transfer debate. Even setting aside the weighty political, practical, and moral questions that impinge on the discussion, the developmental analysis we have presented here does not point to any one age that politicians and practitioners should use in formulating transfer policies or practices. Instead, we encourage those engaged in the debate to view young offenders as falling into three broad categories: juveniles (individuals under 13), who should not be adjudicated in adult court; adults (individuals 17 and older), who should; and youths (individuals between the ages of 13 and 16), who may or may not be developmentally appropriate candidates for transfer depending on their individual characteristics and circumstances.

In general, it appears to us appropriate to raise serious concerns based on developmental evidence about the transfer of individuals 12 and under to adult court owing to their limited adjudicative competence as well as the very real possibility that most individuals this young will not prove sufficiently blameworthy to warrant exposure to the harsh consequences of a criminal court adjudication; individuals 12 and under should continue to be viewed as juveniles, regardless of the nature of their offense. At the other end of the continuum, it appears appropriate to conclude from a developmental perspective that the vast majority of individuals older than 16 are not appreciably different from adults in ways that would prohibit their fair adjudication within the criminal justice system. Our sense is that variability among individuals older than 12 but younger than 17 requires that some sort of individualized assessment of an offender's competence to stand trial, blameworthiness, and likely amenability to treatment be made before reaching a transfer decision.

The irony of employing a developmental perspective in the analysis of transfer policy is that the exercise reveals the inherent inadequacy of policies that draw bright-line, age-based distinctions between adolescence and adulthood. Indeed, an analysis of the developmental literature indicates that variability among adolescents of a given chronological age is the rule, not the exception. In order to be true to what we know about development, a fair transfer policy must be able to accommodate this variability.

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Biosocial Risk Factors and Juvenile Violence

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INDIVIDUALS AGED 15 to 24 years have higher rates of violent crime than any other age group in our society. Moreover, aggression has been found to be stable from early childhood through adolescence and into adulthood. In addition, multiple cohort studies indicate that a small percentage of criminal offenders (about 6–8 percent) commit the majority (60 percent or more) of all violent criminal offenses within a given population (Loeber, Farrington, & Waschbusch, 1998). Due to the fact that chronic offenders have an earlier age of onset and aggression has been found to be relatively stable over time, juvenile onset offending is an area of major concern for our society.

Two government-funded reports have recently been published on the topic of juvenile violence. One is a report to Congress on juvenile violence research (Bilchik, 1999) and the other is an edited volume on the topic of serious and violent juvenile offending (Loeber & Farrington, 1998). The latter report examined risk and protective factors for serious juvenile violence as well as the relative effectiveness of various interventions with these youth. Risk factors at the individual, family, peer, and neighborhood levels were examined and discussed. The report to Congress also examined the causes and correlates of juvenile violence, although it focused on specific studies recently undertaken in major cities in the United States. This report suggested that interventions for juvenile violence should focus on reducing access to firearms and membership in gangs, as well as targeting particular situational factors (e.g., times and locations) that play an important role in juvenile violence.

As I read these recent reports, I noted the conspicuous absence of any substantial discussion about the role of biology in the outcome of juvenile violence. In one way, this is not surprising, as most current criminological theories do not include any reference to biology. On the other hand, the idea that a complex behavior such as violence would not at least be influenced by biological factors seems implausible. It does not make sense to focus on the environment to the exclusion of biology, just as it would not make sense to focus on genetic and biological factors outside of the context of the environment. In fact, recent discoveries in the area of neuroscience make it clear that the nature versus nurture debate as it relates to human behavior is now defunct. Work on gene expression reveals that nature and nurture (genes and environment) are inextricably intertwined from the very earliest stages of development. The expression of genes and the development of the cells of the brain and nervous system depend upon the actions of hormones, neurotransmitters, and growth factors which, in turn, are influenced by the environment in which we develop. Moreover, environmental effects on the brain are not restricted to prenatal development, but rather continue throughout our life (Niehoff, 1999).

One criminological theory that attempts to capture this transactional, developmental process between biological factors and the environment is Moffitt's life-course persistent offender theory (Moffitt, 1993). According to this theory, persistent offending occurs as the result of neuropsychological vulnerabilities interacting with poor parenting throughout the course of early development. My colleagues and I have examined prenatal and perinatal factors as potential markers or causes of the neuropsychological risk factors in this process. We have noted, for example, that the rate of maternal cigarette smoking during the third trimester of pregnancy is related to persistent criminal offending in male offspring. This relationship remains significant when potential confounds such as socioeconomic status, parent psychopathology, father crime, maternal rejection, and perinatal complications are controlled (Brennan, Grekin & Mednick, 1999). My colleagues and I have also found evidence that early-life biosocial interactions can predict to violence in adulthood. For example, delivery complications interact with maternal rejection in the prediction of violence in males, and in particular violent arrests during adolescence (Raine, Brennan, & Mednick, 1994; Raine, Brennan & Mednick, 1997). We theorized that delivery complications result in damage to the central nervous system which makes behavior less controllable, and that when these CNS deficits are combined with parenting deficits, the risk for violence is increased.

In retrospect, our conceptualization and measurement of this and other biosocial interactions seems artificially simplistic. Current research in neuroscience suggests that the biosocial interaction process that results in violent behavior is far more complex than two static factors interacting with one another at one point in time. Moreover, the labeling of a risk factor as entirely "biological" or "social" may not be sensible, as environmental factors have biological consequences and vice versa. Nevertheless our work does take the first step of looking at biology and environment together as factors that influence criminal outcomes.

One of the primary goals of future biosocial research will be to further elucidate the interactional processes of the brain and environment as they relate to outcomes of aggression and violence. Another goal will be to determine more specifically which biosocial factors play an important role in this developmental process. For example, one environmental factor that might have a particularly pernicious effect both on the brain and on aggression is environmental

stress. Animal research has shown that disruption of the early environment can increase the sensitivity of the nervous system to stress in the future. Indeed, this sensitization to stress may be one mediating factor between delivery complications (early stressor) and violence. The brain's responsiveness to stress can be altered throughout childhood and adulthood. For example, there is evidence that children who witness a shooting have increased startle responses for years following that stressful life event.

The startle response is one of the body's natural responses to a threat in the environment. Neuroscientists have studied emotional responses to fear cues using startle response paradigms and other fear conditioning paradigms in the laboratory. Interestingly, they have found a similarity in areas of the brain that regulate fear and aggression (LeDoux, 1996). The amygdala and the frontal cortex are two of these brain areas. The amygdala is a brain component that is essential for the detection and response to threat cues. Threat cues that are detected by the amygdala may also be processed and interpreted by the frontal cortex. This higher level of interpretation allows the individual to discriminate and generalize different threat cues and to respond more consciously to emotional stimuli. In other words, it allows people to inhibit their responses to stress and threats in the environment. Brain imaging studies have also indicated that the frontal cortex may play an important role in the inhibition of criminal violence. For example, Raine and his colleagues found that the prefrontal cortex and orbitofrontal cortex of murderers were both less active than those of control subjects during laboratory attention tasks (Raine, 1993). Raine suggested that violent individuals therefore might not be able to regulate or inhibit the responses of subcortical structures (such as the amygdala) that facilitate aggressive behavior. Taken together, these neurological findings suggest that aggressive behavior may occur as an unchecked response to a threatening or hostile environment.

The notion that some juvenile offenders might be overly sensitive to stress and may become aggressive in reaction to hostile cues in the environment is not necessarily inconsistent with the more widely held belief that many young violent offenders are non-anxious, guiltless psychopaths. In fact both types of juvenile violent offenders may exist. Dodge has described this two-part typology of childhood aggression as the reactive versus proactive typology (Dodge & Coie, 1987). According to Dodge, reactive children are aggressive in response to a real or imagined threat in the environment, whereas proactive children use aggression to achieve some goal or instrumental purpose. Reactive offenders may have an overly sensitive psychophysiological response to stress as outlined above. Proactive offenders, in contrast, might suffer from low arousal or a lack of fear.

Evidence that some antisocial children may have lower levels of arousal comes from studies on resting heart rate levels (Raine, 1993). Antisocial children have lower resting heart rates in comparison to controls, and this effect is both strong and well-replicated. Raine has offered several possible interpretations for these heart rate findings. First, he suggests that low resting heart rate may reflect a lack of fear. This lack of fear would enable antisocial children to forge ahead into aggressive encounters, and would also explain their apparent nonresponsiveness to punishment cues. Another interpretation that Raine offers for the heart rate findings is the idea that antisocial children may be underaroused at baseline levels. This is significant because humans have an optimal level of arousal—if they are underaroused, they will seek out situations that will raise that arousal level. Underaroused children might therefore seek out risky situations and become more involved with criminal behavior as a method of thrill-seeking. Lack of fear and thrill-seeking behavior are characteristics of adult psychopaths—these antisocial children might therefore develop into psychopaths as adults.

In fact, recent research suggests that some of the hallmark characteristics of adult psychopaths, including a lack of empathy and emotional responsiveness, can be seen in a subgroup of antisocial children (Frick,1995). These callous-unemotional children differ from other antisocial children both in terms of etiology and outcomes. To date, they have not been compared to other antisocial subgroups in terms of their neurological or psychophysiological features. Proactive and reactive children, as well, have yet to be studied in terms of potential biological differences. Such future studies will help determine the potential role of biology in the differentiation between subgroups of antisocial and violent youth.

As I have stated, an exclusionary focus on biological factors would not be a sensible approach to the problem of juvenile violence. And it is highly likely that some environmental conditions might cause individuals with normally functioning brains to act in a violent manner. I believe that a biosocial approach to violence does not de-emphasize the importance of the social environment, but rather re-emphasizes it. The environment is a powerful influence on both our behavior and our biological functioning. A biosocial approach, therefore, is not deterministic. Instead it suggests that there are many levels at which one could intervene to disrupt the process of development that leads to violent behavior. Consider, for example, our findings on the interaction between delivery complications and maternal rejection. Our results revealed that delivery complications did not increase the risk for violence unless the mother was also rejecting, and that maternal rejection did not increase the risk for violence unless there was a history of perinatal insult. Therefore, prevention programs could be targeted at prenatal education or at parenting skills—either intervention alone would disrupt this interactive process.

Violent offenders often have an early age of onset for aggressive behavior. This early age of onset suggests that early risks may play an especially important role in this process. Therefore, early intervention and prevention programs would seem to be ideal solutions to combat juvenile violence. However, biosocial research does not suggest that once this developmental process leading to aggression and violence has begun, it can never be undone. Nor does it nec-

essarily suggest the need for drug therapy or direct biological interventions. To the contrary, new findings suggest that brain functioning, like behavior and attitudes, can be changed through psychological interventions such as cognitive behavioral therapy. A greater understanding of the complex, interactive, biosocial process that leads to juvenile violence will allow for a greater number of options in the intervention and prevention of this behavior.

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Juvenile Justice in Transition: Is There a Future?

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THE UNITED States loves anniversary celebrations of events, people, and things. On such occasions, historians and pundits tend to review the past, explore the present, and predict the future—even though many tend to confuse preference with prediction. So, the 100th anniversary of the founding of the first juvenile court elicits the typical kind of response. But one needs to ask: What difference will it make?

Will the analysis of this epochal event which initiated a juvenile justice system lead us to a better system? If the answer is yes, this represents a tacit conclusion that the system is in need of correction. If the answer is no, doesn't this reflect "status quo-ism" that augurs poorly for needed change? If reflective analysis is prompted by such an artificial event as a significant anniversary, we should, nonetheless, seize the opportunity to define what we really want and need in juvenile justice administration, examine critical issues and forces, explore how best to achieve explicit goals, and be prepared to plan strategically for appropriate changes in philosophy as well as process.

For decades in the juvenile justice system programs and services were designed and implemented exclusive of community sentiment and values, and always in terms of *in loco parentis*. Judges, administrators, and probation staffs were committed to doing that which was considered "to be in the best interests of the child." However, this was also a euphemism for efforts to protect the system rather than benefit the child; that is, real operations reflected latent rather than manifest goals. In other words, some critics aver that the juvenile court and other juvenile justice services were conducted more for the benefit of the agency than for the child (e.g., Platt, 1969).

Critics also have contended that probation staff did not always operate as a child's advocate and instead behaved more as an adversary. The truth of the matter is that they did both, which for some, obviously involved a conflict of interest. Policies and procedures changed, of course, as a result of the *Kent* and *Gault* decisions which effectively legitimated the adversarial nature of the juvenile court.

Over the years, the juvenile justice system lumbered along, generally with minimal resources, but with increasing caseloads. This occurred notwithstanding society's general belief that children can be salvaged with appropriate and timely interventions. Notwithstanding what advocates have claimed to be a successful system, Wakin (1975:126) a quarter of a century ago stated:

> Changes are needed in all aspects of the system…(and that) juvenile court programs (are)…largely composed of a mixture of precedent, hunch, and prejudice (and that)…institutions (are) depicted as imposing isolation and oppression at an impressionable age….and the courtroom was called the least appropriate place to solve social problems….(and) that without the proper facilities to handle the special needs of different types of juvenile offenders, there can be no true juvenile justice.

Further, Singer (1997:7) comments that our systems of juvenile justice were not always as complex as they are today, when there were fewer legal labels and fewer subsystems. He goes on to report:

> There are too many official decision makers who are not accountable to any overall system of treatment. This is because the best interests of the juvenile and the state in preventing serious delinquency are often secondary to that of diverse sets of bureaucratic concerns and interests….Yet juvenile justice is still described as a system. This is wrong.

In its 1998 report to Congress, the Coalition for Juvenile Justice is a bit more sanguine concerning the nature and activities of the current juvenile court. The report (p.42) states:

> We believe the juvenile or family court of the 21st century should not be fundamentally different in design and jurisdiction from the court throughout most of the 20th century, but we hope that it will receive significantly more of society's attention and resources. We do not believe the current system is fatally flawed, only that it requires some fine tuning and greater support to carry out its high purpose. We believe that the problems identified by critics are isolated ones and that a whole forest should not be cut down because of a few bad trees.

Whether or not it has achieved its lofty goals, for the last one-half century, the so-called juvenile justice system moved into the "rehabilitative ideal" (Allen, 1964), which meant that youths had even more programs thrust upon them; that is, we did more and more to, with, and for the children coming into the system. The net widened, of course, even though as Schur (1973) wrote: the best thing we can do with our children is keep them out of the system, for they will outgrow their delinquencies as they maturate. Involving them formally in the system, Schur wrote, only exacerbates the situation and contributes to their continuing delinquent behavior.

Further, as Rubington and Weinberg (1968) comment, the labeling of youth as delinquents results in stigmatization, a condition from which these youngsters never recover; that is, once the label of delinquent is created by official agencies, it is as though a child has the equivalent of a "scarlet letter" on the foreheads. This early finding has been corroborated by Rosenthal (1968) and Goldman (1963).

Treatment became the "king," and the king had a long but unsuccessful tenure. But this treatment-driven approach remained the intervention strategy of choice throughout the system even though the results of (published) evaluation studies consistently produced mixed answers regarding the efficacy and impact of treatment (e.g., Lipton, Martinson, and Wilks, 1975; Bailey, 1967, and Sherman, et al. 1997). These impact outcomes, incidentally, seemed to focus almost exclusively on the offenders: their behavior, their attitudes, their rates of compliance related to justice system-imposed terms and conditions, and their willingness to accept and utilize the help so professionally provided them.

In the 1950s, an effort began to examine different strategies for dealing with youths; that is, efforts to manage and otherwise better control clients under supervision, and especially those in the community. Research led to such innovative practices as caseload management, classification, and specialized caseloads. At that time, however, no one was ready to shift from caseloads to workloads and even today this is rarely found in most agencies. Additionally, observation suggests that many agencies do not understand exactly what is meant by "case management," how this differs from routine service delivery, and how such a process is to be implemented.

By the 1960s, a significant shift in research concerns began as several articulate juvenile justice system observers (e.g., Timasheff, 1937, Eaton, 1962, Takagi, 1967, Robison and Takagi, 1968 a and b, Cohn, 1972, and Lerman, 1975) began to question the degree to which organizational forces and processes of decision-and policy-making within agencies actually impacted successes and failures. They explored, from a theoretical perspective, how delinquency and crime rates, including offender behaviors, may be influenced not simply as a result of the level at which they utilized the "help" made available to them, but by the intervention styles and patterns of the agencies—and agents—responsible for their supervision. As examples, the early but seminal SIPU projects (1956) in California as well as the San Francisco Project (Lohman, et al., 1965–1967) confirmed that small caseloads did not produce higher levels of success, in part due to organizational policies.

Administrators began to accept the "nothing works" conclusion (Lipton, Martinson, and Wilks) and when legislators began to address the same thing, there was a dramatic shift away from treatment to better methods of control. (A similar conclusion was also reached years later by Petersilia and Turner, 1990, 1993, who describe the failure of probation to change or otherwise successfully control adult felony offenders). However, as Tippicanoe County (Ulmer, 1998), Indiana found, probation can work *if* it is tied to other kinds of community-based interventions. As well, some of the evaluation studies related to intensive supervision suggest that this level of supervision can have a positive impact, assuming, of course, that it is truly intensive for the high-risk offenders.

Research has also begun to demonstrate that the frequency of contact with an offender is more likely to produce positive results than the quality of the interventions. That is, youths who are seen by a case manager/officer at a high level of frequency are more successful in completing diversionary or probationary terms than those who are in actual treatment (Readio, 1999). If intensive supervision is defined to mean frequent contacts (e.g., at least three to four contacts per week), then we can be optimistic that this kind of programmatic policy may reap significant dividends.

While these internally-driven approaches to control and change the offender population have gained footholds and have been copied by many agencies, few if any responsible evaluations have been conducted to determine their efficacy and/or whether they are cost-effective. And where efficacy has been demonstrated, there really are no vehicles available for the dissemination of these results. LEAA died and such agencies as the Office of Juvenile Justice and Delinquency Prevention (OJJDP), the National Institute of Justice (NIJ), and the Bureau of Justice Assistance BJA had not yet been established.

Yet, there was another development that gained a foothold in agency-based operations. Changes that were occurring in juvenile justice agencies and in society generally and how these agencies related to society, superordinates, and elected officials precipitated the development of secondary functions (Petit, 1967: 134-5). Jails, which once served as the repository for derelicts, public inebriates, and the homeless, could no longer house and otherwise care for these persons because these laws of proscription had changed. Other social service types of agencies now had this responsibility.

In probation, as another example, the presentence investigation/social history no longer was written exclusively for sentencing purposes (Cohn and Ferriter, 1990). Secondary needs evolved as parole boards, institutions, and treatment agencies demanded that the PSIs be expanded to cover issues that were of concern to them for their own deliberations. Correctional facilities no longer were entities unto themselves, for they now had to respond to court-appointed masters who along with judges became *de facto* administrators through their own consent decrees.

The changes which occurred in these agencies, then, actually transformed organizational structures, methods of operation, and the deployment of resources. Additionally, society generally and legislators in particular became impatient with these agencies, which were unable to attain crime control and reduction—issues that were once exclusively within the domain of law enforcement, but now encroaching into the correctional arena (e.g., the use of surveillance officers on the streets). Consequently, instead of being single-purpose organizations, whether adult or juvenile in focus, these agencies were "handed" multi-purpose assignments, including treatment, control, supervision, prevention, and protection of society.

From another perspective, the field of criminal justice administration was thrust into the forefront of the social, political, and cultural life of the communities being served (Cohn and Viano, 1975). Throughout criminal justice admin-

istration and most especially in the juvenile justice arena, managers began to lose control of their own agencies as new philosophies and different values were imposed upon them.

Simultaneously, the juvenile court itself was completely turned upside-down as a consequence of the *Kent* and *Gault* decisions, which required that youths receive the same kind of due process as adults. And the process continued as court hearings were opened, a prosecutor represented the state instead of the probation officer, there were mandatory waivers to adult court, and confidentiality continued to erode. Further, as a result of significant increases in referrals, institutions became overcrowded and case officers simply could not supervise adequately and appropriately growing caseloads.

The only relief available was brokerage (Dell'Apa, et al., 1976); that is, supervising staff had to refer to experts in the community for services which initially had been provided by the agencies themselves. And without all of the necessary accountability measures built into these referrals, it soon became apparent that these outside helping agencies really did not do that much better than the referring agencies. But rising caseloads, diminished resources, and less qualified staff had no choice but to utilize these external resources if there were to be any hope of controlling or changing offenders under supervision. In the institutions, there generally was no treatment available. It was only when the child was returned to the community, for the most part, that treatment was initiated.

King Treatment was dying; yet, referrals to the juvenile justice system escalated as the availability of drugs and weapons and the perceived incidence of juvenile violence escalated. Simultaneously, this became too much for government and society to tolerate; therefore, juvenile codes were changed, more youths were waived by the juvenile courts, and society began to pull back on its commitment to do whatever was necessary to "help" troubled youths. The result today: the juvenile justice system in many ways mirrors the adult system as an adversarial process designed more to protect the populace and control offenders than to help these youths to change.

The labeling of errant youth, which generally was the result of values and beliefs of juvenile justice practitioners (see Rubington and Weinberg, 1968; and Goldman, 1963), moved into the realm of general society, who adopted these values. That is, the lay public continues to be quick to label erring youths as delinquents, but now, in need of harsh punishment, especially if they have committed any kind of violent act. And, because of these labels, which reflect societal values, many youths are dealt with more formally and more harshly than in prior years and without such labeling.

Here, it is important to note that most of the strategic changes in juvenile justice operations (aside from such developments as classification and case management) have been externally imposed by superordinates, elected officials, and legislators, rather than designed and implemented internally as a result of vision, leadership, or strategic planning (see e.g., Cohn, 1998). For a variety of reasons, too many administrators continued to sit back as these changes were imposed, choosing to be reactive rather than proactive. Even today, in the midst of urgency, there is little strategic planning, little community-based leadership and partnership (with communities), and infrequent stands on principles.

The corporate world currently has embraced such administrative practices as Total Quality Management (TQM) and other participative forms of management, for they have found that through *empowerment*, subordinates can and do outperform other companies which still rely on scientific or human relations principles (See Cohn, 1994). Whether by design or default, however, these managerial efforts have not found their way into adult and juvenile justice agencies. This may be due to superordinates refusing to empower their justice agencies or it may be that these innovative approaches to management simply have not reached agency administrators. Or, their failure to implement some kind of participative approach to management may be due to the perception that "we have always done that." Here, unfortunately, there may be confusion over the difference between participative management and entrepreneurialism; that is, subordinate staff have always "done their own thing" simply because supervisors often do not know what goes on in a caseload unless there is trouble, a case blows up, and/or someone complains.

Therefore, even though the current fad is to talk about "partnerships" with other agencies, community-based services, and society in general, aren't these really efforts to co-opt rather than plan and work together collaboratively? While many administrators remain reactive or proactive, to ensure a true partnership they need to be *co-active* both in philosophy and practice. Though the thrust toward "reintegration" was supposed to include co-activity, its implementation only meant the placement of offenders back into the community, but without community involvement.

Organizational changes are sometimes subtle and sometimes dramatic, especially when these changes are dictated by changes in the law. In fact, as Lemert (1970: 4-5), who studied the transformation of the California juvenile court system noted: "If…organic growth is a feature of legal development, so is revolution, taking form in discrete changes, discontinuities, or "new departures in legal ideas and practices."

He goes on to quote Holdsworth (1928: 110) in his comments on legal theories:

> Some theories have not been ephemeral. They have provided an illuminating generalization of new facts, which has been generally accepted, and they have therefore shaped public opinion in the new age and made them accepted commonplaces which…are powerful agents in molding a constitution…. They have opened up new points of view to which old rules and principles must be adapted (Holdsworth, 1928: 110, as quoted in Lemert, 1970: 5).

According to Kuhn (1962: 108), new paradigms appear because of anomalies, which are facts left unexplained by existing paradigms. As these increase in number, doubts about old paradigms or awareness of their deficiencies spread, and a crisis arises. New paradigms promise to

explain or reconcile the anomalies as well as the facts articulated by the old paradigms. Therefore, novel paradigms tend to be created by external agents because they are less committed by prior practice or tradition. They are freer to conceive new images of the world, new sets of rules for problem-solving, and to entertain sympathetically new classes of facts. By the same reasoning, resistance to new paradigms is strongest among established managers who have long-standing commitments to the established ways of perceiving their organizational worlds (Lemert, 1970: 7).

It becomes understandable but not necessarily justifiable why many juvenile justice administrators resist change, cling to old philosophies and practices, and fail to embrace and seek control over the need and desirability for (*co-active*) change. If both adult and juvenile justice have failed to accomplish their basic mission of controlling and preventing crime and delinquency, aren't new paradigms needed? Aren't new approaches, new ideas, and greater dedication to vision required? Isn't the failure on the part of existing administrators to declare a new vision and provide the necessary leadership to accomplish studied and appropriate change the reason for external agents seizing control of the process and imposing changes, whether or not they are appropriate or helpful?

Yet, there is a danger in being too harsh, for in the field of the social sciences, unlike the physical sciences, there may never be the equivalent of "truths" or "principles" which are unerringly right. How is one to develop a new and meaningful paradigm in dealing with delinquents—or dependent and neglected youths—when there are no right or wrong answers? And, this is unfortunately true in that there is little in the published literature which reflects reliable and valid programmatic research. As a consequence, when an administrator cannot defend an existing program according to its merits, it is not unusual for an external agent to impose change, however irrational, and there is hardly anything that can be done to resist it.

Because of constituent pressure, it is not uncommon to find that legal change becomes the opportunistic mechanism for imposing social change, especially if the law is unequivocally pronounced and consistently enforced. The Prohibitionists took this posture, as did those who sought equal educational opportunities for African Americans, and those who want law to force acceptance of different lifestyles. Others, however, argue that while law cannot change personal values and beliefs, statutory changes may not directly produce desired social changes, but nevertheless can initiate them (Rose, 1956: 52–63).

Nevertheless, proponents of change in the juvenile justice system argue for its legitimacy, especially since there is a perception that the current paradigm has neither corrected offenders nor made society less fearful of crime. Further, when issues and concerns begin to accumulate and draw in a wide spectrum of diversified interests (e.g., the political right and left), a crisis is inevitable. Policies and procedures will change whether they are appropriate or not, for they will satisfy those dissatisfied with the current paradigm.

Lemert (1970: 23) quotes Roscoe Pound, who comments on the development in law of executive justice, which essentially is regulatory or administrative law, and which developed because the traditional courts were unable to cope with or understand the issues: "The present popularity of executive (administrative) justice…is attributed to defects in our legal system….(and) is aggravated by a *bad adjustment between law and administration* [emphasis added]."

Executive justice unquestionably has invaded the criminal law, detectable in powers of probation commissions, parole boards, and boards of corrections. Even the juvenile court can be described as a deliberate effort to innovate a special form of executive justice within the existing framework of American court systems. In fact, its creation has been termed "the great social invention of the nineteenth century," and a revolutionary idea in defining and handling problems of children (Pound, 1916: 1-22 and Platt, 1969). But a better description of the origins of the juvenile court in the United States is the revolt against legal procedure for coping with juvenile problems.

Tappan (1962: Chap. VII) comments on the origins of the juvenile court and states that the overriding goals were the protection of children from exploitation and the corrupting influences of urban environments, and the provision of welfare assistance. Further, these were to be achieved through informal proceedings and individualized treatment. Seen in this light, the juvenile court was antiprocedural or, at the very least, according to Lemert (1970: 25), aprocedural. That is, procedures were to be dictated by the fatherly concern of a judge, humanitarian philosophy, and clinical considerations.

After the juvenile court gained a real foothold in the United States and received its greatest impetus from advances in psychoanalysis, social work, and psychology, treatment was the intervention strategy of choice, for it was firmly believed that people behaved as a result of determinism, rather than as a consequence of demons or free will. Therefore, if there were to be change in a youth, not only was an individual assessment of the causes of his or her misbehavior required, but an individualized treatment plan (See e.g., Mary Richmond, 1917).

When these objectives were measured, however, by such notable researchers as Eleanor and Sheldon Glueck (1936), the findings were anything but positive. Their Harvard-based research clearly demonstrated that treatment generally and specifically had no real impact on delinquency. What had been called "the great social invention of the nineteenth century" lost some of its sacred aura as a number of critics began to question whether the juvenile court did not actually contribute to delinquency or at least inaugurate delinquent careers by the imposition of the stigma of wardship, by unwise detention, the failure to distinguish between delinquent and status offenders, and the incarceration of youths in institutions more likely to corrupt than reform. With regard to the latter concern, critics today are alarmed over the disproportionate institutionalization of minority youths, which they believe is the result of latent racism within the

juvenile justice system (Hisa and Hamparian, 1998).

The juvenile court was born in an age of heavy immigration, the development of unions and settlement houses, and sweeping new forces concerning appropriate lifestyles in a democratic society (Higham, 1963). It had a slow growth, but eventually there was a spurt that found states enacting enabling legislation. The courts varied in jurisdiction, powers, and procedures, but the struggle to make juvenile court procedures more uniform and consistent with law in large part was submerged by the sweeping socio-economic conditions of the "Great Depression" of the 1930s and by the country's entry into World War II. Changes and reforms prompted by these events moved American society rapidly toward the form of an administrative state.

Hence, the creation of state-wide agencies for delinquent youth became popular. California law stated, as an example of one state's effort, that the purpose of the California Youth Authority was "…social protection—to protect society by substituting training and treatment for retributive punishment of young persons found guilty of public offenses" (1965: 75) and to establish nominal standards for juvenile court and institutional operations. Such state-wide agencies were a clear example of the move toward administrative justice, even though the California statute explicitly stated: "Nothing in this chapter (Act) shall be deemed to interfere with or limit the jurisdiction of the juvenile court" (California Statutes, 1941:2523).

An analysis of past practices suggests that there has been considerable but unplanned continuity and similarity among and between the various juvenile justice agencies and programs. The primary thrust, of course, was the need for therapeutic interventions, even though success rates generally have not been as high as we would have liked. The juvenile court, however, did offer a promise of diverting youthful offenders from the adult system, which, essentially, was kept. Society did—and does—believe that most youths can be salvaged with appropriate interventions and this approach essentially has guided programmatic efforts.

Presently, the juvenile justice system is not only under attack for its alleged failure to control juvenile misbehavior, but for the perception that it has been "soft" on crime; that is, some believe that the system has been too lenient and too forgiving. This pervasive attitude has been reinforced by youth-based increased drug use, perceived endemic violence, and the availability of weapons. Therefore, legislators have stepped into the fray and altered juvenile codes, allowing many youths to be transferred to adult courts for processing, as well as transforming the juvenile court into an adversarial setting. Furthermore, as discussed earlier, many of these changes have been imposed upon the system by external agents who really have little understanding of how the various components of juvenile justice administration actually do and should work.

As we explore the future, it is difficult to differentiate between "*prediction*" and "*preference*." That is, what one would like to occur may be totally different from what is likely to occur. Yet, there are some trends that if left unrestrained are instructive. These include the nature of juvenile justice administration and management, the role of legislatures/superordinates, technological advances, and the nature and offenses of the clients.

From a management point of view, it is highly doubtful that the quality of administrators will change in the foreseeable future. If many of these top-level persons have no vision, it cannot be expected that change will be viewed as inevitable, and hence that it will be controlled internally. Without vision there can be no leadership and without leadership there can be no constructive change. One has to question why major corporations seem to develop and nurture leaders, but this is scarcely accomplished in government, especially in juvenile justice administration. Government generally has been slow to pick up on corporate and business developments (e.g., TQM, participative management, etc.).

It also is not uncommon for administrators to fail to develop programmatic evaluations. Whether they are uncomfortable with methodological techniques, do not know how to assess programs (and/or personnel), or are fearful of negative results, the truth of the matter is that programs are not evaluated for their efficacy or in terms of cost-benefits. As a consequence, we have only sparse data and information about "what works," and why. This means that only impressionistic data are utilized to convince funding sources to support specific programs, many of which are the "*darlings*" of top management.

The wrong approach may also have been taken regarding evaluation efforts. Menzies (1996:329-30) discusses the "what works" issue from a heuristic perspective:

> What works is answered, "…only at a particular place and time for some well identified group"….We need to ask a different question. Instead of "Does community corrections work?" the question should be "For which offenders and under what social and cultural conditions does community corrections produce a lower recidivism rate?"

Notwithstanding the limits of case management and the so-called new paradigms of "restorative justice" and the "balanced approach" to probation, the return to individualization of and for offenders undoubtedly has gained a new foothold. This appears to be true even though at least one critic (Hurst, 1998) states: "By the end of the seventies, the requiem for individualized justice has been sung!"

Additionally, as long as juvenile justice processes essentially are in the hands of line staff and they are encouraged to behave as entrepreneurs, it isn't possible for these agencies to ensure a consistent delivery system of services. Without standards and without high levels of accountability, each case manager does what he or she wants, while being dedicated to staying "out of trouble." Superordinates have begun to recognize this state of affairs and thus have intervened by passing new laws which direct more juvenile justice processes than ever before in the 100 years history of the court and its sister agencies in juvenile justice administration.

If we have lost our optimistic beliefs that youth can and do change, that trained and skilled workers along with community-based providers can redirect errant youth, that youth working closely with their families and along with

treatment providers can be effective, and that the juvenile court (regardless of structure) remains the most viable vehicle for bringing about constructive change, then we might as well pack our bags and seek some other form for dealing with delinquent, as well as dependent and neglected youths.

In 1914, a chief juvenile probation officer wrote (NCJFCJ, 1998:1):

> The Juvenile Court is not performing its biggest service to the community through the care and direction it gives to the individual boy or girl who may come to it for treatment. It is well enough to cure an individual case of moral weakness, but to do that and that alone is not enough. The Juvenile Court can be the social eye of the community….It can diagnose certain community weaknesses and prescribe certain community remedies. It is a far greater service to prevent one child from coming into the Court than to cure two whose conditions have brought on acts of delinquency.

In an earnest effort to improve the juvenile court and its operations, the "Janiculum Project" (National Symposium, 1998) has been established. The project examines the philosophy, goals, standards, and operations of the juvenile court and has published a list of findings and recommendations. As though the authors had read the quotation above, almost 90 years later they echo some of the same beliefs and values. This is how the proposed mission and philosophy of the court is articulated (NCJFCJ, 1998:109):

> The mission of the juvenile and family court is the protection of society by correcting children who break the law, the protection of children from abuse and neglect, and the preservation and strengthening of families. When the family falters, when the basic needs of children go unmet, when the behavior of children is destructive and goes unchecked, juvenile and family courts shall respond. The juvenile and family court is society's official means of holding itself accountable for the well-being of children and the family. Having been entrusted by society with these vital roles, it is imperative that juvenile and family courts are conducted with fundamental fairness and justice for all whom they serve.

Entreaties to reform the juvenile court and its service delivery system have frequently fallen on deaf ears, especially since so many practices, procedures, and policies have become entrenched. Therefore, if juvenile justice administration is to change—and change indeed is needed—it should go back to its roots in terms of its initial promise and find co-active ways to work with communities (partnerships), improve its services, and otherwise develop a strategy to implement the Janiculum Project's mission statement.

Even though legislatures have revised juvenile codes, making many systems unduly more harsh than is really necessary, the future of the court probably remains in the good hands of caring and concerned judges and court staffs as well as community-based partnerships. Is there room for improvement? Certainly. Is there need for constructive change? Of course. Is it possible to accomplish these necessary reforms? This is problematic.

During the next millennium, the juvenile court undoubtedly will be a part of the justice landscape, even if it bears little relationship to what the founders of the juvenile court movement initially envisioned. Whether or not it will prosper is a different issue. Does society need some form of specialized process for dealing with delinquents, status offenders, dependent, abused, and neglected children? The answer should be "yes," not because we desire to have such a process, but because it is probably in the best interest of society to distinguish between juvenile and adult offenders.

Critics who call for the juvenile court's wake, that is its abolition (e.g., CJJ, 1998; Feld, 1993), and those who call for significant structural revisions (e.g., Mattingly, 1999:3) are either naive or ill-informed, for the court and its various services and programs have indeed helped many youths and their families. Success, however, may be illusive since we are not always certain just what works—and why (See for e.g., Sherman). While change probably is needed, it should be guided and controlled; it should not be approached in a reactive or proactive manner, but through strategic planning and evaluative research with a *co-active* perspective.

At this juncture in the history of the juvenile court, it is time to celebrate rather than denigrate.

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The Unique Circumstances of Native American Juveniles Under Federal Supervision

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The Myth and the Reality

THE ROMANTICIZED view of Indian reservations is that of a closely-knit family dealing with day-to-day problems in a rural setting. While this notion may be true to a degree, reservation life has been greatly idealized by Hollywood. The typical individual living on an Indian reservation in the United States faces poverty, alcoholism, unemployment, and violence on a near daily basis. Broken homes, as well as lack of access to education and health care, are also major impediments in reservation areas. Contrary to popular belief, the majority of Native Americans do not reside on or near a reservation. As of 1990, 22 percent of Native Americans lived on an Indian reservation, while 15 percent resided near a reservation (Aguirre and Turner, 1995). Thus, the remaining 60 percent made their homes in non-reservation areas.

Most felony and some misdemeanor offenses committed by Native Americans on reservation land fall under the jurisdiction of the federal court. Native Americans constitute less than one percent of the total population in the United States; however, Indian offenses amount to nearly ten percent of the overall federal cases (Sands, 1998). In some states, such as South Dakota, Indian offenses constitute a major part of the court docket. The Native American population in South Dakota in 1995 was approximately 7 percent (Dvorak, 1995); however, as of October 1999, the percentage of Native Americans on federal supervision in the state was 67 percent (U.S. Probation Office, 1999). Nationally, Indian offenses constitute over 20 percent of murders and assaults in federal court and nearly 75 percent of all manslaughter and sexual abuse cases (Sands, 1998). The number of Native Americans per capita confined in state and federal prisons is approximately 38 percent above the national average. The rate of confinement in local jails is estimated to be nearly four times the national average (Bureau of Justice, 1999).

According to Bureau of Justice statistics for 1995, United States attorneys filed cases against 240 individuals for alleged acts of juvenile delinquency. Out of the 240 cases, 122 were adjudicated in the federal court system, accounting for 0.2 percent of the total amount of cases federally adjudicated during 1995 (Cohn, 1997). Over half (61 percent) of the juveniles adjudicated in federal court are Native Americans. Bureau of Justice statistics for 1995 also revealed that 37 percent of the juveniles adjudicated delinquent were committed to a correctional facility, with the average length of commitment being 34 months (Cohn, 1997). As of October 1999, the U.S. Probation Office for the District of South Dakota was supervising 107 Native American juvenile offenders (U.S. Probation Office, 1999). The statistics illustrate that Native American youths are disproportionately represented in the federal court system. The purpose of this article is to illustrate the uniqueness of Native American juveniles: specifically, the Sioux Indians of South Dakota, who fall under the jurisdiction of the federal court system.

Indian and non-Indian Views on Crime and Delinquency

There is a vast difference between Indian and non-Indian perceptions of wrongdoing and the most effective means of dealing with crime. In the non-Indian community, a person who commits a crime is deemed a bad person who must be punished. Indian communities, however, view offenses as misbehavior which calls for teaching or illness which requires healing (Sandven, 1999). Non-Indian communities tend to favor a punishment modality, whereas Indian communities traditionally put their faith in education, treatment, and medicine. Obviously, these differing views lead to clashes between the cultures. When dealing with delinquent Native American youth, non-Indians may feel the best course of action is juvenile detention, whereas Indian communities may favor probation, participation in traditional cultural ceremonies, or mentoring by a tribal elder.

Alcohol Abuse

Alcoholism is a major problem on Indian reservations in the United States. According to Bureau of Justice statistics (1999), 70 percent of jailed Native Americans convicted of violence reported that they had been drinking at the time of the offense. With regard to American Indians, the arrest rate for alcohol-related offenses such as drunken driving, public drunkenness, and liquor law violations was more than double that for the total population during 1996. Finally, the Bureau of Justice reported that almost 4 in 10 Native Americans held in local jails had been charged with a public order offense, most notably driving while intoxicated.

There is no doubt that alcohol abuse and alcoholism play a volatile role in the lives of people of all cultures. Native American populations, however, seem to be more suscepti-

ble to the disease of alcoholism. Some studies have suggested that there is a physiological component to Native Americans' increased propensity toward alcoholism, while others have found that a variety of socio-economic factors such as poverty and lack of opportunities play the largest role in this issue.

When a juvenile or adult offender is a substance abuser, probation officers typically deal with this issue through inpatient or outpatient treatment, aftercare services, and Alcoholics Anonymous (AA) or Narcotics Anonymous (NA) meetings. While these services may be of benefit to both Indian and non-Indian populations, Native Americans tend to rely on cultural methods to deal with their sobriety. Specifically, a sweat lodge ceremony, or a "sweat" as it is sometimes called, is used as a means of obtaining spiritual purification through prayer. Individuals enter the sweat lodge and engage in traditional prayers as a ceremonial process of cleansing their souls. In addition to getting in touch with their spirituality, participants in the sweat lodge ceremonies seek clarification and guidance concerning problems dealing with family, substance abuse, violence, and other pertinent issues.

The Sun Dance is a ceremony in which participation requires total abstinence from alcohol and drugs. In this sacred ceremony, Sun Dancers (who must be male) pierce their chests with sharp skewers which are attached to ropes connected to a center pole. The Dancers move around the center pole in a circle while pulling against the skewers piercing their muscles. During the Sun Dance, participants gaze at the sun and pray. The Sun Dance may last several days, during which the Dancers traditionally are not allowed food, water, or rest. Interestingly, the Sun Dance was prohibited by federal law from 1904 to 1935 (Brown, 1993). Although this sacred ceremony was proclaimed illegal, it continued in secrecy. By 1959, the right to hold and participate in Sun Dance ceremonies was reinstated.

Instead of insisting on only AA or NA attendance for Native American juvenile offenders, probation officers should consider balancing the traditional sobriety requirements with those of the Native American culture. Specifically, voluntarily attending a sweat or Sun Dance could take the place of mandatory attendance at a weekly AA meeting. Participation in sweats could be alternated with weekly AA meetings or used to supplement AA attendance. Another viable option is inpatient/outpatient treatment facilities operated by the Indian tribes. These types of facilities are typically located on Indian reservations. They offer a traditional chemical dependency treatment program which incorporates aspects of the Indian culture.

By including Native American culture and ceremonies in the traditional treatment regime, the probation officer approaches sobriety from a dual standpoint. It is now widely accepted that in order to be effective, treatment must be matched to client characteristics. It logically follows that Native American juveniles interested in their culture should be allowed to tap into it for help and support in achieving sobriety.

The Concept of Family

Another difference between the Indian and non-Indian communities is the concept of family, or "*tiwahe*," as it is called by the Sioux Indians of South Dakota. In the typical non-Indian household we would expect to find one or more parents and children. Indian homes, however, are generally characterized by the presence of extended family. The Sioux Indians call this "*tiospaye*." Grandparents, aunts, uncles, cousins, and unrelated individuals may reside in the same home with the Native American family. The multi-generational nature of the Indian family lends itself to an additional support structure for the juvenile. With people in the same home spanning several generations, the juvenile can benefit from the teachings and guidance of more than just his or her parent(s).

Native Americans frequently refer to unrelated individuals as aunts (or "aunties"), uncles, cousins, grandmas, or grandpas. This demonstrates the wide span of the definition of family in Indian communities. Probation officers need to be sensitive to the complex infrastructure of Indian families when dealing with Native American juvenile offenders. In the non-Indian communities, the death of a great aunt, second cousin, or unrelated individual may not be deemed as a great loss to the juvenile due to the distance of the relationship. Indian youth, however, may experience as great a loss at the death of an unrelated individual whom they considered a cousin as they would at the death of a biological cousin. Thus, for Native American juveniles who are in placement or treatment, requests to attend funerals in the juvenile's home area should not be automatically denied if the relationship between the juvenile and the deceased does not appear to be close. Again, the issue of family and closeness is a difference in perception between Indian and non-Indian communities.

Native Americans as Victims of Crime

According to the latest Bureau of Justice statistics, Native Americans are the victims of violent crimes at more than twice the rate of all United States residents. From 1992 through 1996, the average annual rate of violent victimizations among Indians (including Alaska Natives and Aleuts) was 124 per 1,000 residents ages 12 years and older, compared to 61 violent victimizations per 1,000 blacks, 49 per 1,000 whites, and 29 per 1,000 Asians (Bureau of Justice, 1999). For all four types of non-fatal violent victimizations, Indians experienced higher than average annual rates of victimization per 1,000 U.S. inhabitants 12 years old and older during the period from 1992 through 1996 (Bureau of Justice, 1999). Each year approximately 150 Native Americans are murdered, which is nearly the per capita rate in the general population. (Bureau of Justice, 1999)

One cannot argue with the fact that Indian reservations are a potentially violent place to live. Therefore, probation officers need to take into consideration the fact that many of the juvenile Indian offenders under federal supervision may

have been victims of a violent crime. Even more likely is the chance that the juvenile offender witnessed or was negatively impacted by a violent crime against his or her extended family member(s). Realizing that Native American youth may have been victimized or witnessed a disproportionate share of violence is not an excuse or justification for the young offender's actions; rather it provides the probation officer with an understanding of the juvenile's experiences during childhood. A juvenile's minor reaction to a major event in his or her life may occur because the youth has put up a wall as a means of coping with the constant threat of violence. In other words, Native American juveniles may become desensitized to the violence around them, as it is something they may face on a daily basis. Someone who has not regularly experienced this level of violence may wrongly perceive the juvenile's desensitization as indifference.

Jan Chalken, the Director for the Bureau of Justice, stated the following: "The findings reveal a disturbing picture of American Indian involvement in crimes as victims and offenders. Both male and female American Indians experience violent crime at higher rates than people of other races and are more likely to experience interracial violence." (Bureau of Justice, 1999). See Table 1.

TABLE 1.
RATES OF VICTIMIZATION FOR U.S. INHABITANTS 12 YEARS AND OLDER FOR 1992–1996

	Indians	Whites	Blacks	Asians
Sexual Assaults	7	2	3	1
Robberies	12	5	13	7
Agg. Assaults	35	10	16	6
Simple Assaults	70	32	30	15

Life Chances

Compared with other ethnic populations in the United States, Native Americans have been severely constrained in their interaction with mainstream society (Aguirre and Turner, 1995). This isolation is largely the result of the numerous treaties between the U.S. government and the Native American tribes, which placed tribal members in subordinate positions. The subordination, in turn, had the effect of limiting their opportunities to secure life chances. Typically, life chances are defined as the access to satisfactory education, housing, employment, income, and medical care. In essence, life chances are valued resources.

President John F. Kennedy was quoted as saying, "For a subject worked and reworked so often in novels, motion pictures, and television, American Indians remain probably the least understood and most misunderstood Americans of us all" (Brown, 1993). In the 1970s, the United States government officially acknowledged that Native Americans were the most impoverished group in the United States and that this population lived in conditions rivaling those found in Third World countries (U.S. Department of Health, Education, and Welfare, 1976). As little as 20 years ago, 14 percent of Native Americans lived in overcrowded housing, 67 percent lived in houses without running water, 48 percent lived in houses without toilets, and 32 percent had no means of transportation (Aguirre and Turner, 1995). These factors paint a dismal picture for Native Americans, especially those living in isolated reservation communities. Although living conditions have generally improved for most Indian communities, a large proportion of the Native American population still lives below the poverty line. See Table 2.

TABLE 2.
PERCENTAGE OF FAMILIES LIVING BELOW THE POVERTY LINE, 1970–1990

Year	White Americans	Native Americans
1970	8.6	33.2
1980	7.0	23.7
1990	9.8	36.1

Educational attainment is another life chance in which Native Americans fall below the average level. With the exception of Hispanics, American Indians are the least likely of all minority groups to graduate from high school or college. According to Aguirre and Turner (1995), in 1992, 78 percent of Indians had earned a high school diploma, compared with 91 percent of non-Hispanic whites. When comparing college graduates, however, only 11 percent of Native Americans had earned a college degree, compared with 28 percent of non-Hispanic whites. At the high school level, there was a 13 percentage point difference between the two groups. When comparing the two groups for college graduates, non-Hispanic whites were nearly three times as likely as Indians to have achieved a college degree. These figures can be explained, in part, by a lack of access to satisfactory elementary education. The parents of all minority youths, as a whole, tend to have less formal education than their white counterparts. Because parental educational attainment is often linked to a student's academic performance, minority students may start school at a disadvantage (O'Hare, 1992). Finally, much of the focus of education utilizes the white culture as a basis from which to compare all other cultures. Using the white culture as a point of reference is not necessarily pertinent or interesting to students of other cultures, races, and ethnicities.

Two final life chances to be addressed are occupational attainment and income levels. In 1995, the unemployment rate for whites in South Dakota was 3.2 percent. Native Americans had a 32 percent unemployment rate during the same time period (Dvorak, 1995). Astonishingly, the unemployment rate for Indians was ten times higher than that for whites. As has already been discussed, Native Americans have lower levels of educational attainment. Low levels of education have an inverse relationship with high unemployment rates. The isolation of reservation communities also prevents access to well-paying jobs. Finally, reservations

have difficulty in attracting businesses and industry to their already economically-depressed areas.

In South Dakota, as well as the rest of the United States, there exists a major economic difference in the median household income of Indians and whites living in the same area. In 1995, the median income for whites living in South Dakota was $27,000 per year, compared to less than $10,000 annually earned by Native Americans (Dvorak, 1995). It is important to remember that these figures are based on household income. As was previously mentioned, several extended family members and non-relatives may all live under one roof in Indian homes. At non-Indian residences, however, there are typically just parents and children. Therefore, Native Americans are supporting larger households on less income.

Probation officers dealing with Native American juvenile offenders need to consider the harsh reality that these individuals may not have transportation to get to school, running water in which to bathe, or the immunizations and nutrition necessary to keep them healthy. Expecting these individuals to attend school on a daily basis may largely be out of their control if transportation is not available. Once at school, Native American youths may find little value in an education which does not address issues from an Indian perspective. Further, payments of restitution may be few and far between due to the high unemployment rates and lack of industry in reservation areas. While the typical teenager's most important dilemma may be deciding the most fashionable outfit to wear to school, a Native American youth may be shivering because the family does not have the money for a winter coat.

Conclusion

"Man did not weave the web of life. He is merely a strand in it. Whatever he does to the web, he does to himself" (Dvorak, 1995). This quote by Chief Seattle warns of the negative consequences that the human race will inevitably face if we continue to mistreat our own people. When comparing the life chances of Indians to non-Indians in South Dakota, it is obvious that Native Americans do not have the same access to satisfactory housing, education, employment, and income as do whites. Further, there are cultural differences between the perception of crime, the treatment of alcohol abuse, the concept of family, and victimization. The purpose of this article was not necessarily to elicit sympathy for the plight of the American Indians. The primary objective was to enlighten probation officers as to the cultural and socio-economic differences that may exist between the Indian and non-Indian populations. When one begins to understand the experiences and culture of others, it tends to lessen conflict and miscommunication. Since a primary aim of probation officers is to reduce recidivism, it only makes sense that increased awareness and sensitivity would aid in the battle against juvenile re-offending.

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Legal Issues in Juvenile Drug Testing

By Rolando V. del Carmen and Maldine Beth Barnhill

Juvenile drug testing is a popular and accepted way of controlling juvenile behavior and detecting drug use. Most juvenile justice systems in the country use drug testing when supervising juveniles on probation or keeping them in institutions. Drug testing is not limited to the juvenile justice system; it is also used extensively in adult probation, parole, and in jails and prisons. As in other areas of criminal justice, the underlying assumption in juvenile drug testing is that it is an effective way of monitoring behavior and discouraging the use of drugs and thus enhances rehabilitation.

This article discusses constitutional and legal issues associated with drug testing. Preliminary issues are discussed, and then constitutional and other legal issues are addressed. The article presents recommendations for establishing a legally defensible drug testing program that juvenile probation agencies can adopt and implement.

The constitutional, legal, and other issues identified in this article are not peculiar to juvenile probation. The same issues can be and are raised any time drug testing is used to monitor behavior, be that in probation, parole, prisons, or jails. What is peculiar about juvenile drug testing, however, is that it represents a convergence of the principles of *parens patriae* and diminished rights. Juvenile proceedings are civil or quasi-criminal in nature, but courts have now given juveniles basic due process rights that used to be denied to them because of *parens patriae*. Cases involving juvenile drug testing generally do not make an issue of the differences in juvenile and adult proceedings; neither have they used *parens patriae* to highlight and isolate legal issues from the regular criminal justice process.

A review of case law shows a dearth of cases specifically addressing juvenile drug testing. The issues raised in these cases are basically similar to those in other types of drug testing, hence this discussion reflects an analysis of juvenile drug testing cases and cases in the other areas of criminal justice.

Preliminary Issues

The juvenile justice system in the United States is heavily influenced by basic conceptual frameworks that set it apart from adult justice. First, juvenile justice is based on *parens patriae*, literally meaning "parent of the country."[1] This has led to the family model of juvenile justice processing, as opposed to the "fight model" in adult justice. Central to the family model is the assumption that the offender gets the care, love, and treatment that society gives to family members. A downside of the family model is the absence of due process. Members of one's family are not given constitutional protections when being disciplined or when held accountable for their actions. In exchange, they get love, care, and forgiveness. Moreover, once a juvenile has been disciplined, his or her status in the family is restored and the family is whole again.

Over the years, *parens patriae* has gradually given way to basic due process guarantees, at least in some juvenile proceedings. This erosion started with *in re Gault*,[2] where the United States Supreme Court said that juveniles must be given certain due process rights in adjudication proceedings that can result in deprivation of liberty. Since then, other cases have afforded juveniles rights that used to apply only to adult cases. That erosion continues today through case law and legislative enactments that seek to narrow the gap between adult and juvenile justice.

A second influence in juvenile justice is the concept of diminished rights. Over the years, courts have held that offenders, after conviction or adjudication, suffer a diminution of constitutional rights. While they still enjoy constitutional protection, their status as individuals who have broken the law leaves them with fewer rights than the rest of society. Juveniles adjudicated delinquent retain some constitutional rights, but also lost some. The constitutional rights related to privacy, searches and seizures, and due process are reduced once a juvenile comes under the custody of the state.

A third influence is the desire to rehabilitate the juvenile, the assumption being that the young are more susceptible to rehabilitation. Many crimes committed by the young are related to or involve the use and sale of drugs. Rehabilitation, as a goal of juvenile justice, affords the government greater authority to control the behavior of juveniles, particularly in treatment. Drug testing facilitates rehabilitation in that it identifies drug users and serves as a deterrent to future misconduct involving controlled substances. This gives the government greater authority to drug test based on a "compelling need" justification. Conversely, however, juvenile rehabilitation is considered in many states as a government obligation, either constitutionally or by statute. Whatever may be the basis for rehabilitation, it

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enables the government to wield greater control over the juvenile.

The authority to drug test juveniles may come from a number of sources. Nothing in the Constitution encourages or prohibits drug testing; therefore, the Constitution is not a specific source of authority to drug test. Some federal laws impose limitations on drug testing; particularly the release of information, but specific federal authorization to test does not exist. Most drug tests are therefore based on state law, judicial authorization, or agency policy. Some states specifically authorize drug testing in probation, parole, or institutionalization, but most states do not. In the absence of state law, agency policy may authorize drug testing. Ideally, however, state law should authorize drug testing, although its specifics should be left to the agency.

Constitutional Issues

Drug testing can be challenged as potentially violative of six constitutional rights: the right against unreasonable searches and seizures, the right against self-incrimination, the right to privacy, the right to due process, the right to confrontation and cross-examination, and the right to equal protection. In addition, a few cases have raised the constitutional issue of impermissible delegation of judicial authority and the right against cruel and unusual punishment. Most challenges have failed.

The Fourth Amendment right against unreasonable searches and seizures is often invoked, drug testing being a highly intrusive form of search and seizure. For the challenge to succeed, the offender must prove that drug testing is an unreasonable form of search and seizure. This is difficult because of a juvenile's diminished Fourth Amendment constitutional right. Moreover, searches and seizures are more closely scrutinized by the courts when done by the police or law enforcement rather than by administrative agencies. The police are not involved in juvenile drug testing because it is usually administered and monitored by probation and parole officers. In most cases, drug testing is authorized either by state law, agency policy, or judicial order, and the results are used in an administrative proceeding, not in a criminal trial to prove guilt. Court decisions indicate that the Fourth Amendment rights of probationers and parolees are greatly diminished, particularly in revocation proceedings where such rights are often involved.

Offenders sometimes allege a violation of the right against self-incrimination, saying that the introduction of the results of a drug test in court is self-incriminatory. The Constitution, however, prohibits testimonial, not physical self-incrimination. Drug testing is physical self-incrimination and is analogous to appearing in a police line-up or requiring a suspect to submit to fingerprinting. Given the physical nature of drug testing, the constitutional right against self-incrimination does not protect the offender.

The right to privacy is raised in drug testing cases in the context of who monitors the process of obtaining the sample and how that is done. One court has said "that one's anatomy is draped in constitutional protection." Most jurisdictions, however, provide for same-sex supervision and shun supervision that is demeaning or humiliating. As long as these precautions are observed, challenges based on the right to privacy do not succeed.

The right to due process can be invoked when challenging test accuracy, the allegation being that inaccurate and unreliable test results violate fundamental fairness. These challenges often fail because of improving technology. Some jurisdictions require confirmation if test results are challenged; most courts, however, accept the results of a single drug test as accurate. The possibility of false positives or false negatives looms in drug tests, but is more an issue of sound agency policy than a valid basis for a legal challenge. At least two cases have dealt with the issue of test accuracy: *Peranzo v. Coughlin*[3] and *Jensen v. Lick*.[4] The research presented in the Peranzo case found an overall accuracy of 96 percent on EMIT®, with a survey of 64 laboratories over a four-year period. The accuracy for positive test was 98.7 percent for 730 positive tests. The *Lick* case had a determination of 97-to-99 percent accuracy overall. These accuracy rates, together with other test results, present a formidable barrier for plaintiffs to overcome.

The constitutional right to confrontation and cross-examination arises if the person who tested the sample is not in court to testify and be cross-examined. Most court cases are based on this issue; hence, it deserves extended discussion. While some courts require the courtroom appearance of the technician who conducted the test, most courts hold that the right to cross-examination and confrontation is not violated as long as the reliability of the test is established through some other means. Other courts dispense with confrontation and cross-examination under exceptions to the hearsay testimony rule, holding that the results of drug tests fall under the official records or business records exception to the hearsay rule. In *People ex rel. Brazeau v. McLaughlin*,[5] the court held the toxicology report to be hearsay and admissible. The admissibility of the document was based on a statement signed by the director of the lab attesting to scientific reliability of the GC/MS and EMIT® tests used. A number of courts have held that the appearance in court of the person who made the report is often not required due to the substantial cost of such an appearance, as proof of reliability or a signed statement of reliability of the laboratory report will suffice instead (*State v. Gregory*, *State v. Anderson*, *United States v. Penn*[6]).

Where the laboratory technician was in court for *Carter v. State*,[7] the court reversed judgment against the defendant due to lack of foundation for the scientific testing. The state failed to provide a proper foundation for the drug test when it was shown the laboratory technician could not explain the scientific basis of the testing procedure. The state failed to present a technician with the qualifications needed to establish the proper scientific foundation for the test. In the alternative, if the technician is not present, at least one court has held a positive test result admissible based upon

the testimony of the probation officer.[8] In this case, there was external evidence of illegal activity and the court decided that the rules of evidence do not apply fully to a probation revocation hearing. The non-application of the formal rules of evidence has also been determined on the federal level in *United States v. Grandlund*.[9] It further held that a defendant only has a qualified right to confront and cross-examine witnesses: therefore, a confrontation of a laboratory technician is not guaranteed if a good cause showing can be made to deny it. Other possibilities to refute the evidence presented by the federal government were cited as the rationale for denying confrontation of the laboratory technician in *U.S. v. McCormick*.[10] In sum, constitutional challenges based on the right to confrontation have not fared well in the courts.

Equal protection claims arise in cases where confirmation is at offender's expense and the offender is indigent and cannot pay for confirmation. While this challenge is strong when raised, it can easily be obviated by providing that confirmation will be at agency expense if the offender is indigent.

The Sixth Amendment prohibits the imposition of cruel and unusual punishment. Plaintiffs may assert that drug testing is both cruel and unusual, a futile challenge because the prohibition against cruel and unusual punishment has traditionally been interpreted by the courts to apply only to conditions of confinement or if the punishment imposed is grossly disproportionate to the offense. Neither of these characterizes drug testing; hence no such challenge has succeeded in court.

Other Legal Issues

Other non-constitutional legal issues have arisen, the most frequent being whether the condition of drug testing should be related to the act committed. Although courts are split on this issue, more recent court decisions tend to require relatedness for drug testing to be valid.

Another legal issue is whether an officer can drug test in the absence of specific authorization by law, from the court, or in the absence of agency policy. At least one federal court of appeals has answered in the affirmative. In *U.S. v. Duff*,[11] the ninth circuit federal court of appeals held that the probation officer had the power to order a defendant to submit to drug testing even though the court had not explicitly imposed such a condition. The court said that urine testing was consistent with the condition of probation requiring the defendant to refrain from violating the law and the probation officer had reasonable suspicion that the defendant was using drugs. In *U.S. v. Wright*,[12] the court approved drug testing based on the general conditions of release, under the clause which precludes use of controlled substances.

Judges have exercised wide discretion in determining what conditions are to be imposed in probation. Drug testing comes under this discretion. In most cases, the legislature does not specify the conditions for juvenile probation, leaving that determination to the judge and the juvenile agency.

Will one dirty test suffice to trigger sanctions, including revocation of probation? Most courts say yes. In *United States v. McNickles*[13] and *Stevens v. State*,[14] courts held that a single violation suffices to revoke probation. Some courts require probable cause; others use the lower standard of reasonable suspicion, or mere suspicion. Revocation being a non-criminal proceeding, appellate courts prefer the degree of certainty for revocation to be decided by lower court judges.

Pre-adjudication Testing

Pre-adjudication drug testing is used in some jurisdictions, usually as a condition of release. Legal issues arise because of possible negation of the presumption of innocence and the imposition of a sanction prior to adjudication. This is not a formidable constitutional issue, however, in juvenile court cases, because the U.S. Supreme Court has decided that preventive detention of juveniles (which raises essentially the same issue of presumption of innocence) is constitutional if it promotes a legitimate state interest.[15] Such state interest is not hard for the state to establish in drug testing.

A corollary issue is whether the juvenile can be denied release if he or she refuses to submit to a drug test. Although no case law addresses this issue, the likelihood is that such denial is defensible if detention is authorized for that offense anyway. If it is authorized, then conditional release should also be considered authorized, unless release is specifically precluded by state law. If state law does not authorize detention for that offense, then drug testing can be used only with consent because no viable sanction exists in case of refusal to submit to the test.

Recommendations for Establishing a Legally Defensible Drug Testing Program

For Juvenile Justice

What follows are recommendations agencies may want to use when adopting a legally defensible drug testing program. These recommendations are divided into the following categories: authorizations, when to test, confirmation, chain of custody, confidentiality, court challenges, pre-adjudication drug testing, and other concerns.

Authorization

- Ideally, the authority to drug test should be given by state law, as opposed to authorization given by the judge, parole board, or agency policy. Currently, only a few states have laws on drug testing. Moreover, whatever laws there are deal with drug testing in general and do not particularly address juvenile drug testing.

- In the absence of state law authorizing drug testing, agencies should seek court or board order to authorize testing as a condition of pretrial release, probation, or parole.
- In the absence of state law or court or board order, drug testing should be authorized by agency policy and not left to officer discretion.
- State law that authorizes drug testing should include a provision exempting officers and agencies from liability arising from the imposition and implementation of drug tests. This protects officers from liability under state law, but not from federal cases for civil rights (Section 1983) violations.
- Agencies should have a written set of procedures and guidelines for drug testing. This should state what happens if the offender refuses to submit to the test, how test results will be used, and the likely sanctions if the test is positive. A copy of the procedure should be given to the person to be tested.
- Drug testing procedures and guidelines should be submitted to and reviewed by legal counsel prior to implementation. They must be reviewed periodically. If possible, the legal counsel should be a member of the team drafting the drug testing policy.

When to Test

- The frequency of drug tests should be left to the discretion of the agency and not specified by law or judicial order. Flexibility should be given to the agency; otherwise failure to test as specified by law or judicial order might provide grounds for liability based on negligence.
- An officer should not require drug testing on his or her own. If an officer has reasonable suspicion that an offender who is not required to submit to drug testing is using drugs, the officer should obtain a court or board modification of the conditions allowing the test to be performed. This protects the officer from liability arising from drug tests.
- In addition to scheduled drug tests, drug testing at any time will likely be held valid by the courts if there is individualized reasonable suspicion that the offender is using drugs, as long as there is a court or board order authorizing the test. If such authorization does not exist, it is best to obtain authorization from the judge or board even if reasonable suspicion exists.

Confirmation

- The agency should develop and implement a confirmation policy based on court decisions in that jurisdiction. Courts differ on the need to confirm; some courts do not require confirmation, other courts do. Among courts that require confirmation, some consider a second EMIT® test sufficient for confirmation; others require GC/MS.
- If courts in a particular jurisdiction require confirmation of negative test results when challenged, the decision by the agency to confirm or not to confirm should consider whether the expense of confirmation is worth it for the agency. If confirmation is not cost-effective, the alternative might be to disregard the result, retest the juvenile, and then obtain oral confirmation of the result.
- If confirmation is needed, GC/MS is recommended as the most legally acceptable confirmation procedure.
- Secure an admission of drug use from the offender following an initial screen that reveals a positive result. If the offender admits to the use of illegal drugs following any positive drug test, the officer should obtain a signed, written, admission, preferably in the presence of two witnesses.
- The offender should be given the option to challenge the test result at offender's expense. If the offender is indigent, confirmation should be at agency expense; otherwise equal protection issues might arise.
- Agencies should have a list of approved independent laboratories for offenders electing to challenge positive test results. The list assures that confirmation initiated by offenders is done by a reliable laboratory.
- All specimens that screen positive on an initial screen but fail to be confirmed should be declared negative and treated as specimens that showed negative in the initial screen.
- Specimens should be saved at least up to the time when the opportunity for a legal challenge will have lapsed. The agency may set a specified time for a confirmation challenge. In one case, the court found nothing wrong with keeping the sample for six months.[16]

Chain of Custody

- Rigorous chain of custody procedures should be prescribed and implemented as part of the agency drug testing strategy.
- The agency should develop a chain of custody form to be signed by every individual releasing and accepting the urine specimen.
- Agency policy should require officers to confront the offender with positive drug test results as soon as possible, preferably not later than 72 hours.
- When specimens are received from another office or facility, testing personnel should acknowledge receipt on the chain of custody form and provide the person delivering a copy.
- Testing personnel should inspect each package for evi-

dence of possible tampering and compare information on the accompanying chain of custody form.

- Any evidence of tampering with or discrepancies in the information on specimen bottles or the agency's chain of custody form attached to the shipment should be reported immediately to the submitting office, and should be noted on the chain of custody form which should accompany the specimens while they are at the non-instrument test site.

Confidentiality

- Confidentiality of test results should be observed by the agency. Test results should be disclosed only to those required by law or agency policy to have them.
- In the absence of state law, disclosure should be limited to the following: the offender, third parties to whom the offender, in writing, wants the results disclosed, and persons to whom such information is to be disclosed pursuant to court or board order.
- If no state law or court decision governs the release or non-release of drug test result information, the agency should draft its own policy in compliance with federal confidentiality laws and with whatever limitations the agency wants to impose. Confidentiality, rather than disclosure, should be the general rule.
- Agency policy should require that requests for disclosure of test results, other than those to whom the information should be disclosed by statute or case law, should be made in writing. Requests by telephone for release of information should not be granted.
- There should be proper documentation of the action taken and to whom and when disclosure was made.
- If the agency is using federal funds for testing, the agency should comply with federal rules on confidentiality. These rules include those found in 42 U.S.C. Sec. 290(dd-2) and (ee-3), and 42 CFR Part 2, and administrative rules promulgated by federal agencies in accordance with federal law.[17]
- Questions concerning the disclosure of test results that are not covered by law or agency policy should be referred to the judge or board.
- In case of doubt, drug test results should not be released.

Court Challenges

- The agency should establish policies for handling court challenges to test results. The staff should be prepared to provide evidence to support positive test results.
- If challenges arise about the validity and reliability of test results, the responsibility for providing expert testimony should be with the supplier of the instrument used. Expert testing should be given by the provider with no or minimum cost to the agency. These provisions should be included in the contract with the supplier.
- Staff training should include information and the development of skills needed for court testimony.

Pre-adjudication Drug Testing

- Ideally, drug testing should be imposed as a condition of pre-adjudication release only if:
  1. It is properly authorized, preferably by legislation or, in the absence thereof, by judicial order;
  2. There is justification for it, such as the offender having a history of drug use, it is reasonably related to the alleged act, or for the juvenile's safety or for the safety of others in the institution (if in a detention center);
  3. It is needed to identify users who may have no outward appearance or history of drug use, but there is reasonable suspicion that they have used drugs;
  4. It is linked to a treatment program or case management plan;
  5. Such release enhances the avowed goals of the court and the agency.

  It should not be used for punitive purposes because at this stage the juvenile will not as yet have been adjudicated.
- The procedure should be clearly set and made known to the juvenile, including how the results are to be used;
- The policy must be in writing and occasionally reviewed.

Other Concerns

- Every offender should be properly informed about the agency's drug testing policies and procedures.
- Drug test operators, whether in-house or from the outside, should be trained and properly qualified.
- Drug tests should not be unnecessarily humiliating or degrading; neither should they be used to harass the offender.
- Cross-sex supervision of drug tests should be avoided, except in emergency situations.
- Offenders who cannot or would not produce urine samples should be given reasonable time to produce the sample. Failure or refusal to give a sample after reasonable time may be considered a violation of the condition for the offender to submit to a drug test.

Conclusion

Drug testing juveniles is currently a popular form of controlling juvenile behavior and is used in many jurisdictions. It raises constitutional and legal issues, some of which have

been addressed by the courts. Although the United States Supreme Court has not directly addressed the issue of juvenile drug testing, lower courts have resolved basic legal issues. In general, legal challenges to juvenile drug testing have not succeeded because of the *parens patriae* doctrine, drug testing being a valid form of behavior monitoring, and the concept of diminished constitutional rights.

Certain measures can be taken by the agency to enhance the legal defensibility of drug testing programs. Among the most important are proper authorization, preferably by statute, a written and carefully reviewed set of policies and procedures, adherence to prescribed procedures, and careful personnel training. There are no guarantees against court challenges or lawsuits, but adopting legal precautions should minimize legal challenges, protect officers from liability, and improve the chances of a successful defense in case agency policy is challenged.

NOTES

[1] *Black's Law Dictionary*, 6th edition, at 769.

[2]387 U.S. 1 (1967).

[3]608 F. Supp. 1504 (D.C.N.Y. 1985).

[4]589 F.Supp. 39 (1984).

[5]650 N.Y.S. 2d 361 (New York 1996).

[6]946 S.W. 2d 829 (Tennessee 1997), 945 P. 2d 1147 (Washington 1997), 721 F. 2d 762 (11th Cir. 1983).

[7]685 N.E. 2d 1112 (Indiana 1997).

[8]*State v. Fields*, 686 So.2d 107 (Louisiana 1996).

[9]71 F. 3d 507 (5th Cir. 1995).

[10]54 F. 3d 214 (5th Cir. 1995).

[11]831 F.2d 176 (9th Cir. 1987).

[12]86 F. 3d 64 (5th Cir. 1996).

[13]948 F. Supp. 345 (Delaware 1996).

[14]900b S.W. 2d 348 (Texas 1995).

[15]*Schall v. Martin*, 467 U.S. 253 (1984).

[16]*State v. Quelnan*, 767 P. 2d 243 (Hawaii1989).

[17] Federal rules on confidentiality relevant to drug testing and services are long and extremely complex. As culled from other publications, they may be summarized, however, as follows:

"Two Federal laws and a set of Federal regulations guarantee the strict confidentiality of persons (including youths) receiving alcohol and drug services. (The legal citations for these laws and regulations are 42 U.S.C. sec.290 dd-3 and ee-3; CFR Part 2.) The laws and regulations are designed to protect client's privacy rights and thereby to attract people to treatment.

"The Federal confidentiality laws and regulations protect any information about youth if the youth has applied for or received any alcohol or other drug-related services–including diagnosis, treatment, or referral for treatment–from a covered program. The restrictions on disclosure apply to any information, whether or not recorded, that would identify the youth as an alcohol or drug user, either directly or by implication.

"The Federal regulations apply only to programs that are federally assisted, but this included indirect forms of Federal aid such as tax-exempt status, or State or local government funding that originated with the Federal Government. Virtually all programs in public schools, and many private school programs, meet this requirement."

Exceptions according to the publication are: Consent, Internal Program Communications, Qualified Service Organization agreements, Communications that do not disclose patient-identifying information, child abuse and neglect reporting, court-ordered disclosures, patient crimes on program premises or against program personnel, and research, audit, or evaluation.

Source: *Legal Issues for Alcohol and Other Drug Use Prevention and Treatment Programs Serving High-Risk Youth*, OSAP Technical Report–2, U.S. Department of Health and Human Services, 1992, pp. Ivff.

Another publication summarized federal law as follows:

"These laws and regulations prohibit disclosure of information regarding patients who have applied for or received any alcohol or drug abuse-related services, including assessments, diagnosis, counseling, group counseling, treatment, or referral for treatment, from a covered program. The restrictions on disclosure apply to any information that would identify a patient as an alcohol or drug abuser, either directly or by implication. They apply to patients who undertake treatment as a form of alternative processing, patients who are civilly or involuntarily committed, minor patients, and former patients. They apply even if the person making the inquiry already has the information, has other ways of getting it, enjoys official status, is authorized by State law, or comes armed with a subpoena or search warrant.

"Any person that specializes, in whole or in part in providing treatment, counseling, and/or assessment and referral services for patients with alcohol or drug problems must comply with Federal confidentiality regulations (sec. 2.12 (3)). Although the Federal regulations apply only to programs that receive Federal assistance, this category includes organizations that receive indirect forms of Federal aid such as tax-exempt status, or State or local funding coming (in whole or in part) from the Federal government.

Source: *Treatment Drug Courts: Integrating Substance Abuse Treatment With Legal Case Processing: Treatment Improvement Protocol Series 23*, U.S. Department of Health and Human Services, 1996, p. 49.

Up to Speed

A Review of Research for Practitioners

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Juvenile Probation on the Eve of the Next Millennium

BY RONALD P. CORBETT, JR.

JUDGE JUDITH Sheindlin, supervising judge for the Manhattan Family Court, published in 1996 her perspective on the state of affairs in juvenile justice, titled *Don't Pee on My Leg and Tell Me It's Raining*. Judge Sheindlin's views, graphically implied in the title, include a repudiation of the social causation approach to juvenile delinquency and a call for a return to an ethic of self-discipline and individual accountability. From the vantage point of over twenty years experience as a juvenile judge, Sheindlin sees a system that can "barely function" (p.5), trading in empty threats and broken promises. Juvenile courts in her view have avoided assigning blame for wrongdoing and have thereby encouraged a lack of individual responsibility, leaving young offenders with ready excuses for their predatory behavior and completely without fear of any consequences. The system must "cut through the baloney and tell the truth," starting with the "total elimination of probation" (p.61) in favor of a greater reliance on police surveillance and increased incarceration.

While more extreme than most, Sheindlin's damning critique of the juvenile justice system is of a piece with a number of recent treatments of the system, both journalistic and academic. A brief synopsis of each suggests a system in a severe state of crisis:

- In *No Matter How Loud I Shout*, Edward Humes (1996), a Pulitzer Prize-winning author, presents an inside view of the workings of the Los Angeles Juvenile Court. Describing the system generally as "broken, battered and outgunned" (p.371), Humes echoes Sheindlin's theme of a widespread sense of immunity among juvenile offenders, perpetuated by a system that dispenses wrist slaps and apple bites in lieu of real sanctions. Facing continuous delays instead of prompt justice, and infrequent phone contact from probation officers instead of the close supervision needed, the young offenders in Los Angeles quickly learn that they are beyond the reach of the law:

  > That's how the system programs you. They let you go and they know that just encourages you, and then they can get you on something worse later on. It's like, they set you up. Of course, I'm to blame, too, for going along with it. I didn't have to do those things, I know that. But the system didn't have to make it so goddamn easy (Humes, 1996, p.333).

- In *The State of Violent Crime in America*, the first report of the newly formed Council on Crime in America (1996), the juvenile system is portrayed as a revolving door where again the theme of the lack of consequences and the consequent emboldening of young offenders is struck. Chaired by former Attorney General Griffin Bell and well-known conservative intellectual William Bennett, the report illustrates the success of one jurisdiction (Jacksonville, Florida) with the increased use of adult punishments for serious juvenile offenders and generally calls for a sober realization that the juvenile justice system's traditional reliance on treatment interventions must give way to strategies based on incapacitation and punishment.
- Finally, in *Screwing the System and Making It Work*, an ethnographic study of an unnamed juvenile court system, sociologist Mark Jacobs (1990) depicts a system whose principle intervention—community supervision—is demonstrably failing and whose state of disorganization and administrative weakness undermines any attempt at effective solutions. The few successes that Jacobs finds are accomplished in spite of the system by creatively evading the rules and regulations which otherwise frustrate all reasonable efforts. In the end, Jacobs concludes that the juvenile justice system fails because it attempts to solve problems of social breakdown through the largely ineffectual means of individual treatment plans.

Even granting that exposes will always earn publication more quickly than positive coverage, these four notable publications have such convergent findings that a conclusion regarding a crisis state for juvenile justice generally and juvenile probation specifically, seems inescapable. What then should be done? What initiatives might be undertaken in probation that would set juvenile justice on a more promising course, earning it back a measure of public trust and genuine impact on the lives of young offenders? This article will attempt an answer to those questions by first

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reviewing the scope of the work of juvenile probation and current trends in juvenile crime, then reviewing what has been learned about successful correctional interventions and how those lessons can be applied to juvenile probation, concluding with an examination of a new model for juvenile justice that can incorporate the findings of research in a context that values the rights and expectations of offenders, victims and society.

Juvenile Probation in the United States

In a review of juvenile probation nationally published in March 1996 by the Office of Juvenile Justice and Delinquency Prevention, Torbet reports an annual caseflow of nearly 1.5 million delinquency cases, resulting in some 500,000 juveniles under probation at any one time. Juvenile probation officers have caseloads averaging 41 offenders, with much higher numbers typifying urban locations.

Duties of juvenile probation officers are multiple but chiefly fall into the following three categories:

- *Intake, Screening and Assessment.*—Juvenile probation officers are charged with the responsibility in many jurisdictions of determining which juveniles under arrest will proceed to a formal court process or instead be diverted to an informal process, if the offense involved is minor. In making this recommendation, the officer will obtain from the offender, his/her family and any social agencies involved with the juvenile at least a threshold amount of current status and background information involving such factors as school attendance, behavior at home and in the community, family relationships, peers, etc. A great deal of emphasis in screening will be placed on the circumstances of the offense and the previous record, if any. In addition to recommending for or against diversion, this intake process will yield pertinent information for the juvenile judge to utilize in making decisions regarding detention, bail, conditions of release, appointment of counsel and other matters.

- *Pre-Sentence Investigations.*—Probation officers play a crucial role in determining the most appropriate sentence or disposition to be imposed on the juvenile before the court. In preparing such reports, probation officers will begin by expanding information gathered at intake as well as reaching out to other officials, treatment personnel, and family that may have useful information or perspectives bearing on the issue of an appropriate disposition. Pre-sentence reports will typically include as major sections a detailed examination of the facts and circumstances surrounding the offense and the juvenile's role in the incident; an elaborate social history, including any professional evaluations undertaken at the request of the court or the family; a summary of the impact of the delinquency on the victim(s) and their views regarding an appropriate disposition; and a discussion of the elements of an ideal disposition, including the alternatives available along with the probation officer's recommendation (National Center for Juvenile Justice, 1991).

- *Supervision.*—The bulk of the work of juvenile probation officers is consumed in supervising youth placed by the courts on probation. This supervision includes both direct and regular contact with the offender (where resources permit) as well as collateral work with parents, schools, employers, and agency personnel. It is the probation officer's responsibility to enforce the orders of the court in the form of victim restitution or curfews, to oversee the activities of the offender as much as possible, to uncover any lapses in behavior or company, and to insure that the juvenile takes advantage of all opportunities for addressing personal problems such as substance abuse or school failings. While the ideal is to insure full compliance with all the conditions of probation and to see that the juvenile leaves probation better equipped for a law-abiding life than when supervision began, probation officers must also respond quickly to non-compliance and must move for revocation of probation and a more serious sentence when circumstances warrant.

  In discharging this core function of supervision, effective probation must play many roles—police officer, counselor, family therapist, educator, mentor, and disciplinarian. It is the successful juggling of these multiple roles, assessing which is most appropriate in a given situation, that leads to the most effective practice.

Recent Trends

Trends within the juvenile probation system are ominous. The number of delinquency petitions increased 23 percent between 1989 and 1993, leading to a 21 percent increase in probation caseloads. At the same time, there has been no concomitant increase in resources provided to the juvenile courts, though the public demand for accountability and hard-nosed, intensive treatment of juveniles before the court has become most pronounced (Torbet, 1996).

More worrisome still is the worsening profile of the juveniles coming before the court. Even though most youth placed on probation are adjudicated for property offenses, the percent placed on probation for violent offenses has increased significantly in the last years. In 1989, 17 percent of those youth on probation were adjudicated for violent offenses; by 1993, that percentage had increased to 21 percent, which translates into nearly a 25 percent growth in the proportion of violent offenders on juvenile probation (Torbet, 1996).

This trend has changed the character of probation work for many juvenile officers, who now must reckon with safety issues of a new dimension. A Justice Department survey found that one-third of officers polled had been assaulted in the line of duty and that 42 percent reported themselves as being either usually or always concerned for their safety (Torbet, 1996).

This problem is amplified by the generally held view that today's juveniles have a degree of unprecedented cold-bloodedness and remorselessness. While these impressions

are difficult to quantify in terms of traditional research, it has been this author's experience that, pervading discussions within both probation and police circles, has been the theme of a growing and alarming lack of concern and emotion among young offenders for both the consequences to their victims or even themselves of their involvement in serious violence. This is the new face of juvenile crime and it is a major departure from past experience, leaving few reliable blueprints for action available to concerned officials. In this connection, James Q. Wilson, a professor of public policy at UCLA, has referred to "youngsters who afterwards show us the blank, unremorseful stare of a feral, presocial being" (as quoted in DiIulio, 1996).

The Coming Plague—Juvenile Violence

In a column appearing in the *New York Times* in the summer of 1996, Princeton criminologist John DiIulio described the juvenile violence problems as "grave and growing" (p. A 15). The following trends underline DiIulio's concern and provide further evidence of an explosion of juvenile violence that has the potential to overwhelm America's big cities.

- The number of juveniles murdered grew by 82 percent between 1984 and 1994;
- While most trends in adult arrests for violent crime are down since 1990, juvenile arrests for serious violence increased 26 percent by 1994, including a 15 percent increase in murder;
- Juvenile arrest rates for weapons violations nearly doubled between 1987 and 1994;
- In 1980, the number of juveniles murdered by firearms was 47 percent of all murdered juveniles. By 1994, that percentage had increased to 67 percent (Snyder, et al., 1996).

Researchers have been able to attribute the greatest part of the increase in juvenile homicides to firearm-related murders. Al Blumsten (1996) has offered an analysis of this increase that traces its origins to the emergence of the crack cocaine trade in the mid 1980's and the acquisition of firearms that was a unique aspect of that emerging criminal enterprise. Young people who obtained guns originally for business purposes would also have them available in the event of other, more conventional types of conflicts among youth. The wider circulation and possession of firearms by the "players" caused other youth not involved in the drug trade to pick up guns for self-protection, as they did not wish to leave themselves at a tactical disadvantage.

Related research confirms that though firearm-related deaths among youth may be commonly seen as related to drug trade, in fact most such homicides are a byproduct of a violent argument rather than an event occurring during the commission of a crime (Pacific Center, 1994). It becomes plain then that strategies to reduce the most serious juvenile crime must address the issue of reducing gun possessions, an issue to be taken up later in this paper.

Two additional observations help frame the future of juvenile violence. It is commonly accepted that rates of juvenile crime, including violence, are driven by a demographic imperative. That is, as the number of people in the crime-prone age bracket—the teens and early twenties—ebbs and flows, so generally does the crime rate (Fox, 1996). The bad news in this respect is that America is entering a 10-15 year span when the crime-prone age cohort will increase substantially. For example, by the year 2000, there will be a million more people between the ages of 14–17 than there were in 1995, of which roughly half will be male (Wilson, 1995a). By the year 2010, there will be 74 million juveniles under age 17 (DiIulio, 1996). These estimates have led DiIulio and others to project that juvenile participation in murder, rape, and robbery will more than double by 2010.

However, the most recent data, while limited, is promising. During 1995, for the first time in ten years, the rate of juvenile homicide decreased for the second year in a row, by 15.2 percent (Butterfield, 1996). In a report issued by the U.S. Department of Justice, data gathered by the FBI revealed that the juvenile homicide rate, which reached an all-time high in 1993, declined over the following two years by 22.8 percent. While a two-year trend is certainly encouraging, it is too soon to predict that the demographical forecast is inoperative. Murders by young people are still alarmingly high and, as the number of teenagers increases over the next several years, it will take hard work and good fortune to sustain the currently hopeful trend.

Lessons Learned About Effective Interventions

While one could hardly guess it from the current tone of relentless punitiveness pervading the debates on criminal justice policy, there has been a near exponential increase over the last 15 years in what is known with some significant confidence about the characteristics of effective correctional interventions. While the amount of public funds devoted to criminal research pales in comparison with that devoted to other forms of basic research (e.g., health issues), researchers have nonetheless made important advances in our understanding of the ingredients necessary to purposefully impact criminal and delinquent careers (Petersilia 1990).

Canadian criminologists Don Andrews and Paul Gendreau have been at the leading edge of this research. By employing the relatively new statistical technique of mega-analysis, which allows for combining the results of multiple studies of a similar type to test the aggregate strength of a given intervention, Andrews and Gendreau (1990) have been able to identify key factors that can be utilized in the construction of correctional programs, factors which when used in combination can reduce recidivism by as much as 50 percent. Their research looked equally at juvenile and adult programs and found commonalities across the two groups.

Effective programs had the following features:

- They were intensive and behavioral. Intensity was meas-

ured by both the absorption of the offenders' daily schedule and the duration of the program over time. Appropriate services in this respect will occupy 40–70 percent of the offenders' time and last an average of six months. Behavioral programs will establish a regimen of positive reinforcements for pro-social behavior and will incorporate a modeling approach including demonstrations of positive behavior that offenders are then encouraged to imitate;

- They target high risk offenders and criminogenic needs. Somewhat surprisingly, effective programs worked best with offenders classified as high-risk. This effect is strengthened if the program first identifies the presence of individual needs known to be predictive of recidivism (e.g. substance abuse, poor self-control) and then focuses on eliminating the problem. Targeting needs not proven to be related to criminal behavior (e.g. self-esteem) will not produce favorable results;
- Treatment modalities and counselors must be matched with individual offender types, a principle Andrews and Gendreau refer to as "responsivity." The program approach must be matched with the learning style and personality of the offender—a one-size-fits-all approach will fail. Taking care to compare the style of any therapist/counselor with the personality of the offender (e.g., anxious offenders should be matched with especially sensitive counselors) also is critical;
- They provide pro-social contexts and activities and emphasize advocacy and brokerage. Effective programs will replace the normal offender networks with new circles of peers and contacts who are involved in law-abiding lifestyles. Success will be enhanced by aggressive efforts to link offenders with community agencies offering needed services. Most offenders will be unfamiliar with strategies for working the community and effective programs can serve as a bridge to facilitate a kind of mainstreaming of offenders (Gendreau, 1996).

Lipsey (1991) undertook a mega-analysis of some 400 juvenile programs and reached findings similar to those of Andrews and Gendreau. Lipsey's findings are impressive due to the much greater number of programs included in the analysis and the fact that he restricted his study to juvenile programs. In addition to those findings that parallel earlier results, Lipsey further discovered that skill-building programs and those that were closely monitored, usually by a research team, for program implementation and integrity, were successful.

Effectiveness of Specific Programs

Traditional Probation

Despite the fact that it is clearly the treatment of choice for most juvenile offenders, there has been amazingly little major research on the effectiveness of regular probation (Clear and Braga, 1995). Targeted at only a small percentage of the overall probation population, researchers' monies and efforts have more commonly been devoted to more recent innovations such as intensive supervision, electronic monitoring, or boot camps.

One noteworthy exception to this trend is a study published in 1988 by Wooldredge, in which he analyzed the impact of four different types of dispositions—including traditional probation—imposed by Illinois juvenile courts. This study of the subsequent recidivism of over two thousand delinquents found that lengthy probation supervision if combined with community treatment had the greatest effect in suppressing later recidivism, particularly when compared with incarceration or outright dismissal. Wooldredge concludes as follows:

> While it appears that "doing something" is [usually] better than "doing nothing" for eliminating recidivism, this study suggests that differences in "something" may also yield differences in recidivism rates. Specifically, two years of court supervision with community treatment is superior to any other sentence examined in this study for eliminating and [delaying] recidivism. On the other hand, sentences involving detention should be carefully considered in relating the types of delinquents they may be effective on (Wooldredge, 1988, pp.281, 293).

Juvenile Intensive Supervision

The concept of intensive probation supervision (IPS) was one of a new generation of strategies to emerge from the intermediate sanctions movement. First developed for adult offenders, IPS programs were intended both to provide an alternative to incarceration for appropriate offenders as well as to enhance the impact of supervision on high-risk probationers.

The concept spread to the juvenile domain quickly and spawned similar experimentation, though not nearly on the same scale as the adult programs. The program models emphasized reduced caseloads and, in contrast to similar efforts in the 1960's, put a premium on closer surveillance and monitoring, with reduced attention to treatment (Armstrong, 1991).

As with so much else in the juvenile correctional field, little reliable scientific evidence is available on program impact. The National Council on Crime and Delinquency (NCC) undertook in the late 80's a review of some 41 programs and found that evaluative data of program sites was "generally nonexistent" (Krisberg, et al. 1989, p. 40). A similar conclusion was reached by Armstrong (1991) who found only five scientifically acceptable program evaluations and further criticized the absence of any apparent theoretical base for the programs.

Though useful research on juvenile IPS programs is scarce, two studies produced at least minimally reliable results. In the New Pride Replication Project conducted between 1980 and 1984, ten newly established juvenile IPS programs were located in both medium and large cities. The program was comprised of two six-month phases, the first involving nearly daily contact which gradually decreased during the second phase. The programs supplemented this

intensive supervision with heavy doses of alternative schooling, vocational training, and job placement.

After gathering three years of outcome data, findings revealed no significant differences between the experiment and control groups (Palmer, 1992). A similar study by Barton and Butts (1990) on three juvenile IPS programs using random assignment found comparable results, though it was asserted that the IPS cost less than one third the expense of incarceration.

More recently, an experiment was undertaken by the Toledo Juvenile Court in using IPS as a diversion from commitment to the state youth authority. Employing a mix of surveillance and treatment techniques, the program extended over six months and the research employed an 18-month follow-up period. Results found that there was no difference in subsequent recidivism between the IPS youth and a matched group committed to the Ohio Department of Youth Services. Researchers concluded that the IPS program posed no greater threat to public safety, at approximately 20 percent of the cost of incarcerating the same youth (Weibush, 1993).

Violent Offenders

In light of the prospect of a growing number of violent juveniles, information specific to intervening with this particular offender is especially critical. Recent research includes one major evaluation of intensive supervision for violent juveniles, though it must be said that this program *followed* commitment to a small, secure juvenile facility with subsequent stays in community programs for several months. Consequently, it would be difficult to compare the population and prior experience to that of most juvenile probationers. The supervision focused on job placement, education, and to some lesser extent, family counseling and peer support.

In a two-year follow-up measuring for subsequent felony or violent arrests, no significant differences were found between program youth and a control group who were institutionalized for eight months and then placed on standard juvenile parole. Some evidence was found that sites which had stronger and/or consistently implemented treatment components produced better results (Palmer, 1992).

Juvenile Boot Camp

Boot camps have become a popular option on the continuum of sanctions for adult offenders so—as with IPS programs—it is not surprising that juvenile agencies have implemented their own versions. Such programs emphasize strong discipline, modeled on military programs, and a strict physical conditioning regimen. The typical program is aimed at non-violent offenders, and involves a 3-month commitment followed by after-care (Peterson, 1996).

In 1992, the U.S. Justice Department's Office of Juvenile Justice and Delinquency Prevention (OJJDP) funded three new juvenile boot camps and undertook impact evaluations. The subsequent reports included the following findings:

- Most participants completed the program.
- Academic skills were significantly improved.
- A significant number of participants found jobs during aftercare.
- No reduction in recidivism was found compared to a control group of youth who were institutionalized or placed on probation (Peterson, 1996).

How Intensive is Intensive?

All of the programs reviewed above represent the characteristic efforts at recent reform in juvenile corrections and are alike in their emphasis on increased oversight of offenders, coupled in some instances (the more effective experiments) with increased rehabilitative services. They are also alike in having largely failed by the most important measure—recidivism.

Why has there been so little success? Ted Palmer, arguably the dean of research in juvenile corrections, argues that the "intensive" programs have not been intensive enough, in light of the multiple needs presented by high risk offenders:

> …given the interrelatedness of most serious, multiple offenders' difficulties and deficits, it is perhaps overly optimistic to expect fairly short-term programs to help most such individuals sort out and settle these matters once and for all, even if the programs are intensive (Palmer, 1992, p.112).

It may be that the system has been attempting to generate success on the cheap. To create expectations of turning very troubled youth from confirmed pathways of negative and predatory behavior—patterns developed over perhaps a decade of poor if not harmful rearing—through the application of concentrated service for a 6-12 month period, may be entirely unrealistic. To do the impossible, we have generally spent less than one-third the cost of institutionalizing these same youth.

Rather than congratulate ourselves for the short-term cost savings represented by diversion from incarceration to an intermediate sanction, we should think of making a substantial investment in the near term—something, let us say, more equivalent to the cost of a year's incarceration—in order to increase the chances of long-term significant savings represented by future imprisonments avoided. Americans, it has been often observed, are congenitally drawn to short-term strategies and addicted to quick returns on their investment. What has been found not to work in other domains (business, personal investment, etc.) may similarly prove self-defeating in juvenile justice.

Juvenile Transfer to Adult Court

One clear result of the growing violence committed by youth is an increased reliance on the "transfer" option—that is, the power of the system to move jurisdiction over juvenile offenders into adult court, to take advantage of the

greater penalties available on the adult level. The popularity of the transfer option is reflected in both an increased number of cases where jurisdiction is waived (a 41 percent increase from 1989-1993) as well as legislative reforms aimed at making waivers more automated than discretionary (Howell, et al., 1996).

Studies conducted on the comparative effectiveness of handling similar offenders in adult versus juvenile court give the advantage to juvenile court where recidivism is the measure. Most studies indicate that juveniles imprisoned in adult facilities were more likely to be arrested following release.

In the making of criminal or juvenile justice policy, frequently political and ideological considerations will override (if not totally ignore) the available empirical data. The move to transfer a greater number of juvenile offenders to adult court is not likely to abate; it is a specific reform that has become captive of the "get tough" philosophy that unquestionably holds sway in the current climate.

Five Steps Toward a Reformed Juvenile Probation

Let Research Drive Policy

Despite an ever-growing body of research relevant to the formation of criminal justice policy, it remains remarkable how little empirical findings inform the design of programs in juvenile justice. As a result of this rather willful ignorance, the juvenile probation field can be found to embrace existing models for intervention (e.g. juvenile IPS) with scant if any evidence that such models work (Blumstein and Petersilia, 1995).

The field too often becomes enthralled by the latest fad and rushes to adopt it, irrespective of the evidence that it has or can work. Finkenauer (1982) has referred to this as the "panacea phenomenon" and it seems no less common 15 years after he first identified this tendency.

This myopia on the part of correctional administrators has multiple explanations. Practitioners typically value the wisdom imparted by experience more than that contained in criminological journals. They prefer to consult their own intuition and gut instincts, more than any hard data. Secondly, the pertinent research is not as accessible as it might be. This is a product of the conventions of the academy, which rewards publication in criminological journals more so than writing done for the publications practitioners would read or consult. Thirdly, administrators and policy makers live and work in a politically charged atmosphere where consideration of "what works" is only one of the relevant considerations in developing policy. In the administrator's world, that which is congruent with the current political climate may indeed depart from what makes sense empirically.

Even allowing for the burden to survive the ideological wars, juvenile probation administrators could do a much better job of incorporating a research perspective into their decision making. This research-sensitive approach would take two forms: first, managers must realize that policy rarely needs to be created in a vacuum; that is, in setting policy in any particular direction, there will usually be some data bearing on the decision to be made. Becoming familiar with the techniques for adequately researching the literature and accessing the federal information services is crucial, which implies the staffing of at least a modest research division.

Secondly, all new initiatives should include a strong evaluation component. We have missed opportunities to learn from much previous experimentation because data was not kept in a way that facilitated any useful analysis (Palmer, 1992). All new programs should be seen as experiments, with clearly demonstrated time lines and methodologies for assessing impact. Juvenile probation agencies must become "learning organizations" (Senge, 1990) in which no course of action becomes institutionalized until its value is proven and feedback loops become a regular feature of the informational architecture of an agency.

Instead of viewing decisions about future programs as primarily a choice between hard or soft, tough or lenient, probation administrators should train themselves to think more in terms of smart versus dumb. "Smart" programs are those built on existing research with strong evaluation components. While not all programs sponsored by juvenile probation must meet this test absolutely (restitution programs are vital, irrespective of their impact on recidivism), juvenile probation will gain in credibility and impact as it gets "smarter."

Emphasize Early Intervention

If juvenile probation were analogized to an investment strategy, the enterprise would be facing bankruptcy. In many respects, resources are allocated to that area (older, chronic offenders) where they are least likely to gain an impressive return. First offenders, by contrast, are all but ignored. Demonstrated incapacity for reform—not amenability to change—is what earns attention from the system. That must change.

Much has been learned in the past 20 years about the early precursors for chronic delinquency (Greenwood, 1995). We have learned, for example, that children whose parents are cold, cruel and inconsistent in their parenting skills are at greatly increased risk for becoming enmeshed in the juvenile justice system.

So what? Is there anything that can be done about it? Yes! Models have been developed that work dramatically in training parents to more effectively supervise their own children themselves, reducing significantly their later delinquencies. In a report released in the spring of 1996, Rand Corporation researchers identified this form of parent training as being among the two or three most cost-effective strategies in terms of reduction in crime and delinquency (Greenwood, et al., 1996). An elaborate and highly tested model for this training, developed by the Oregon Social Learning Center, has been supported by repeated evaluations (Wilson, 1995b).

One collateral finding from this research—in fact from nearly all research on prevention—is that intervening earlier (in or before the primary grades) yields stronger results. Most delinquents enter the juvenile court in their early teens. Can they be reached earlier?

Quite apart from what schools and other communities can do with younger children, juvenile courts have access to young children encountered either as the subject of abuse and neglect petitions or as younger siblings of older delinquents. By reconceptualizing their mandate as intervening with families instead of solely with the convicted juvenile, courts can truly enter the prevention business in a viable way. The Rand report strongly suggests that a small amount spent on young children and their families earlier can save much more substantial costs later.

Intervening aggressively with abusive families would very likely repay itself many times over. Juveniles found guilty of the more serious crimes typically have long histories of abuse. A National Institute of Justice study found that an abused or neglected child has a 40 percent greater chance of becoming delinquent than other children (DiIulio, 1996).

Assessment instruments are now available to determine the ongoing risk for abuse within families as well as to predict the likelihood that patterns of abuse will change once an intervention has commenced (Gelles, 1996). Focusing attention on abusive families will pay off both in terms of child protection and delinquency prevention.

The Los Angeles Juvenile Court has undertaken a special project with first offenders who have the hallmarks of chronic delinquents. Instead of waiting for several arrests before intensive services are provided, the notion now will be that a greater investment earlier on targeted youth makes more sense (Humes, 1996). This preventive approach promises to work better and cost less.

Emphasize the Paying of Just Debts

The public image of the Juvenile Court has been marred for decades now by the impression that it coddles vicious children and "treats" kids who are more deserving of punishment.

Probation administrators ignore this perception at their peril, as it undermines their credibility and diminishes their support. Both as a matter of justice and good correctional practice, juveniles should get their "just deserts" for harm done. Restitution and community service programs repay and restore victims and harmed communities and counter the prevalent notion that juvenile offenders are immune from any real penalties, an impression certainly re-enforced by Humes' (1996) recent study of the Los Angeles Juvenile Court.

In his otherwise bleak and discouraging account, Humes relates the story of a program that places juvenile probationers in a school for disabled children where the probationers must discharge their community service responsibilities by caring for and feeding young children with major disabilities.

A juvenile prosecutor describes the impact of the program as follows:

> These are street thugs, serious offenders, some of the worst kids who come through here. Most of them have served time in camp or at the Youth Authority, and they're harder than ever. Then they end up feeding and bathing autistic and wheelchair-bound kids, working with them intensively, having these handicapped folks depending on them utterly. It works a kind of magic. It softens them. For the first time in their lives, someone is dependent on them. And it changes them. It's been going for four years, there's never been a problem, never anyone neglected or hurt. Rival gang members go there and work together side by side. Sometimes it seems like a miracle (p.173).

One of the most promising new paradigms in juvenile justice is the "Balanced and Restorative Justice Mode" developed by Gordon Bazemore of Florida Atlantic University and his colleagues. In a compelling design that attempts to simultaneously serve the just expectations of victim, community, and offender alike, the following principle is enunciated: "When an offense occurs by the offender, an obligation incurs by the offender to the victim that must be fulfilled" (Maloney et al., 1995, p. 43).

All juvenile probationers—in the interests of justice, for the sake of any injured victims or communities, and, not insignificantly, for their own moral education—must be compelled to pay their just debts. In doing so, wounds heal, losses are restored, and the moral sentiments of the community are assuaged.

Make Probation Character Building

In the parlance of traditional clinical assessments, most delinquents have been labeled as "character disordered." To many observers, this was a kind of "default" diagnosis that filled in the blank when no other form of mental illness seemed present.

Indeed, delinquents do seem lacking in what we refer to commonly as character, by which we generally mean habits of thought and action that reveal a fidelity to principles of integrity, good comportment, concern for others, and self-control (Wilson, 1995b).

Neo-conservative perspectives on crime have brought the issue of character defects among delinquents and criminals to the foreground, in contrast to the medical model which attributed various "problems" and "illnesses" to offenders, deficiencies presumably beyond their control and therefore beyond their responsibility (Wilson, 1995a). Imputing bad character to delinquents would seem to imply greater responsibility for wrong-doing while also pointing to a different type of remediation.

Can a term of juvenile probation build character? As Wilson (1995b) suggests, we know little about how to inculcate character. Yet we have some clues. According to Aristotle, character is reflected not in some inner quality or virtue, but in a pattern of commendable actions which, in the doing, both build and reveal character.

In the Aristotelian sense then, juvenile courts can attempt to build character by compelling probationers to complete actions that youth of high character would undertake. Compensating for harm done, discussed above, is surely part of this. Regular attendance and good behavior at school would also reflect character in action. Obeying the reason-

able requests of parents and respectable conduct at home and in the neighborhood would further exemplify character. If Aristotle was right that we become good by doing good, requiring juvenile probationers to do good even though they may not seem or yet be good could, over time, build what we call character.

As Andrews and Kiessling (1980) found, effective probation officers model pro-social behavior. Juvenile probation officers must then see themselves as moral educators, who must constantly look for opportunities to exemplify good character to those they supervise. Every occasion where self-restraint is exercised in the face of a probationer's provocation, where kindness and courtesy is extended to a probationer's family in defiance of the juvenile's expectation, and every effort by the officer to insure fair treatment in dispositional and revocational proceedings are opportunities for character building and moral education.

If character is revealed in making moral decisions, then juvenile probation agencies could undertake more explicit strategies for moral development. Though employed more in educational than correctional settings, techniques for instilling a heightened moral sense have been used successfully in advancing the moral reasoning powers of young children (Lickona, 1992). Based on Lawrence Kohlberg's highly regarded theory of moral development, participants in the program are led through discussions of moral dilemmas where they must reconcile competing interests and reach just solutions. Research has shown that subjects can elevate their moral reasoning away from more selfish egocentric perspectives to broader more altruistic and empathetic thinking.

This psychoeducational strategy would lend itself readily to the probation environment. In lieu of what is too often a rather mechanical and vacuous exchange with a probation officer once or twice each month, young offenders could participate in discussion groups led by trained probation officers with both offenders and staff likely feeling that they are engaged in a more productive experience.

Prioritize Violence Prevention

In light of the growing rates of serious juvenile violence and with this trend expected to continue into the next decade (Fox, 1996), juvenile probation must focus on efforts it can undertake to suppress violent behavior.

As mentioned earlier, there is scant evidence that the more punitive strategies will have long-term impact. (It must be said that there are independent "just deserts" rationales for punishing seriously violent offenders, but this does not account for first offenders showing aggressive tendencies.) Again drawing from efforts more commonly found in schools, some juvenile probation departments have undertaken violence prevention programs with juvenile probationers (Office of the Commissioner of Probation, 1995). These programs employ curricula designed to improve the social, problem-solving, and anger management skills of young offenders. While curricula vary, most employ an interactive, exercise-based, skill-building model that extends over an average of 10-15 sessions of an hour or so duration (Brewer, et al., 1996).

Evaluations conducted on such programs indicate that they are generally effective in improving social skills, as measured by their response to hypothetical conflict solutions (Brewer, et al., 1996). An evaluation of a program undertaken with juvenile probationers in Massachusetts demonstrated significant reductions in subsequent juvenile violence (Romano, 1996). More importantly, this program, sponsored by the Boston Juvenile Court for several years now, attests to the viability of such programming within the juvenile probation context.

Given the aforementioned growth in juvenile violence attributed to firearms, prevention programs targeted on this area warrant consideration. Unfortunately, very little has been done: "Programs that intervene with young people who use guns or have been caught with guns unfortunately are rare and in dire need of further development." (Office of Juvenile Justice and Delinquency Prevention, 1996, p.16).

Nonetheless, initiating more efforts in this area makes sense. Studies of handgun possession by youth indicate that handguns are more likely to be owned by individuals with a prior record of violent behavior, particularly where the gun is illegal (OJJDP, 1996). This suggests a real potential pay-off in targeting juvenile probationers.

Firearm prevention programs have been undertaken in several juvenile jurisdictions, though thus far little evaluative information is available. Pima County Arizona Juvenile Court, for example, operates a course for youth who, though not chronic offenders, are before the court for offenses involving the carrying or firing of a gun or youth who have been identified as being at risk for firearm use. Parents are required to attend these educational sessions, where the law governing gun use and the dangers implicit in unauthorized use are explained (OJJDP, 1996).

Given the extent of the violence problem, further experimentation and evolution seems highly warranted. Moreover, a greater reliance on substantive group-work modalities offers a common-sense alternative to the traditional and exhausted model of one-on-one contact, cynically derided within the profession as "fifteen-minutes-of-avoiding-eye-contact-once-a-month."

The Prospects Ahead

The five reforms recommended above constitute a modest and therefore doable agenda, not one that would likely entail additional large expenditures but would rely on reallocating existing resources and redeploying current staff. Implementing them will not deliver utopian, crime-free communities in the next millennium, but we have reason to believe they would be worth the effort.

Progressive administrators will no doubt consider such initiatives, as well as others. As to the rest, a changing climate in governmental circles may compel the reluctant and unimaginative to undertake steps toward building a system both more effective and more congruent with public atti-

tudes and expectations (Corbett, 1996). In the face of disturbing projections for future rates of youthful violence, immediate action would not seem premature.

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Juvenile Focus*

By Alvin W. Cohn, D. Crim.
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Youth Court Programs: The American Probation and Parole Association (APPA) has been awarded a grant by the Office of Juvenile Justice and Delinquency Prevention (OJJDP) and other federal agencies designed to help strengthen the ability of the juvenile justice system to hold youth accountable for their behavior, while enhancing public safety through youth participation in the juvenile justice system. To facilitate this process, APPA will (1) develop and publish national guidelines for youth court programs (also called teen courts) and (2) provide training and technical assistance through regional training programs to assist jurisdictions in implementing promising programs and practices that reflect the intent of and/or adhere to the identified guidelines.

For further information, contact Tracy Godwin, at (606) 244-8001.

Treatment Directory: The Substance Abuse and Mental Health Services Administration has published *The National Directory of Drug Abuse and Alcoholism Treatment and Prevention Programs*. This user-friendly guide presents information on thousands of programs for quick reference by health care providers, social workers, managed care organizations, and the public. The detailed information available enables clinicians and people with special needs to locate appropriate treatment and prevention programs within geographical areas.

To order copies of the directory free of charge, contact the National Clearinghouse for Alcohol and Drug Information, (800) 729-6686. The directory is also available electronically through the Internet at www.samhsa.gov.

Juvenile Reintegration: The National Institute of Justice (NIJ) has recently released *Reintegrating Juvenile Offenders into the Community*, by David Altschuler. This Research Preview (#FS-000234) presents the preliminary evaluation findings of the Intensive Aftercare Program, a demonstration project to provide juvenile offenders with comprehensive ongoing services, both while they are incarcerated and when they return to their communities. The researchers found that juveniles under community supervision who participated in the program averaged between two and four times as many face-to-face and telephone contacts with parole officers as juveniles who did not participate in the program.

To obtain a copy, contact the National Criminal Justice Reference Service (800) 851-3420, or the NIJ Web site, http://www.ojp.usdoj.gov/nij.

Day Care Centers: A recent study of day care by the federal government found that two-thirds of the centers had unsafe conditions that could place children in danger of injury or death. The Consumer Product Safety Commission reported that it had examined 220 licensed child care settings and found that most contained at least one safety violation, such as crib bedding that could suffocate babies or loops on window blind cords that could cause strangulation.

The agency said about 31,000 children aged four and younger were treated in 1997 in hospital emergency rooms for injuries they received in child care and school settings, and at least 56 children have died in child care since 1990.

Foster Care: Across the country, adoptions of foster children last year were approximately 40 percent higher than in 1995, increasing to more than 36,000, according to state figures collected by the North American Council on Adoptable Children (NACAC) and reviewed by the U.S. Department of Health and Human Services. The rapid increase is the result of recent federal and state efforts to revamp a system that has trapped tens of thousands of children in foster care, often shuffling them between homes and institutions for years.

Teen Finances: In 1998, teens earned $121 billion, which was nine percent more than in 1997. But they spent even more—$141 billion, up 16 percent from 1997. According to Teenage Research Unlimited, 69 percent of the teens put funds into savings, 20 percent into a checking account, 17 percent into stocks or bonds, and seven percent into mutual funds. Where the funds came from: 55 percent of teens said from parents, 47 percent from odd jobs, 44 percent from gifts, 30 percent from part-time jobs, and 12 percent from full-time jobs. One-third of the teens aged 18 or 19 reported that they had their own credit cards and nine percent said they had access to their parents' credit card.

Arts Education: An arts report card released by the U.S. Education Department's National Center for Education Statistics (regarding eighth graders) reports that 72 percent of schools offer a music curriculum; 64 percent offer visual arts; only 10 percent offer dance; and 15 percent theater. However, art instruction in most schools is merely textbook learning, as 35 percent of the students say they almost never sing; 32 percent say the same thing about playing instruments; and only a third report ever painting or drawing.

Transforming the Juvenile Court: The Urban Institute

***Editor's note: Please send information about new resources, developments, and programs in juvenile justice and delinquency to Alvin W. Cohn, President, Administration of Justice Services, Inc. 15005 Westbury Road, Rockville, MD 20853.**

recently released a Crime Policy Report, *Delinquents or Criminals: Policy Options for Young Offenders*. The report, by Adele Harrell and Jeffrey Butts, proposes a new model for the juvenile justice system. It would utilize an array of specialized courts (e.g., drug, teen, and gun courts) designed to handle specific types of offenses. The authors also maintain that courts must have a wider range of choices to deal effectively with offenders and that they need innovation. The report does not lay out a specific blueprint for a new system. Rather, it offers a general description of the new model.

For more information or to receive a copy of the report, contact the Urban Institute (202) 261-5709, or visit their website at www.urban.gov.

Fathers and Child Support: Fathers who pay child support tend to have children who do better in school, both in terms of school achievement and behavior, according to *Child Trends*, a nonprofit, nonpartisan research center. The report also indicates that fathers who have greater involvement in routine activities with their children (e.g., helping with homework, eating meals together) have children with fewer behavior problems, greater sociability, and better school performance. Additionally, fathers who are able to provide economically for their children are more likely to stay invested in their marriages or partner relationships and are more likely to be engaged with and nurturing of their children, even if they live apart from them. Fathers are more likely to promote young children's intellectual and social development through physical play, while mothers are more likely to do so through talking and teaching.

Education for At-Risk Youth: A Boys & Girls Clubs of America program to raise at-risk youth's levels of academic achievement shows signs of success. The program, implemented in five cities and called Project Learn, will be employed at 10 new learning centers as models for implementation of the program nationwide. The centers, which will be in New York City, are funded by the New York Life Foundation, and are designed to stress close partnerships among students, parents, and educators.

An evaluation of the project shows that, compared to students in other after-school programs, its students had a 15 percent higher overall grade point average and 87 percent fewer absences. The program involves five components: homework help and tutoring; activities during leisure hours to reinforce what is taught in the classroom; encouraging parents to support their children in school; collaboration with schools; and goal-setting to provide opportunities to celebrate academic achievements.

Contact the website at www.bgca.org for more information.

Substance Abuse: The use of alcohol, tobacco, and other drugs by youth has been measured since 1975 by the Monitoring the Future (previously called the High School Senior) Survey. Among 12th graders, drug use peaked in 1981, with slightly more than 65 percent of the seniors reporting that they had used an illicit drug sometime in the past. During the following decade, there was a steady decline in the proportion of youth reporting use of illicit drugs during their lives, dropping to a low of 40.7 percent in 1992.

Beginning in 1993, this trend reversed. By 1996, as many as 50.8 percent of high school seniors reported using illicit drugs at some time. According to the Institute for Social Research at the University of Michigan, not only are more youth using mood-altering substances than in the previous decade, they are beginning to ingest them at increasingly younger ages. Further, in a study conducted in Washington, DC, it was found that youth who sold and used drugs were more likely to commit crimes than those who only sold drugs or only used drugs. Heavy drug users were more likely to commit property crimes than nonusers, and youth who trafficked in drugs reported higher rates of crimes against persons.

Research Findings: Antisocial behaviors are largely learned and at an early age…juvenile offenders fail to learn some of the basic social survival skills that would enable them to make decisions and live their lives in a pro-social manner…prevention programs for youth mounted early on can be more effective than punitive strategies pursued after serious behavior has manifested itself…regarding the causes and prevention of violence, a balanced array of strategies which includes prevention as well as the more traditional response of punishment seems to be effective….

It is possible to identify reliably risk factors that place youth at-risk for substance abuse as well as resiliency and protective factors that can help youth avoid substance abuse…offenders with higher levels of education, female offenders, and offenders with lengthy community corrections sanctions tend to violate less often and are rearrested less often…parent training reduces chronic delinquency…correctional networking with law enforcement helps to reduce gang activity…"coerced" addiction treatments are more effective than voluntary participation…offenders on electronic monitoring experience pains of punishment similar to those of incarceration…victim offender mediation programs working with juvenile offenders in four states found that 90 percent of victims were satisfied with the outcome of the mediation process….

Weak school commitment and poor school performance are associated with increased involvement in delinquency and drug use…gang members account for 86 percent of serious delinquent acts; 69 percent of violent delinquent acts, and 70 percent of drug sales in Rochester, NY…more than half (53 percent) of the youth involved in a Denver project ages 11 through 15 in 1987 were arrested over the next five years—system processing did not have a deterrent effect—the best predictors of success were having conventional friends, having a stable family and good parental monitoring, having positive expectations for the future, and not having delinquent peers.

Teens, Crime, and the Community: TCC is a partnership between the National Crime Prevention Council (NCPC) and Street Law, Inc., funded by OJJDP. It is a national program that combines education and action to reduce teen victimization. Through community service projects, TCC provides a forum for youth to take a stand against violence and become part of the solution by improving their schools and

neighborhoods. More than half a million teenagers in 40 states have participated in TCC since it began in 1985.

For further information, contact TCC at www.nationaltcc.org or at NCPC at (202) 466-6272, ext. 152.

Statistics: Youth homicide rates are half what they were five years ago, but twice as high as they were 15 years ago.

- The highest amount of violent crime occurs in August, the lowest in February.
- Almost all (94 percent of black and 87 percent of white) murder victims are killed by members of their own race.
- Murders connected to robbery, drug trafficking, arguments, and juvenile gangs continued a trend of significant decline since 1994.
- Every day, 2,833 children drop out of school.
- Youth account for 18 percent of all violent crime in the U.S.
- Youth account for 33 percent of all serious property crime.
- Every day, 135,000 children carry a gun to school.
- Seven billion dollars are spent annually to incarcerate young offenders and school dropouts.
- Immigrant children now represent one out of four of all children living in poverty in the U.S.
- One in seven of the nation's children ages 10 to 18 is not covered by health insurance; amounting to 4.2 million adolescents.
- National arrests for female juveniles increased 41 percent between 1985 and 1995; male arrests increased by 18 percent.
- In 1997, about six juveniles were murdered in the U.S. every day; with 33 percent under age 6 and 40 percent killed by a family member.
- Allowing one youth to leave high school for a life of crime and drug abuse costs society $2 million.
- In 1997, an estimated 2,300 murders (approximately 12 percent of all murders) in the U.S. involved at least one juvenile offender.
- On a typical day in 1997, nearly 106,000 juveniles were being held in a residential facility as a result of a law violation.
- Black juveniles are held in residential custody in the U.S. at twice the rate for Hispanics and five times the rate for whites.
- In 1995, the average number of juveniles detained in 503 public facilities on a daily basis was 23,000, with an additional 7,900 held in adult jails, for a 68 percent increase between 1985 and 1995.
- Juvenile arrests between 1985 and 1996 increased 23 percent; juvenile drug arrests increased 78 percent; violent crime rates increased by 53 percent; arrests for female juveniles increased 41 percent, while the male increase was 18 percent; and female violence arrests increased by 111 percent.

Accountability-Based Sanctions: OJJDP has recently published "Developing and Administering Accountability-Based Sanctions for Juveniles." It is a 12-page bulletin and was written by Patrick Griffin, with the National Center for Juvenile Justice and provides an overview of graduated, community-based sanctions that seek to restore the broken bonds between the juvenile offender and the victimized community.

This publication (NCJ 177612) is available free from the Juvenile Justice Clearinghouse, at (800) 638-8736, or can be found online at http://www.ncjrs.org/jjgen.htm#177612.

Residential Placements: Out-of-home placements for adjudicated youth in the U.S. (28 percent in 1996) included residential treatment centers, juvenile corrections facilities, foster homes, and group homes. The number placed rose from 105,600 in 1987 to 159,400 in 1996. Drug and person offense cases contributed most to the increase, followed by public order and property offenses. White youth accounted for 59 percent of the placements. However, adjudicated cases resulting in placement increased least for white youth (43 percent) compared with black youth (58 percent) and youth of other races (128 percent).

HIV: Young gay men are being hit with a surge in HIV transmission, even though AIDS-related deaths have been declining in the U.S., according to the Centers for Disease Control and Prevention. Gay males between the ages of 15 and 22 are contracting HIV at an accelerating rate, with approximately three percent of all young gay and bisexual men becoming infected every year since 1991. African-American gay youth are at a greater risk than any other group of teenagers, with a four percent per year new infection rate on top of a previously infected population of 14 percent. Seven percent of the Hispanic at-risk population and seven percent of whites are HIV-infected.

Drug Use and Teenagers: Illicit drug use by American teenagers dropped sharply in 1998, with less than one in 10 youths now saying they use cocaine, marijuana, or other illegal drugs, according to the National Household Survey on Drug Abuse. The survey reports that 9.9 percent of youths ages 12 to 17 reported that they were using illegal drugs in 1998, compared with 11.4 percent in the same age category in 1997. But the report, which surveyed 25,500 Americans 12 and older also found no substantial change in overall drug use across age groups.

The survey estimated that last year, 13.6 Americans or 6.2 percent of the population 12 or older were drug users—defined as those who had used an illicit drug at least once in the past 30 days. In 1997, the figure was 13.9 million users. According to the annual survey, drug use among 12 to 17 year-olds hit a peak of 16.3 percent in 1979, and declined during the 1980s to reach a low point of 5.3 percent in 1992.

Slightly more than half of all Americans 12 and older were

current users of alcohol in 1998, including 10.4 million who were ages 12 to 20. Of this youngest group, 5.1 million engaged in "binge drinking," defined as having five or more drinks at least once in the preceding 30 days prior to the survey.

Teen Drug Abuse Guidelines: Teenagers are not "little adults" and treating their drug problems like those of adults is a recipe for failure, according to the U.S. Substance Abuse and Mental Health Services Administration (SAMHSA). The agency has issued new guidelines and instructions to help youth workers identify and intervene with substance-abusing teens. SAMHSA reports that on any given day, about 44,000 teens under age 18 were in rehabilitation in 1991. By 1996, that number had almost doubled to 77,000.

The guidelines, directed toward anyone who works with youth, are published by the Center for Substance Abuse Treatment (CSAT) as Treatment Improvement Protocols (TIPs) and include:

— Indicators of youth involvement in illicit drug use
— The onset of substance abuse
— Voluntary versus coerced treatment
— Degree of academic failure

For more information about CSAT, SAMHSA, and TIPs, contact the National Clearinghouse for Alcohol and Drug Information at (800) 729-6686 or at www.samhsa.gov.

Child Labor Crackdown: In an effort to crack down on door-to-door peddling by youth, the U.S. Department of Labor, Interstate Labor Standards Association, and the National Child Labor Coalition recently launched a campaign called "Candy Kids: Sweatshops of the Streets." DOL has also created an online bulletin board for state labor law enforcement agencies to share information about adults who run exploitive youth peddling operations, often known as "traveling youth crews."

For additional information, contact (202) 835-3323.

Girls and Happiness: In a survey conducted by the National Campaign to Prevent Teen Pregnancy, results show that levels of happiness among high school senior girls have plummeted since the 1970s, at the same time that high school senior boys are feeling happier.

The report demonstrates that teen pregnancy and drug use, which get most of the attention in research on girls, are the tip of the iceberg of the "quiet disturbance" facing many girls, which also includes depression, suicidal thoughts, and anxiety. Among the problems many girls face include: anxiety about their bodies, unwanted sexual attention, and early sex.

The report criticizes the "hypersexualized media" and its pressure on girls to conform to unachievable body ideals. The report recommends that the media present features and storylines that clearly communicate the risks of problem behaviors and the benefits of achievement, and present images that more accurately reflect the variety of shapes and sizes and the racial and ethnic diversity of adolescent girls.

Newspapers for Foster Kids: *Getting Ready* is a newspaper designed to help foster children prepare for independent living. It is written by current and former foster kids. A recent issue focused on transportation issues, such as buying a used car and lowering insurance bills. Published monthly by Northwest Media, Inc., in Eugene, OR, the annual subscription rate is $15. Contact 541-0177.

Foster Care Youth United is written primarily by foster children age 14 and older. A recent issue had an interview with drug dealers and a story about getting a first job. It is published six times a year by Youth Communications, in New York, and with an annual subscription rate of $10. Contact (212) 242-3270.

Cigar Smoking: The Centers for Disease Control and Prevention in a survey of youths found that 31 percent of high school boys had smoked a cigar at least once in the preceding 30 days. The figure for girls was 11 percent. The study also found that 18 percent of boys and two percent of girls had used smokeless tobacco in the month before the survey was taken.

Girl Scouts: The Girl Scouts now offers a new patch to its members for domestic violence. The patch is a two-inch turquoise circle with the words "Stop Domestic Violence," written in red. To earn the patch, a Scout has to find out where domestic violence victims can go for help, read a book or see a movie on the subject, know what makes a relationship healthy, and complete a service project to help victims.

Voting and Civics: A survey conducted for the National Association of Secretaries of States reports that young people are increasingly interested in volunteering to help their communities, but are turned off by voting and civic involvement. The poll of 1,005 15 to 24 year olds showed that 90 percent agreed that "the most important thing I can do as a citizen is to help others," and the best way to do that was by volunteering and raising children well. The survey also indicates that the young respondents believe schools do a poor job of giving them information regarding voting, and that politicians do not target youth anyway.

In a related kind of survey for Public Allies, Americans ages 18 to 34 said they were committed to community service and direct assistance to others, but little interested in civic engagement or making changes through the political process.

Youth as Consumers: American youth are getting a lot of free reign from their parents when it comes to buying clothes and choosing food, but they are still on a tight leash when it comes to computer games and jewelry, according to the 1998 Roper Youth Report. Approximately 1,200 six to 17 year-olds were interviewed, 38 percent of whom report consulting with their parents before purchasing clothes, down from 45 percent in 1997. Of those ages eight to 12, 49 percent can select their own cereal, while 90 percent of teens report virtual total freedom over their food choices.

While 53 percent of preteens said their parents were the major influence in monetary expenditures, more than half the teens reported freedom to choose in 14 of the 17 categories listed. The exceptions: electronic equipment, jewelry, and computer software—mostly due to their expensive nature.

Reviews of Professional Periodicals

CRIME AND DELINQUENCY

Reviewed by CHRISTINE J. SUTTON

"Strange Bedfellows: Is Sex Offender Notification A Form of Community Justice?" By Lois Presser and Elaine Gunnison (July 1999). Nationwide legislation requires that the names of sex offenders living in communities be made public. The contemporary social movement that drives sex offender notification, also known as community notification, uses the rhetoric of community justice. Notification laws were a supplement to registration laws, which require offenders just released from prison to register with local law enforcement agencies. A "perception that registration alone is inadequate to protect the public against sex offenders" prompted the notification of community initiative. They compared the logic of notification with that of restorative community justice, by examining the implicit and explicit understandings of community, victims, offenders, and social control.

The authors contend that there are two principles to community justice. The first is that community justice helps citizens increase their own safety. Secondly, community justice looks to the roots of crime problems, seeking to prevent crime before it occurs. Two types of procedures are involved in notification laws: one for assessing offender risk and one for disseminating information about offenders. Among the states, risk is assessed differently. However it is assessed, a three-tier risk topology is usually applied, consisting of low (Tier 1), medium (Tier 2), and high (Tier 3) risk. There are three basic notification categories: active notification, limited disclosure and passive notification, which correspond to the three tier risk structure. For example, in the case of Tier 3 offenders, active notification delivers information to citizens without asking for it. The public is notified through virtually any available means. With limited disclosure (generally for the Tier 2 offender) only some organizations (like schools) are notified. For the Tier 1 offender, passive notification requires citizens to obtain the information themselves.

Both restorative justice and sex offender notification negotiate new combinations of social control. Restorative justice substitutes informal for formal social control over offenders. Notification seeks a net increase in both formal and informal social control over offenders. Restorative justice may lead to more control over more people, despite its intentions. The "net of social control" may be widened if persons whom the formal justice system would have dismissed are sanctioned. Secondly, by adding restorative conditions to probation terms, more opportunities are provided to "fail" and to be incarcerated for violation.

Extending social control over sex offenders is the manifest goal of the notification movement. Notification generalizes the incapacitative functions of the prison beyond the prison, and indeed, beyond the dominion of government. With neighborhoods alert to any presumed evidence of criminality, the offender stands a good chance of returning to court on a violation.

The authors conclude that it is not clear that society is better off with this "brand of justice"; its main accomplishment may be simply to "ensure that their problems will have solutions." Furthermore, the authors suggest that sex offender notification may be a flawed strategy for controlling sex crimes. It reflects a skewed view of sex offenders and lacks plans for problem solving, as it can encourage citizen action in the form of vigilantism. Notification relies on "stigma," which increases the likelihood that offenders will retreat into denial and eventually recidivate.

Although notification has been promoted as a community justice initiative, the authors take issue with this, noting it does not meet the needs of communities threatened by sexual violence. Treatment is a critical component with sex offenders, and the restorative justice programs have failed to consider current knowledge about offenders and therein develop appropriate programs. Programs that are founded on acceptance of responsibility, coupled with the offender's understanding of the sequence of thoughts, feelings, events, high-risk circumstances, arousal stimuli that preceded their sexual assaults, followed by training on how to interrupt the cycle and the teaching of new attitudes and behaviors, are not a part of notification or restorative community justice. Notification also does not address the fact that most child victims knew their offenders, that they were family friends or relatives; it also does not address the existing social and family structure. Notification cannot be justified by the idea that "people who harm us are not of us." The authors do emphasize that aspects of the notification movement can help shape the development of new programs. Thus, strange bedfellows, sex offender notification and restorative community justice might become friends yet.

CANADIAN JOURNAL OF CRIMINOLOGY

Reviewed by ROBERT A. TAYLOR, SR.

"Trends in Youth Crime: Some Evidence Pointing to Increases in the Severity and Volume of Violence on the Part of Young People," by Thomas Garbor (July 1999). Like their southern neighbors, Canadians have fallen victim to increased violent crime perpetrated by juveniles. As is the case in the United States, recently it has been widely reported that the rate of violent crimes by youth have

decreased. However, in this article, the author questions the reliability of official data reaching this conclusion.

The author takes some exception to the conclusions reached in several articles previously published in the *Canadian Journal of Criminology*, relative to the accuracy of official data from the Uniform Crime Report (UCR) survey, which suggests a decrease in the rate of violent crime in Canada.

Not only does the author point to the inaccuracy of the official data reported in the UCR, relative to the "dark figure of crime" and adult criminal activity, but he contends that the official data may be even more inaccurate when addressing youth crime. The author asserts that adults are less likely to report crimes committed by youth, particularly those youths between 12 and 15 years of age. In addition, the author points to the fact that there is a significant amount of crime, although sometimes minor, occurring in and around schools which is never reported, and thus isn't reflected in UCR data.

The author further questions the accuracy of UCR data because, in his opinion, it does not adequately account for demographic changes involving an aging population, which may obscure criminal activity among young people. The author points out that these demographic changes could account for a substantial proportion of the variation in crime rates. Garbor foresees a "dark cloud on the horizon" relative to juvenile crime based on a significant demographic increase in youth who will be reaching their most crime-prone years, youth between the ages of 12 and 17.

In this article, the author provides statistical data relative to the increase in violent crime since 1997. This statistical portrait paints an ominous picture of a significant increase in violent crime, and particularly the use of weapons in a number of these crimes. The statistics indicate that weapons were used in 36 percent of violent crimes in 1997, up from 23 percent of violent incidence in 1987.

The author further questions the conclusion that the violent crime rate for juveniles has decreased by studying surveys of youth and adults. Specifically, in a survey of students from 20 junior and senior high schools in Calgary in 1995, the possession of weapons was widespread among youths who reside in the urban areas of Canada. Between one third and one fourth of the students surveyed indicated that they had carried some type of weapon at school during the previous year. It was the youths' general impression that crime had increased over the previous five years.

A similar survey conducted with adults revealed that about half of the adults in Calgary who were surveyed felt that crime had increased within their community during the previous five years. Finally, the author points to his own national study to support his contention that juvenile violence has continued to rise. In his survey of officials from 260 school boards and 250 police departments across Canada, Garbor found that 80 percent of both police personnel and educators felt that the problem of violence in schools had grown over the 10 year period prior to the survey. Of those who did not feel that violence had increased, the remaining respondents felt that the problem had remained about the same over the previous 10 years.

The author points out that not only does the UCR data fail to accurately determine the amount of crime, it fails to provide accurate information about the extremity of violence. In the surveys mentioned, respondents commented on the growing "viciousness" of youth violence. In his conclusion, the author warns against complacency about youth crime based on recent figures, based on his contention that the evidence is contradictory, and that any decline is not uniform within Canada. In addition, Garbor recommends less reliance on UCR data, based in part on the report's failure to consider demographic changes, regional differences, and how offenses are defined. Politicians and criminologists in the United States might also want to heed Garbor's warning.

Challenging Dire Threats of the Future

American Youth Violence. By Franklin E. Zimring. New York and Oxford: Oxford University Press, 1998, 209 pp., $29.95.

This work continues Franklin Zimring's established pattern of creatively thoughtful (and sometimes interestingly confrontational) contributions to the so vitally needed dialogue about the purpose and function of the American juvenile and criminal justice systems. Among his concerns are alarmist predictions in recent years of supposedly forthcoming enormous increases in youthful violative behaviors. Thus, from writers of scholarly repute one hears of "a coming storm of violent youth crime," of fearful numbers of "juvenile super-predators" on our streets, and of increases in juvenile homicide constituting a "blood bath." "Make ready," we are warned.

Well, maybe—but maybe not. True, Zimring documents the fact that from 1984 to 1993 arrests for juvenile violent behaviors, especially homicide and aggravated assault, increased disturbingly. But from a broader perspective this may represent only a continuation of a longer pattern of difficult to understand cyclical fluctuations. The doomsayers are now confronted with the puzzling necessity of explaining rapid declines in the behaviors of concern from 1981 to 1984 and again from each year from 1993 to the present time.

Generally, most pessimistic forecasts of violent crime rates have been based upon projected increases in the country's population of teen-age males and, sometimes, of its ethnic group composition. But these numbers do not explain enough. For example, for some time homicide arrest rates of Afro-American teenagers have been higher than those of other ethnic groups. But fluctuation of percentages of the youth population that is Afro-American do not track the sharp upward or downward movements in rates of violent juvenile crime in recent years. The actual future probable risk factors influencing violation rates may well be unemployment rates and the economic cycle, or more or less successful educational patterns, or adequacy of child care, or street drug traffic, or availability of handguns or other variables difficult to measure or predict.

The major danger seems to arise from dire threats of the future and the re-labeling of youth as "future violent predators." Such discourse seems to have contributed to a sort of popular and legislative dismissal of long-available knowledge about the common characteristics of simply being a youth that should powerfully influence youth policy. Thus, prevalent trends are toward failure to consider youth as youth, but to move toward treating youthful offenders as adults. But in general youths are not in full possession of adult faculties. They are still in the process of "becoming." They may not yet have achieved the cognitive ability to fully understand the reason and necessity for moral rules. They may not truly perceive the probable consequences of violating such rules. Thus, they may not have achieved adult faculties for impulse control. And the teen years are those in which this capacity is tested in new arenas: greater physical freedom, secondary education, sex, driving, and others.

However, even more important than the foregoing considerations may be the fact that adolescents tend to live their lives in peer groups. Youth crime is largely group crime. The teenager may have developed impulse control when alone, but may find resistance to temptation when under the pressure of the peer group quite a different matter.

There are, then, general attributes of youth itself that should powerfully affect the societal response to juvenile violative behavior. Such response must to the greatest degree possible avoid producing a negative self-concept and public reputation, as well as limited opportunity for successful functioning in the conventional world. Policies seeking "room to reform" and to "grow up" become necessary. The avoidance of criminalization that results in return to the free world of an individual more hurt and therefore hurtful than before conviction is imperative both for youth welfare and for ultimate societal protection. The necessary policies may include punishment. But studied awareness of the amount, nature, and probable consequences of such punishment (as of other possible dispositions) become imperative. Such processes do not result from dispositional "justice" based upon rigid categories of offense behaviors and the attachment to them of equally rigid mandatory sentences. Thus Zimring notes that, "Discretion is increasingly important in determining the proper punishment for the manifold varieties of youth crime."(pp 124–25)

However, the trend of the times is toward almost sole reliance upon "get tough" policies calling upon rigid adult criminal law practices to be applied to ever-greater proportions of violative youth. Thus Zimring notes that "Since 1987, every American state, except Vermont, has passed legislation encouraging the transfer of persons under the maximum age for juvenile court jurisdiction to criminal courts under some circumstances." Particularly noteworthy is the trend toward such transfer upon the initiative of the prosecutor, rather than as a result of judicial consideration. A further trend has been designation by the legislature of youth over stated ages (usually 16 but not infrequently younger) accused of specific offenses as being "not fit for juvenile court jurisdiction." And ever looming over the horizon is the possibility recommended by an increasing number of scholars of doing away altogether with the juvenile court as an instrument for processing juveniles who have engaged in violative behavior.

The probable consequences of these "get tough" policies are rarely argued or subjected to research. Thus, Zimring observes that, "High rates of juvenile violence are invoked and from this it is concluded that the punishment for youth

violence is insufficient, and from this it is concluded that criminal court jurisdiction for serious offenses would obviously be superior to a system that is never described, let alone assessed, in argument" (emphases in original, p. 29). Recently, however, research-based data contributing to reasonable argument of the prevention vs. punishment issues begins to emerge. For example, Zimring cites data generated by RAND Corporation (1996) comparing the cost-benefits of selected children's services programs with those observed from California's "three strikes and you're out" mandatory sentence program. Data strongly supports estimates that parent training and school graduation incentives would generate crime savings many times those produced by the "three strikes" program.

It will be evident from the above that Zimring sees an imperative need to re-analyze American policies regarding violent youth crime. But he does not suggest that this is the most pressing task ahead. More vital than "violent youth crime policy" is broader "youth development policy." In fact, a narrow focus on the development of programs calculated to meet the needs of delinquent youth may be self-defeating. Zimring notes that nurturant programs like Head Start, mentoring, adoption, and successful schooling work well (and, incidentally, prevent crime) as long as we do not rename them and re-deploy them as crime control. "Social competence comes from empowerment programs open to all children, from programs in which children are expected to succeed." (p. 194)

In sum, this is a very important book. It promotes creative new thinking about a problem area in American life that in recent years has been a subject more of an almost hysterical rejection of the idea of reaching out to, rather than conducting a war against, youth seeming different than us. One hopes that the book will be widely read by practitioners, scholars, legislators, and policy developers everywhere. It may well contribute to the development of new relationships between the American polity and its youthful citizens.

Portland, Oregon CHARLES SHIREMAN, PH.D

A Portrait of Youthful Psychopaths

Savage Spawn: Reflections on Violent Children. By Jonathan Kellerman. New York: Ballantine Publishing, 1999.134 pp., $10.95.

Dr. Jonathan Kellerman, a child clinical psychologist by training, is best known for his fiction, which features Dr. Alex Delaware, a clinical psychologist who repeatedly finds himself in the middle of cases involving murder and intrigue. *Savage Spawn: Reflections on Violent Children*, a non-fiction work which was written for the lay public and is part of Ballantine Publishing's Library of Contemporary Thought, provides us with Kellerman's thoughts and reflections about youth violence. His interest in the topic and motivation to write the book, Kellerman informs us in the first chapter, came after the Arkansas and Oregon school shootings.

After piquing the reader's interest with an interesting case history, Kellerman introduces the reader to the construct of psychopathy, as conceptualized by Cleckley (1976) and Hare (1993, 1996, 1998). Through case examples and a review of relevant research, Kellerman does an excellent job of describing for the general public the interpersonal and behavioral characteristics (i.e., egocentricity; impulsivity; irresponsibility; shallow emotions; absence of empathy, remorse, or guilt; lying and manipulativeness; and persistent norms, rule, and law-breaking) of juveniles and adults high in psychopathy, and makes an effort to distinguish them from other law breakers and persons with severe and persistent mental illness (e.g., schizophrenia). Kellerman does an excellent job of summarizing and distilling the research relevant to understanding the potential environmental, behavioral, and biological causes of psychopathy, making a special effort to debunk easy explanations or those focussed on identifying scapegoats (e.g., mass media). Kellerman offers recommendations for change at the individual, programmatic, and societal levels, and finishes his book with a call to incapacitate repetitively violent persons high in psychopathy given the absence of effective psychological or psychiatric interventions.

Kellerman also accurately communicates the increased risk for violent and non-violent offending that persons high in psychopathy present relative to the majority of lawbreakers (it is generally estimated that no more than 20 percent to 25 percent of persons in correctional settings meet criteria for psychopathy, while a much larger proportion—perhaps 80 percent—meet diagnostic criteria for antisocial personality disorder; Hare, 1998). Without question, it is Kellerman's ability to summarize research and theory regarding the etiology of psychopathy, and bring to life the characteristics of this subgroup of juvenile offenders and how they interact with the world around them, that are the strengths of this book. The reader who finds this work interesting will also want to read Robert Hare's book, *Without Conscience: The Disturbing World of the Psychopaths Among Us*.

The one potential shortcoming of Kellerman's book is that the reader may conclude that the prevalence of youth violence is increasing dramatically and the majority of youth committing this violence are high in psychopathy. Yet things are more complicated than this, and Kellerman's failure to communicate these subtle yet important distinctions may result in readers misunderstanding the issue of youth violence more generally.

Some interesting data that are not presented in Kellerman's book, but which are critical to putting youth violence in perspective, have been compiled by staff of the Office of Juvenile Justice and Delinquency Prevention at the National Institute of Justice and the Center for the Study and Prevention of Violence at the University of Colorado. Without question, in the late 1980s and early 1990s there was a dramatic increase in the rates of serious violent juvenile crimes, including murder (Snyder, 1998a; 1998b, 1998c,

1998d, 1998d, 1998e). However, the rates of violence began decreasing in 1994 and had declined by approximately 33 percent by 1997. Of further interest is the finding that firearms-related homicide rates among juveniles increased over 150 percent between 1985 and 1993, leading some to attribute the increased homicide rates among juveniles, in part, to their access to guns (Elliott, 1994; Snyder, 1998b). Furthermore, although the proportion of youth violence that was lethal began increasing in the late 1980s until its peak in 1994, overall rates of violent offending among youth appear to be more stable over time (Elliott, 1994).

It may also be surprising to some readers that general criminal/delinquent behavior during adolescence is statistically normative, with rates of offending peaking at the age of 17. Between one quarter and one fifth of boys, and between 5 percent and 10 percent of girls between the ages of 16 and 17 report engaging in at least one episode of serious violence, yet 80 percent of these youth will not engage in any violent behavior by the time they become adults (Elliott, 1994; Elliott, Ageton, Huizinga, Knowles, & Cantor, 1983; Hirschi, 1969). Even though youth high in psychopathy commit violent offenses at a rate much higher than youth who are lower in this construct (see, e.g., Forth & Burke, 1998), the low prevalence rate of psychopathy in the general population of youth (preliminary data offered by Forth and Burke, 1998 indicate that the prevalence rate is certainly less than 5 percent) suggests that much, perhaps most, of the youth violence we see is not committed by the small number of youth who display the interpersonal and behavioral characteristics of psychopathy described above.

Together, the above data suggest that violent behavior, unfortunately, is perpetrated by a fair number of youth and, more fortunately, most typically abates with age and maturity. It also follows that much—probably most—of the violent behavior committed by youth is not committed by the calculating, cold, and emotionless youth described so well by Kellerman in his book. Bur rather, much of the violence we see today is committed by the children in our neighborhoods and the children in our schools. Although Kellerman aptly describes a subset of youth who are likely to engage in criminal and seriously violent acts with a high degree of frequency, to focus on them may keep us from understanding and responding to the majority of youth who engage in violent behavior, but for perhaps very different reasons.

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Tampa, Florida RANDY K.OTTO, PH.D.

Courts for "Other People's Kids"

Bad Kids: Race and the Transformation of the Juvenile Court. By Barry C. Feld. New York: Oxford University Press, 374 pp., $19.95 paper, $55 hardcover.

As Americans observe the centennial of the juvenile court created by a group of progressive social reformers in Chicago, Barry Feld, Centennial Professor of Law at the University of Minnesota Law School, gives that creation failing grades and recommends a new policy for children.

Juvenile justice personnel and policy makers will not find this book the kind of news they want to hear during the 100th birthday year. As to policy makers, they rarely use sound research and analysis in the development of policies relating to children. They use rhetoric and undocumented pronouncements to adopt "get tough" legislation. This book is written by a leading scholar and a committed advocate of social justice for children.

With reference to the juvenile court, Roscoe Pound, a former dean of the Harvard Law School, has been quoted as saying that: "the juvenile court has become like the illegitimate issue of an illicit relationship between the legal profession and the social work profession and now no one wants to claim the little bastard." Feld's conclusion takes this description one step further: He finds that in the last hundred years, and especially in the last 30 years, no one has found a way to nourish the "little bastards" or provide true due process and rehabilitative social justice. In other words, the concept has expired. Feld writes this book from two personal perspectives, the lawyer advocate and the academic research scholar. The book is also written in two parts: A well documented history and the proposal to implement a new way to process child offenders.

As the advocate, he traces the evolution of the juvenile court from its creation in 1899. Here he finds that the juve-

nile courts of 1899 and today are racially biased, were created for "other people's children," and continue to operate for "other people's children."

> Social class and racial biases shape public attitudes and policies toward children. A century ago, Progressive reformers used "conscience and convenience" to distinguish between their own children and "other people's children." Politicians and parents tend to make similar distinctions today. They simultaneously invest resources, affection, and high hopes in their own children and view other people's children with suspicion and as potential threats to the well-being of their own.

As for present-day practices and racial bias in the last three decades, Feld explores the social and legal changes that have transformed the juvenile court into a scaled down, second-rate criminal court for young offenders where they receive the worst of both worlds: "neither the protections afforded adults nor the solicitous care and regenerative treatment postulated for children" (*In Re Gault*).

> As to the "other people's children," during the last three decades Feld finds the recent transformation of the juvenile court provides a graphic illustration of the conversion of public fear and hostility toward other people's children into harsh and punitive social control practices…. Politicians have manipulated and exploited these racially tinged perceptions for political advantage with demagogic pledges to "get tough" and "crack down" on youth crime, which have become a "code word" for black males.

These findings as to the continuing racial bias of the juvenile justice system will present more bad news for those working in the juvenile justice arena. They should also be of major concern to the American public.

Like it or not, these findings are based on sound research and analysis of credible data. They are controversial but very difficult to disagree with.

Feld's major finding as to the juvenile court failures are summarized as follows:

> The juvenile court creators envisioned a social service agency in a judicial arena and attempted to fuse its social welfare mission with the power of state coercion. The idea that judicial clinicians can successfully combine social welfare and criminal social control in one agency constitutes the juvenile court's inherent conceptual flaw. Progressives created (and court practitioners carried out) an irreconcilable conflict by asking the juvenile court simultaneously to enhance child welfare and to control youths' violations of criminal law. One had to take priority over the other and the court inevitably subordinated social welfare considerations to crime control concerns because of their built-in penal focus.

Feld's alternative is to abolish the present-day juvenile court. His solution is to create one court where everyone is tried, but if convicted, juveniles would receive a "youth discount" in sentencing. This is where Feld the academic presents his most radical position. This is also where he will find his most serious disagreement. Feld thinks the progressives who founded the juvenile court were "naive," but it is his solution to uncouple social services and social control and install a bargain basement kid's sentencing policy that is naïve. He proposes implementation by a "reasonable, responsible and humane legislature." Unfortunately, where children are concerned no such body exists and none is anywhere on the horizon. Another reason Feld proposes abolishing the juvenile court is its lack of financial resources to implement effective social service programs. He seems to ignore the fact that the less than humane legislatures of today are flooding millions, maybe billions into juvenile courts and agencies. Accountability Block Grants, Comprehensive Strategies and the War on Drugs are just a few funding policies. The problem here is that these funds are being spent on all the retributive approaches that Feld the advocate clearly proves do not rehabilitate children, prevent crime, or protect public safety. The growing supporters of drug courts will find Feld's research very frightening.

Juvenile justice in its centennial year is at a crossroads and as Yogi Berra once said "when you come to a cross in the road take it." Some want to go left and take Feld's road. Some want to go right and preserve the *parens patria* model of the founders and many like myself are at the fork and stuck.

Feld actually presents the solutions in this book and shows how the necessary separate justice system can be preserved. Start with abolishing the prosecutorial transfer policies and implement the concept first developed in New Mexico (NM STAT ANN S 32A-2-2 1993). This process is discussed on page 262 of *Bad Kids*. Add to this the requirements of *Kent* (383 US 541, 1966), page 213, 214 in *Bad Kids*. Find that responsible and humane legislature Feld calls for (page 315), and tell them that if they truly want to hold adolescent offenders responsible and protect public safety they should redirect the billions they are wasting on the failed initiatives they now fund to proven preventative ideas and effective programs.

They can also start with a national implementation of "The Prenatal and Early Childhood Nurse Home Visitation Program"—after all, they paid for the research by Dr. David Olds and his colleagues (OJJDP Bulletin, Nov. 1998). Most of the rest of the civilized world long ago found this approach the best method of preventing youth crime and child abuse, especially where "other people's children" are concerned.

Finally, fully ratify the U.N. Convention on Children's Rights and the long ago developed ABA/IJA Juvenile Justice Standards (IJJ/ABA, *Standards for Juvenile Justice*, approved 1979); also see id., Standards for Juvenile Justice: A Summary and Analysis, Barbara Danziger Flicker, Second Edition, 1982, pp. 22–23. Both provide for the humane and responsible rights of children and for the use of effective and child-based methods of holding child offenders accountable.

These are but a few of the ways to preserve the separate system of justice for children. Feld presents these and several others in this book. He just reaches the wrong conclusions as the alternative to the mistakes we are making today.

This is a compelling and thoughtful book, controversial and radical to many. However, it is the best we have to get those of us stuck at the crossroads onto the right road into the next 100 years of the juvenile system in America.

Ft. Lauderdale, Florida FRANK A. ORLANDO

Prescriptions for a New Millennium

Juvenile Delinquency in the United States and the United Kingdom. Edited by Gary L. McDowell and Jinney S. Smith. New York: St. Martin's Press, 1999. $59.95.

From its inception, the juvenile court in the United States has been based on the philosophy that misbehaving and troubled children can be changed and re-directed provided they receive individualized attention and appropriate therapeutic interventions. From a slightly different perspective, the United Kingdom's approach has been quite similar for it was designed to be rational, reflective, and humane, with de-escalation at every stage of the process. Moreover, it too has recently moved toward enhanced statutory requirements with regard to adjudication.

It has also been believed in both countries that in the absence of parental guidance and control, the court was—and is—prepared to supervise the child in the place of the parents (i.e., *in loco parentis*). Historically, then, this has translated into the government's assumption of control when it is believed that the child is in need of supervision at a level that cannot be provided by the parents (i.e., *parens patriae*).

In true positivist tradition, youth workers have designed myriad intervention strategies, which have been centered around the youth's aberrant behavior and his or her lack of responsibility. As a consequence, in both countries, we have fashioned systems that encourage juvenile justice system penetration in order to deal with and otherwise control these youths and their behaviors. In both countries, the systems appear to have prospered, notwithstanding Schur's 1973 plea to reduce formal processing and to allow these offenders to maturate on their own. He believed that most would simply grow up and outgrow their delinquencies. He feared, and perhaps rightly so, that formal system involvement could only lead to further formal penetration and stigmatization, which in turn would lead to more delinquent behavior. Great Britain recognized this and moved early-on to deal with youth more informally than occurred in the United States.

It should be noted, however, that while such a process might have worked a half century ago, it was hardly implemented. Further, Schur's dictum was written in an age where there was minimal drug use, adolescent violence, serious gangs, and where families could be described essentially as "intact." Additionally, it was an age where the appellate courts seldom intervened in the juvenile court and before legislatures re-wrote juvenile codes, which require more youths than ever before to be dealt with formally. It also appears that the movement which was begun in the 1980s to divert and utilize intermediate sanctions for more youths than previously were developed more as a result of facility overcrowding and increasing caseloads than as a result of a philosophical change in how juvenile justice should operate.

In *Juvenile Delinquency and the United States and United Kingdom*, editors McDowell and Smith have produced a slim volume containing nine articles; some programmatically descriptive, some analyzing the "failures" of the juvenile justice system, and most concerned with moral issues and how to hold juvenile offenders both responsible and accountable for their misdeeds. Most of the articles lament the changing family structure, the rising adversarial nature of the juvenile court, and the need to provide the court with appropriate resources.

Obviously, a few authors ask for "more of the same," which has been tried over and over again—an approach that has neither made the juvenile justice system itself more responsible and accountable, nor has demonstrated effectiveness in controlling or otherwise reducing delinquent behavior. In fact, as the early research of the Gluecks (see, for e.g., 1930 and 1936) and the later work by Lipton, et al. (1975) has demonstrated, the efficacy of a treatment philosophy has been less than successful and may even be problematic.

James Q. Wilson titillates the reader with a "Foreword" that is insightful, but much too short. The editors would have been better served if Wilson had been allowed to expand his thoughts. Nonetheless, he does help to set a tone for this collection of articles when he writes (p. xv):

> …today we expect more than we have received from family life….Family life was difficult when life was short, money scarce, and freedom absent; why has it become difficult for some people now that life is long, money available, and freedom everywhere?

For Wilson and other contributors, the solution for the delinquency "problem" in both countries is to strengthen the family, induce character building in youth, and ensure that moral values are inculcated into the youth's persona, especially by caring and involved parents. Thus, if the juvenile court adopted these philosophical dicta and developed appropriate implementation strategies, we would not be confronted with *Federal Probation* contributor Ronald P. Corbett's (p. 119) conclusion: "Trends within the juvenile probation system are ominous."

That there have been dramatic changes in both the U.S. and U.K. cultures, including significant increases in substance abuse and violence, along with decreased youth supervision by families, are inescapable truths. While the juvenile court cannot be held accountable for these shifts in behaviors and decreased societal moral values, it long ago should have recognized the nature and extent of them and altered its stale and tradition-bound approach to youth coming before the bench.

Pundits, critics, and researchers have offered various solutions in the U.S. and U.K., some of which are described in this book, but most authors fail to discriminate clearly between *preference* and *prediction*; that is, "what I want to occur" versus "what I believe will occur." Consequently, character building, family strengthening, and moral development become prescriptive themes throughout this volume, without revealing precisely how they can be accomplished.

In an "Afterword" (p. 187) Mary Tuck urges both the U.S.

and U.K. to "…reconsider the importance of teaching young men virtue. But we cannot stop there. To achieve a better society, we cannot rest with just a consideration of such ideas, but must act upon them as well."

I agree with Wilson (p. xvi) when he states:

> The problem to which this book is addressed is far more serious than is implied by its title….The book is really about the central problem of a modern industrial society: how can one enjoy the benefits of personal emancipation while retaining the moral instruction of a coherent social order? No-one has yet discovered the answer.

For the reader who believes that the absence of family involvement and true moral values form the crux of the delinquency "problem" in both countries, such convictions will be reinforced. For those seeking solutions, there will be disappointment. Nonetheless, the articles are informative and readable, and suggest that the differences between the two countries are more form than substance, for certainly the juvenile justice systems share similar philosophical foundations and practices.

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Rethinking Sentencing Reform

Fear of Judging: Sentencing Guidelines in the Federal Courts. By Kate Stith and José A. Cabranes. Chicago: The University of Chicago Press, 1998. 276 pp., $17.

Authors Kate Stith, a noted law professor, and the Honorable José A. Cabranes, her husband and a federal circuit judge, explain in *Fear of Judging* why many judges strongly believe that the federal Sentencing Guidelines are the bane of the federal criminal law system. This book is a valuable addition to the Sentencing Guideline literature. It succinctly describes the origins of the Sentencing Reform Act of 1984 and the resulting Guidelines, and explains how they operate and why and how federal sentencing procedures should be reformed. The authors speak from a clearly expressed anti-Guidelines bias.

In five chapters, 177 pages of original text, and four appendices of reference material, the authors survey the history of sentencing and penological reforms in America, describe the political evolution of the Sentencing Reform Act, and detail the current Guidelines sentencing ritual. Historical, penological, and sociological data support a thought-provoking understanding of the Guidelines and of the arguments against their continued existence.

The Sentencing Guidelines were intended to end unwarranted sentencing disparity and to toughen criminal penalties. However, the authors believe the Guidelines established insufficient, binding principles and wrongly shifted major portions of sentencing discretion from judges to prosecutors and probation officers. In their view, the Guidelines are based upon faulty premises and have not achieved the desired sentence uniformity. While lauding the broad pre-Guidelines authority of sentencing judges, the authors do not recommend returning to unfettered judicial discretion. Whether for or against the Sentencing Guidelines, or uncommitted in the debate, the reader will find *Fear of Judging* informative and the authors' recommendations noteworthy.

The Introduction describes the pre-Guidelines division of criminal sentencing responsibilities between Congress' definition of criminal acts and the judiciary's sentences within the maximum and minimum penalties set by Congress. The sentencing hearing has changed under the Guidelines to an adjudicatory proceeding in which the defendant's actions are fit into the mold of a model crime, which may include conduct not included in the criminal conviction.

Chapter One recounts the history of sentencing. The intellectual roots of the Sentencing Guidelines are traced to the Enlightenment's desire to make human activities more rational and systematic. That philosophy bore fruit in the Constitution's separation of governmental powers. Until the Sentencing Reform Act, federal judges exercised great discretion in sentencing within statutory limits.

During this period of broad judicial discretion, the belief that the criminal would be reformed by hard labor and solitary confinement gave way to a theory of rehabilitation through indeterminate sentences and parole personnel expertise. In this rehabilitative model the sentencing phase remained separate from the rigorous guilt-finding phase of the proceedings. The duty of linking the seriousness of the crime and the circumstances of the defendant remained with the courts, often without appellate review.

The 1960's and 1970's saw the interaction of major forces in the law and society. The Supreme Court reformed criminal law procedures in the areas of investigation and adjudication, but did not greatly affect sentencing proceedings. However, the collapse of the rehabilitative ideal focussed attention on criminal sentencing; indeterminate sentences were believed to have little effect on recidivism. Discretionary sentencing was attacked by the advocates of prisoners' rights and by the psychiatric community. Conservative political forces criticized apparently lenient sentences. Presaging the fall from grace of broad sentencing discretion was strong criticism of sentence disparity seen in the 1920's and 1930's. Critics believed the perceived sentence disparity could be accounted for only by variations in judges' personalities or by other illegitimate considerations. Reform proposals in the 1960's, such as for appellate review of sentences, were insufficient to deter the calls for substantial reforms made by Professor Kenneth Culp Davis, District Judge Marvin E. Frankel, and others. Tortuous politics led to the Sentencing Reform Act.

Chapter Two describes the Sentencing Guidelines in terms of their centerpiece, the grid which plots the defendant's criminal history and the severity of the current offense. The

authors review the theories behind the Guidelines' components and the factors which limit judicial sentencing discretion. The reader cannot but conclude that the Guidelines achieved two sought goals: a great reduction of judges' sentencing discretion and the imposition of tougher sentences. Even so, the authors argue, with support from a study made by Circuit Judge Gerald Heaney, the Guidelines did not eliminate unwarranted sentencing disparity.

Chapter Three unfavorably compares the "new ritual" Guidelines sentencing procedure with the pre-Guidelines sentencing. Judges have become adjudicators of facts which narrowly bind their sentencing decisions. Probation officers have become "special masters" who investigate and pronounce one version of the relevant facts. Prosecutors, in the exercise of their charging discretion, have acquired the ability almost to determine sentences under the Guidelines. The authors argue that the expertise of sentencing judges is now largely untapped and that opportunities for judicial reasoning are reduced in number.

Chapter Four discloses why sentences under the Guidelines do not measure up to the authors' definition of just sentences, *i.e.*, sentences which are reasoned and proportional, and are imposed with fairness and due process of law in a constitutional scheme of checks and balances. Readers might favorably measure the authors' recommendations for reform (made in Chapter Five) against this standard.

The authors describe studies of sentences under the Guidelines which indicate that they are not less disparate and inconsistent than pre-Guidelines sentences. Any uniformity achieved by the Guidelines, in the authors' view, comes at the same price of arbitrariness that was asserted against the pre-Guidelines sentences. Such arbitrariness results from the Guidelines' rigid reliance on quantifiable measures of harm and a narrow view of relevant offender characteristics. Also, the authors level a strong constitutional challenge against the Guidelines' withdrawal from the sentencing judge of the ability to check and balance the abusive exercise of prosecutorial discretion.

Chapter Five sets out the authors' thoughtful, remedial recommendations, which do not call for a return to the unfettered discretion of pre-Guidelines sentencing. These include:

- generally giving judges "fewer mandates and more choices" and allowing judges to consider all aspects of the crime and of the offender;
- amending the Federal Rules of Criminal Procedure to import the due process guarantee of notice of what the government intends to prove at the sentencing proceeding;
- increasing the burden of proof for sentencing hearings from a preponderance of the evidence to clear and convincing evidence;
- requiring judges to state on the record the reasons for their sentences;
- creating a Sentencing Committee of the Judicial Conference of the United States to develop non-mandatory guidelines, subject to Congressional approval; and
- providing for appellate review of federal sentences with an abuse of discretion standard.

The fear of judging that led to the Sentencing Guidelines should be relieved by the safeguards of checks and balances found in the authors' suggested reforms.

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Criminal Culpability and Correctional Mental Health

Prison Madness: The Mental Health Crisis Behind Bars and What We Must Do About It. By Terry Kupers. San Francisco, California: Jossey-Bass, 1999.

This well written and easy-to-read book is likely to appeal to academics, practitioners and lay persons alike. Dr. Kupers provides a compelling–indeed, at times, riveting–account of life behind bars for people with mental illnesses. At the individual level, he describes what prison is like not only for people with serious and persistent mental illnesses who are sent to prison but also for people whose mental disorder first emerges as a result of trauma associated with the prison experience. At the systemic level, the text provides a thoroughgoing treatment of institutional policies and other formal as well as informal practices that exacerbate mental illnesses or at least fail to ameliorate them.

Part I of the text addresses how so many mentally ill people are winding up in prison. Deinstitutionalization and the criminalization of homelessness are but two of the issues cited as contributing to the imprisonment of mentally disordered people. This part of the book also provides the reader with alarming epidemiological and prevalence data in support of assertions about the gravity of the problem. The relatively low priority given to mental health treatment by corrections administrators also is described.

In Part II of the book, Dr. Kupers describes "What Goes on Behind Bars." Part of this section is devoted to special populations. The dynamics of racism within the institutional context is described in some detail along with its implications for mental health. The special issues confronting institutionalized female offenders are also explained. Dr. Kupers also addresses special psychosocial stressors experienced by inmates in chapters devoted to rape (and accompanying post-traumatic stress disorder) and the loss of contact with loved ones. This section ends with a discussion of prison suicide.

Part III of the book lays out a vision for corrections specifically and criminal justice more generally--a vision of systems committed to fostering mental health, ameliorating the effects of mental illness, and treating people with mental illnesses differently. This vision materializes and is brought into focus through chapters devoted to discussions of "The Possibilities and Limits of Litigation," "Recommendations for Treatment and Rehabilitation," and "The Folly of [The] Law and Order [Orientation]." The vision laid out in this section provides a glimmer of hope that stands in stark contrast to the very bleak picture provided

elsewhere in the book.

Although the vision laid out in the final section of the book emerged as the natural antidote to the ills depicted in earlier sections, some of the underlying assumptions may be subject to challenge. A thorough reading of the book, for example, leaves the reader with a view of a criminal justice system where (a) the police routinely harass and beat citizens who have done nothing wrong merely on account of their race, (b) inmates lose their appeals of disciplinary action because of racist hearings intentionally "stacked" against appellants, and (c) prison administrators foster inmate failure in the form of recidivism in order to ensure repeat customers and, thus, advance the goals of the "Prison-Industrial Complex." Perhaps each of these allegations is well founded and accurately reflects the everyday experience of most people. Perhaps not. Perhaps this section simply betrays the bias of an expert witness who is retained regularly by partisan advocates.

Partisan or not, the text communicates a message that deserves a hearing. Although Dr. Kupers' message may not ring true with everyone, it certainly will be echoed by others; and in numbers too great to ignore. Moreover, although some may argue over assertions about the degree to which the criminal justice systems actively conspire against people who are poor, mentally ill and/or minorities, few would deny the overrepresentation of these groups throughout the criminal justice systems. It is equally difficult to ignore the apparent neglect of persons with mental illnesses by prison administrators and staff. Thus, even if the text is rendered less-than-perfect by virtue of partisanship, its message remains compelling and deserving of our attention.

Huntsville, TX PHILLIP M. LYONS, JR.

Reports Received

Police-Corrections Partnerships. National Institute of Justice, Office of Justice Programs, U.S. Department of Justice, March 1999, 52 pp. This report is part of a series published by the National Institute of Justice titled Issues and Practices in Criminal Justice. It profiles enhanced supervision programs such as Operation Night Light in Boston and Neighborhood Probation in Phoenix. It also examines other varieties of partnerships, such as fugitive apprehension, information sharing, prison anti-gang partnerships, and the like, and explains how to handle challenges to partnering.

Relationship Between Mental Health and Substance Abuse Among Adolescents. Office of Applied Studies, Substance Abuse and Mental Health Services Administration, U.S. Department of Health and Human Services, July 1, 1999, 78 pp. This report examines the association between psychological functioning and substance abuse in adolescents aged 12 to 17, drawing on the 1994-1996 National Household Survey on Drug Abuse (NHSDA). The report breaks down relationships between adolescent psychological functioning and use of cigarettes, alcohol, marijuana, and other illicit drugs.

Promising Strategies to Reduce Gun Violence. Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice, February, 1999, 253 pp. This publication is the result of a work group commissioned by Attorney General Janet Reno in 1998 to review existing efforts in communities across the country to reduce gun violence, with a focus on youth gun programs. Sixty separate profiles are provided, complete with contacts for further information, for comprehensive gun violence reduction strategies, and strategies to interrupt sources for illegal guns, deter illegal possession and carrying, and educate youths about handgun violence.

Drug Court Resource Series: Practical Guide for Applying Federal Confidentiality Laws to Drug Court Operations. Drug Courts Program Office, Office of Justice Programs, U.S. Department of Justice, May 1999, 15 pp. This guide addresses the issues raised by the close collaboration between treatment providers and the judicial system that has resulted from the development of drug court programs. The guide discusses issues of confidentiality and the use of information gathered about substance abuse, and answers frequently asked questions.

Weed and Seed: Best Practices. Executive Office for Weed and Seed, Office of Justice Programs, U.S. Department of Justice, Spring 1999, 17 pp. Operation Weed and Seed is the Department of Justice's community-based crime prevention program, which coordinates public and private sector resources, including federal, state and local crime-fighting agencies and social service providers, to reduce violent crime, drug abuse and gang activity in high-crime neighborhoods. This report describes examples of Best Practices from the Weed and Seed pilot sites, which have grown in number from 3 in 1991 to 200 in 1999.

America's Children: Key National Indicators of Well-Being. Federal Interagency Forum on Child and Family Statistics, July 1999, 114 pp. This report is the third in an annual series compiled as a collaborative effort of 18 federal agencies. It draws together the most recent official statistics on the condition of America's children, including population and family characteristics, economic and health factors, education, and behavior, including illicit drug use and violence. It provides a wealth of charts, tables and graphs comparing current statistics with those of recent years.

Books Received

A View From the Trenches: A Manual for Wardens by Wardens. Edited and published cooperatively by the North American Association of Wardens and Superintendents (NAAWS) and the American Correctional Association (ACA), Lanham, Maryland, 1999, 198 pp., $27.50.

The Role of Police in American Society: A Documentary History. By Bryan Vila and Cynthia Morris. Westport, CT: Greenwood Publishing Group, 1999, 360 pp., $49.95.

Alternative Sentencing: Electronically Monitored Correctional Supervision, 2nd edition. By Richard Enos,

John S. Holman, and Marnie E. Carroll. Wyndham Hall Press, Bristol, Indiana, 1999, 225 pp., $39.95.

Restorative Juvenile Justice: Repairing the Harm of Youth Crime. Edited by Gordon Bazemore and Lode Walgrave. Monsey, NY: Criminal Justice Press, 1999, 399 pp.

To Serve and Protect: Privatization and Community in Criminal Justice. By Bruce L. Benson. Oakland, CA, The Independent Institute, 1998, 372 pp., $37.50.

Drug-Involved Adult Offenders: Community Supervision Strategies and Considerations. By Sam Torres with Michael Elbert, James D. Baer, and Jon Booher. Lexington, Kentucky, American Probation and Parole Association, 1999, 99 pp.

Working with Victims of Crime: Policies, Politics and Practice. By Brian Williams. London and Philadelphia, Jessica Kingsley, 1999, 158 pp.

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VOLUME LXIII, JANUARY TO DECEMBER 1999

It Has Come to Our Attention

The **Office of Juvenile Justice and Delinquency Prevention** (OJJDP) has issued its 200- plus page Juvenile Offenders and Victims: 1999 National Report, authored by Howard Snyder and Melissa Sickmund, of the National Center for Juvenile Justice. The report provides the latest statistical breakdowns on patterns of juvenile crime and victimization, complete with a wealth of charts and graphs and comprehensive commentary. The authors compile FBI and other government figures to supply numbers for when, where, how, by whom, and by what means juveniles experienced violence, abuse, or property crimes. They also offer detailed information on juveniles as perpetrators, including what happens to them once apprehended, tracking their course through juvenile and adult courts. In a several-page discussion titled "Can future juvenile crime trends be predicted?" the authors critique the early 1990s prediction "of a coming wave of 'superpredators,' which was based on rising trends of violent crime coupled with the knowledge that in another decade the juvenile population would sharply increase. In recent years, with a downturn in the rate of juvenile violence, some writers in the field have looked more closely at the data to see what it truly signifies, noting for example that the early 90s showed increases in violent crime in all age groups, not just juveniles, and that some of the increase in violent crime arrests during the 80s and 90s can be attributed to reclassifying status offenses (such as incorrigibility) as assaults. Further, though homicides by juveniles did indeed increase from the mid-80s through 1993, the rise is entirely attributable to homicides committed with firearms. The authors conclude that many factors besides sheer numbers of juveniles influence rising and falling violent crime trends, and that "No one has been able to predict juvenile violence trends accurately." Copies of the report may be obtained from the Juvenile Justice Clearinghouse, P.O. Box 6000, Rockville, MD 20849-6000, 800-638-8736 or 301-519-5500; e-mail: puborder@ncjrs.org. Much of the information in this report is also available through the Internet on the OJJDP Statistical Briefing Book, which can be accessed from the OJJDP home page at www.ojjdp.ncjrs.org through the JJ Facts & Figures prompt.

A study funded by the **Correctional Services of Canada** has identified some red flags that could alert probation and parole officers to offenders likely to reoffend. The study examined the thoughts, emotions, problems, and behaviors of the men prior to reoffending and found that up to 90% of repeat offenders do not intend to commit crimes or violate supervision as little as 15 minutes before the new offense. But this radical impulsivity does not mean impending reoffenders don't send out unknowing signals. Researchers Zamble and Quinsey, in a study recently published by Cambridge University Press titled The Criminal Recidivism Process, uncovered a strong statistical link between criminal recidivism and poor coping skills, dysphoric emotional states, counterproductive perceptions and cognitions such as negative thinking and defeatism. Offenders headed for a trip back to court generally followed this pattern: initial optimism; exposure to ordinary life problems they cannot cope with; increasingly negative thoughts and depressed and angry feelings. Though they generally are not planning another foray into crime or violence at this point, they are at high risk. Probation and parole officers should be aware that "Waiting until someone misses their parole appointment is too late to predict that they are in trouble," according to Zamble. "By then, either they have already reoffended or are about to." But by using new tools to monitor released prisoners' psychological states, officers could better gauge who is likely to reoffend, intervening earlier to move those at increasing risk into a halfway house, therapy, and/or increasing levels of supervision.

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