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Edited by
Marilyn D. McShane
Frank P. Williams III

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Youth Violence and Delinquency

Monsters and Myths

Volume 1

Juvenile Offenders and Victims

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Preface

HERE THERE BE DRAGONS: THE UNKNOWN AND DANGEROUS DELINQUENT

When ancient mapmakers worked their way to the edges of uncharted or unexplored territories, they marked the boundaries with the famous phrase, "beyond here monsters lie" or "here there be dragons," appealing to the common understanding that what was unknown must contain the dreaded or evil. Much the same can be said for the vast expanse of juvenile delinquency—the wild, unpredictable, and unrestrained tempers of youth are to be feared and often demonized. The media "mapmakers" often paint dramatic and terror-filled accounts of what are, in reality, rare events. Consequently, the routine parade of countless minor episodes of kids who shoplift, run away, and vandalize, and who are overlooked in the overcrowded and overworked juvenile courts, is far less attractive for the sound bites of the evening news.

The normal developmental tendencies of youth to talk, act, and dress in extreme and unique ways often contribute to these fearful images. The blue hair, Mohawk cuts, the cacophonic music, and elaborate piercings and tattoos often mark the borders of adult tolerance. Although generational misunderstandings and the inevitable rebellion of teenagers is nothing new, we seem to continue to approach each successive wave of youngsters with the same apprehension, fear, and readiness to suppress the wayward vestiges of individualism. So it is not surprising, then, that a crime committed by a spike-haired, nose-ringed, gothic-dressed, jack-booted young man is perhaps likely to draw more attention from the court and require longer supervision with more restrictions on activities. Anti-loitering and congregating statutes, as well as prohibitions against skateboarding, are viewed by critics as ways to cleanse business areas of

unattractive nuisances. As a group of youth in Brattleboro, Vermont, gathering in downtown parking areas pushing the limits of municipal goodwill found out, no law prohibited them from stripping down to various levels of nudity, but there soon would be, as fast as the select board of town leaders could legislate one.

Today, theorists often spend as much time contemplating why youth do not commit crime as why youth do. We attempt to explain not only the overall decrease in juvenile crime, but also why, in the face of such a decrease, most people still have the impression that the juvenile crime rate is increasing. Media coverage of certain dramatic juvenile crimes tends to give people the wrong impression about current trends in delinquency. The terms "shocking crime" and "brutal violence" are often overplayed, creating a distorted and pessimistic view of youthful offenders. Although many people believe that juvenile delinquency is increasing, the truth is that the juvenile offending rate is fairly stable and that many youth are engaged in co-offending, which tends to make the amount of crime appear higher. That is, more offenders are arrested than actual crimes committed. Also, contrary to what some people seem to believe, juvenile offenders are not getting younger or engaging in more rapes and robberies.

Crime figures vary by whether you are talking about reports of crimes or arrests for crimes. As a consequence of better law enforcement techniques, arrests can increase even though the amount of reported crimes stays about the same. The accuracy of certain crime statistics and the likelihood of offenses being reported also vary by type, such as drug crime, violent crime, and status offenses, as well as by race and gender. We know that, overall, the juvenile arrest rate for property crimes has decreased. By 2003, the juvenile arrest rate for violent crime, particularly murder, had decreased to levels similar to those around the early 1980s. Some of the most recent government statistics indicate that arrests for simple assaults and aggravated assaults have increased, particularly for juvenile females.[1] So, although there is a great deal to be optimistic about, there is much to be done to enrich the lives of American youth and to improve their chances of success.

We know that the number of children living under the poverty limit is still dangerously high and that self-reported delinquency has always been associated with being poor. As in the past, data still suggest that most juvenile crime is intraracial, thus victims are likely to be the same race as their offenders. Children continue to be at higher risk for neglect and maltreatment in the home than they are for violent victimization in the streets. Schools are still one of the safest places for kids, and fewer kids drop out today than in the 1970s.

Although data seem to indicate a rise in lethality in some crimes, the casual ease with which juveniles access semiautomatic and automatic weapons can be used to explain trends in homicide. These explanations are as insightful and as full of implications for programs and policies as those that address deviant behavior. Although narrowing our focus to specific types of offenders only or certain types of offenses may be frustrating to those seeking a "one-size-fits-all" approach, it often gives us a greater, more

accurate, albeit smaller, picture. Thus, readers who are looking for clear-cut answers to the problems of juvenile crime and violence will find that there are lots of little ones, plenty of pretty good ones, and certainly none that fit a broad range of behaviors and cultures. We believe that you will find the work in this volume is extremely informative and persuasive. It is evident that the field requires a wide range of research from many varied disciplines and involves not only environmental, social, legal, political, and economic change but also changes in our values, attitudes, and goals—the very fabric of our society.

The articles in this volume will provide readers with a picture of the current status of juvenile crime in this country. The realities are often far less dramatic and entertaining than the news clips on evening television reporting, but they represent the true focus of law enforcement, the courts, and youth services workers in corrections, treatment, and community outreach professions. Our tax dollars, our neighbor's children, our schools, and our police are all influenced by the way we view delinquency.

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CHAPTER 1

Myths and Realities: How and What the Public Knows about Crime and Delinquency

Marilyn D. McShane and Frank P. Williams III

We all know about crime and delinquency. It appears on television, it is featured in the newspapers, we talk about it with our friends. In fact, crime is such a constant in society that we can easily say that it is a part of our lives. Government reports and criminologists point out that most of us will be the victim of a crime at least once in our lives. That is a rather scary statistic.

What is not said is that most crimes are minor things such as vandalism and petty theft. They are inconveniences, but little else. Even "violent" crimes are mainly petty events—someone hits someone else, a police officer is pushed. As a result, our "chances" of being a victim of crime really describe the chances of being the victim of a minor incident. The serious crimes are much more rare.

We realize that you hear about serious crimes all of the time, so you are probably thinking that there *must* be a lot of violent crimes out there. The reality to this is both "yes, there is" and "no, there isn't." The yes is that there are a lot of people in the world, so even if something is a rare event, plenty of examples exist. The "no" is that you can think of your chances as something like hitting the lottery—most of the time you buy a lottery ticket and get nothing. When you do "win," it is likely to be a small amount. Larger winnings are progressively unlikely. On the whole, being the victim of a crime is like that: most of the time you get nothing, some of the time you get a petty crime, rarely you get a more serious crime, and, finally, there is the unlikely event that you will be the victim of a serious violent crime.

Having said this, you also need to recognize that your chances of being a victim of a crime will vary with your personal characteristics: age, race/

ethnicity, location, job, etc. Some people have a much higher probability of being a victim of serious crime than others. People will also tell you that a high percentage of the population are victims of serious crime, such as child abuse or rape. We will discuss the specifics of these claims later, but, for now, we'll just say that the truth of these statements depends on how you define these crimes.

Now for a relatively controversial statement: *the biggest problem is not crime and delinquent acts themselves, but rather how they affect us.* How crime affects us is not normally a product of our real-life experiences, but, instead, what we have been led to believe through the surrounding social environment. We refer to this as the ***social reality of crime***.[1]

So what is this "surrounding social environment" that leads to the "social reality" of crime? It is what your family, your friends, and your coworkers tell you about crime. It is the news and stories you hear on television and read in the newspapers. It is the urban myths about crime. And more than knowing about crime, these provide the context for *explaining* crime. Simply having the knowledge of crime tells you what crimes are around you, how many occur, where they occur, who is a victim, who gets arrested, what happens in court, and so on. Explaining crime, on the other hand, is making sense of crime: why it occurs, why people commit criminal or delinquent acts, what we should do about it, and how you should live to avoid it. In short, your social environment produces your knowledge of crime and that, in turn, creates the way you interpret and explain crime. Thus, all of these assume that actual crime is directly related to your interpretation of crime—and that is rarely the case.

Social reality describes the difference between actual reality and socially interpreted reality. An early sociologist, W. I. Thomas, once said that what we perceive to be real is real in its consequences. By this he meant that what a person *thinks* is real might as well be truly real, because the person will actually behave *as if* it were real. Put another way, a child might believe that there is a monster under the bed. Adults know different, there are no monsters (at least of this variety . . .). That lack of actual reality still doesn't make any difference; the child will *behave* as if there were a monster under the bed. So, too, is the social reality of crime—people will act on what they "know" about crime, regardless of how close their knowledge is to true reality.

The social reality of crime, then, is the basis for the way the public thinks, acts, and makes pronouncements about crime. The "true" reality of crime is not at issue, the social reality is the critical component. Unfortunately, this social reality can be manipulated, and even created, by news media, politicians, or anyone with a special interest in crime (or the things it brings with it). This is why criminologists usually consider crime to be a *social problem*, rather than merely factual events. Social problems are constructed. That is, they are created by people who have a vested interest in them. The underlying reality of crime itself is actually unimportant to its existence as a social problem. Thus, our discussion of social reality fits in nicely with crime as a social problem. One criminologist has even referred to crime waves as "crime reporting waves"[2]—an adroit observation because individuals cannot possibly know how much crime is

taking place around them or in the nation. When we become interested in crime, we experience a crime reporting wave that may or may not match the actual events of crime.

Another concept that applies to this problem is that of a "moral panic." Moral panics exist when people with a strong interest in a subject manage to convince the public that things have gotten out of hand and a huge problem exists. Almost universally, moral panics follow the same path:

- Someone notices a "problem"
- Someone becomes overenthusiastic about solving the problem
- Claims are made that the problem is widespread and serious
- The news media begins reporting on the "problem" and quotes the claims
- Politicians and special interest groups take up the claims and spread them
- The public begins to believe that the problem is serious and must be resolved
- The media engages in a problem-reporting wave
- People with actual information on the problem begin to question the claims
- The claims turn out to be highly exaggerated
- News-reporting declines, politicians and the public begins to lose interest
- The "problem" disappears

Examples of moral panics in recent times include child abuse, serial murderers, crack babies, missing children, and sex offenders. Each panic followed, almost to the letter, the above scheme. It is possible that, during a crime wave and the resulting public excitement, a moral panic actually is going on and the crime itself has not substantially changed.

HOW DO WE KNOW ABOUT CRIME AND DELINQUENCY?

The people who know the most about crime, criminologists and criminal justicians, have usually spent years of training and study in the subject. But because the amount of literature and research is quite large, even these people are reluctant to say that they know much about the entire subject. Normally, criminologists focus on one area of crime or delinquency (or the criminal/juvenile justice systems themselves) and reserve their judgments to that area. Conversely, most members of the public don't know much about crime but that doesn't stop them from thinking they do or from making pronouncements about crime and what to do with criminals and delinquents.

This leads us to our first "reality" statement:

Reality 1: Few people know much about crime, but almost everyone thinks they do.

The truth is that crime is one of those subjects about which everyone claims to be an expert. And because of this, much of our criminal and juvenile justice policy tends to be created by those who know little about both crime and the justice system. For a certainty, few people actually study crime and are aware of relevant research. This fact, coupled with the popular feeling that everyone "knows" about crime, raises the following question: "How *does* the public know about crime?" We believe there are four primary sources of crime information: personal experience, information from friends and relatives, government reports and pronouncements, and the media.

Information from Personal Experience

As noted above, most people have some experience with crime, but that experience is normally of a relatively minor sort. Such crimes as vandalism, petty theft, and a range of public disorder offenses are common experiences. So common, in fact, that you are likely to have experienced these multiple times. Thus, it is true that most people know crime from personal experience and therefore form opinions based on some degree of factual evidence. Conversely, when the public talks about crime, they don't actually refer to any of these common offenses. It is *real* crime—murder, rape, robbery, burglary, assault—to which they refer. Street crimes, or "index" crimes, are the offenses on everyone's mind. These crimes are far less commonly experienced and, even when experienced, may not produce similar effects (as we noted above, there are some people in certain areas who experience such crimes at much higher rates and *do* have factually informed opinions). Therefore, although some people are reasonably informed by personal experience, the crime experiences of most members of the pubic bear little resemblance to the crimes about which they make pronouncements.

Information from Family and Friends

One reasonable way to add to one's experiences is to draw from the experiences of others. Although these "anecdotal" incidents are emotionally powerful in their personal basis, they are not scientific nor can they be generalized—that is, they are not useful for prediction or for gauging trends. Those closest to us are the normal sources for this additional information. We know from research on social learning that, in addition to information, much of our attitudes and behaviors are formed by those around us. Consider, however, just how your family and friends learn about crime. Do they have any better sources of information than you do? Are their sources reliable? And, most of all, is it possible for their sources to even know the state of crime around us? After all, criminologists are themselves reluctant to talk about actual crime; they refer to those crimes we "know about."

Information from Government Reports and Pronouncements

Although the public receives much of its crime information from the government—including various crime-related agencies, the president's office, and Congress—it is also true that all this information is filtered through the media. Thus, the media is implicated in the delivery of virtually all crime information the public does not personally receive through their our own experiences or from people close to them. Assuming that much of this information is not "interpreted" for us by the media, the question then becomes how the government creates and conveys crime news.

The answer to this question is largely that, like all organizations, government agencies and personnel have agendas that either serve the agency or some moralistic or political purpose. This doesn't mean that government crime information is somehow part of an insidious plan, but merely that individual and agency beliefs, policies, and goals dictate the issues and questions they believe are important and therefore the type of information they provide the public. For instance, in the early years of the Reagan administration, there was a strong conviction that illicit drugs were a major threat to the United States. The problem was that the public didn't feel that drugs were a major social problem. President Reagan and members of his administration talked about the problem posed by drugs at every opportunity from 1982 to 1984. Finally, in 1984, a Gallup Poll indicated that Americans were listening and drugs showed up for the first time as one of the major problems facing the United States.[3] President Reagan promptly proclaimed that the American people wanted something done about drugs and he would obey their wishes. Of course, the truth was that Americans were simply reflecting the political emphasis and media hype on drugs. Every presidential administration has done similar things—they have agendas to push "for the good of the country." Why wouldn't they have such agendas? After all, isn't this why many people vote for them? Of course, no one ever knows the entire agenda.

Aside from obvious agenda items on crime, there are regular and routine government pronouncements. The Federal Bureau of Investigation (FBI) announces that the Uniform Crime Reports are showing a rise (or a decrease) in crime rates. The National Institute of Justice (NIJ) releases the latest victimization statistics or the findings from a specific subset of these statistics (such as victimization of the elderly). The NIJ and its various offices also release reports from funded research on a wide variety of crime and justice issues. To these can be added more than a thousand other national, state, and local agencies that are providing the public with crime-related information. In one sense, each of these organizations releases information that serves two noninformational purposes: (1) it serves to convey the importance of the agency, thus justifying the agency's budget; and (2) it serves to marshal public opinion around the "purpose" of the agency. In short, while informational, news releases from agencies serve their interests.

Such reports, news, and pronouncements help to create the social reality of crime to which we have been referring. For example, in 1996, political analyst John DiIulio compiled a highly publicized report that predicted that social circumstances were ripe to spawn a wave of serious juvenile superpredators who would plague American communities. Republican presidential candidate Bob Dole quickly adopted the "superpredator" scare scenario to propel legislators into passing The Violent Youth Predator Act of 1996, which allowed many young offenders to be tried and incarcerated as adults. In short time, of course, criminologists were able to demonstrate that the phenomenon was not going to occur and, in many areas, violent crime by juveniles decreased. Although DiIulio's pronouncements were widely discredited, the image lingers—as do many of the terms that continue to be resurrected during political campaigns and funding competitions.[4]

Information from the Media

Conceptions of crime, criminals, and delinquents are commonly derived from images presented by the popular media. The public acts on these images as certainly as if they were real. The truth is that popular images and criminological reality usually are in opposition. Here is another reality to keep in mind about crime and the media:

Reality 2: Crime pays—for the media!

The media sell crime because crime sells media. Imagine the mythological newsboy standing on the street corner hawking a newspaper: "Extra, extra, read all about it! Woman helps old man across street!" That is obviously a headline that wouldn't sell a dozen papers. Change the headline to "Woman shoots old man crossing street," and you have a sensational news item that will sell papers. The same concept applies to television and radio news (watch them to see how much crime they report during the hour or half-hour). Therefore, crime sells newspapers and increases the number of television news viewers. But not all crime is sensational enough to contribute to media sales. Thefts, for instance, are just not interesting. Here are the hard facts about crime and the media: the media report most often the crimes that happen the least, and the least-reported crimes are the ones that occur most frequently. Thus, the public is erroneously led to believe that violence is commonplace and, as a result, fear of crime is generated. Not all media crime information, however, comes from news sources. The standard fare of media involves crime images as well.

THE LONE RANGER, DIRTY HARRY, AND MEDIA IMAGES OF JUSTICE

One form of socially constructed reality can be found in popular film, television, and radio shows. For an example, we will use the old Lone

Ranger shows (available in all three forms of media). The Lone Ranger is particularly handy for our discussion because George Trendle, the creator of the show, acknowledged that he was as interested in sending moral messages as he was in entertaining. Every show had at least one major moral message. Realizing the importance of image, Trendle signed every actor playing the Lone Ranger to a contract that mandated that his off-stage behavior match his on-stage role. One of the actors, the late Clayton Moore, felt so strongly about the morality issue that, after playing the Lone Ranger for a half-dozen years, he maintained the role off stage for the rest of his life.

Almost 20 years ago, Quinney wrote an article about what the Lone Ranger had to say about criminology:

> What I am suggesting is that our understanding of crime in America is tied to a myth. Rather than basing our thought on social theory, whether of Emile Durkheim or of Max Weber, we have allowed our thinking to be shaped by the prevailing American frontier ideology. We have been party to a myth. *Law and order. Support your local sheriff. My country. To rule the world.*
>
> *And beware of evil.* What would a world look like that was not divided into the good and the bad? I can't say, can you? The reel spinning before me always shows men in white hats chasing men in black hats; cowboys and Indians; cops and robbers; Americans and Communists; believers and non-believers. To this day I cannot conceive of a world that does not pit the forces of good against those of evil.[5]

Perhaps another quotation, this time from the Lone Ranger himself, would make this concept more clear. In the following scene, the Lone Ranger is talking to his nephew Dan just after Grandma's death (the Lone Ranger left Dan with her to be raised while he was busy fighting crime). Dan has expressed a desire to go off with the Lone Ranger and Tonto to battle criminals, but the Lone Ranger tells Dan that he should first go to college (an important message in 1947 because of the number of unemployed young males after WWII). As he talks, the music of *America the Beautiful* begins quietly in the background and swells to a crescendo:

> She and your father left you a great heritage. They and others like them have handed down to you the right to worship as you choose. And the right to work and profit from your enterprise. They have given you a land where there is true freedom. True equality of opportunity. A nation that is governed by the people. By laws that are best for the greatest number. Your duty, Dan, is to preserve that heritage and strengthen it. That is the heritage and duty of every American. (At this point there is nothing to be heard but *America the Beautiful* playing which then fades into the Lone Ranger theme music.)[6]

From the various Lone Ranger episodes, we learned about the "*blinding light* of justice," the value of *silver* bullets (it seems that bullets from the good guy's gun had to be pure), the good guys riding a *white* horse, taking care of *defenseless* women, and so on. We also knew that the bad guys would always take advantage of the good guys, but never the

reverse. The public learned that justice was pure and fair, and, where the Lone Ranger was concerned, it was swift and certain.

But the Lone Ranger imagery is now rather dated. What is the public now receiving as ''justice'' images? Perhaps the best answer is that reports of out-of-control crime and the ''War on Crime,'' dating from the 1970s, begat a new type of media crime-fighter, one who gave evil its due without depending on a corrupt and ineffective justice system—Dirty Harry. In the first of Clint Eastwood's ''Dirty Harry'' movies, people literally cheered when the evil protagonist was illegally blown away. The young male movie-goers left the theater making comments about how to take care of justice. And, of course, Eastwood's Dirty Harry and his ''Make my day, punk!'' filtered into American consciousness and became an icon (Dirty Harry also became a name for a police stereotype[7]). Movie-goers received far more than entertainment from the movie—they learned a lesson in the ineffectual nature of formal justice and the ''proper'' way to achieve justice. They also learned that criminals are thoroughly evil and socially unredeemable creatures who are absolutely different from normal people. Of course, they already knew much of this—they had been to other movies, read other books, and watched other television shows that delivered the same messages. After Dirty Harry, a series of similarly themed movies staring Charles Bronson, Bruce Willis, and Mel Gibson were made. Television police programs such as *Nash Bridges, NYPD Blue, Miami Vice, Walker–Texas Ranger,* and *CSI* generally repeat these images. All find a way to cut corners and successfully ''bring in the criminal'' in spite of the legal technicalities standing in the way of ''real'' justice.

From other media sources, the public has learned that there is another type of criminal—a very devious, very intelligent, cold-blooded killer who requires much more than a Dirty Harry to bring him to justice. This criminal can only be caught by a superintelligent investigator who is capable of seeing and understanding the smallest nuances of evidence. Such villains are exemplified in the pages of writers such as Sir Arthur Conan Doyle (the *Sherlock Holmes* series), Agatha Christie, and, more recently, James Patterson. In fact, Patterson's best-sellers (such as *Along Came a Spider* and *Kiss the Girls*) trade on the public's concept of serial murder, painting a picture of murderers as genius sociopaths who kill over and over again. Patterson's detective requires a doctorate in clinical psychology to win the battle of wits. Furthermore, expensive labs with high-tech equipment and genius technicians turn tiny microscopic traces of fibers and skin cells into damning evidence resulting in iron-clad convictions. Ironically, materials are never lost, compromised, or piled up on the desk of someone who is taking extended leave.

The truth is there is not much reality in the television crime-reality shows. These shows demonstrate the exciting and tough nature of the police job and the general stupidity of average criminals. Although other stereotypical cops and robbers exist, all of these cater to, and help create, public perceptions of ''real'' police work. Moreover, they all serve to focus the public attention on the ''front end of the justice system.'' Surette, in an excellent work on media and crime, has this to say about such emphases:

> These images of society and criminality, combined with the emphasis on the front end of the justice system, investigations and arrests, ultimately promote pro-law enforcement and crime control policies. Crime shows may be about law and order, but they are light on law and heavy on order.[8]

In short, the Lone Ranger and others of his ilk (Superman, Batman, Spider Man, Wonder Woman, Teen-Age Mutant Ninja Turtles, Power Rangers, the Avengers, and the Fantastic Four, to name a few) have not just entertained us by providing action and adventure every week, they have intentionally and unintentionally provided moral messages and pictures of proper social reaction for impressionable minds, both young and old. These popular figures help construct the way justice is viewed and crime-fighting is done.

Media Affects Our Lives

Without spending much more time on the subject, it should now be obvious that media coverage of crime affects our lives. Imagine how it might affect which politicians we vote for (Richard Nixon "invented" the modern-day political use of candidates "being against crime"—after all, who is going to come out *for* crime?) and what we do on a daily basis. Fear of crime is largely a product of media reporting, political maneuvering, and the work of special interest groups. Thus, we come to another truism:

Reality 3: Crime pays—for politicians and special interest groups!

CONCLUSION

To couch this message in other terms, perception is a critical ingredient in what humans know and how they behave. Moreover, it is not merely perception that is important, but also *selective* perception. The world around us is too complex. A person simply cannot perceive all that he or she sees at any moment for the very reason that the complexity of the information would be too difficult to process and therefore result in paralysis. So, humans rely on selective perception to resolve the problem of filtering out all but the most important factors. Of course, those factors that humans define as "most important" are a product of preexisting belief systems or ideologies that tell us what we should observe and how we should process these observations (what is defined as important may even be a product of evolution ...). Reality is, of necessity, a selectively perceived reality. Popular media, the government, and our friends assist in that selection process.

Crime, justice, and the justice system are all interpreted through the filter of perception. Because the information we receive is, on the whole, lacking in accuracy, the public believes and acts on a version of crime and justice that is largely in the mind. This social reality of crime is the essence

of the myths and misinterpretations that abound among the public. And, this reality is the source of most of our criminal and juvenile justice policies.

NOTES

1. See Richard Quinney's *The Social Reality of Crime* (1970) for the first elaborated statement on this concept.
2. Fishman, 1978.
3. Goode & Ben-Yehuda, 1994.
4. Schiraldi, 2001.
5. Quinney, 1973, p. 60.
6. Quinney, 1973, p. 57.
7. Klockars, 1980.
8. Surette, 1998, p. 50.

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CHAPTER 2

Age, Gender, Race, and Rep: Trends in Juvenile Offending and Victimization

Richard McWhorter

The costs to society of juvenile offending are both direct and indirect. Direct costs include incarceration, damages, and injuries, as well as replacement of stolen property and treatment. Indirect costs are things like community fear, the purchase of security, and the loss of potentially productive citizens to a life of crime and institutionalization. Likewise, the direct and indirect affects of victimization can also be quantified, and these numbers provide significant motivation to address the causes of delinquency, identify those at greatest risk, and implement solutions that, at face value, seem to be a small fraction of the estimated costs of later interventions.

In 1999, a government study estimated that the cost to the public of one youth dropping out of school and becoming involved in crime and drug abuse was in excess of $2 million.[1] Over time, however, the estimates are projected much higher as the costs are adjusted for inflation.

Learning more about those who not only will become offenders but who also will persist in offending is as critical as determining what treatments and programs show the most promise for success. Long-held beliefs about the effects of age, gender, and race must be scrutinized in light of our demographically changing society and with the newer and more sophisticated statistical techniques available to analyze crime.

AGE, RACE, AND GENDER: WHAT REALLY COUNTS?

One of the problems with attempting to profile offenders or victims is that characteristics can be too broad or too narrow to be useful in predicting who is at risk. For example, the Federal Bureau of Investigation's

(FBI's) attempt to link certain traits to school shooters, based on a small number of previous incidents, is notably weak. The traits they listed, such as externalizing blame, inappropriate humor, narcissism, and access to violent videos, could be generalized to most adolescents and were unlikely to predict a homicidal teen. Conversely, prediction instruments that look for previous violent attacks, as well as mutilating small animals, may be a bit narrow and likely to overlook some who eventually do commit serious crimes.

Traditionally, variables like age, race, and gender have been considered the most consistent predictors of both criminality and victimization. Over time, age and gender remain powerful factors in any analysis, but race has been clarified by more complex relationships, such as socioeconomics, criminal history, neighborhoods, and education. Other variations in research outcomes can be attributed to different sampling locations. Official statistics gathered by the FBI from individual police jurisdictions is often criticized for overemphasizing the importance of street crimes to the exclusion of other serious offenses, such as white collar crimes, environmental crimes, and drug crimes. In addition, official statistics tend to underreport rape and domestic violence crimes, while overemphasizing those crimes requiring police reports for insurance purposes. They are also subject to the reluctance of both victims and witnesses to go to the police about certain offenses or offenders.

Conversely, self-report surveys, in particular the National Crime Victimization Survey (NCVS), tend to rely on respondents' recollections and their tendency to admit to certain types of victimizations and suppress others, to emphasize stranger-based crimes, and to downplay any behavior on their own part that might have originated or aggravated the criminal incidents. Studies taking place over a long period of time and with multiple observations, called longitudinal studies, may give us different types of research findings than those assessed at one specific point in time (cross-sectional studies). It was a well-known longitudinal study, The Wolfgang-Sellin Philadelphia Birth Cohort, that demonstrated the presence of a small group of persistent or chronic offenders, roughly 6 percent of the boys, were responsible for half of the area's juvenile crime.[2] This finding has since been replicated in many areas and has led to specific strategies being developed to address this high-rate offender.

Age, Race, and Gender

Although the age at which juveniles can be found criminally responsible varies from state to state, age is one of the most consistent predictors of crime—that is, criminality is young and male. Clarifying the exact function of the age variable, however, has been made somewhat difficult by the different ways age is defined and data on it are categorized and collected. For instance, the federal government defines a juvenile as a person under the age of 18. Sixteen states have legislated the minimum age of criminal responsibility. North Carolina has the youngest age, which is 6 years. For

three other states, the minimum age is 7 years, in Arizona it is 8, and 11 other states, including Texas, have set the youngest age at 10 years.[3] This made the headlines recently when Houston prosecutors tried a youth who was only 10 years old when he shot his father during his parents' contentious and often violent divorce. Lohstroh, who was being given Prozac at the time, gained access to his mother's gun and pulled it from his backpack after entering his father's vehicle for a planned custody visit. The jury found the boy guilty of juvenile misconduct, an offense that could result in 40 years of incarceration with the first 10 years in juvenile facilities.

The upper age limit used in courts also differs among the states. For three states, a juvenile becomes an adult (for court purposes) at 15 years, for 10 states it is 16 years, and for the remaining states, and the District of Columbia, it is 17 years.[4] In addition, exceptions may exist to the upper age. Juvenile court jurisdictions can be extended for disposition (that is, sentencing in an adult court) reasons. For 33 states, this could extend through the age of 20 years or as old as 24 years, such as in California, Montana, Oregon, and Wisconsin. Juveniles can be transferred by statute to the adult criminal justice jurisdiction by certification, which is legislatively determined based on the level of crime committed by a juvenile.

The following sections will present the demographics of juveniles, juvenile delinquency, juvenile offenders, and juvenile victims. This analysis can be problematic because the various major database sources are not consistent in the way they define age. Because no uniform age range exists for juveniles, there are limitations on describing individuals in this status. Additionally, one of our major information sources, the NCVS, does not record any information on victims younger than 12 years of age. Therefore, in the discussions that follow, specific ages or age ranges will be identified when possible.

JUVENILE POPULATION DEMOGRAPHICS

In the United States in 2004, there were an estimated 73 million juveniles age 17 and under. Of these, 60 percent were white non-Hispanic, 16 percent were blacks, and 19 percent were Hispanics. Of the youth under 18 years of age, 17 percent lived in poverty. Of these, 10 percent were whites, 33 percent were blacks, and 29 percent were Hispanics.[5] Furthermore, 68 percent lived in two-parent family households and approximately three-quarters of these were whites and 35 percent blacks.[6] Of those who lived in one-parent households, 3 million had males as head of household. In addition, more than 95 percent of juveniles of school age were enrolled in public or private schools.[7]

Juvenile Delinquency

The early American criminal justice system was greatly influenced by Cesare Beccaria's (1764) treatise on crime and punishment and many of

his principles of punishment were adopted in the Declaration of Independence and the U.S. Constitution. Along with disenchantment with the earlier, more theological, view of crime, many people began to focus on the causes of crime. With these efforts came a growing awareness of the significance of a criminal's childhood background.

The early focus was more on strengthening social stability and social controls to address the more problematic issues of childhood. Endeavors were initiated to "correct" criminal behaviors and to prevent future ones. This meant that the focal point became providing better environments for children. To accomplish this, houses of refuge and orphan asylums began to appear to protect and to provide for children. According to Empey, "Either the house of refuge or the orphan's asylum was to become an instrument of the new social order whose purpose it was to produce the ideal child."[8]

During the nineteenth century, efforts were made to strengthen children and to better prepare them for adulthood. These changes included school attendance laws and labor laws, which addressed the minimum ages for, and time limits on, work days for children over 12 years of age. Eventually, the struggle to improve living conditions and provide a better future for the nation's children, and a separate justice system, were established.[9]

With the enactment of the Illinois Juvenile Court Act (1899), a law was passed that officially defined the ages of children and adults. Those under 16 years of age were separated from adulthood and were identified as children. Not only did this act serve to define the concept of childhood, but Empey argued that it also served to invent the concept of delinquency. Others have also argued the definition of delinquency itself depended on a definition of childhood,[10] which was partially an attempt to extend the ages of childhood.[11]

Additionally, during the last few decades of the nineteenth century, there was an increase in the scientific study of the teen years. This effort to study teens culminated during the enactment of the Juvenile Court Act and with the publication of the work on adolescence by G. Stanley Hall.[12] These changes promoted the concept of children, adolescents, and juveniles as "fundamentally different from adults."[13]

Since the turn of the twentieth century, the constructs of childhood, adolescence, and juveniles continued to be influenced by an increased awareness of the developmental stage of adolescence. With a separate stage established, many developmental psychology scholars saw a critical need to establish the developmental differences of adolescence from childhood and adulthood.[14] As a result, separating adolescents from adulthood became the focus of much social posturing. Preoccupation with controlling children who were perceived to be a threat to the social order, by virtue of their physical size and lack of maturity, resulted in the expansion of the defined length of childhood and the consequent economic dependency of teenagers, which created even greater demands for formal social control.[15]

Hanawalt argued this was an attempt at control in which adults "manipulated access to the economic advantages of the adult world."[16] She further suggested that, in earlier times, apprenticeships were used to

control this access. A major disruption of this control mechanism occurred during the Industrial Revolution when wages available for child labor provided a means for young people to achieve freedom. Eventually, by the turn of the nineteenth century, an adolescent working class existed alongside the adult working class.

Therefore, Hanawalt argued that control and freedom of children has revolved around an economic motivation. Control was required to continue the child's or later adolescent's role of physically or economically supporting the family. In addition, control was needed as society became more industrialized to control job and wage competition between adolescents and adults.

English law had declared that children less than 7 years old were incapable of a serious crime, therefore, there was no category for child offenders. Children from 7 to 14 years of age were treated the same as those under 7 years of age, unless it could be established that the child was aware of the wrongfulness or sinfulness of the act they committed. If this was established, their punishment could be as extreme as for an adult, including capital punishment. For those over 14 years of age, the English courts deemed them adults and, as such, they were treated accordingly.[17]

As it is today, in the past, there were behaviors and actions exclusive to children that were considered crimes. Some of these crimes could even be capital offenses, such as "rebelliousness against parents."[18] Other child crimes could receive corporal punishments. With the Juvenile Court Act, the framework had been more formally stated and structured, with the goal of juvenile rehabilitation.

Various descriptions and discussions have attempted to defend these judicial limits placed on juveniles. The very foundation of the juvenile justice system was based on the philosophy of aiding the juvenile to change his or her behavior and to make a positive entrance into adulthood. Through this separate and special handling, reformers hoped to avoid the stigmatizing of a juvenile who had entered the system. For these reasons, the informality and confidentiality of the juvenile justice process was established.

The basis of this separate system was the belief that juveniles lacked the development and cognitive ability to understand the consequences of various actions and activities and, therefore, deserved different handling by the court. Since the court's creation, this belief has been both supported and challenged. Studies have suggested that adolescents over 14 years old of an average intelligence have shown little difference than adults of average intelligence. Paradoxically, adolescents with lower-than-average intelligence were not similar to adults with lower-than-average intelligence.[19] Other issues that separated adolescents from adults were risk interpretations and impulse control. Oftentimes, these issues may go together. The impulse drive did not allow an adolescent to adequately measure the risk potential of an action, either as the result of improper evaluation or impulsivity.[20]

In addition, it has been that suggested delinquent behavior was a normal function of adolescent development.[21] The majority of the time, an adolescent appeared to "age out" of these behaviors.[22] Indeed, Riemer argued that certain behaviors would be hedonistic and spontaneous,

suggesting "all persons are deviant at least some of the time."[23] Scott suggested these decisions to "act out" by adolescents may be developmental evidence of "cognitive and psychosocial immaturity."[24] Margaret Mead and G. Stanley Hall have described adolescence as a phase of "storm and stress."[25]

Adolescents gather into rather homogeneous groups, with the majority of friends tending to be of similar social status, ethnicity, and race.[26] Likewise, families are more harmonious than not. Also, as adolescents matured into adulthood, they would adopt the majority of values and beliefs of their parents.

Complicating the discussion of delinquency of juveniles are the status offenses, those offenses if committed by an adult would not be viewed as criminal. In the past, when a juvenile was adjudicated as a delinquent, he or she could have been guilty of a serious act, such as homicide, or could have been guilty of something as minor as truancy. In this discussion, the focus will be on those acts that would be criminal whether committed by a juvenile or an adult.

Beginning in the 1970s, the rates of juveniles committing more delinquent acts began to increase, and became more violent. This led some researchers to predict the coming of the superpredator. At about the same time this pronouncement was being made in the 1990s, the rates began to decrease—until in the early 2000s the rate was approximately the level it was in the 1970s. Unfortunately, in reaction to these pronouncements about juvenile crime, legislatures responded with a more "get tough" philosophy. This philosophy led to lowering the upper age range for adjudicating youth, certifying and transferring to the adult criminal system, and exclusionary laws. Even for those who remained within the juvenile system, there were changes in sentencing. These changes included blended sentences, mandatory minimums, and extended sentences.

Fritsch, Caeti, and Hemmens have argued, "the primary purpose of judicial waiver is to impose more severe sanctions than are permitted in juvenile court."[27] This statement suggested more severe sanctions became available in the adult system. As a result, research indicated more violent juveniles were transferred more often to the adult system. Yet, there was other research questioning the reality of this occurrence.

Poulos and Orchowsky suggested that certain factors would increase the possibility of transfer out of the juvenile system. Those factors included current offense, prior record, education, age, and previous treatment, especially mental health. If a juvenile was certified to be tried as an adult, many states adopted a "once an adult, always an adult" position. A few states did provide methods of being returned to the juvenile system, although this was left to the juvenile to pursue.[28]

Reports on Offending

Approximately 80 percent of all nonfatal violent crimes to juveniles reportedly have been committed by juvenile offenders.[29] Many of the

violent types of crimes committed by juveniles have been mainly stable since 1980. Yet, today's homicide rates remains higher than in 1980.[30] The majority of violent crimes committed by juveniles were by males between 15 and 17 years old (we also know that the most common time is around 3 P.M.).[31]

In 2004, 1,578,893 arrests were reported by the FBI for crimes committed by juveniles under 18 years of age, ranging from running away and curfew violations to murder.[32] This figure can be misleading for this range of ages. The majority of those arrested were 15- to 17-year-old juveniles (1,075,514 arrests), which was more than twice as many as those arrested under 15 years of age (503,379).[33]

Under 18-year-old juveniles accounted for more than 18.5 percent of the total arrests made in 2004. Of these arrests, more than 69 percent were committed by males. Furthermore, almost 70 percent of those under 18 years of age were white males.[34]

Snyder and Sickmund reported the ranges in times of crime committed as well as whether the crimes occurred at school or nonschool locations. Sexual assaults and aggravated assaults most frequently occur at school at about 3 P.M. Shoplifting most often occurs at 5 P.M. and robbery at 9 P.M. Drug crimes appear to peak at noon at school and at 11 P.M. at nonschool location. More than 7 percent of 12- to 17-year-old juvenile offenders were reported selling drugs. Less than one-fourth used alcohol, which was divided nearly equally between male and females juveniles. More than 9 percent used marijuana and more than 7 percent used alcohol and marijuana.[35]

Snyder and Sickmund also counted nearly 8,500 homicides of juvenile victims committed by juvenile offenders. In 2002, there were more than 960 juvenile male homicide offenders compared with less than a hundred female offenders. More than 490 were white juvenile offenders and more than 530 were black juvenile offenders. Less than 370 of the 1,068 homicides involved a firearm. Approximately 50 percent of the homicides were committed by acquaintances and less than 14 percent were committed by a relative.[36]

Both national and international studies on delinquency note that the true picture of delinquent offending is distorted by the fact that most juvenile crimes are committed in groups, that is, that crime is a product of co-offending. This means that you cannot assume from the crime reports that one crime is equal to one offender. If more than one youth is arrested for a single offense, than the arrest information will distort the crime picture. For criminologists, this is not a surprising phenomenon as most theories stress the way the delinquent behavior is learned and valued in social groups. Peer pressure and status influence the likelihood that certain negative behaviors will be reinforced and rewarded. Data indicate that approximately 82 percent of juveniles committed their offense as members of a group and 44 percent of murders had more than one perpetrator. Nonwhites are more likely to offend in groups as are offenders under the age of 14. For 16- to 17-year-olds, violent crimes are twice as likely to take place in a co-offense. As age increases, single actors are more likely to

commit crimes, particularly property offenses. We also know that those who are younger at the time of their first arrest have higher recidivism rates and those with long criminal histories eventually move from group to solo offending.[37]

In summary, the most frequently reported juvenile arrest is of a white male between 15 and 17 years old. He most likely would be arrested for a property crime or larceny theft. Of the property crime arrests, less than 55 percent would be petitioned to a juvenile court and just over two-thirds would be adjudicated delinquent. The majority of those adjudicated would be 16-year-old white males.[38]

Looking beyond Race and Delinquency

Research over time has indicated that a number of other factors may be much better predictors of delinquency than the controversial notion of race. Many people have argued that any true effect or influence of race would be hard to detect because race and economic status are so hard to separate in analysis. In a more recent series of studies in which multiple measures of socioeconomic status are used, strong correlations exist between lower socioeconomic status (SES) and delinquency. These studies also showed that poor parental supervision, low parental reinforcement, and males with low levels of family activity were all related to increased levels of delinquency.[39]

Another example of how our efforts to improve statistical analysis have resulted in different findings about the causes of delinquency is found in the impact of religion on youth. In the past, findings were mixed on the effect of religion and delinquency, particularly in situations in which religion was measured by church attendance or identification with a particular religious affiliation. More recent studies that have assigned the variable religion to particular values and spiritual ethics have found more of a negative relationship between religiosity and delinquency. In particular when both mothers and children have strong religious beliefs, youths may be more insulated against delinquency.

Juvenile Victims

For every crime, at least one person was a victim, excluding the somewhat special category of victimless crimes—prostitution, gambling, and illicit drug use. It has only been within the last 40 years or so the focus has been placed on victims. In the previous centuries, victims had received a diminishing concern by society, as the majority of concern and study had been on crimes and offenders. As rules and laws were formulated, the responsibility still remained with the victim to seek restitution. This period was often considered the age of a victim justice system. Near the end of the Middle Ages victims began to recede into the background as crimes were seen as being committed against the rulers, such as the feudal barons.

In the American Colonies and post-American Revolution, the victim in the United States became the state, as a crime was seen to be a challenge to social order. Therefore, it became the responsibility of public prosecutors who represented the government to begin the determination of whether to process a crime and, if so, how. The primary victim was responsible for filing charges and possibly to provide evidence through his or her testimony, but ultimately the state was the victim.

The 1950s and 1960s were the beginning of the civil rights movement, which began other movements, culminating in the victims' rights movement. With this movement, the role of the victim began to change in the criminal justice system, as well as his or her treatment. This was especially true of studying victimization and victims.

The study of victims began in the 1940s with the work of Hans von Hentig, a criminologist who had studied how criminals became criminals. He then applied the process to how victims became victims. Then, Benjamin Mendelsohn, an attorney, followed with his typology of classifying victims on the level of responsibility for a crime. With each decade, there appeared another typology or theory. In the twenty-first century, opportunity, lifestyle, and routine activities theories are in vogue.

The primary source of victim data in the United States is the NCVS. This annual survey of more than 40,000 households represents more than 90,000 individuals who are 12 years old or older. The survey was first conducted in 1973 as the National Crime Survey and was redesigned and renamed in 1992.

The data produced by this survey from 1992 to 2003, indicate that the frequency of violent crimes and theft at school shows a decreasing trend since 1993, with an occasional elevation in frequency. For nonschool locations, this has been true since 1992 for violent crime and since 1993 for theft.[40] During the decade beginning in 1993, nonfatal violence occurred approximately two and a half times more often to juveniles (12 to 17 years old) than to adults.[41] This age group was responsible for about three-quarters of juvenile victimizations reported to the police. More than half of the 12- to 14-year-old victims were more likely be a victim of an acquaintance, who was a nonrelative, and more likely to be a victim of nonviolence than the 15- to 17-year-old victims. The 12- to 17-year-old victims were also more likely to be a victim of violence than were adults.[42]

Finkelhor and Hashima developed a typology of juvenile victims, and in this typology, the first category was *pandemic victimization*. These types of victimization were the most common victim experiences and were potentially experienced at some point during a juvenile's life. The second category is *acute victimization*, which is experienced by fewer juveniles. These types were potentially more violent and destructive. The final category was *extraordinary victimization*. These were the more rare forms of victimizations, were more violent, and are experienced by few juveniles.[43]

Two characteristics of juvenile victims and victimizations were closely related to one another. These were locations and times of day. According to routine activities theory,[44] three elements must converge for a crime to take place. Those are a motivated offender, an attractive target, and the

absence of guardian. For juveniles, offenders, and victims alike, school was the most common location and activity. It would be assumed that with teachers and other adults present there would be adequate guardianship. Upon review of NCVS data, however, schools and school grounds were the most frequent location for juvenile victimizations.

Theft was more common for juveniles than violence and generally occurred more frequently at school than at nonschool locations. This held true for both genders. In addition, the majority of juvenile victimization occurred at 3:00 P.M., which is the time most schools end their days.[45]

The peak time for aggravated assaults and sexual assaults was 3:00 P.M. For nonschool locations, the most frequent time aggravated assault occurred was 8:00 P.M. The most frequent offender was an acquaintance, who was not a relative. For sexual assaults by an acquaintance, the times were noon followed by 3:00 P.M. When the offender was a family member, the most common time for 12- to 14-year-old juveniles was 4:00 P.M. and for older juveniles it was 9:00 P.M. When aggravated assault was perpetrated by a family member, the crime most often occurred at 9:00 P.M.[46]

Three locations other than school identified were residences, outdoors, and commercial locations. In time order, outdoors incidents occurred most frequently at 3:00 P.M. For residences, the time was 4:00 P.M., and for commercial locations the time was 9:00 P.M.[47]

Racially, all juvenile races are victimized, but black and white juveniles have the higher frequencies of victimization. More than 13 percent of juvenile sexual assaults were black juveniles, which was more than twice as many as white juveniles. In addition, black juvenile victims experienced more physical assaults or witnessed violence more than white victims. The rates of violent victimizations were closer to the same rates. For younger juvenile victims of violence, white juveniles had a higher rate than black juveniles, but older juvenile blacks had a slightly higher rate than white juveniles.[48]

Socioeconomic status is also related to juvenile victimization. The majority of victimizations occurred more frequently in poor urban areas.[49] In addition, numerous categories of victimization were more frequent for victims who lived in a household of less than $20,000.[50] For younger juveniles, this was at a lower rate than the older juveniles. Suburban communities had the second highest rate, followed by rural areas.[51] One significant category of victimization of juveniles from households of more than $50,000 was bullying.[52]

Finally, juvenile victims of homicide were more than five times more likely to be 15 to 17 years of age than 12 to 14 years old. Slightly more victims were white than black and they were almost twice as often male rather than female. These homicides were least likely to be committed using a firearm. Additionally, these demographics were descriptive of victims and offenders of serious violent victimizations.[53]

According to Finkelhor and Ormrod, of all crimes reported to the police, more than 11 percent were juvenile victims and these accounted for more than 70 percent of all sexual crimes.[54] More than one-fourth of the violent crimes perpetrated on juvenile victims were reported to police,

which was less than half of those of an adult victim. Of the in-school crimes, more than one-third were reported to a school official instead of the police.[55] When the offender was a juvenile, the victimization of a juvenile was often reported less frequently.[56]

Bullying was a major victimization experienced in schools and was more common for boys.[57] According to Haynie and colleagues in a World Health Organization Survey, almost 17 percent of juveniles reported having been bullied three or more times in a year. Also, approximately three-quarters of teenagers have been bullied once during their school years,[58] although more frequently for younger school age children.[59]

CONCLUSION

Much like the type of friends selected by a juvenile, a similarity exists between the juvenile victims selected by the juvenile offenders. The most frequent relationship between the juvenile offender and the juvenile victim was an acquaintanceship, which possibly could be an aspect of routine activities theory that is not often addressed. This would involve the approachability of an offender to a victim. An explanation of this dynamic would be that the victims and their offenders were members of a similar class or status, such as classmates.

The most frequent delinquent event was property crime and was committed most frequently by a black male, 15 to 17 years old, who lived in an urban area. He would commit this crime most frequently between 3:00 P.M. and 4:00 P.M., most likely on school grounds and without a firearm. The victim of this event was comparable. He, too, was a black 15- to 17-year-old male living in an urban area in a household with an income most likely less than $20,000.

Even with what is known about juveniles, questions persist as to who they are and what their roles are in society. Still, according to Mohr, Gelles, and Schwartz, they "continue to occupy a position in a no-man's-land between chattel and constitutionally protected citizen."[60] Despite the fact that they are citizens of the United States, they are denied the full rights granted a citizen under the Fourteenth Amendment of the U.S. Constitution.

In many ways, they continue to function under property rights laws of the past. They do not have the right to choose or decide for themselves in many life situations. In other life situations, it appears that explanations for certain actions are ignored. On the one hand, society puts forth juveniles who are not yet able to understand the full ramifications of their decisions. On the other hand, if one of these juveniles commits a serious enough crime, society flips its position and declares they should be treated as an adult.[61]

Society accepts that a juvenile can choose to join the military and die for his or her country, but does not let them purchase alcohol. In the juvenile justice system, for decades juveniles were denied adequate counsel, under the belief the court had the welfare of the juvenile as its focus. When this began to change, courts attempted to persuade juveniles to waive counsel.

As a result of Supreme Court rulings over the years, the differences between the juvenile justice system and the adult system have been reduced. In addition, the requirements to certify a juvenile as an adult for more serious crimes have been reduced. One of the earliest attempts to facilitate this and modify the juvenile systems jurisdiction was in 1935 in Illinois (that any juvenile over the age of 10 would be tried in the adult system for all felonies).[62] As a result of the changes and challenges, and because the juvenile system is losing its uniqueness, some have suggested the dissolution of the two justice systems.

It could be argued that this faction of the population is discriminated against in many ways on the basis of age. As a result of age, juveniles can suffer curfews, be denied voting for those who make laws that affect them and juries of their peers, and be subject to mandatory school attendance.

When born in this country, children's nationality is established, yet they are a special class of citizens, that is, one who may enjoy fewer rights than noncitizens in this country. Juveniles do not enjoy the same rights or privileges of those over a certain age. And the laws governing juveniles lack consistency, both in determining who is a juvenile and what society's expectations are for juveniles. If they are a protected citizenry, who are they being protected from, and why is there a need?

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CHAPTER 3

Home Is Where the Hurt Is: Child Abuse and Delinquency

Robert L. Bing III

> Parents . . . always remember that you represent the window by which your kids view the world.
>
> —Ray Wright, former Dallas Cowboy

The relationship between child abuse and delinquency has been the subject of debate throughout the years. It is generally assumed, for instance, that exposure to abuse as a child will predispose an individual to acts of aggression and delinquency. The importance of the problem is evidenced through allegations that serial killers, rapists, substance abusers, and juvenile superpredators have histories of mistreatment. These are best viewed as direct effects of abuse. Other, more indirect effects may result in children running away from home or being pushed out of the home and ultimately engaging in survival crimes like petty theft and prostitution, as well as drug and alcohol abuse, which may result in greater health and safety risks.

What follows is a look at issues and case studies exploring the relationship between child abuse and delinquency, beginning with an examination of themes and trends in the empirical literature. It is hoped that this chapter will enhance one's knowledge about the complex relationship between child abuse and delinquency. At the end of this chapter, recommendations to problems identified in the research are offered.

A LOOK AT ISSUES IN THE LITERATURE

The literature on child abuse can be divided into two categories: first-generation and second-generation research. The first-generation studies

tend to be retrospective in nature with weak research designs. The second-generation studies have more rigorous research designs. We begin with findings and issues that emerge in the first-generation literature.

First-Generation Research

In this research, there are many different findings: Some researchers found physically abused children more aggressive.[1] Several other studies examining juvenile court and medical records reveal that a sizeable number of delinquents have been abused.[2] Similarly, two studies relying on self-reports found that juveniles in trouble with the law had been abused, in percentages ranging from 51 to 69 percent.[3] In a systematic review of existing studies on delinquency, Loeber and Dishion found parental family management techniques such as the inconsistent use of discipline to be strongly predictive of delinquency.[4] In all, a number of these first-generation studies point toward strong relationships between delinquency and child maltreatment.

Second-Generation Research

In the 1990s, many of the newer studies had more rigorous research designs. In this category of new research, many findings and observations parallel the earlier research. For example, Zingraff and others in a comparison study suggest that the overall rate of arrest was highest among maltreated children and next highest among low income groups.[5] Second, Smith and Thornberry report that a history of maltreatment significantly affects the prevalence and frequency of police arrests.[6] Similarly, Widom and Ames found that child neglect was a strong predictor of delinquency.[7] In addition, Ireland and others found that abused kids have higher rates of offending than nonabused youth.[8] Interestingly, this relationship holds for both official and self-report measures. These few examples point toward a complex yet undeniable relationship between abuse and delinquency.

What follows are a series of discussions based on major themes that appear in the literature, ranging from sex abuse, social status, and family conflict.

WHAT IS THE ROLE OF SEX ABUSE IN DELINQUENCY?

Much research confirms the devastating impact of child sexual abuse. Indeed, research reveals that children who have been sexually abused are at higher risk for delinquency, adolescent aggression, and suicidal thoughts. It should be recognized that sexual abuse varies in practice and content. For example, it can occur in the form of rewarding a child for sexual behavior that is inappropriate for his or her age. Sexual abuse can also include an unwarranted touch or forcible penetration. It is estimated that 1 in 10 boys and 1 in 3 girls have been the victim of some form of sexual exploitation. The impact of sexual abuse can be profound, affecting the mind, personality, and emotional development of the child. Sexual abuse may damage the

emotional development of the individual, resulting in a child with little appreciation for what constitutes *normal* sexual behaviors.

One of the difficulties in prosecuting cases of child sexual abuse is the difficulty that jurors may have in understanding child sex abuse accommodation syndrome. The psychological symptoms of victims of repeated abuse by those they trust can result in a form of pathological bonding with the offender that may delay disclosure and reporting. Often, it is difficult to understand the complex emotions faced by victims who are violated by those they trust. The feelings of powerlessness, helplessness, and entrapment can lead to not only accommodation but also to false testimony, retractions, and defense of their abusers.

Child sexual abuse can cause many different behaviors. Long-term effects include confused boundaries, dissociative states, self-injury, memory repression, and even multiple personalities. Some victims or survivors (in adult life) find themselves sexualizing their own children. Other studies have found a strong relationship between sexual abuse and adolescent prostitution. Siegel and Williams found that juvenile offenders with past histories of sexual abuse fall into two arrest categories: (1) arrests for violent crimes and (2) arrests for running away.[9] Individuals who run away are at a greater risk of involvement in more serious behavior, such as drug use, prostitution, or exploitation by people they meet on the street.[10]

Last, but not least, Swanston and others provide compelling research to illustrate the fact that there is a cogent relationship between delinquency and a history of child sexual abuse. They state, ''A history of child sexual abuse is clearly associated with self reported criminal behavior ... and should be seen as an independent risk factor for criminal offending.''[11]

The following list captures the realities for women as *victims* and as *survivors* of sexual abuse.[12]

- Sexual abuse is related to mental health problems, school problems, and risky sexual behaviors.
- Young girls who experience sexual abuse may *perceive* greater barriers to counseling and service.
- The juvenile justice system is not well designed to respond to the myriad problems associated with sexual abuse.
- Women affected by sexual abuse must be seen as both *victims* and *survivors.*
- Focusing on sexually abused women as victims only perpetuates paternalistic attitudes.
- New intervention efforts should seek greater input from women who have been abused.
- Interventions should focus not only on the individual, but also on the entire family, community, and institutional level.

WHAT IS IT ABOUT SERIAL KILLERS?

Do many of the notorious serial killers, like Ted Bundy and John Wayne Gacy, have histories of child abuse? Ted Bundy was born out of

wedlock, and law enforcement officials believe that he is responsible for more than 25 murders. He was eventually convicted of three murders and later executed in the state of Florida. According to Egger, many believe that "learning the circumstances of his 'out of wedlock birth' had a decided impact upon his behavior."[13] John Gacy, who was convicted of killing 33 young men and boys, had a father who drank excessively. It is said that the father would call him a "sissy and mamma's boy."[14]

Hickey conducted an analysis of female serial killers and found that many of these killers were from economically deprived backgrounds and had been severely abused as children.[15] The serial killer literature consistently includes some type of child mistreatment. In citing past research,[16] Egger identifies additional risk factors related to the childhood histories of serial killers. These include brutal or almost violent punishment, lack of love and genuine affection within the family structure, and a home known for physical abuse and neglect.

A Closer Look

The most common correlate among children who go on to murder is parental abuse.[17] These children who go on to commit homicide have learned their behaviors through the years of victimization suffered as a child. Said another way, abusive parents become powerful and negative role models for their children. Following are limited case studies of juveniles who are in prison for committing homicides:

- *Case 1:* John was sentenced to die for robbing and shooting a store clerk as she begged for life. Abandoned by his dad at the age of three, he was raised by a mother—a drug addict—who beat him often.
- *Case 2:* Sarah, with the help of a female friend, killed an elderly lady with a butcher knife. Court records reveal that Sarah had been sexually abused by her father and uncle. Her accomplice had been beaten and raped throughout her childhood.
- *Case 3:* Jerry and his sister Pam shot and killed their father. In this instance, court records reveal a history of sexual abuse of Pam and physical abuse by the father of both son and daughter.

It can be easily argued that those who have been abused or those who witness abuse are at increased risk for lashing out and retaliating later in life. Next, we examine the relationship between child maltreatment and drug use.

WHAT IS THE RELATIONSHIP AMONG SUBSTANCE ABUSE, CHILD ABUSE, AND DELINQUENCY?

Substance abuse is a major societal concern. Some of the available research points toward strong correlations between child abuse and alcoholism. One study, for example, found that children who grow up with

parents abusing alcohol were more likely to suffer adverse childhood experiences, such as delinquency.[18] Similarly, a standard textbook in the field identifies research showing parallels between cocaine or heroin use and child abuse.[19]

Yet another study concluded after highly structured interviews with 20 female abuse survivors that these women went on to commit delinquent acts and later in life were presented with myriad health problems.[20] As teenagers, the females in this same study had many behavioral problems in school, frequently resulting in expulsion. Many of the females who were sexually abused turned to substance abuse as a form of escapism. One woman stated that drugs were "used to minimize emotional intensity—to put memories on the back burner." Sadly, the use of drugs to abate feelings of sexual assault often resulted in opportunities for abuse by others, providing evidence of the very vicious cycle linked with sexual abuse and delinquency.

WHAT IS THE RELATIONSHIP AMONG SOCIAL CLASS, CULTURE, AND ABUSE?

Low-income families are heavily represented in the literature of crime and delinquency. One can speculate that low-income families, especially single-parent households are barely meeting the needs of their families. Stated differently, poor people struggle to survive on a daily basis. It is speculated that undue stressors and frustrations lead to unwise parental decisions that result in child abuse. The issue of child abuse or neglect and income seem to go hand and hand.

Slack and others in their analyses of an economically disadvantaged sample, found that "poverty and parenting are more strongly associated with physical child neglect reports than others."[21] They also found a direct relationship between parenting style and employment. Parents without jobs were more likely to brutally spank their kids. The nature of the spanking or discipline is believed to be related to financial frustration. In contrast, these same researchers found that "more frequent work is also associated with higher household incomes, suggesting that work may help relieve financial stress, which could indirectly affect a parenting technique such as a spanking."[22] With respect to mid- or high-income families, however, there are no guarantees that families from even the highest income levels will possess good parenting skills.[23]

Examining the issue of race, Schuck found in a Florida study that "higher child maltreatment reporting rates for black children were associated with more black female-headed families in poverty."[24] This overrepresentation is highest in urban areas and reverses itself when rural communities are examined. Why are the rates lower for impoverished black female-headed families in rural areas? Schuck conjectures that rural blacks may live a more stable existence—with well-developed social networks and a stronger sense of community, absent in some urban locations. Schuck goes on to suggest that "differences in parenting practices, cultural

aspects of child rearing, and discrimination by child welfare workers may also contribute to overrepresentation"[25] of poor black families. In all, many other studies provide additional support for the notion that there is far more abuse and neglect in poor homes.[26]

The following list contains risk factors associated with child abuse and delinquency. These variables increase the likelihood that maltreatment will result in adolescent or juvenile delinquency.

- Poor parental control
- Parental disinterest
- Inconsistent discipline
- Poor communication
- Absence of at least one biological parent
- Living at or below poverty level
- Education level of parent
- Sexual abuse

These variables lay the foundation for social and mental health agencies that are concerned with abuse and delinquency. Mandatory reporting laws require those in contact with children, primarily physicians, day care workers, and teachers to report suspected cases of child abuse. Over the years, differences in rates of child abuse may be traced to the perceived risks and benefits of reporting as viewed by these professional service groups. Critics argue that the potential political and economic dangers of reporting cases involving middle-class and upper-class clients guarantees that statistics will unfairly represent the poor. In other words, traits such as poverty do not represent those who are most likely to abuse, only those who are most likely to be caught.

WHAT IS THE ROLE OF THE FAMILY AND FAMILY SERVICES?

If the child is introduced to a loving relationship from both parents, the stability necessary for a life free of delinquency is enhanced. It is widely assumed that warmth exhibited by both parents will insulate the child from inappropriate conduct. Rosenbaum, for example, found that "the family background of incarcerated female delinquents was almost universally dysfunctional."[27] Love, consistent discipline, and nurturing behavior especially from the mother will reaffirm the positive identity of the child and go a long way to insulate kids during their development.[28]

Because of the various ways that domestic violence cases and families identified as negligent are processed or managed, it is often difficult for the criminal justice system or child protective services to respond effectively. High rates of mobility and short-term custody arrangements often make it difficult for service and protection agencies to monitor children at risk for abuse. Although Child Protective Services workers receive more than 50,000 maltreatment referral calls weekly, less than 20 percent are ever substantiated.[29] This does not mean that calls are not valid or contain

accurate information. The problem is that agencies, underfunded and understaffed, are unable to follow up and investigate in enough depth to bring a case to court. Also, with families moving and children being shifted between caretakers, it is often difficult to locate those named in referrals, particularly if a significant period of time has elapsed.

IS THERE A RELATIONSHIP BETWEEN CHILD ABUSE AND AGGRESSIVE BEHAVIOR?

From a 1977 interview with John DiIulio, Cromartie reports that, if we want to understand the increased incidence of violence by kids, we need to look no farther than their treatment as kids. It is said that child maltreatment will increase the chances of delinquency by nearly 40 percent. To reaffirm this finding, DiIulio has said that every superpredator child that he has ever seen has been the victim of child abuse.

Because DiIulio is relatively famous for creating the "superpredator" myth of the 1990s and his connection between superpredators and child abuse, it is appropriate to list some of the myths related to these discussions about child abuse and delinquency. They are as follows:

Myth 1: There is a *direct* relationship between child abuse and delinquency and low-income status.
Myth 2: Child abuse is committed exclusively by men. The truth is that mothers and fathers are equally likely to be abusers, although fathers are more likely to be reported.
Myth 3: Child abuse will not have an indelible impact on the overall mental development of children.
Myth 4: Child abuse is mostly an American phenomenon.
Myth 5: Many allegations of child abuse are wrong and represent a tendency to overreport the offense.

Taken together, these myths espouse long-held beliefs that have not been empirically proven. The data that follow highlight significant research findings; please note that there may be variations in the data and research.[30]

- During 2004, an estimated 3 million children were alleged to have been abused or neglected. Approximately 872,000 children were determined to be victims of child maltreatment.
- Having a nonbiological parent in the household may place the child at greater risk.
- The number of individuals estimated to die annually from child abuse is around 1,000.
- Neglect is the most underrecorded form of fatal maltreatment.
- In 2002, one or both parents were involved in 79 percent of child abuse or neglect cases.
- There is no single profile of a perpetrator of fatal child abuse, although certain characteristics appear and reappear in many studies.

- Of the various types of maltreatment reported in recent years, more than 60 percent of all cases were neglect cases, 18 percent were physical abuse cases, and 10 percent were sexual abuse cases.
- The average age of an abused child is about 7 years old, a slight majority are females, and most are white.
- Infants younger than 1 year old accounted for 10 percent of child maltreatment victims in 2003.

Although neglect may be perceived by some to be a less serious form of child abuse (one that may be harder to define and detect), researchers are convinced that neglect frequently results in a continued cycle of violence. Over time, officials have made distinctions between physical neglect, medical neglect, and emotional neglect. As the research on child abuse in general reveals, the prevalence of child neglect is also largely underreported.

SOLUTIONS

In 1974, Congress passed the Child Abuse Prevention and Treatment Act, which provides money to increase and enhance services to maltreated children and their parents. This Act has provided the impetus for all 50 states to improve legal services for abused kids.

The complex dynamics of domestic violence suggests that society needs to explore nontraditional as well as traditional models of abuse intervention and treatment. A strict criminal justice response will not work. One idea promulgated by DiIulio, President George Bush's former director of Faith-Based Programs, is that the church become involved. His motto is to "build more churches, not jails." His idea is that the church must rally around juveniles who have been victimized as children by their parents or presumed loved ones.

Second, it has been suggested by Lemmon that treatment programs examine the role and influence of neglect, relative to abuse. He maintains that when types of maltreatment are separated, neglect is a stronger indicator of delinquency.[31] Although child neglect is the most common form of maltreatment, a strategy needs to be implemented that focuses equally on child neglect and child abuse.

Third, child protective service agencies and their counselors need to conduct more thorough investigations and to be more skilled and knowledgeable of different cultures. One way to achieve this is through the concept of child advocacy centers, which are multidisciplinary organizations that focus on the needs of the child. Although not necessarily a means of prevention, they represent a way to respond differently to the needs of abused children. The child advocacy center concept calls for greater coordination between various agencies, resulting in fewer meetings (and interviews) with the abused child. This paradigm may reduce the number of times an abused child has to repeat factual information to different people.

Fourth, Gellert offers a variety of methods to improve on the existing system.[32] He suggests, for example, establishing better coordination of

data and resources to child care providers. He is also an advocate of the timely collection of information from well-qualified workers. Gellert believes that one way to achieve success in the response to child abuse problems is through creation of interagency child abuse teams (detailed below). These teams would establish links between agencies and improve identification of intervention opportunities, while decreasing the incidence of misdiagnosis and error.

In addition, data should not only be collected but should be analyzed and interpreted by researchers so that consumers clearly understand the information in a meaningful context. This often means focusing on trends rather than a single year's incidences and looking at an issue in comparison to other related problems or issues. For example, a major controversy in the past decade has been the actual number of stranger abductions and the realization that a more realistic interpretation of unaccounted for children was actually the problem of family-related disputes and custody battles. Concern over the disproportionate resources spent on the relatively rare occurrence of stranger-abducted children led the government to address the larger scope of potential abuse by sponsoring the National Incidence Studies of Missing, Abducted, Runaway and Throwaway (NISMART) children. These reports, available online (www.ojjdp.ncjrs.org) are funded through the Missing Children's Assistance Act and provide detailed analysis of the number of children in these different categories based on surveys of juvenile residential facilities, law enforcement, and households. Over time, researchers have come to understand much more about the nature of these problems and to report the data in ways that accurately depict the problem. In this manner, regularly updated and regional child abuse registries should be deployed everywhere to facilitate rapid data collection, improve coordination of agencies, and expedite preventive interventions for child abuse victims.

Fifth, Haugaard and Feerick bluntly state that more money is needed to address this problem.[33] They argue that the government and society must provide the resources to effectively *prevent* child abuse nationwide. This effort would be tantamount to a declaration of war on child abuse in much the same way we have the drug war and the terrorism war.

Sixth, Websdale offers recommendations as they relate to the prevention of child abuse.[34] He talks about the importance of a holistic perspective, that is, more frequent home visits by qualified counselors. Websdale calls for parenting programs for first-time parents and some parents with newborn children. He also identifies a need to break down the social isolation that at-risk families may experience in highly urban and densely populated communities.

Seventh, consistent with the observation of Websdale, and as mentioned earlier, child protection service agencies remain not only understaffed and underfunded, but the attrition rates of employees also remain high. If we are serious about eradicating child abuse, this society must not balk at the opportunity to adequately fund needed personnel and to provide the financial incentives that are essential to retain competent staff as well as the resources needed to abate burn out (which results in attrition).

Eighth, increased use of home visit programs may have limited utility; child care workers should look closely at a home visit program in Dallas, Texas, for parents with children at risk for child abuse and other forms of victimization. The program under evaluation is called the Parent Aid Program at the Child Abuse Center in Dallas. The researcher, Harder, shares the following results:[35]

- 76 percent of the parents who participated in the program did not receive subsequent referrals to Child Protective Services.
- 52 percent of those parents who dropped out of the program did not receive subsequent referrals to Child Protective Services.
- 62 percent of the parents who refused to participate in the program had subsequent referrals to Child Protective Services.

In all, Harder's study of the Dallas program revealed that home visits reduced the number of subsequent referrals to child protective services. However, the success rate for those who refused participation was close to the success rate of those who completed the program. This finding is not fully explained by the researcher, but one observation does become clear—it is a challenge to engage and retain the parents who participate. Harder indicates that retention problems abound in visitation programs across the country. The challenge, then, behind any recommendation to implement family visit programs, is to provide assurances that they will appeal to the *entire* family and that said programs are culture based.

Ninth, Dorne argues that privatization of child protective service agencies could potentially enhance services for abused children.[36] But is this really the answer? The argument is that the private agencies would perform well, because they would be motivated by profit. The truth, however, is that many of these agencies already contract out with the private sector to perform counseling and other services. It is this author's view that the idea of privatization is reprehensible. The government should never abdicate the responsibility of its children to a private entity; it would certainly result in disparate response systems and further fragment a system that needs better coordination.

Tenth, a massive advertising campaign is needed to engender increased public awareness. The campaign would carry slogans with facts that would have educational benefits. The public service announcement campaign would also include information about the extent of the problem, "do's and don'ts" with regard to parenting, the value of open dialogue, the importance of consistent discipline, and reminders to parents that consequences for inappropriate behavior must be fair and calibrated—not uneven or heavy-handed. This massive information and education campaign may result in increased public support for the expenditure of funds to improve the system, especially if policy makers can convince individuals from all income strata that everyone benefits (not just the poor) from additional funding and resources.

CONCLUSION

Many studies support the widespread assumption that a causal relationship exists between child abuse and delinquency. This relationship is a complex one. And while it is true that a great majority of maltreated children do not commit delinquent acts, research reveals that many delinquent youth have histories of child abuse. Consequently, there is clearly a need for identification of early intervention strategies.[37]

We know what some of the solutions are, but there are no moral imperatives to make a difference in the lives of children. Perhaps it is because the problem of child abuse has been mostly relegated to low-income families. It is the author's belief that there is no genuine interest in reducing child abuse and its potential devastating effects. Lastly, it is likely that child abuse will never be completely removed, *but we can do better* by investing in meaningful primary and secondary prevention initiatives. One start to achieve this would be to address the root causes of poverty in today's society. Such a strategy, if implemented, would go a long way toward reducing child abuse and neglect.

NOTES

1. Spivack, 1983.
2. See, e.g., Shanok & Lewis, 1981.
3. Kratcoski & Kratcoski, 1982; Rhoades & Parker, 1981.
4. Loeber & Dishion, 1984.
5. Zingraff, Leiter, Myers, & Johnson, 1993.
6. Smith & Thornberry, 1995.
7. Widom & Ames, 1994.
8. Ireland, Smith, & Thornberry, 2002.
9. Siegel & Williams, 2003.
10. Chesney-Lind, 1997.
11. Swanston et al., 2003, p. 743.
12. Goodkind, Ng, & Sarri., 2006.
13. Egger, 1998, p. 9.
14. Egger, 1998, p. 9.
15. Hickey, 1991.
16. Hazelwood & Douglas, 1980; Ellis & Gullo, 1971.
17. Ewing, 1990.
18. Dube et al., 2001.
19. Siegel & Senna, 1991.
20. Hall, 2000.
21. Slack, Holl, McDaniel, Yoo, & Bolger, 2004, p. 403.
22. Slack et al., 2004, p. 403.
23. Julian, 2006.
24. Schuck, 2005, p. 547.
25. Schuck, 2005, p. 551.
26. See Wexler (1995) for an excellent review of those studies.
27. Rosenbaum, 1989, p. 40.
28. Julian, 2006.

29. Snyder & Sickmund, 2006.
30. Snyder & Sickmund, 2006.
31. Lemmon, 1999.
32. As cited in Kiyohara, 1995.
33. Haugaard & Feerick, 2002.
34. Websdale, 2003.
35. Harder, 2005.
36. Dorne, 2002.
37. Grisson, 2002.

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CHAPTER 4

Youth Street Gangs

Lorine A. Hughes

Youth street gangs[1] have been an enduring social problem that has defied effective amelioration and control. Despite numerous interventions and police crackdowns, street gangs have proliferated rapidly and continue to shock public sensibilities.[2] Between 1975 and 2000, gangs increased almost sevenfold, from 4,481 to 30,818.[3] Today, there are an estimated 24,000 gangs in the United States, with approximately 760,000 active members in 2,900 jurisdictions.[4] Gangs have spread beyond the boundaries of early gang cities, such as Los Angeles, Chicago, and New York, to cities in such states as Arkansas, Idaho, Kansas, Nebraska, Washington, Wisconsin, and even Hawaii.[5] They also have been documented on reservations as well as in both rural and suburban areas.[6] Specific reasons for the growth of gangs in these nontraditional places are unclear, but explanations that focus on migration undertaken to expand drug distribution markets appear to be less popular and empirically valid than those that point to internal community dynamics, media effects, and the influence of individual "cultural carriers" who relocate to a new area and bring with them their prior gang experiences.[7]

The failure of policies to combat gangs has baffled even the most astute social observers. From detached worker programs to police gang task forces, nothing has worked very well. The problem, it seems, is not just a matter of good policies being implemented poorly, but also a reflection of inadequate policies. Especially since the beginning of the conservative "get tough" era, in which gangs and gangbanging were assumed to be the result of individual free will and the existence of a "culture of poverty" among the lower classes of society, government agencies and government-funded

responses have emphasized police crackdowns and enhanced penalties over community investment and provision of legitimate opportunities. For example, in 1988, California became the first of five states to enact the Street Terrorism Enforcement and Prevention (STEP) Act, patterned after the Racketeer Influenced and Corrupt Organizations (RICO) Act, which has been used primarily to deal with organized crime by means of enhanced police and legislative power as a form of deterrence.[8] The most recent, and perhaps most controversial, in a long line of antigang measures is the Gang Deterrence and Community Protection Act of 2005, otherwise known as the "Gangbusters Bill." This piece of legislation was introduced by Virginia lawmakers in response to a media-driven panic over gang violence, the alleged involvement of gangs in human and drug trafficking, and concerns over the growth of Mara Salvatrucha (MS-13), an El Salvadorian gang that is believed to be especially violent, organized, and spreading rapidly from Los Angeles to other parts of the country. The Bill authorizes increased federal funds to investigate and prosecute gang members; it also "expands the range of gang crimes punishable by death, establishes mandatory minimum sentences, authorizes the prosecution of 16- and 17-year-old gang members in federal court as adults, and extends the statute of limitations for all violent crimes from 5 to 15 years."[9] Although it is now evident that such suppression policies are misguided and ineffective, they remain a popular choice among legislatures and other policy makers. Surely, there must be something else we can (and should) do.

Papachristos argues that "[b]efore we can figure out what to do about gangs or what types of policies and interventions might be most effective, we need to devise analytic strategies that help us chart the real gang landscape and not just distorted images of it."[10] Criminologists are beginning to do this in the form of network analyses, which map the position of gangs and their members in social space, thus providing valuable information about the connectedness that exists between and among gangs.[11] Too often, however, findings from network analyses and other gang studies are simply incorporated into the reactionary "get tough" policy model and used to boost suppression tactics.[12] Although targeting central gang members for arrest and prosecution may shake the existing organizational structures of gangs and provide a measure of relief from gang-related crime and violence, such an approach is unlikely to solve the gang problem, because it neglects other critical points of intervention, such as gang formation and the enlisting of new members, and fails to address the underlying causes of gangs and gangbanging.[13]

Based on our personal experiences with gangs and gang research, my colleague and long-time gang scholar, Jim Short, and I are convinced that young people form and become involved in gangs as compensation for deficits in their lives. Gangs are not distributed equally across the country, nor do their members adequately represent the nation's youth population. Instead, gangs are found primarily in disadvantaged neighborhoods and draw the bulk of their membership from among the most powerless groups in society, that is, poor minorities between the ages of 12 and 24.[14] Policy makers and practitioners must attend to these social contexts

and accept the failure of singular suppression strategies to adequately address them. However, throwing money at poverty-stricken and gang-infested communities will not work either. As Vigil's comparative study of Los Angeles gangs demonstrates, the gang problem is complex and involves "multiple marginalities," at home, in school, and in relation to other social institutions.[15] Here, I argue that the gang problem reflects not just poverty, but also is a function of the difficulties that many young people face in securing all forms of capital—economic, human, cultural, political, and social. Policies that neglect this reality are unlikely to produce or to sustain benefits and, in fact, may make the problem worse.

GANGS AND CAPITAL

Economic Capital

Although no two gangs are exactly alike, a common theme running through decades of gang research centers on the relationship between economic disadvantage and gang formation and involvement. From Thrasher's classic study of gangs in Chicago during the 1920s to more contemporary investigations in that city and elsewhere, gangs have been located primarily within the poorest neighborhoods in the country. Characteristic of these areas are unemployment and poverty rates that are much higher than the national average, as well as rows of dilapidated housing, a disproportionate share of liquor establishments and other shady businesses (e.g., check cashing), and a high concentration of immigrants or other racial and ethnic minorities living together in proximity. The most infamous examples include New York's Chinatowns, the Hispanic barrios of Los Angeles, and the ghetto areas surrounding the massive public housing projects that have long been home to some of Chicago's most economically marginalized blacks (e.g., Robert Taylor Homes).

Structural changes in the national economy facilitated the entrenchment of gangs in these three "chronic" gang cities and encouraged their proliferation to other places throughout the country.[16] The rapid departure of relatively high-paying and secure manufacturing jobs from the nation's urban centers helped turn these places into areas plagued by persistent joblessness, poverty and welfare dependency, female-headed households, family disruption, illegitimate births, crime, and other related social ills.[17] Gangs also flourished in this context. Although some gangs formed anew, other gangs—such as the Gangster Disciples, Latin Kings, Vice Lords, 18th Street Gang, Maravilla, and White Fence—continued their transformation into institutionalized "supergangs," complete with a complex web of affiliated but geographically distinct "sets" and a history spanning multiple generations.[18]

For youth growing up in such conditions, gangbanging often becomes a natural course of action. The reasons they cite for joining gangs—acceptance, love, identity, status, money, protection, and excitement—strongly suggest that they see in gangs a chance to recapitalize their lives.[19]

The reality, we now know, is that gangs often are exploitative and only rarely provide their members with the opportunity for substantial financial gains.[20] Moreover, everyday gang life tends to be fairly boring, with much of the time spent doing nothing but hanging out and getting high (or looking for something on which to get high).[21] Gangs may exacerbate their members' problems, placing them at increased risk of violent victimization and greater contact with police and prison. To the young men and women who join gangs, however, what matters is the meaning that gangbanging brings to their lives.

Human Capital

The gang problem is more than one of poverty; it is also a problem of insufficient human capital, which consists of the education, skills, and experiences that "influence future monetary and psychic income."[22] Gangs draw their membership primarily from among society's most unskilled and uneducated populations. Once absorbed by manufacturing jobs, these people now find themselves lacking the credentials needed to compete successfully in today's service- and information-based economy.[23] Exacerbating this already difficult situation, globalization of the world's economy continues to push more and more good jobs overseas. Although some affected youth manage to escape the vicious cycle of poverty and despair, many are not so fortunate. Most do not possess natural artistic or athletic ability; of those that do, few have the opportunity and support needed to fully develop their talents. College tends not to be a realistic option for these youth. The costs of higher education are often prohibitive, and the application and enrollment processes can be especially daunting to young people who have grown up on the streets, even if someone more knowledgeable happens to be there to help. Moreover, the secondary schools they attend are often substandard, unable to meet the needs of students—many of whom have only limited English proficiency—or they are oriented more toward remedial education for immigrant children and other academically challenged students than toward college preparation. The adoption of a "zero tolerance" policy by many schools may increase the already high dropout rates among gang members and other minority youth,[24] furthering their alienation through quasi-military security mechanisms and the transformation of the traditional role of teacher from mentor to detached bystanders.[25]

Faced with such limited prospects, gang youth are easily recruited into the illicit economy. Although most gangs are not involved in drug distribution *as gangs,* individual gang members are more likely than their nongang counterparts to participate in such behavior and most other types of crimes, oftentimes as part of a clique.[26] They appear to do so more to supplement their income than in lieu of conventional activities, and many genuinely hope some day to be able to "go legit."[27] Instead, however, many wind up spending time in prison and returning to the streets with even fewer opportunities than before.[28] Even for those who manage to escape a criminal record and related problems (e.g., ineligibility for federal

student aid), the only available jobs tend to be "in the fast-food industry or service work in hotels, malls, and restaurants," none of which provides decent wages and benefits.[29] Because these jobs offer no real hope for advancement in society, gang members may see them as a waste of time and effort, especially if transportation is an issue or if street activities promise more lucrative returns.[30] Thus, although gang members might at first seem like bad kids who are too lazy to do anything productive with their lives, the real problem may be that they typically have few opportunities to accumulate the human capital needed to overcome their disadvantaged backgrounds.

Political Capital

Youth occupy a precarious position in today's society. Their activities and actions are circumscribed and regulated by their parents, schools, and the law. Politically, they have few rights and wield limited power. Because gang youth typically belong to populations with muted political voices, they have even fewer opportunities to accumulate the political capital needed to influence the decisions that affect their lives. Historically, gangs have emerged among racial minorities and immigrants, two of the most politically powerless groups in society. Depending on the source of information, estimates of the racial composition of contemporary gangs range from 75 to 95 percent minority.[31] No comparable estimates of immigration status exist, but research suggests that first- and second-generation immigrants make up a sizable proportion of recently emerging Asian and Hispanic gangs,[32] just as they did among early white gangs.[33] Unlike the "ethnic Europeans of the gangs of the 1920s, whose marginality lasted only one generation,"[34] however, today's gang youth tend to be systematically excluded from the mainstream.

Although gangs typically are loosely organized and lack effective leadership, group cohesion, and the ability to mobilize effectively, they nevertheless provide their members with a sense of empowerment and the opportunity to transcend the limits of their lives, if only symbolically. Owing to their placement at the bottom of society's sociopolitical hierarchy, minority and immigrant youth are especially vulnerable to the allure of gangs. Despite greater societal awareness and tolerance of diversity, these youth continue to experience the effects of widespread racism and anti-immigrant sentiment. They also must contend with the fallout from community disinvestment and massive cutbacks in government welfare programs.[35] In addition, legislation intended to better the life situation of minorities and immigrants to this country (e.g., civil rights, affirmative action, Voting Rights Act, and Immigration Act of 1990) often have produced uneven results, benefiting those with relatively more resources while leaving the less fortunate largely untouched. In some cases, such legislation has given impetus to the flight of the middle and working classes from disadvantaged communities, depriving those left behind of their most promising political leaders and the ability to affect public policy.[36] The

policies that then develop are often insensitive, if not detrimental, to the plight of these people. As Geis notes,

> It is no longer acceptable in American society to demonstrate prejudice overtly. But the same end can be achieved by pinpointing activities that are very largely those of the socially disenfranchised and inventing special kinds of laws that will bring persons who violate them to grief.[37]

Consider, for example, the disproportionate impact of the war on drugs, particularly crack cocaine, on black men and their communities. Under the draconian laws established as part of this war, thousands of young black men have been sent to prison for extended periods of time and at a rate much higher than white men.[38] These men often leave behind a community already devastated by other factors contributing to high rates of female-headed households, poverty, crime and violence, and male joblessness. Upon entering prison, they confront a system notorious for being a hotbed of gang formation and activity.[39] While in prison,[40] they are locked out of political participation by felon disenfranchisement laws, further limiting their communities' ability to influence legislation.[41] Even if the right to vote is restored upon release from prison, which in many states it is not, they reenter their communities with limited job skills and prospects, and face a larger society hostile to ex-convicts.[42] Many then turn to gangs and street hustles, placing themselves at risk of rearrest and added time in prison.

There is no end in sight for gang youth caught in this cycle. After a long period in which gang problems remained a low priority on the nation's domestic policy agenda,[43] gangs and gang members now find themselves at the center of a moral panic, confronting hardened approaches to gang control. Policies already on the books or now in the works threaten the civil liberties of gang members and promise to crack down on gangs like never before.[44] Although gangs and gang crime are serious problems demanding tough solutions, policies that further the political vulnerability of gang youth and their communities are misguided at best. Few gangs fit the assumptions on which most antigang laws and policies are based. Gangs generally are not sophisticated criminal or terrorist organizations, nor do they spend the majority of their time conspiring to commit violence or trafficking in drugs.[45] They "typically develop in marginalized contexts, and most gang members participate in small-time and relatively unorganized street hustles."[46]

Instead of challenging images popularized by the media (and often by gang members themselves), criminological research has often fueled them.[47] Partly because of the interest and demands of government funding agencies, recent gang studies have focused primarily on documenting the prevalence of gangs, the characteristics of gang members, and their participation in crime and violence.[48] To the extent that these studies obscure the diversity among gangs, they reinforce the tendency to conflate gangs with organized crime and to treat both accordingly. Less evident on the scholarly agenda are studies of the everyday realities faced by individual

gang members, the causal significance of gangs to their members' behaviors, and the nature of the relationship between gangs and their communities.[49] Such research is needed to better inform gang policy and thus avoid further alienation of vulnerable youth. The development of sound policy may help gangs develop a healthy political voice and overcome the negative influences that hindered the attempts of earlier gangs to become legitimate organizations and catalysts for positive social change.[50]

Cultural Capital

Deficits in the other forms of capital are brought about by some of the same factors that limit opportunities for these young people to acquire cultural capital.[51] All too often, youth in poor areas see their own cultures devalued in the larger society and that they are denied the benefits that accrue to those whose lives bear a closer resemblance to the American ideal. These youth rarely experience the world beyond their immediate surroundings and must live day to day amid poverty, weakened primary social institutions (e.g., family and school), persistent unemployment, and drugs and crime. Few are exposed to the "finer things" in life—such as appreciation of art history, classical music and literature, foreign cuisines, travel abroad, and so forth—and most are not encouraged to go to college or taught how to be professional workers.[52] Many also are not shown what it means to be a good parent, because their own are caught up in drugs or are in prison, have abandoned or abused them, are dependent on them for money or other types of help (e.g., language or child care), or are simply too busy trying to make ends meet.

Urban ethnographies suggest that gangs are a manifestation of the alternate culture or street code that emerges in response to economic depression and marginalization. "At the heart of the code is the issue of respect," as reflected in the behavior of young men and in their artistic and symbolic expression.[53] Especially in "chronic" gang cities, where gangs have become institutionalized and are passed from one generation to the next,[54] young boys learn early on that being viewed as a "real man" requires the acquisition of various forms of street capital, including wads of cash, women, flashy cars, jewelry, guns, and a willingness to resort to violence. The exaggerated importance placed on each of these things is evident in the esteem accorded to those who possess them and in the graffiti spattered throughout the community. It can be seen, as well, in popular gang movies, such as *Boys 'N the Hood, Colors*, and *Menace II Society.* Perhaps nowhere is the street culture more apparent than in hip-hop and the music of rap artists Dr. Dre, Snoop Doggy Dogg, Tupac Shakur, 50 Cent, and others. Lyrics that glorify and glamorize thug life and the gangsta' identity also speak of the hard realities of life in ghetto projects. Along with all the talk about dope, 40s and other types of liquor, money, gold, guns, pimping and "pimped out" cars, there are numerous references to poverty, racism, police repression, drive-bys, murders, and body bags.

Although alternative cultures may have survival value for life on the streets or in prisons and jails, they do not translate well in mainstream

society. Despite growing acceptance of rap music and ghetto styles in the cultural mainstream, the "code of the streets" may exacerbate the isolation of impoverished neighborhoods and the breakdown of traditional institutions.[55] When suburban and rural youth groups adopt gang names, sport gang clothing and tattoos, and flash gang signs, they, too, are likely to experience negative adult attention and develop factional rivalries among themselves.[56] It is in the nation's inner cities, however, that the numbers of alienated and deprived people have reached the "critical mass necessary for a viable subculture"[57] and where the emphasis on street capital is most widespread and problematic.

The prevalence of violent crime in the inner cities is especially troubling. Despite long-term declines in crime and violence in the United States since the 1980s, the rate of serious violent crime in cities with a population more than 250,000 is 932.6 per 100,000 population, including rates of murder, rape, robbery, and aggravated assault equaling 12.5, 41.8, 358.1, and 520.8, respectively.[58] Because rates of violent crime tend to be even higher in the inner cities, young people in these areas are at an increased risk of exposure to violence. A recent study funded by the National Institute of Mental Health (NIMH) reported that of 792 inner-city youth surveyed, 92.5 percent had been exposed to violence in the previous six months, 73.2 percent "knew of neighborhood shootings," 55.4 percent had seen a person "seriously beaten or killed," "half had heard of neighborhood murders," 22 percent said "there were shootings and knifings in their school," and 20 percent had been "hurt or threatened with physical violence in their own homes."[59] With violence such a prominent part of their lives, it is not surprising that many urban youth become involved in gangs and participate in violent activities.[60]

Although the nature of the relationship between gangs and violence is unclear, multiple data sources suggest the existence of a causal link. For example, of the 312,402 homicides recorded by police between 1976 and 2002 in the nation's largest cities, roughly 70 percent were classified as gang-related crimes, compared with 12.9 percent in small cities, 16.6 percent in the suburbs, and 0.8 percent in rural locales.[61] Analyses of official data also find that, "[c]ompared to non-gang incidents, gang incidents are more visible, more violent, more likely to involve a weapon, more likely to involve strangers, and more likely to involve fear of retaliation."[62] Since 1987, more than 90 percent of all gang-related homicides each year have involved a gun, a rate roughly 30 percent higher than corresponding figures for nongang homicides. Studies based on longitudinal self-report data reinforce cross-sectional findings of an association between admitted gang membership and self-reported crime and violence, revealing a peak in gang member involvement in such behaviors precisely during periods of active gang membership.[63] Contrary to social selection—that is, birds of a feather flocking together—explanations of the gang-crime/violence relationship, these studies offer powerful evidence of a gang "facilitative" effect.

Insight into the specific mechanisms underlying general statistical patterns is derived primarily from field studies, particularly those carried out

in the observation tradition of the Chicago School of Urban Sociology. Despite differing time frames and clear racial and geographic differences among analyzed gangs, these studies regularly depict gangs as social contexts characterized by heightened concerns over respect and street-sanctioned means of achieving it.[64] Autobiographical and journalistic accounts featuring male and female gangbangers of varying races reiterate this theme.[65] Gangs appear to give a collective expression to the code of the streets, serving as "staging areas" for young males—and, increasingly, older males and young females—to demonstrate respected qualities and providing a ready sanctioning system for such attributes and behaviors.[66] They also offer their members protection and backup against those who try to achieve respect at their expense.

To earn respect on the streets, gangs and gang members must "send the unmistakable, if sometimes subtle, message that [they are] capable of violence, and possibly mayhem, when the situation requires it."[67] Much of this involves nonviolent posturing, in the form of appearances, mannerisms, and exaggerated accumulation of material goods and symbols of success (e.g., money, girls, etc.).[68] Having done time in prison also brings respect, because it is generally taken as a sign of a person's ability to survive in the roughest of social environments. As sporadic gang warfare makes clear, however, there is no substitute for displays of violence. Gangs and their members are under constant threat of violent victimization, even death, at the hands of rivals and other people wishing to enhance their own street position.[69] When attacked or otherwise disrespected (e.g., scratched out graffiti), they are expected, by themselves and others, to wage a successful defense or to exact revenge at a later point in time.[70] Failure to do so is tantamount to admitting weakness and inviting future attacks.

The emphasis on retaliatory violence in disadvantaged neighborhoods has been attributed to a "profound lack of faith in the police and the judicial system."[71] Residents of these areas, many of whom are people of color, know all too well the high costs associated with racial disparities in the criminal justice system, and they have often witnessed or been at the receiving end of questionable police tactics. Thus, these people have come to feel as though they cannot rely on legal means to handle their disputes and must take matters into their own hands, using violence if necessary.[72] For gangs and gang members faced with rivalries and clear expectations of violence as a means to protect personal and gang status, pressures to seek such "street justice" may be especially acute.[73]

Social Capital

Not all, or even most, youth living in the inner cities or other disadvantaged neighborhoods turn to gangs or violence. Variations seem to occur, in part, because of differential access to social capital, or the "the ability of actors to secure benefits by virtue of membership in social networks or other social structures."[74] Owing to individual talents and attributes, relatively favorable family circumstances, or a fortuitous meeting, some youth in these areas are able to maintain a strong adult presence in their lives

and remain connected to conventional social institutions. As structural conditions have worsened,[75] however, more inner-city youth have become alienated from mainstream social networks (e.g., school, work, and church) and thus from the people who are in the best position to provide them with access to, or information about, openings in the legitimate opportunity structure. As Kelley notes,

> One way to understand conditions in the urban ghetto is by noting that children living in it often lack meaningful connections beyond their immediate kinship and neighborhood environments. This has two related consequences. First, the social capital generated by their families can only be parlayed into access to resources existing in their physical surroundings, including those made available by public assistance programs. Because those resources tend to be of poor quality, the advantages derived from social capital are few. That, in turn, has an effect upon adults' credibility when trying to control the behavior of children. Second, the truncation of social networks makes it unlikely that most impoverished children can maintain the kind of sustained contact with members of external social networks that would enable them to envision alternative paths out of the ghetto.[76]

The lack of meaningful ties to conventional opportunity structures paves the way for alternative culture systems that further limit access to mainstream social networks. As negative adult influences replace prosocial role models, youth become increasingly susceptible to gangs. Even if the most significant adults in their lives do not encourage gang participation and criminal behaviors, through their own involvement in these activities or other forms of approval, they are generally unable to offer sound advice or keep members of younger generations away from gang life.[77] Although participation in a gang tends to exacerbate young people's alienation from conventional adults and society, to these youth, gang networks appear to be the best way to form or solidify relationships through which important resources will flow.[78]

CONCLUSION

Many communities have been devastated by poverty, persistent joblessness, substandard schooling, community disinvestment, and bad policy. As families and other social institutions break down, youth are not taught what it means to be a good parent, worker, or college student. No one is there to show them a better life; their primary learning is how to get by on the streets. Although many turn to gangs in an effort to recapitalize their lives, gangbanging places these youth at increased risk of being processed through the justice system, where they receive a criminal record and must deal with all that it entails. By the time they reach adulthood, their options are limited. How can we expect people to prosper if all they can expect out of life is working at a dead-end job and if all they have grown up around is ghetto life? Men are locked up, dead, or unfit to be good parents; young women face the burden of raising children on their own and being the sole breadwinner. The community loses its potential

leaders, and its political voice is compromised by the disproportionate number of adults who are in prison or otherwise subject to felon disenfranchisement. The result is that disadvantaged communities, often suffering from a multitude of problems, are powerless against policies that directly affect their lives and that may exacerbate already tough circumstances. Faced with such bleak prospects, it is not surprising that residents of these areas generally distrust the police and other outsiders and tend to take matters into their own hands. Their need to achieve or maintain street capital likely outweighs the potential loss of all other forms of capital, which are already in short supply.

The failure of tactics based on suppression and the placement of criminal justice professionals at the front lines of the so-called war on gangs highlights the need for a more comprehensive solution to the youth street gang problem.[79] Gangs and gangbanging are complex phenomena, involving a variety of factors and social processes. Although the suppression view of gangs "as simply another type of organized crime (or, more recently, terrorist units) requiring 'gang busting' (akin to 'union busting') may be appropriate for the small subset of gangs that conform most closely to images popularized by the media and some law enforcement officials," it "neglects the vast majority of gangs and the wide diversity among them."[80] Of greater concern is that the suppression model ignores the deprivations that give rise to the formation of gangs and encourage gang membership. Gang control programs that neglect such issues can provide, at best, only a false sense of security; at worst, they will intensify existing problems or create additional ones, as recently happened following the mass deportation of members of MS-13 back to El Salvador.[81]

Jim Short recently suggested that greater consideration be paid to gang intervention programs that make use of street workers to promote social capital and collective efficacy among gang members and their communities.[82] Lest past mistakes be repeated, however, street-worker programs should not dominate gang policy. Although such programs may be more suited to the task of building social capital among gang members than are singular suppression strategies, they must be based on theoretically informed research, carried out properly, and supplemented by other forms of capital building that recognize the sociocultural contexts in which they are implemented. If not, they are unlikely to succeed and may make things worse.[83]

Ultimately, what is needed is an approach that has as its starting point the location of gangs and gang activities within their social contexts and is sensitive to the realities faced by individual gang members. It must be based on criminological insights and theory rather than ideology and stereotyped images. "Gangs tend to be more violent than other local offenders; but most gang youth crime is nonserious and nonviolent.... That's not to deny the reality is bad. But our goal is to dissect the problem, not to pound the table."[84] Meeting this goal will require the development of a research and policy program that seeks to understand and address the difficulties that gang youth face in securing capital of all types—economic, social, human, political, and cultural. At the center of such a program must be the community, with the police and other agents

of the criminal justice system playing secondary, albeit important, roles. Suppression should no longer be the first response; but rather the last alternative, to be employed only if all else has failed.

NOTES

1. The author thanks Jim Short, Buddy Howell, Andy Papachristos, and Pete Simi for their helpful comments on a previous draft of this manuscript.

2. Definitional issues continue to plague the study of gangs, but the terms "street gang" and "youth gang" typically exclude prison gangs, motorcycle gangs, skinheads, drug crews, taggers, play groups, and other such collectivities. Although there is much disagreement over the appropriateness of inclusion of criminal activity in the definition of gangs, "common to all definitions of street gangs is the fact that they are unsupervised youth groups that meet together with some regularity, over time, and that they are non-adult-sponsored and self-determining with respect to membership criteria, organizational structure, and acceptable behavior" (Short & Hughes, in press).

3. Curry & Decker, 2002; Miller, 2001.

4. Egley, Howell, & Major, 2004.

5. Battin et al., 1998; Chesney-Lind et al., 2005; Esbensen & Osgood, 1997; Fleisher, 1998; Hagedorn, 1988; Howell, Moore, & Egley, 2002; Levin & Pinkerson, 1994.

6. Major & Egley, 2002; Monti, 1994; Weisheit & Wells, 2001.

7. See Maxson, 1998.

8. See Bjerregaard, 2003; Klein, 1995; Webb & Katz, 2003.

9. Amoroso, 2005, para. 3.

10. Papachristos, 2005a, p. 645.

11. See Fleisher, 2002, 2006; McGloin, 2005; Papachristos, 2006.

12. It is important to consider whether individuals who are most central to the gang are those who are most criminally active. Evidence suggests that gang members who bring too much "heat" on the gang, from other gangs and/or from law enforcement, are relegated to the fringe by more central members (Hughes & Short, 2005). Thus, while a policy that targets the members who are most socially connected may counteract the group processes that contribute to elevated rates of crime and violence, it may also reduce a key source of constraint against those who are the most inclined to troublesome behaviors.

13. Spergel, 1995.

14. Klein, 1995; Short, 1997; Vigil & Yun, 2002; see Howell & Egley, 2005.

15. Vigil, 2002.

16. Hagedorn, 1988; Klein, 1995; Spergel & Curry, 1990, 1993.

17. Sampson, 1987; Wilson, 1987, 1996.

18. Hagedorn, 1988; Moore, 1991. Alliances and rivalries eventually led to the establishment of larger gang nations, such as Chicago's People and Folks and the Bloods and Crips of Los Angeles. On the streets, however, intergang alliances have been tenuous, with some gangs "flipping" from one nation to the other or fighting against, even killing, members of allied gangs (www.chicagomobs.org, 2006).

19. Hughes, 2005.

20. Field studies of drug-dealing gangs typically report wide discrepancies between the profits made by the few individuals in leadership positions and the more numerous "foot soldiers," who must endure the risks associated with slinging dope but generally earn no more doing this type of job than working for minimum wage (Padilla, 1993; Venkatesh, 1999).

21. Fleisher, 1998; Hagedorn, 1988.
22. Becker, 1964, p. 11.
23. Wilson, 1987, 1996.
24. Brotherton & Barrios, 2004; Snyder & Sickmund, 2006.
25. Devine, 1997.
26. Hughes, 2005; Coughlin & Venkatesh, 2003.
27. Hagedorn, 1994, 2002.
28. Today, far more African Americans and Hispanics are in prison than in college (Walker, Spohn, & DeLone, 2004).
29. Fleisher & Decker, 2001, p. 2; see also Hagedorn, 1988.
30. Hagedorn, 1988.
31. Howell, 1998; Howell et al., 2002.
32. Joe, 1994; Joe & Robinson, 1980; Vigil, 2002.
33. Thrasher, 1927.
34. Moore, 1988, pp. 5–6.
35. Cummings & Monti, 1993.
36. Wilson, 1987.
37. Geis, 2002, p. 259.
38. Mauer, 1998; Walker et al., 2004.
39. Fleisher & Decker, 2001.
40. Only two states, Maine and Vermont, allow prison inmates to vote. Most states also deny probationers and parolees the right to vote. ''Each state has developed its own process of restoring voting rights to ex-offenders but most of these restoration processes are so cumbersome that few ex-offenders are able to take advantage of them'' (The Sentencing Project, 2006, p. 1).
41. Uggen & Manza, 2002.
42. Petersilia, 2003.
43. Monti & Cummings, 1993.
44. Coughlin & Venkatesh, 2003; Hughes & Short, 2006; Stewart, 1998.
45. Coughlin & Venkatesh, 2003.
46. Hughes & Short, in press.
47. Katz & Jackson-Jacobs, 2004.
48. Hughes, 2005.
49. Short & Hughes, 2006.
50. The most well-known and best-documented cases of political activism occurred among the Almighty Latin King and Queen Nation in New York between 1995 and 1999 (see Brotherton & Barrios, 2004) and three black gangs in Chicago—the Blackstone Rangers, the Devil's Disciples, and the Vice Lords—during the 1960s and 1970s. None of these gangs evolved into a full-fledged social movement with lasting impacts, however, and all ultimately succumbed to ''mounting external pressures, inadequate community support, and internal contradictions'' (Hughes & Short, 2006, p. [47]). See also Spergel, 1995.
51. Cultural capital is defined by French sociologist Pierre Bourdieu (1986) as the symbols, attitudes, values, and knowledge necessary for acceptance in higher status society.
52. Moreover, some may choose not to leave their communities or try to ''make it,'' even when given the chance, out of fear of failing or finding themselves returning to unwelcoming sentiments and suspicions that they think they are better than those who are less fortunate (see Portes, 1998). Family concerns also may be important, because some youth are expected to provide monetary support or care for their parents, siblings, and/or other blood relatives. Sometimes it is simply a matter of the youth feeling more comfortable in the only environment and lifestyle he or she has ever known.

53. Anderson, 1999, p. 33.
54. Hagedorn, 1988.
55. Anderson, 1999.
56. Monti, 1994.
57. Fischer, 1974, p. 1328; but see Coughlin & Venkatesh, 2003, pp. 56–57.
58. Federal Bureau of Investigation, 2005.
59. Elze, Stiffman, & Dorè, 1999.
60. Howell, 1998.
61. Fox & Zawitz, 2004. Because of definitional variations across police departments, these figures should be interpreted cautiously. "Member-based definitions, such as those used in Los Angeles, more broadly classify any homicide involving a gang member as gang-related. In contrast, more conservative motive-based definitions, such as those used in Chicago, classify a homicide as gang-related only if the crime itself was *motivated* by gang activity and, therefore, would be more commonly associated with group-level actions such as turf defense, drug dealing, or existing gang conflicts" (Papachristos & Kirk, 2006, p. 69; see also Maxson & Klein, 1990, 1996).
62. Hughes, 2005, pp. 99–100.
63. Esbensen & Huizinga, 1993; Thornberry, Krohn, Lizotte, & Chard-Wierschem, 1993; Thornberry, Krohn, Lizotte, Smith, & Tobin, 2003; see also Battin, Hill, Abott, Catalano, & Hawkins, 1998.
64. Cureton, 2002; Decker & van Winkle, 1996; Horowitz, 1983; Hughes & Short, 2005; Joe & Robinson, 1980; Sanders, 1994; Short & Strodtbeck, 1965; Vigil, 2002.
65. Dawley, 1979; Sanchez, 2000; Scott, 2004; Shakur, 1994; Sikes, 1998.
66. Anderson, 1999, pp. 76–78.
67. Anderson, 1999, p. 33.
68. Felson (2006) suggests that much of this signaling involves a type of "fakery" that allows each participant to "draw upon the nastiness of the whole" (p. 313) and "gain a free ride on the toughness of others, even when they are not present" (p. 314).
69. Decker & van Winkle, 1996.
70. Decker, 1996; Hughes & Short, 2005.
71. E.g., Anderson, 1999; Kubrin & Weitzer, 2003.
72. This has led to a self-fulfilling prophecy in which the distrust and disrespect of police and other parts of the criminal justice system supports traditional stereotypes and thereby increases the initial targeting and repression of seemingly violent populations (Bjerregaard, 2003).
73. Horowitz, 1983; Hughes & Short, 2005.
74. Portes, 1998, p. 6; see also Bourdieu, 1986.
75. Of particular importance are the long-standing reluctance among white people to live in minority neighborhoods and the relatively recent departure of middle-class African Americans from inner-city ghettos (Massey, 1990; Massey & Denton, 1994; Wilson, 1987).
76. Kelley, 1995, pp. 217–218.
77. Rivera & Short, 1967; Short, Rivera, & Marshall, 1964.
78. Fleisher, 2002, 2006; see also Sullivan, 1989.
79. See Spergel, 1995.
80. Hughes & Short, in press.
81. Papachristos (2005b, p. 53) argues that this policy "has amounted to unintentional state-sponsored gang migration," which has spread the gang problem rather than solve it.
82. Short, 2006.

83. Klein, 1969, 1971.
84. Felson, 2006, p. 308.

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CHAPTER 5

Juvenile Sex Offending

Camille Gibson

Juvenile sex offending occurs when a juvenile engages in sexual behavior without the other person's true consent (i.e., consent with full knowledge and an absolute freedom to engage or not)[1] or engages in sexual behavior that is aggressive, exploitive, manipulative, or threatening. A juvenile sex offender must be of the age of juvenile responsibility to be served by a juvenile justice system (e.g., in Texas this age is 10 to 16 years old). Thus, people below the minimum age limit are not be considered juvenile sex offenders and people above the limit are adult sex offenders. Notably, the upper age limit is usually 17 years, although it may be lower in some states, plus some states do not have a minimum age limit (e.g., Florida and Idaho). The victim may be of any age and the behaviors are numerous.

Sex offenses may be nonphysical sexual acts, such as making obscene phone calls, voyeurism, exhibitionism, and public masturbation, or sex acts involving physical contact, such as fondling, penetration of another's body orifice (for self-gratification), prostitution, coercing others into prostitution, forcible rape or sexual homicide, and the making or possession of child pornography.[2] What constitutes a sexual offense varies from state to state in terms of specifics. In Texas, for example, if two 14-year-olds agree to sexual intercourse, both could be charged with committing a felonious sexual offense. Generally, the law assumes that people under the age of maturity are incapable of consenting to sexual activity.

Some instances of sex offending are manifestations of a sexual disorder or paraphilia as classified by the *Diagnostic and Statistical Manual IV-Text Revision* (known as *DSM-IV-TR*) of the American Psychiatric Association. These acts include exhibitionism, fetishism (when it involves defacing the

belongings of someone who does not consent, such as masturbating on a victim's shoe), frotteurism, pedophilia, sexual masochism during which a person is harmed, and voyeurism. The *DSM-IV-TR* also mentions paraphilia unspecified, which would include less common paraphilia such as zoophilia, necrophilia, autoerotic asphyxiation, and unsolicited scatologia (obscene phone calls). For the behaviors behind the paraphilia to be diagnosable disorders, the person must derive pleasure from the activities.

Usually, diagnoses of paraphilia are reserved for adults[3] and the behavior must exist for at least six months and interfere with life activities. Critics of the *DSM-IV-TR* question such criteria, stating that the six-month requirement is an arbitrary one.[4] It might also be argued that the age limit for these diagnoses (at least 16 years) and the five-year age difference between victim and offender requirements are also arbitrary. In the case of the latter, there may even be cultural implications.[5] Regardless, if not a diagnosable disorder, the paraphilic activity need only occur once for it to be an offense. Indeed, one of juvenile justice's most famous cases, *In re Gault*, began with a paraphilic act. The case involved a 15-year-old boy, Gerald Gault who was accused of an act of unsolicited telephone scatologia. However, whether Gault actually had a paraphilia is unclear.

A number of public misperceptions regarding sex offenders exist. Karen Terry notes that in 1950 Paul Tappan described the following myths, which persist today:[6]

> **Myth 1:** Sex offenders are oversexed, hence castration would cure them. Actually, sex offenders are more likely to be undersexed and the motivation for offending is often not sex but a sense of power and control.
> **Myth 2:** Most offenders are homicidal. Indeed, most cases of sex offending are minor offenses. In 1999, for example, there were nine cases of juvenile sexual homicide known to law enforcement which represented 12 percent of all such cases that year.[7]
> **Myth 3:** Most offenders recidivate. In actuality, studies reveal that as few as 5 percent of people who commit rape or sexual assault recidivate.[8] For juvenile males, most studies report sexual offense recidivism rates from 8 to 14 percent.[9] These recidivism rates are lower than rates for nonsexual offending, which are commonly reported to be as high as 58 percent.[10]
> **Myth 4:** Most offenders have an escalation in the seriousness of their behavior. Rather, most sex offenders limit themselves to a behavior with which they are comfortable.
> **Myth 5:** Future offending may be predicted. At best, mental health experts may assess the dangerousness of a sex offender, but they are unable to predict recidivism.
> **Myth 6:** Legislation will remove the problem. Indeed, legislation is of comfort to the public, but without the right legislation involving a recognition of the heterogeneity of sex offenders and the need to use appropriate responses, laws will do little to protect the public.

Other myths include the idea that most sex offending is done by strangers and that sex offenders are almost exclusively adults and male. Unmistakably, juvenile sex offenders do exist, and they tend to victimize

relatives or friends over whom they have some control.[11] Retrospective accounts from adult sex offenders indicate that about a half of them begin sex offending as juveniles.[12] Although it was once commonly thought that juvenile sexual activity was largely mere innocent exploratory play, today, it is viewed more seriously because it is now understood that nondeviant sexual behavior often precedes juvenile sex offending.[13] Furthermore, for some juveniles, sex offending may be one of a range of delinquent activities.[14]

PREVALENCE

Data available on juvenile sex offending are problematic. Notably, sex offending is grossly underreported, especially for juvenile sex offending. Because most cases of juvenile sex offending involve a perpetrator who is a relative or family friend, the victim, and in some cases the victim's family, are often reluctant to report the incidents to the authorities. The younger the juvenile sex offender, the less likely it is that the offending will be taken seriously by the adults around him or her. Hence, official data from law enforcement are limited to cases reported. Given the guilt and stigmatization associated with sex offenses, self-report data are suspect because many sex offenders underreport their behaviors.[15] Even the often-referenced annual Child Maltreatment Reports from the U.S. Department of Health and Human Services[16] is weakened by the fact that it captures only cases known to and deemed credible by child protective services. Victimization surveys such as the National Crime Victimization Survey (NCVS) are also utilized; the NCVS, however, fails to capture the most vulnerable victims of juvenile sexual offending, youth under 12 years of age.

Nevertheless, from the data available, juveniles account for approximately 17 percent of all forcible rapes; 21 percent of other sex offenses;[17] 40 percent of sexual assaults against children under 6 years old; 39 percent of victimizations of children 6 to 11 years old; 27 percent of older juvenile victimizations; and 4 percent of adult sexual victimizations.[18] Although sexual aggression may be observed in very young children, it becomes more evident by ages 6 to 9 years.[19] This may be the result of the youngest victims' inability to articulate their victimization coherently. Significantly, sexual offenses are more likely to be reported to law enforcement when the offender is male, black, a stranger or nonintimate relative, and uses a firearm, and when there are multiple offenders. The most common age range of reported perpetrators is 12 to 14 years (accounting for 40 percent of rapes and sexual assaults) followed by 15- to 17-year-olds (accounting for 25 percent of rapes and sexual assaults).[20] Of all the cases of child maltreatment known to child protective services, nearly three-quarters of the perpetrators of sexual abuse are friends or neighbors.[21] Although reports of sex offending increased in the 1980s, reports of child sexual victimizations declined substantially in the 1990s. The reasons for these recent declines are not clear.[22]

RISK FACTORS

Risk factors are usually described in terms of individual characteristics and environmental factors. Individual indicators of risk include mental illness with a biological component such as a neurological problem, the presence of paraphilia, chemical changes in the brain, and increased testosterone levels. Other individual risk factors are attachment difficulties, low self-esteem, social incompetence, poor academic performance, learning difficulties, sexual ignorance, cognitive distortions, deviant sexual arousal, and a lack of empathy. Among juveniles who persist with sex offending into adulthood, low intelligence and poor school attainment appear to be risk factors.[23] Individual risk factors emphasized for juvenile sexual homicide offenders include low birth weight and birth complications, enuresis, alienation, rage, cruelty to animals as a child, paraphilia, and excitement from sexually violent fantasies.[24]

Environmental risk factors commonly include family dysfunction, lack of parental sensitivity, sexual and physical abuse, a substance-abusing mother, and exposure to hardcore pornography by age 6.[25] One study comparing 29 juvenile sex offenders and 32 nonsex offenders with conduct disorder concluded that the sex offenders were significantly more likely to have been from families with substantial deception, including family secrecy, lies, and myths.[26] On a less common environmental note, where animals are accessible, Fleming, Jory, and Burton found juvenile sex with nonhuman animals to be strongly related to juvenile sex offending against people.[27]

Notably, many of the risk factors for juvenile sex offending are also risk factors for nonsexual juvenile offending.[28] Thus, on the one hand, it appears that juvenile sex offending may simply be one of many maladaptive responses to the same sorts of stimuli. For example, Katz described offending in terms of thrill seeking.[29] Evidence suggests that indeed much juvenile offending, including juvenile sex offending, involves some pursuit of a thrill.[30] On the other hand, it appears that juvenile sex offenders experience more neglect, emotional abuse, physical abuse, and sexual abuse than nonsex offenders.[31] Even among juvenile sex offenders, evidence suggests that the intensity of the risk factors may vary in a predictive manner. One study of juvenile sex offenders by Smith, Wampler, Jones, and Reifman[32] found that among the most high-risk juvenile sex offenders there were reports of more social discomfort, lower self-esteem, more aggression, more extreme sexual fantasies, and less family cohesion.

Problematic in deciphering risk factors for juvenile sex versus nonsex offending is that many studies with these comparison examine incapacitated juveniles. Hence, their results are usually superficially more indicative of system practices than of offending etiology.[33] Nonetheless, the notion that the risk factors for both sex and nonsex offending might be more similar than not may be a valid one, because in most cases both types of offending cease by adulthood. This supports the notion put forth by the likes of Moffit that much juvenile offending is a developmental manifestation of youth.[34] Thus, it is often outgrown. Consider, for example, the

circumstances of juvenile offending. Juveniles are more likely to sexually offend and to nonsexually offend in groups than adults.[35] One account of junior high school boys engaging in the group rape of a peer acquaintance may be found in the chapter on "trains" in the 1994 bestselling autobiographical book *Makes Me Wanna Holler* by acclaimed journalist Nathan McCall. McCall, who participated in the act, was 14 years old at the time. Notably, solo juvenile sex offenders tend to be older than those who offend in groups.[36]

For the most part, the literature discusses risk of juvenile sex offending in terms of recidivism. Yet, longitudinal studies of juvenile sex reoffending are few and often the samples involve fewer than 100 subjects.[37] It is commonly reported that juvenile sex offense recidivism is between 8 and 14 percent, while juvenile nonsex offense recidivism is between 16 and 54 percent.[38] When juvenile sex offenders do recidivate, it is more likely to be with a nonsexual offense.[39]

Juvenile risk of sexual reoffending is commonly assessed with some combination of instruments, namely the Juvenile Sex Offender Assessment Protocol II (J-SOAP-II), the Static 99 (which was developed for adult male sex offenders), the Rapid Risk Assessment for Sex Offenses Recidivism (RRASOR), the Matrix 2000, the Sex Offender Risk Appraisal Guide (SORAG), the Minnesota Sex Offender Screening Tool Revised (MnSOST-R), and the Juvenile Risk Assessment Scale (JRAS). A significant shortcoming of these risk assessment instruments is that most were normed on adult sex offenders and all were normed on males.

In terms of the risk of being victimized, a person's characteristics are significant in determining the dynamics of the sexual offense. People who are perceived to be vulnerable are at greater risk of juvenile sexual victimization. Juvenile sex offenders mostly choose younger victims. In cases in which the victim is an elderly female, however, the offense is often characterized by excessive beating and stabbing. This suggests an intent to both control and punish the victim.[40] Male victims, older victims, and victims who resist experience more aggression than others.[41] From a study of 126 juvenile sex offenders, Hunter and colleagues reported that the juvenile child molesters tended to act alone, have male victims, and victimize a relative. In cases of juvenile sexual homicide, they found that victim choice was largely a matter of access to acquaintances or strangers, and the victimization was accomplished with deception and planning.[42]

Hunter and colleagues offer the following description of a violent juvenile sexual offense:

> In 1992, police arrested two brothers, ages 13 and 15, for the rape and attempted murder of a 36-year-old woman. The crime was particularly heinous because the youthful offenders emotionally and physically terrorized the victim. After the rape, the victim asked the brothers if they planned to kill her. When the 13-year-old said yes, the victim asked if she could look at her mother's photograph first. The youngest offender removed the unframed photo from her dresser and tore it into small pieces in front of the kneeling victim. Then, for no apparent reason, he began cutting and

stabbing her. She started screaming, and when her neighbors responded to investigate, the subjects fled. As a result of the attack, the victim suffered partial paralysis on the left side of her body. The emotional scars may never heal.[43]

ETIOLOGY OF JUVENILE SEX OFFENDING

What constitutes a sex offense has varied in time and place through centuries and across cultures. For example, in ancient societies such as Egypt and Greece, involving young boys in sexual acts was fairly common. In Egypt, it was even considered beneficial to the boys.[44] Taking such liberties with children has not been a part of U.S. history. Until the early 1900s, deviant sexual behavior was largely regarded as a mental illness until social activists pushed for legislation to criminalize certain sex acts. One exception to deviant juvenile sexual behavior that has been illegal in America since the 1600s is bestiality.[45] This was usually referenced in statutes under buggery or unnatural sex acts and regarded as cruelty to animals. Hensley and colleagues describe a 1948 study by Kinsey, Wardell, Pomeroy, and Martin involving more than 5,000 males, which revealed that 40 to 50 percent of the adolescent males who grew up on farms had had sexual contact with an animal. Hensley and colleagues attribute the overall decline in cases of bestiality in the United States to a shift away from a predominantly farming economy.[46]

According to Terry, one particularly influential group in criminalizing sexual deviance was the Women's Christian Temperance Union (WCTU), which was particularly active from 1874 into the early 1900s. The WCTU and other segments of society were concerned about the sexual exploitation of young girls, the prostitution of both boys and girls, and widespread sexually transmitted diseases among youngsters. Thus, they lobbied against prostitution and for raising the age of consent to older than 10 years of age. By the 1920s, they had achieved the latter goal in that most of the country had ages of consent between 14 and 18 years old.[47]

Another wave of female-led activism in the 1960s led to the development of feminist ideas to attempt to explain the prevalence of males as sex offenders. A central theme was that male rape of females was facilitated by a cultural socialization that advocated male dominance,[48] sexual entitlement over women,[49] and a need for little intimacy and empathy.[50]

Most theories of sex offending, however, focus on the nature of family socialization as opposed to cultural socialization because sex-offending behaviors are not societal norms. They discuss individual characteristics, age, gender, and family circumstances in terms of some regressed development, cognitive distortion, improper learning, or biology. Frequently advocated in the literature is the idea that sexual deviance is learned or develops as an alternative way of relating to others because of social awkwardness. Supposedly, these problems begin in early childhood within a family or other primary social context that is lacking quality family caring. Therein, the juvenile is commonly miseducated sexually by sexual victimization or by witnessing or experiencing extreme physical abuse. If the

abuse becomes associated with a sexual stimuli then sexual offending becomes more likely.

Deviant sexual fantasies are often discussed in the literature. However, with the exception of juvenile sexual homicide, the evidence of fantasies as connected to sex offending is unclear. Additionally, such fantasies often are not disclosed or disclosed in their entirety.[51] In response, polygraph testing has become common practice in therapeutic settings. It is difficult to ascertain whether the fantasies of sex offenders are more deviant or more frequent than that of nonsex offenders or even nonoffenders.[52]

Nevertheless, clinical efforts to understand juvenile sexual offending have led to the following commonly referenced typologies of juvenile sex offenders:

- O'Brien and Bera proposed a taxonomy with seven types: naïve experimenters, undersocialized child exploiters, sexual aggressives, sexual compulsives, disturbed impulsives, group influenced, and pseudosocialized.[53]
- Pithers, Gray, Busconi, and Houchens' typology of child sex offenders identified five types: sexually aggressive, nonsymptomatic, highly traumatized, abusive reactive, and rule breaker.[54]
- Prentsky, Harris, Frizzell, and Righthand identified six types: child molesters, rapists, sexually reactive children, fondlers, paraphilic offenders, and unclassifiable.[55]
- Worling offers four types: antisocial impulsive, unusual/isolated, overcontrolled/reserved, and confident/aggressive.[56]

THEORIES

Because juvenile sex offending involves a wide range of behaviors, not surprisingly the explanations are also wide ranging. Primarily, these explanations include elements of biology and psychology. The biological explanations may describe violent offenses as a result of experiences of physical abuse at a young age to a point at which the abuse produced certain chemical changes in the brain that make aggression more likely.[57] Although such changes might increase the likelihood of aggression in general, the aggression can become sexualized if the offender has learned to associate sexual stimuli with aggression.[58] For example, Myers offers an example of how such changes might have occurred in a 20-year-old sexual homicide offender. Myers speculates that the young man in his case study may have come to associate relations with a woman to violence from his experiences as a child, during which time he was cradled by his mother while his father punched her.[59] Others attribute violent sex offending to increased levels of testosterone. For the most part, however, when violence is involved, the behavior is described as primarily an act of domination and anger as opposed to sex.

Regarding psychological explanations for sex offending, Sigmund Freud was one of the first to theorize about deviant sexuality. Since then others

have built on his idea that sexual deviance may be the result of being fixated in an earlier stage of development.[60] The fixation is usually the outcome of experiences in the family context that hinder development, locking the individual into a younger, often egocentric stage characterized by diminished empathy.[61]

Among the most frequently used developmental constructs to explain sex offending is attachment. Attachment theories, which as a group have substantial empirical support, assert that parental insensitivity, especially involving mothers, can lead to poor bonding or attachment experiences in infancy and early childhood.[62] The result may be social incompetence that could manifest in sex offending that indicates a preference for minors. Alternately, the social incompetence could lead to feelings of frustrations that manifest in sexual aggression toward people of any age. Not surprisingly, then, recent findings suggest that maternal substance abuse (which can negatively affect maternal sensitivity) is a significant predictor of poor treatment performance among juvenile sex offenders.[63] Attachment theorists include Bartholomew, Ward, Hudson, Marshall, and Siegert.[64]

Other theories of juvenile sex offending focus on cognition, learning, and family dynamics. Cognitive explanations largely discuss the development of thinking errors that rationalize the offending behavior. Finkelhor offered a cognitive explanation of sex offending with four propositions: (1) a motivation exists to victimize a minor who is perceived as sexually more enticing; (2) cognitive distortions become strong enough to overcome internal inhibitions; (3) external inhibitions are overcome with the possibility of access to the child, absent a guardian to stop the motivated offender; and (4) victim resistance is overcome often by selecting minors perceived to be most vulnerable.[65]

Learning theories tend to describe the process of learning to sexually offend as largely no different from other forms of learning involving modeling and behavior reinforcements.[66] Family dynamic theories focus on sex offending within families by placing the responsibility for the offending on the family unit as opposed to the perpetrator or the victim.[67] Many of the theories of juvenile sex offending are integrative.

Children Who Sexually Offend

Children (defined as people who are prepubescent or usually younger than 12 years old) who sexually offend are usually referred to as ''children with sexual behavior problems.'' Although most of these sexual behavior problems cease by adulthood,[68] for a few children careful intervention is necessary. A classification of sexual behavior problems in children by Berliner, Manaois, and Monastersky illustrates this point. The classifications are as follows:[69]

- Precocious sexual behavior, for example, intercourse or oral genital contact between peers without force or coercion. This behavior may reflect a child's own victimization or some exposure to the behavior. The behavior may stop on its own or with some intervention.

- Inappropriate sexual behavior, such as ongoing or public masturbation, highly sexualized behavior, or sexual preoccupation. This may indicate early stages of deviant sexual arousal.
- Coercive sexual behavior, during which sex acts occur by threat or by force, or between people with significant disparity in size. These sexual behaviors are more about manifesting hostility than sexual gratification. Overall, these children are more prone to engage in nonsexual offending than repeated sex offending.

The general assumption about children who offend sexually is that they have been sexually miseducated, possibly by some form of victimization. Thus, their "offending" is simply a manifestation of learned behaviors. When victimized, these children may have been rewarded in some way, thus reinforcing the sexual behaviors. They may also have learned to use sexually deviant behavior to cope with an inability to form proper attachments, a problem which may have developed as a result of the child's own inappropriate behaviors, feelings of distrust of others, or having a sense of betrayal and stigmatization.[70] Often, sexualized behaviors in children do not alarm the adults who observe it, so they do not alert law enforcement or seek therapeutic intervention. Nevertheless, because sexually inappropriate behaviors in children may indeed harm victims or indicate the early beginnings of more serious sex offending, they warrant attention.

Juvenile Females Who Sexually Offend

Juvenile female sex offending has long been underreported. This might be attributed to both a societal belief that female sex offending is most rare, and to an endorsement of certain sexual behavior from females that would be most unacceptable from males.[71] These behaviors include female sexual aggressiveness toward a male, even a much younger male, and exhibitionism. Not surprisingly therefore, the literature on juvenile female sex offending is sparse and largely anecdotal. Of course, the result is that juvenile female sex offenders are at some disadvantage in the assessment and treatment of their condition. The extent to which juvenile females recidivate sexually is unknown.[72]

From cases known to law enforcement, juvenile females account for 1 percent of juvenile arrests for forcible rape and, excluding prostitution, 7 percent of juvenile arrests for sex offenses.[73] The National Center on Sexual Behavior of Youth offers the following facts from the literature on female juvenile sex offenders: The average offender is 14 years old; unlikely to have an exclusive attraction to one type of person; offend nonaggressively; rarely offend against adults; usually select a relative or acquaintance as victim whether male or female; and will otherwise be well-functioning people. Additionally, the National Center on Sexual Behavior of Youth reports that juvenile female offenders markedly differ from their male counterparts in that their accounts of their own childhood sexual victimization suggest victimization at younger ages and from numerous

perpetrators. Their physical and sexual abuse is also reported as more severe and extensive. Regarding juvenile female prostitution, ongoing trauma among sexually abused adolescents precedes their entry into this activity.[74] Indeed, the retrospective accounts of adult female prostitutes reveal that 65 to 95 percent of them were sexually assaulted as children.[75] Clearly, more research on the occurrence, assessment, and treatment of juvenile female sex offending is necessary.

Legal Responses to Sex Offending

The current legal response to sex offending is largely punitive, wide in reach, and narrowly therapeutic. This legal posture has its roots in the 1970's notion that treatment for sex offenders is largely ineffective, a position that the therapeutic community no longer endorses.[76] For juvenile sex offenders, the legal response ranges from doing nothing to sentencing offenders to long periods of incarceration. In most states, only some juvenile sex offenders must register, often at the discretion of a judge, and they may also be subject to community notification laws.

Sex offender registries began as an investigative tool for law enforcement. They have become a civic tool with the intent of public protection and specific deterrence of potential sex offenders.[77] Some sex offender registries are available to anyone via the Internet with photographs and details of the person's sex-offending history. Arguably, the registries are not particularly effective because many studies indicate that most sex offenders, especially juvenile sex offenders, do not recidivate; plus the law does not protect the public from offenders yet to offend.[78]

Sexual violent predator (SVP) laws exist in some states to monitor and treat the most dangerous sex offenders. SVP laws require the civil commitment and mental health treatment of sexual offenders deemed prone to predatory violence after the offender has completed a criminal sentence and until such time when the person is deemed no longer predatory and sexually violent. These laws have been controversial given their imposition on the offenders' individual liberties, including those of juveniles who, unlike adults, do not have the benefit of full due process.

Often, the legal response to sex offending comes from a few cases sensationalized by the media, which, although often shocking to the public, constitute a minority of all sex offending—for example, the case of sex offender Wesley Alan Dodd. Dodd is an example of an infamous, calculating sex offender who began offending at age 13 with exhibitionism and soon thereafter progressed to the molestation of young boys and eventually sexual homicide. He was caught at age 28 after attempting to abduct a 6-year-old boy from a movie theater. In Dodd's home, investigators found a torture rack and a diary detailing his heinous acts and plans. He was executed in the state of Washington in 1993 for the 1989 killing of three boys, one of whom he also raped. They were William Neer (age 11), his brother Cole Neer (age 10), and Lee Iseli (age 4). In 1990, Washington became the first state to enact sex offender community notification laws.

On the federal level, the Jacob Wetterling Crimes Against Children and Sexually Violent Offenders Registration Act followed as an attachment to President Clinton's famed Violent Crime Control and Law Enforcement Act of 1994. Jacob Wetterling was an 11-year-old Minnesota boy who, in 1989, was abducted while bicycling. The Wetterling Act requires at least a 10-year registration for sex offenses against people of any age and for certain nonsexual offenses against children (e.g., false imprisonment of a minor) and the lifelong registration of some offenders.

Thereafter, the Megan's Law phenomenon began. The federal Megan's Law was adopted from a New Jersey law by that name. In 1994, a 7-year-old New Jersey girl was raped and murdered after having been invited by her twice-convicted sex offender neighbor, Jesse Timmendequas, to see his new puppy. New Jersey's Megan's Law was enacted that same year, and it required that sex offender registration information be made public. The New Jersey law was adopted federally in 1996, but the federal version left it to state entities to ascertain what type of information would be made public and how. States had the option of adopting the federal law if they wanted access to specific crime prevention federal funds, including funding to maintain a state offender registry. Of course, the law does not protect the public from potential sex offenders,[79] of whom some will be juveniles. Also, in many states, deregistration from the state register is possible after a period of time, usually 10 years with no new sex offenses.

Another significant law was enacted in 1996, the Pam Lychner Sexual Offender Tracking and Identification Act. It was an amendment to the Wetterling Act of 1994. Pam Lychner was a realtor who was attacked while meeting a potential client. The Lychner Act requires the lifelong registration for sex offenders who are convicted of multiple registration offenses or an aggravated sex offense. The Wetterling Act was further amended in 2000 by the Campus Sex Crimes Prevention Act, which requires that when a registered offender becomes employed or enrolled at an institution of higher education, he or she must report this status to law enforcement with jurisdiction over the institution.

Then, in July 2006, the federal Adam Walsh Child Protection and Safety Act became law. Adam Walsh, the 6-year-old son of John Walsh (who subsequently became the host of the television program *America's Most Wanted*), was abducted and decapitated in 1981 at the age of 6. The Adam Walsh Law requires the integration of state sex offender registries into the federal sex offender registry, which must also be made available to the public. It created mandatory minimum sentences for the most serious offenders against children and stiffer penalties for offenders who fail to comply with registration requirements. It eliminated statutes of limitations for felony sex offenses against children and provides funds for both the civil commitment of sex offenders and the training of law enforcement to stop child sexual victimizations facilitated via the Internet.

Other significant legal developments have occurred at the state level affecting juvenile sex offenders. Notably, in some states, such as Texas, whether a juvenile sex offender must register is left to the discretion of a judge. Also in Texas, all juveniles committed to a state residential facility

must submit a deoxyribonucleic acid (DNA) sample for a DNA bank. Additionally, the state's juvenile sex offenders have to transfer to another school if their victim attends the same school and makes a request for that to happen. In other states, for example, New York and Florida, juveniles face mandatory transfers for certain sex offenses.

Another significant legal development involving juvenile sex offending is the application of the polygraph test. Although not admitted into court as evidence in cases of criminal prosecution, many courts will require the use of polygraphs to aid in the assessment of sex offenders. Both juveniles and adults, fearing legal and societal reprisal, tend to otherwise underreport the nature and frequency of their sex offending.[80] Data from the use of polygraphs with adult sex offenders reveal that they tend to overreport childhood victimization and underreport their sex offending as juveniles. The laws on polygraph use vary by state. In some cases, in which the offender faces possible additional liability from self-incrimination, polygraph use might be part of an immunity agreement.

Encouragingly, state laws have had a positive impact on the quality of therapeutic services that juvenile sex offenders receive. For example, in Texas, sex offender treatment may only be administered by a psychotherapist holding both a mental health license and a sex offender treatment provider license, both of which require continuing education to be maintained.

Treatment Programming

Given the facts established about juvenile sex offenders, it is largely accepted among sex offender treatment providers that an appropriate treatment approach in many cases will be a multisystemic one. Such treatment often means a collaborative effort involving the juvenile and his or her family, social services, the school, therapeutic personnel, and juvenile justice personnel. It is also understood that, unless there are significant consequences for noncompliance with treatment, many juvenile sex offenders will not comply.[81]

Therapeutic approaches to sex offending universally involve cognitive-behavioral therapy toward an acknowledgment of the juvenile's sex-offending cycle(s). These cycles involve moving from thoughts that lead to certain feeling that then manifest in inappropriate sexual behaviors. The cycle may be triggered by feelings, but between the feelings and the sexual behavior, the thoughts involve choices. Thus, therapy largely involves teaching sex offenders to become aware of their cycles and learning to make the right choices. For juveniles, this often involves sex education to correct any distorted thinking. To this end, triggers that the sex offenders might have mislabeled as causes are usually reframed as mere triggers.[82] Some juvenile sex offenders, therefore, may have multiple problems that establish the triggers. For example, learning difficulties or social rejection may trigger negative thoughts and feelings, which then trigger the juvenile's offense cycle.

Additionally, because a lack of parental (especially maternal) sensitivity is related to sex offending,[83] family treatment goals usually include educating parents to increase their awareness of all of their children and the family dynamics. This should result in improved supervision of the juvenile sex offender and the protection of any victims or potential child victims in the home.[84]

In rare cases, juveniles with severe paraphilic urges may receive hormonal treatments, such as cyproterone acetate, medroxyprogesterone, or gonadotrophin-releasing hormone analogs. These drugs alter testosterone levels to decrease libido, sexual fantasies, and deviant sexuality. The full effects of these drugs on juveniles are unknown and adverse effects potentially are severe. Thus, their administration is usually limited to 16-year-olds or older with careful medical monitoring.[85] Nonpharmacological ways of addressing paraphilic urges include systematic desensitization, satiation training, and covert sensitization.[86]

Successful programs (such as Florida's 12-month Specialized Treatment Program for Juvenile Sex Offenders) include a relapse prevention plan and, as necessary, anger management, communication, and social skills training.[87] Of course, any substance abuse issues need to be addressed. In cases in which a dual diagnosis involves sexually abusive behaviors and substance abuse, both are considered primary disorders because each condition will likely facilitate the existence of the other. Alcohol, for example, may be abused to numb guilt and reduce empathy, thus increasing the likelihood of a sexual offense.[88]

CONCLUSION

More research is needed to understand who sex offenders are and the circumstances surrounding juvenile sex offending. Because many risk factors for juvenile sex and nonsex offending overlap, more qualitative studies, followed by generalizable studies, are necessary to clarify the etiology of the two classes of behaviors.

Additionally, even though recidivism rates of juvenile sex offenders are low, the need remains for better assessments and treatment models designed specifically for juveniles. These models should improve the interventions with female juvenile sex offenders and the efforts to recognize early warning signs of those juveniles who are likely to persist with sex offending. Presently, despite the fact that it is clear that juveniles and adults differ substantially in sex offending and in their treatment needs, much of the programmatic approaches available to juvenile sex offenders are based on findings about adult male sex offenders. For example, it may be beneficial to remove an adult male child molester from his home if children are there. For a juvenile child molester, however, the family disruption that such a removal could cause might not be in the best interest of the juvenile or his or her family.[89]

Furthermore, certain potential therapeutic barriers must be addressed. Consider, for example, the legal and therapeutic discordance in Kentucky's 2004 state Supreme Court ruling in *Welch v. Commonwealth.* The case

requires that Miranda warnings be given in therapeutic settings before juvenile sex offenders answer questions from therapists because such questioning amounts to a custodial interrogation. Data also suggest the need for proactive measures to improve parenting and family dynamics to eliminate familial risk factors.

All of the above suggestions will likely require a reeducation of the public on the heterogeneity of sex offenders in terms of levels of risk, age, and gender. This should help to dissuade politicians from pandering to moral panic by creating laws that sweep too broadly. In so doing, more progress may be made toward limiting sex offender registries and community notification for juveniles to only the most dangerous offenders. In all of this, however, it is still advised to heed the words of people like Sara Steen who cautioned against seeing juvenile sex offending as purely a disorder manifestation as opposed to an offense.[90]

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CHAPTER 6

Bad Boys in Bars: Hogging and Humiliation

Jeannine A. Gailey and Ariane Prohaska

A couple of years ago a local alternative news magazine in Cleveland, Ohio, ran an article titled, ''Big Game Hunters: They're Men Who Chase Chubbies for Sport and Pleasure. They Call it Hogging.''[1] The title was superimposed over a picture of a man wearing a pig mask and holding a bouquet of flowers. Having never heard of hogging, we gave it a gander. We quickly realized that the sport was ''picking up'' women who these men perceived to be overweight or unattractive; they called it hogging because overweight women in their eyes are hogs. We wondered why would men do such a thing. As we learned from the article and later research,[2] picking up women deemed unattractive or overweight was usually the result of a bet among friends or of the need for the guy to achieve sexual gratification, often because he was ''hard up'' or needed a ''slumpbuster.'' We were horrified. Because we had never heard of such a thing, part of the shock was the language they used to discuss their actions. They claimed that what they were doing was harmless and that the women they perceived as overweight or unattractive somehow deserved to be mistreated.

In this chapter, we discuss some of the reasons young men hog, the way they overcome stigmatization, and the justifications they provide to neutralize their behaviors. First, hogging is just one way in which groups of young men can achieve and maintain masculinity in their peer groups. Second, to achieve masculinity and recognition from one's peers, they must carefully negotiate the situation so that they are not stigmatized or ridiculed. This is usually accomplished by humiliating the women either in person or behind their back as they gossip with their friends. Third, much

about the way men account for their actions can be understood in the context of Sykes and Matza's Techniques of Neutralization.[3] Before we begin, however, it is important to understand some features of and things about hogging and the "typical" hogger.

Hogging is a practice during which men prey on women they deem overweight or unattractive to satisfy their competitive or sexual urges.[4] It usually takes place when a group of men decide to make the evening "more interesting" by betting on who can "pick up" the most overweight or unattractive woman, or it occurs around bar closing when men decide they will "settle" for an overweight woman to satisfy their sexual urges. Previous research[5] and our interview with Sarah Fenske (the author of the *Scene Magazine* article) indicate that men who hog are usually in their late teens or early twenties. They are also likely to be involved in fraternities or the military, but hogging may occur among any group of men. In these types of groups, men may humiliate or degrade women to prove their manhood to other group members and for a good laugh. For example, the men we interviewed said they often hog out of boredom to make the evening more fun and interesting. One of our respondents discussed how this takes place when the evening is boring, stating, "Your friends are there, so you make a bet to try to go talk to the ugliest girl, knowing that it's just going to be a laugh for you and your friends." Hogging is funny, a joke, something that men do to pass time. In sum, from what we know, hoggers are typically young, early twenties or late teens, and tend to be in college, especially fraternities or sports, or are in the military or attend military school. We now turn to a discussion of how hogging enables men to achieve masculinity in their peer groups.

HOMOSOCIAL INTERACTIONS AND MASCULINITY

Most sociologists agree that gender is something that one accomplishes or does by upholding the normative expectations of one's gender role.[6] Therefore, when discussing masculinity or femininity, it is important to understand the cultural standards for gendered behavior. Kimmel argues that there are multiple masculinities, with the dominant, hegemonic masculinity being the one most rewarded in contemporary society.[7] Hegemonic masculinity is rooted in such values as control, dominance, competition, and aggression while simultaneously devaluing emotional attachment. Men reward each other with power and prestige if they adhere to the masculine ideal. Men achieve the masculine ideal in different ways, such as participating in sports, drinking heavily, or pursuing women for sexual purposes. According to Connell, men are judged by how closely they adhere to these ideals.[8] It is important that other men believe that they are "real men." Masculinity, then, is a "homosocial enactment"[9] because men participate in activities that adhere to the hegemonic ideal so that other men will recognize their masculinity. Homosociality refers to social bonds between people of the same sex and more broadly to same-sex-focused social relations.[10] Research on men and masculinity indicates a

strong relationship between homosociality and masculinity: men's lives tend to be highly organized around relationships with other men.[11]

Most men, however, are unable to live up to these normative expectations.[12] Hegemonic masculinity is most easily achieved by white, upper- and middle-class, heterosexual men; in other words, men in power who control access to scarce resources in society.[13] Men who do not fit into this category may participate in "hypermasculine" behaviors to compensate for not achieving the masculine ideal.[14] Hypermasculinity often involves violence toward other men, women, and themselves.

Related to hypermasculinity, the term "hostile masculinity"[15] encompasses the belief that sexual aggression toward women is the result of men's extreme adherence to the traditional male gender expectations. Hostile masculinity consists of two components: (1) control and domination toward women; and (2) insecurity, defensiveness, and distrust of women. If men cannot have the finer things in life, such as cars, money, or power, they find other ways to express their manhood. Men who participate in this behavior are looking for another way to live up to normative masculine standards and demonstrate that they are "men."

According to the hegemonic masculine ideal, sex is not about intimacy, but rather is about conquest.[16] One way men achieve status in their peer groups is by engaging in sexual acts with numerous women. An important part of facilitating as many sexual encounters as possible is being able to wear down a woman's resistance, and alcohol is often the easiest way to do this.[17] Because hogging usually occurs in bars or at parties that serve alcohol, it is likely that this form of sexual predation is similar to other sexual acts pursued by men to achieve proof of manhood. Flood's research in Australia indicated that male-male peer relationships tend to structure and give meaning to heterosexual encounters.[18] Therefore, placing bets on who can take home the heaviest or ugliest woman seems to be one way men could achieve masculinity in their peer groups.

Our previous research and that of Flood (forthcoming) indicate that this behavior in fact does occur.[19] In our study on hogging and masculinity, we found that interviewees who were familiar with hogging discussed it (40 times throughout the 13 interviews) as a way to gain status within the male peer group whether through winning the bet, entertaining others, or by receiving sexual gratification.[20] One interviewee noted,

> . . . but [if] they want a quick, you know, quick sex fix, [they] might go up towards your, you know, heavier set or your uh, most people might consider your more ugly women to satisfy their sexual needs instead of going after someone that would be more attractive to you because they know they can get a one-night stand out of this girl instead of, you know, trying to chase someone you know might already have a half dozen suitors. . . .

When the goal is sex, hoggers perceive overweight women as easy to "pick up." Thus, they see themselves as able to gain status in the group more easily by approaching overweight women. The conversations with their friends that follow the encounter affirm their masculinity.

We also tested Malamuth and colleagues' notion of hostile masculinity[21] to determine whether control and domination, insecurity, defensiveness, or distrust of women played a part in hogging. We found that hogging is a way to mask insecurities about being rejected by "attractive" women.[22] One *Scene Magazine* interviewee reported, "You're not embarrassed getting shot down by them. You're not embarrassed when they leave."[23] Therefore, hogging is an easy way to maintain emotional distance from women (rather than being hurt by women to whom they may be attracted). Furthermore, control and domination were achieved by the way men talked to the women.

In addition to interviews, we conducted a content analysis (a method in which the researcher looks for themes in written text) on the *Scene Magazine* article and 13 accounts of hogging found on CollegeStories.com. CollegeStories.com is a Web site on which students from across the country write about their college experiences, which consist mostly of tales of drinking and sex. The content analysis revealed that men assert their masculinity through inexpressiveness and independence (mentioned 29 times) and adventurousness and aggression (mentioned 11 times), but gaining status in the group was the most frequently coded form of masculinity (mentioned 34 times). Once hogging takes place, the participants must be sure that they have achieved status in their group and won't be labeled or ridiculed for being with a woman who is considered unattractive by cultural standards. One CollegeStories.com writer noted,

> So one night two of my buddies made a bet and it was either how many girls they could get with total in one night that were either nasty or fat or which one could do the biggest one, they had to pick ... and one kid had, I swear to god this girl weighed like 250 pounds and, um, he took her home and he won the bet.[24]

This quote reveals the entertainment that hogging created, as well as the status gained in the group for the winner of the bet. In the following section, we discuss how men avoid stigma by humiliating and mistreating the women they call hogs.

STIGMA AVOIDANCE THROUGH HUMILIATION AND MISTREATMENT

Offenses against women stem from the dominant gender system. Socialization and patterns of routine interaction encourage men to victimize women and, in turn, impose the victim role on women. Rape, domestic violence, and the mistreatment of women in general are part of a bigger problem in the United States, that is, culturally accepted misogyny.[25] As Schur states, "the two tendencies to stigmatize women and to absolve men of responsibility for victimizing women—are closely related."[26] Both reproduce the dominance of male privilege and power in society.[27] Schur notes on many occasions that the mere fact a woman has violated a gender norm is enough to "justify" treating the woman as a deviant. For women, "becoming an attractive object is a role obligation."[28] Therefore,

overweight women are more likely to be stigmatized than overweight men are. For women, obesity isn't just a physical state, but rather serves as evidence of a character defect.[29] Women who are obese are seen as lazy, out of control, deviant, unattractive, and nonsexual.[30] Therefore, men who engage in sexual relationships with women perceived as overweight or unattractive often try to avoid stigmatization by claiming that they were hogging. Their claim of hogging is easier to accept by their male peers if they also degrade or in some way humiliate the woman.

Society's tolerance of the mistreatment of women can be interpreted in terms of the links between the supposed offenses and patterns of approved behavior. If male behavior patterns incorporate elements of compliance to persisting gender norms, it is unlikely that they will be labeled deviant. Hogging, therefore, is unlikely to be labeled deviant by many people in our culture. Conversely, having intercourse with or being attracted to a woman who does not meet conventional standards of beauty is considered deviant, because the woman is violating gender roles by not living up to her obligation as an attractive object.[31] Therefore, even though hogging isn't likely to be labeled deviant, sexual relations with overweight or unattractive women is, which implies that the men who participate in this behavior must find some way to avoid stigmatization.

In previous research,[32] we found evidence that stigma avoidance occurs when men have sexual relations with women they consider overweight or unattractive. Both the men we interviewed and the men in the content analysis we performed stated that they would make fun of each other if someone had been sexually involved with an overweight or unattractive woman. Some of the men indicated that, if they had been with a woman who was overweight, they would try to keep it a secret; others stated that they did not care who knew, but their friends would question their behavior and make fun of them. One respondent indicated that the behavior could be ignored if his friend had a "good excuse." He stated, "but I mean if they have a legitimate reason for it, we just let it go." According to our data, as long as the men are drunk or "hard up," they can justify their behavior to their friends and do not have to worry about being stigmatized. In the *Scene Magazine* article, one of the men stated about a friend, "if he can keep his friends from finding out, he'll keep seeing hogs on the side. He likes them. They don't expect anything. They're just cool."[33] An interviewee indicated something similar: he revealed that his friends who hog probably really like the women, but they are afraid to admit it. He said, "he's embarrassed, because he knows she's ugly and so he can't face his friends. 'Yeah I know she's ugly but she's easy,' but I think honestly that they actually do like her. . . ." Being the brunt of a joke is a definite concern because it decreases their status. One account of hogging described on the CollegeStories.com was from a man who convinced a college freshman to leave through the window because he knew his friends would ridicule him for being with her if they saw her. He described the scene as follows:

> I could hear some of my frat brothers talking trash and laughing about last night in the living room upstairs. There was no way she would ever be able

> to walk past these guys without my life being ruined. I convinced her that if she went upstairs she would be known as a house slut and that I didn't want her to have that reputation so soon into her first year at school (pretty good, huh?). I explained to her that the only alternative was to leave through the window.

Another man reported receiving eight drunken voice-mails from friends who were laughing and yelling "FAT" after he had left the bar and spent the night with an overweight woman.

The joy of hogging isn't only about winning bets or receiving sexual gratification, it's also about recounting the story to friends. One of the men interviewed by Fenske stated,

> Indeed, much of the fun seems to come in the telling, in recounting the tale that can top all others. Part of hogging's appeal is knowing he can tell his buddies later. "He loves it," explains his roommate, "and he loves telling the story."[34]

Stigma avoidance comes in the form of humiliation too. The *Scene Magazine* article provides a good example of how men humiliate and degrade women they view as hogs:

> I just talk to them like they're complete disgusting pigs. You gotta break 'em down with insults. Comment on their fat—"You're a dirty little pig." They call me a dick, an asshole, but after a few beers, they're into it.[35]

One of the men we interviewed described a particular type of humiliation that he and his fraternity brothers engage in when they are hogging for sport, called a rodeo. The following quote is his description of a rodeo:

> A rodeo is when your buddy meets a girl and takes her back to his room to have sex and two or three guys are waiting in the closet, and [as] they're getting into it and right before she either appears as if she's going to get off or right before she's really getting into it, three guys jump out. One with a camera, one with a stopwatch, and one just there to yell, and they time how long the guy can hang on to the girl. That's what a rodeo is.[36]

This quote illustrates how men who hog humiliate and dehumanize women they view as overweight or unattractive. Unfortunately, rodeos aren't unique to this fraternity in Northeast Ohio. Flood writes about a similar event in Australia. Flood's participants reported getting a hotel room and drawing names. The man whose name isn't drawn has to bring back the heaviest woman he can find. The other men wait and hide. While having sex, he ties her to the bed on her hands and knees. His friends come out of hiding and turn on the lights. He jumps on her back and tries to restrain her as she attempts to free herself.[37] Flood's data indicate other instances of abuse as well, such as hitting golf balls between the legs of a woman who was drunk and passed out. The *Scene Magazine* article reveals a similar behavior:

> They'd each donate $100. Then they'd go barhopping. If one of the guys found a willing hog, everyone would hurry back to the dorm to surreptitiously watch the guy usher his prize into the room—and neglect to lock the door behind him. At the end of the year, the guy who'd rodeoed the biggest girl collected the pot, all $1,400 of it.[38]

Few men who participate in hogging have sympathy for the women or, at least, they do not report feeling sympathy. Most hoggers think the woman is "lucky" because she received sexual attention. They are assuming, of course, that heavy women do not receive male attention or sexual gratification and that they desire it. Yet, it's not just the storytelling or the discourse that is degrading, the behavior is as well: rodeos, name calling, and taking advantage of women who are so intoxicated that they don't care, don't remember, or have lost consciousness is appalling. Although there is little dispute that these behaviors are abusive, sometimes they cross over into rape and sexual assault (i.e., the woman is passed out). In the following section, we discuss how men who hog neutralize their behavior to avoid stigma and guilt.

NEUTRALIZATIONS AND JUSTIFICATIONS

Sykes and Matza conceptualized five ways people attempt to neutralize deviant behaviors: denial of responsibility (it's okay because the person had no control over the occurrence); denial of victim (the person harmed deserves it); denial of injury (no one was harmed); condemnation of condemners (those who criticize have done the same or worse); and appeal to higher loyalty (attachment to the group is more important than others).[39] Deviant actors construct justifications to avoid adverse social censure for deviance that precedes the behavior and that also may follow it (making it acceptable to self and others).

In previous research,[40] we conducted interviews and performed a content analysis on the *Scene Magazine* article and of stories posted on CollegeStories.com. We coded the interviews and content analysis material in the same manner, coding for all five of the neutralization techniques. The interviews revealed that around two-thirds (n = 9) of the men used at least one neutralization technique and eight used multiple techniques. Of the 13 men interviewed, nine knew about hogging, two admitted to doing it, and seven denied their own personal participation but discussed occasions during which their friends hogged or when they participated in the bets. For the content analysis, each account had at least one neutralization technique and several included multiple instances. The techniques that these data revealed, in order of frequency, where as follows: denial of victim (49 times), denial of responsibility (43 times), appeal to higher loyalty (21 times), denial of injury (16 times), and condemning condemners (10 times).

Denial of victim was most often associated with the belief that women who are overweight or unattractive are not "normal" and therefore deserve to be mistreated. The men not only expressed that women who deviate from the thin ideal of society deserve this treatment, but also

indicated that these women are not really women at all, and therefore there is no victim.[41] The following statement from the *Scene Magazine* article exemplifies this mentality: ''They understand their place, they know they're pigs. They don't get it like a normal girl could. They're desperate.''[42] A young man who wrote about one of his sexual experiences on CollegeStories.com expressed a similar idea, ''Feeling utterly rejected, I went downstairs to try to find some leftover, desperate chick who was hanging out late [at] night.''[43]

Denial of responsibility, the second most frequently found category, was employed when the men said they were too drunk to ''know any better'' or because they hadn't had sex in a long time and had reached a point of desperation. For example, one the college students who wrote an account for CollegeStories.com said that his friend asked whether he had sex with a woman who was overweight, and he replied, ''I just slurred back 'amanthgottado, watamanthgottado' (translation: a man's gotta do, what a man's gotta do).'' A completely different account from a college student on CollegeStories.com echoed the previous quote, noting that, ''One night I ended up sleeping with this chick that was a little too gifted in girth for my tastes. She is cool and all, and we are friends, she just isn't someone that I would normally go for. But sometimes you gotta do what you gotta do.'' As we mentioned at the beginning of the chapter, hogging usually involves a bar and drinking, and many of the men justified their behavior by saying that they were drunk. We asked one of our participants if hogging was usually blamed on being drunk, he replied, ''Yeah, if she's not attractive then it's them [the man] being drunk.''[44]

Appeal to higher loyalty, denial of injury, and condemnation of condemners were all employed either in the interviews or accounts we analyzed, but to a much lesser extent. All but two of the men we interviewed thought that hogging was normal and funny. This was surprising to us. In fact, we've found that many people find it humorous. During several occasions in which we've discussed hogging in undergraduate classes that we teach, both male and female students laugh. A greater percentage of the women are appalled, but many laugh and argue that there is nothing wrong with it. We disagree. In the following section, we offer concluding thoughts and discuss some possibilities for diminishing the behavior.

CONCLUSION

The goals of this chapter were to discuss the reasons men hog, how men avoid stigma, and how they, in turn, neutralize their behaviors. Our research indicates that men are able to maintain normative gender expectations and achieve masculinity by hogging. Because hogging often involves betting, men are able to compete and, if they win, gain status in the group. But even when hogging doesn't involve betting, masculinity can still be achieved because they have succeeded in a sexual conquest. It is a delicate situation, however, because women who are perceived as unattractive or overweight are often considered deviant for violating the gendered

expectation of beauty and thinness. Therefore, men who have sexual relations with deviant women are also likely to be labeled deviant by their peers if their peers believe they are attracted to or genuinely like the women. To avoid the stigma and label, we argue, men use humiliation and mistreatment to "prove" to their peers that they really don't like the women and that they were simply hogging. They then use techniques of neutralization to describe their actions and justify them (i.e., claiming they were drunk, needed to "get laid," and so on). One shortcoming thus far in our research is that we have been unable to tease out the differences between men who hog for sport and those who hog for pleasure. One of the men we interviewed said,

> If they're just trying to get laid then they would prefer a girl that's prettier and a little bit thicker or a little bit fatter than a girl that's just fat and ugly. But if it's a bet they try to find the biggest nastiest girl they can.

It is clear that these are two different dynamics and that not all men who hog for pleasure also hog for sport and vice versa. It is something that we hope future research will be able to disentangle. The next logical question is what, if anything, should be done to address this troubling behavior? Hogging for the most part involves behaviors that are not illegal, so we can't argue for stiffer penalties or fines. Instead, we suggest that knowledge is power. Many women, in fact, most women, have never heard of hogging. It's something that men keep quiet. We think that informing as many people as possible is one way to help decrease occurrences. If women are aware that men may try to hit on them or pick them up in a bar only to humiliate them, then perhaps women will be able to make informed choices in these situations. Informal social control may prevent or at least decrease occurrences; therefore, calling attention to these troubling behaviors is important. Consciousness raising may also be an effective tool.

On a broader level, rigid gender expectations, along with inflexible beauty ideals, limit the experiences of both men and women. It is clear that hogging exists partly because of the beauty ideal of American society. As long as overweight women are considered deviant, some men will continue to participate in this behavior. Additionally, as long as standards of masculinity are rigid and unachievable for most men, negative sexual consequences will exist for all women.

NOTES

1. Fenske, 2003.
2. Gailey & Prohaska, 2006; Prohaska & Gailey, in press.
3. Sykes & Matza, 1957.
4. Gailey & Prohaska, 2006.
5. Gailey & Prohaska, 2006; Prohaska & Gailey, in press.
6. West & Zimmerman, 1987.
7. Kimmel, 1994.

8. Connell, 1987.
9. Kimmel, 1994, p. 129.
10. Bird, 1996, p. 121.
11. Flood, in press; Kimmel, 1994.
12. Connell, 1987; Kaufmann, 1994; Kimmel, 1994.
13. Connell, 1987.
14. Kimmel, 1994.
15. Malamuth, Sockloski, Koss, & Tanaka, 1991.
16. Kimmel, 1998.
17. Kimmel, 1998.
18. Flood, in press.
19. Prohaska & Gailey, in press; Flood, in press.
20. Prohaska & Gailey, in press.
21. Malamuth et al., 1991.
22. Prohaska & Gailey, in press.
23. Fenske, 2003, p. 15.
24. Gailey & Prohaska, 2006, p. 39.
25. Martin & Hummer, 1989; Sanday, 1990.
26. Schur, 1984, p. 133.
27. Gailey & Prohaska, 2006.
28. Schur, 1984, p. 66.
29. Schur, 1984.
30. Austin, 1999; Schur, 1984, 1988.
31. Schur, 1984.
32. Gailey & Prohaska, 2006.
33. Fenkse, 2003, p. 16.
34. Fenske, 2003, p. 17.
35. Fenske, 2003, p. 15.
36. Gailey & Prohaska, 2006, p. 46.
37. Flood, in press, p. 11.
38. Fenske, 2003, p. 17.
39. Sykes & Matza, 1957.
40. Gailey & Prohaska, 2006.
41. Gailey & Prohaska, 2006.
42. Fenske, 2003, p. 17.
43. Gailey & Prohaska, 2006, p. 40.
44. Gailey & Prohaska, 2006, p. 41.

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CHAPTER 7

Delinquency, Alcohol, and Drugs

Frances P. Reddington

In the study of delinquency, much attention is paid to adolescent use of alcohol and drugs and their impact on juvenile crime and violence. This is a topic frequently discussed and debated in the literature, in the media, in state capitals, and around family dinner tables.

ADOLESCENTS IN THE UNITED STATES AND ALCOHOL USE

According to the American Medical Association, when prohibition was lifted in the United States, many states set 21 as their legal drinking age. In the early 1970s, however, many states began to experiment with the legal drinking age limit by lowering the age to 20 or 19, while some states lowered the age down to 18. Research at the time suggested that car crashes and injuries among this age group increased tremendously. Some states pretty quickly returned their legal drinking age to 21. However, in 1984, the federal government enacted the Uniform Drinking Age Act, which basically meant that states that did not conform to 21 as the legal drinking age would receive reduced federal funding for transportation.[1] Presently, all states appear to be in compliance. According to an article "Alcohol Problems and Solutions,"[2] the United States has the highest legal drinking age in the world.

Many sources will tell you that alcohol is the number one drug of choice of American teens. And all states' statutes will tell you that alcohol possession and consumption is illegal for minors. A report from the Federal Interagency Forum on Child and Family Statistics suggests that

adolescent underage heavy drinking has remained stable since the mid-1990s after a pretty steady decline starting in 1980. Survey results indicate that 11, 21, and 28 percent of 8th, 10th, and 12th graders, respectively, reported that they had consumed five or more drinks in a row at least one time during the previous two weeks. The ethnic pattern for heavy drinking also remained stable, with white and Latino youth indicating higher levels of heavy drinking than black youth.[3]

Perhaps one of the most widely used surveys of adolescent behavior concerning alcohol use is the National Household Survey of Drug Abuse, conducted by the Substance Abuse and Mental Health Services Administration (SAMHSA). Major findings from the 2004 survey suggest that between the years 2002–04, the rate of underage drinking remained stable. About 28 percent of youth from ages 12 to 20 admitted drinking alcohol in the month before the survey. That is about 10.8 million youth. One out of five of these youth responded that they were binge drinkers and just over 6 percent reported that they were heavy drinkers. When broken down by race, rates of alcohol use were divided as followed: 32.6 percent of white youth, 26.6 percent of Latino youth, 24.4 percent of American Indian or Eskimo youth, 19.1 percent of black youth, 16.4 percent of Asian youth, and 26.4 percent of youth who reported they were of two or more races.

The Monitoring the Future Study examined a pattern of how adolescents perceive the availability of alcohol. Ninety-two percent of 12th graders state that alcohol is ''fairly'' or ''very'' easy for them to get. More than 80 percent of 10th graders report the same thing, as did more than 60 percent of 8th graders.[4]

According to the National Institute on Alcohol Abuse and Alcoholism, the use of alcohol increases tremendously between middle school and high school. In addition, the use of alcohol by an adolescent increases the risk of alcohol dependency, the chance of a serious auto accident, and is associated with high-risk behaviors.

ADOLESCENTS IN THE UNITED STATES AND DRUG USE

The use of illegal drugs by American adolescents is of major concern. Numerous studies try to assess the prevalence, frequency, onset, and amount of use of illegal drugs by juveniles. According to the 2003 National Survey on Drug Use and Health, 11.2 percent of youth in the United States between the ages of 12 and 17 reported that they used illegal drugs. Thirty percent of these youth reported that they had used an illegal drug in their lifetime, and 21.8 percent reported that they had used an illegal drug within the past year. Almost 8 percent of the responding youth said that they were currently using marijuana, which was cited as the most used illegal drug within this age group. Lifetime use of other drugs fell sharply below the use of marijuana. For example, 13 percent of youth reported using psychotherapeutic drugs for nonmedical reasons,

while 10.7 percent of youth reported using inhalants. Lifetime cocaine use was reported by 2.6 percent of respondents, while Ecstasy use was reported by 2.4 percent. All other surveyed substances' lifetime use fell to below 2 percent.[5]

The National Institute on Drug Abuse and the University of Michigan found in their 2004 Monitoring the Future Study of 8th, 10th, and 12th graders that 51.1 percent of 12th graders reported using an illegal drug, as did 21.5 percent of 8th graders and 39.8 percent of 10th graders. The Centers for Disease Control and Prevention in 2003 found that while 40.2 percent of high schoolers surveyed stated that they had used marijuana in their lifetime, the number represented a 7 percent decrease from 1999 and a little over 4 percent decrease from 2001.[6]

What do all these figures mean? First, the use of illegal drugs by juveniles in this country has shown a significant downturn in the recent past. Overall usage, however, remains significantly high. An extensive body of research had been completed to see what effects illegal drug use has on adolescents. Research suggests that adolescents who use drugs might develop an antisocial attitude, health-related problems, and, of course, delinquent behavior. Research strongly suggests that the earlier illegal drug use is initiated, the higher the risk of developing more serious drug problems.[7]

ADOLESCENT ARRESTS FOR ALCOHOL VIOLATIONS

Trying to determine arrest rates for alcohol abuse is not easy. On the national scale, we can examine arrests for Driving Under the Influence, Liquor Law Violations, and Drunkenness. Of these categories, by far, the most arrests are seen for Liquor Law Violations. Liquor Law Violations include "being in a public place while intoxicated through the use of alcohol or drugs. In some states it includes public intoxication, drunkenness and other liquor law violations, but not driving under the influence."[8] The good news is that between 1999 and 2003 (the last complete year for which statistics are available) the number of arrests for Liquor Law Violations decreased 22 percent. There was a 6 percent decrease between 2002 and 2003 in the number of Liquor Law Violations. One area of concern in the latest figures available is that, of the total number of Liquor Law Violations arrests in 2003, 35 percent (more than one-third) of the arrests were of girls.[9]

When it comes to driving under the influence, there has been a 9 percent decrease in the number of arrests since 1999, and a 4 percent decrease from 2002 to 2003. Twenty percent of the total arrests in 2002 for driving under the influence were girls. The offense of drunkenness reflects a 19 percent arrest rate decrease for the period between 1994 and 2003, with a 6 percent decrease from 2002 to 2003. Twenty-three percent of the arrests for drunkenness in 2003 were females and 13 percent of the arrests were of children under the age of 15.[10]

What do these decreasing arrest rates tell us? Two ideas come to mind. First, the obvious answer would be that juveniles are committing fewer

alcohol-related crimes and thus the arrest rates are going down as a reflection of declining activity. Second, although the activity level remains the same or is decreasing slightly, the police may be less likely than they have been in the past to arrest for this type of crime. There are several possible explanations for this: (1) budgets may be requiring that police investigate and arrest for more serious crimes; (2) because general arrest statistics reflect only the most serious crime committed, the alcohol crimes are greatly underrepresented in official statistics (evidence in juvenile justice literature suggests that this may be a contributing factor); and (3) more diversion programs may exist for police to refer alcohol-involved youth, thus avoiding the official arrest statistic. Whatever the reason, the pattern of arrest demonstrates a viable decline.

ADOLESCENT ARRESTS FOR DRUG ABUSE VIOLATIONS

Although the number of juvenile arrests in the United States has been decreasing, Drug Abuse Violation arrests among juveniles have not shown the same pattern. Drug law violations include "unlawful sale, purchase, distribution, manufacture, cultivation, transport, possession or use of a controlled or prohibited substance or drug or drug paraphernalia or attempt to commit these acts."[11] Arrests for Drug Abuse Violations began to rise sharply in the 1990s and have just begun to show some gradual decline. There was a 19 percent increase in Drug Abuse Violations between 1994 and 2003. Between 1999 and 2000, there was a slight drop of 3 percent, but between 2002 and 2003 arrests again increased 4 percent.[12]

Two facts regarding the arrests of juveniles for Drug Abuse Violations are worth mentioning specifically. The first is the fact that 17 percent of juveniles arrested for Drug Abuse Violations in 2003 were under the age of 15. Second, although arrests of girls showed tremendous percentage increases higher than boys for Weapons Law Violations and Simple and Aggravated Assaults, rate increases in arrests for Drug Abuse Violations for both genders was just over 50 percent from 1980 through 2003. If you look at the more recent rate from 1990 to 2003, the percentage increase for girls versus boys in Drug Abuse Violations arrests is 184 percent for girls compared with 81 percent for boys.[13]

Concerns about this issue have led to research being conducted regarding girls and their illegal drug use. Female juveniles favor marijuana as their drug of choice. In a study released in 2006, it is suggested that girls are now more likely to start using marijuana than boys. In addition, teenage girls also report higher illegal use of prescription drugs than do boys. Causes for this higher use offered in the literature range from depression, stress, higher susceptibility to peer pressure than boys, low self-esteem, and anxiety. In addition, many experts suggest that the effects of drug abuse are more "profound" on young women than they are on boys—both psychologically and physically.[14] Obviously, if girls bring different

issues to the table, societal and juvenile justice responses will have to adapt. This need will be discussed later in this chapter.

THE DRUGS/ALCOHOL AND DELINQUENCY CONNECTION

Much research has been completed attempting to discern the drugs/alcohol and delinquency connection. A wealth of research addresses this topic, yet perhaps one of the most comprehensive studies released comes from the National Center on Addiction and Substance Abuse (CASA). According to one of their recent reports,[15] 80 percent of youth arrested have one or more of the following characteristics:

- Test positive for drug use
- Have taken drugs or drunk alcohol before committing their crime
- Admit substance abuse
- Commit a drug- or alcohol-related crime

Half of the children arrested tested positive for drugs. Of those tested, more than 90 percent tested positive for marijuana, more than 14 percent for cocaine, close to 9 percent for amphetamines, almost 8 percent for methamphetamines, and just under 3 percent for opiates. Although alcohol is not generally tested for, almost 40 percent of the youths arrested admitted that they had used alcohol before committing their crime. Thus, the most common drugs used by juvenile arrestees are alcohol and marijuana. In addition, the study suggests that the youth who are arrested for a drug- or alcohol-related offense demonstrate other characteristics as well to suggest substance abuse. When comparing the youth arrested just once in a year to the nonarrested youth, the following statistics are startling. Arrested youth are—

- More that 2 times most likely to have used alcohol
- More than 3½ more likely to have used marijuana
- More than 4 times more likely to have used prescription drugs for recreation
- More than 7 times more likely to have used Ecstasy
- More than 9 times more likely to have used cocaine
- More than 20 times more likely to have used heroin

The study suggests that the alcohol, drugs, and delinquency connection runs through all categories of crimes. The majority of youth arrested for either violent crimes or property crimes were involved in the use of some substance at the time of the crime. In addition, the study suggests that only 3.6 percent of juveniles arrested ever receive any type of drug or alcohol treatment and that substance-abusing offenders are more likely to be repeat offenders. The CASA study offered some strong conclusions: ''Instead of helping, we are writing off these young Americans—releasing

them without needed services, punishing them without providing help to get back on track, locking them up in conditions of overcrowding and violence, leaving these children behind."[16]

Let us next examine how the juvenile court responds to those young people that come into their system.

JUVENILE DRUG USE, GANGS, AND VIOLENCE

Wondering whether a growth in the number of youth gangs and more aggressive media coverage of youth gangs (which created public fear) was based on the reality of gang activity, the Office of Juvenile Justice and Delinquency Prevention researched youth gang activity and published the results of a study by Howell and Decker in 1999. One of the major research areas of the project was the relationship among gangs, drug trafficking, and violence. Gangs did not seem to tie themselves to drug activities until the 1960s. Gang involvement in drug trafficking seemed to blossom in the mid-1980s during the cocaine era. The increased demand for cocaine, as well as financial need, may have been the impetus behind this movement.

This report regarding youth gangs and drugs concluded that little empirical evidence supported the notion that the majority of youth gangs specifically create networks to traffic drugs. Interstate drug trafficking and extensive networking is the pattern of adult gangs. However, "youth gang members actively engage in drug use, drug trafficking, and violent crime."[17] Youth who belong to gangs are more likely to traffic drugs and be involved in violence than youth who do not belong to gangs. Gang members are more likely to promote individual drug use.

JUVENILE COURT AND ITS RESPONSE

The number of arrests of juveniles for Drug Abuse Violations is going to affect the juvenile court and its functioning. From 1990 until 1999, the number of drug offense cases referred to U.S. juvenile courts increased 169 percent. The drug offense cases in 1999 accounted for 11 percent of all delinquency cases referred to juvenile court. In 1990, that number was just 5 percent.[18] These numbers present challenges to the juvenile court.

One of the first major decisions in the juvenile justice system is the decision of whether to detain the juvenile in a securely locked facility. Most juveniles do not have bail as an option in juvenile court. Generally speaking, if a juvenile is detained in juvenile court, the reason is for the safety of the child or the community, the likelihood that the child will flee, or the assumption that the child will commit a crime if released. Only about 20 percent of all juvenile offenders are detained.[19] Between 1991 and 2000, the percentage of substance abusers detained increased more than any other offense category. In 2000, for example, 11.3 percent of detained youth were detained on Drug Abuse Violations.[20]

The next major decision in the juvenile justice system is to decide whether the case should be waived up to the adult criminal court system.

The juvenile court has always had the option to use the transfer process if a child could not be rehabilitated within the juvenile system. Once the juvenile court was created, the majority of cases were handled in juvenile court and transfer was not a common process. This began to change in the late 1980s and early 1990s when the United States experienced a "get tough on juvenile offenders" movement. Drug-offending youth was one of the groups seemingly targeted for tough treatment.

During the early 1990s, a higher percentage of drug law violation cases were waived to adult court than any other offense group. The juvenile system appeared to believe that drug law violators would be better served in the adult system. Throughout the 1990s, however, the percentage of drug abuse violations being transferred has dropped. Overall, only about 1 percent (or less) of all juvenile cases are transferred out of juvenile court annually. In 2000, Drug Abuse Violation cases made up 14.1 percent of all the cases that were transferred to the criminal courts.[21]

When a juvenile case is heard in juvenile court, the judge must enter a disposition for the juvenile. A disposition is somewhat equivalent to adult sentencing. The most common disposition seen in juvenile court is juvenile probation. Likewise, the most common disposition for those juveniles adjudicated delinquent on drug charges is probation, followed by placement outside the home as the second most seen disposition.[22] Between 1991 and 2000, drug abuse violators placed on probation increased 276 percent. In 2000, out-of-home placement was ordered in 20 percent of drug abuse cases, a 76 percent increase since 1991.[23]

These statistics suggest that the juvenile justice system now keeps more drug abuse violators in the juvenile justice system. Although most of these juveniles are kept in the community placed on probation, one out of five are disposed in residential placements. The increase of youth into these dispositions begs the question whether the juvenile justice system is now more equipped to deal with the drug-involved youth while on probation or in residential treatment, because they are using these dispositions more often. A review of basic fundamental skills training of juvenile probation officers suggests that the recommended basic curriculum focuses on job skills knowledge of the system and lacks in-depth coverage of adolescent drug and alcohol issues.[24] Drug and alcohol issues most likely would include specialized training, which would be taken after one has been employed for some time and already has been working with substance-abusing youth.

Two additional issues emerging from the literature include concerns about racial and gender disparity in juvenile court treatment. Between 1991 and 2000, Drug Law Violation cases referred to juvenile court for female offenders increased a whopping 311.4 percent—a much higher percentage increase than the 181.2 percent increase seen for males.[25] Perhaps the biggest concern about these numbers and the juvenile justice system response centers on the idea that traditionally male treatment programs are simply being "painted pink" and presented to female offenders.[26] This approach would not prove successful. It has already been suggested that juvenile females present different reasons for drug involvement and suffer

different consequences because of this involvement. The system must address these differences to create successful gender-based drug treatment programs.

Some sobering statistics exist about juvenile justice treatment of minority drug-offending youth. Black teens are 1.8 times more likely to be arrested for a drug offense, while white juveniles are 4.2 times more likely to be arrested for driving under the influence and 4.3 times more likely to be arrested for drunkenness. Black teen drug offenders are more likely to be detained, formally processed, transferred, and placed out of their homes for drug offenses than are white youth.[27] Clearly, some diversity issues still have not been rectified within the juvenile justice system.

CASA estimated in its report that the cost of managing substance-abusing juvenile offenders in the juvenile justice system costs a staggering $14.4 billion annually. CASA estimates that if you were to add in the costs of other public and private entities the costs might double. CASA also notes that a mere 1 percent of this $14.4 billion goes toward treatment. With costs of this magnitude, the substance-abusing juvenile offender requires new responses from the juvenile justice system.

The Juvenile Drug Court

One of the innovations that the juvenile court has tried in its response to adolescent drug abuse is the juvenile drug court. Juvenile drug courts were first established in 1995. By 2001, when the U.S. Department of Justice issued a report on Juvenile Drug Court Programs, it was estimated that more than 140 juvenile drug courts were in operation and more than 125 were planning to become operational in the near future.[28]

In June 2006, the U.S. Department of Justice released a special report on drug courts. Their major conclusion about juvenile drug courts was summed up in the introduction to the report:

> Compared to adults, juveniles can be difficult to diagnose and treat. Many young people referred to drug court have no established pattern of abuse or physical addiction. Others have reached serious levels of criminal and drug involvement. Neither general treatment research nor drug court evaluations have produced definitive information on juveniles. Most juvenile drug court teams are still exploring whether their mission should be prevention or intervention.[29]

The Paradox of the Juvenile Court Response and Society's Confusion about Youth

As stated in the preceding section, one of the juvenile court responses to the initial increase in juvenile law violators was to transfer them into the adult system. This response was part of a changing societal view about offending juveniles and the subsequent response to their misbehavior by the juvenile justice system and, thus, by society. The late 1980s and 1990s

followed a get-tough approach to juvenile crime. On the heels of a moral panic over juvenile misbehavior and a conservative agenda toward offenders in the mid-1980s, an actual increase in juvenile crime in the early 1990s led to a more punitive approach to juvenile offenders.

All states made it easier to transfer youth into the adult criminal justice system. Age requirements were lowered, crime criteria were broadened, and the authority to transfer was extended beyond the juvenile court judge. Debates on how to treat juvenile offenders raged in newspapers and magazines, in numerous documentaries, and even in the Supreme Court of the United States. On the one hand, the argument heard was "if you are old enough to do the crime you are old enough to do the time." As previously mentioned, this get-tough approach was heavily applied to juvenile offenders charged with Drug Law Violations.

The concept of adolescent development, immaturity, and decreased criminal responsibility based on chronological age was replaced with the concept that the punishment needed to fit the act—not the offender. And, apparently, drug violations were considered among the most serious crimes adolescents could commit. That, or the juvenile justice system simply had no idea how to treat the issue and they passed it on to an equally ill-equipped adult system. This concept that juvenile offenders needed punishment, and not treatment, has continued throughout the early 2000s.

Now here is the paradox. On the one hand, society began examining the ages at which it grants adult privileges and wondering whether it needed to set those ages back because teens are not mature or responsible enough to handle such adult responsibilities. On the other hand, legislators, the media, and the American public also demanded that the juvenile justice system hold children criminally responsible at younger and younger ages. For example, it was during this time period (the mid-1980s) that the federal government enticed states to increase the legal drinking age back to 21. Currently, a ranging debate is going on in Massachusetts about raising the legal driving age to 17½ years. The motivation for the age change is to curb accidents among young drivers who are not mature enough to take the responsibility of driving seriously and who also make bad choices and decisions as they drive. These youth do not seem to fully understand the risks or long-term consequences of their choices.

SOCIETY'S RESPONSES: THE D.A.R.E. PROGRAM

Perhaps the most well known of society's responses to the concern of youth and drug and alcohol use is the creation of D.A.R.E.—the Drug Abuse and Resistance Education programs created in 1983 in Los Angeles by then–Police Chief Darryl Gates. The program is school-based and was designed to prevent students' future use of alcohol, tobacco, and illicit drugs. The program uses uniformed police officers in the classroom who teach from a highly structured set of lessons that were developed by the Los Angeles Police Department (LAPD) and the LA school district. The program is designed for older elementary school-age children and is usually most active in the 5th or 6th grades, although there are components

for younger and older students as well as for families. The LAPD really bought into the concept of D.A.R.E. and allowed 10 officers to teach the curriculum to more than 8,000 students the first year of the program. By the mid-1990s, D.A.R.E. had grown to an international program serving thousands of children.[30]

Although perhaps the most widely known adolescent drug program in the country, reports researching the effectiveness of D.A.R.E. have presented a less successful story. The primarily cited purposes of the D.A.R.E. program are to achieve the following:

- Teach students to recognize pressures to use drugs from peers and from the media
- Teach students the skills to resist peer inducements to use drugs
- Enhance students' self-esteem
- Teach positive alternatives to substance use
- Increase students' interpersonal, communication, and decision–making skills[31]

Research indicates that D.A.R.E. is not effective in reducing drug use by the students who have gone through the program. *USA Today* reported on a 1994 Department of Justice Study that "The D.A.R.E. program's limited effect on adolescent drug use contrasts with the programs popularity and prevalence. An important implication is that D.A.R.E. could be taking the place of other more beneficial drug education programs that kids could be receiving."[32]

If you were to check the D.A.R.E Web site today, the first thing that you notice is that the top line reads "The New D.A.R.E. Program—Substance Abuse and Violence Prevention: Inside the 21st Century School House."[33] The Web site continues to explain that D.A.R.E. is going high tech and will be more interactive and move to a decision-based model of instruction. To quote the Web site:

> Gleaming with the latest in prevention science and teaching techniques, D.A.R.E. is reinventing itself as part of a major national research study that promises to help teachers and administrators cope with ever-evolving federal prevention program requirements and the thorny issues of school violence, budget cuts, and terrorism. Gone is the old style approach to prevention in which an officer stands behind a podium and lectures students in straight rows. New D.A.R.E. officers are trained as "coaches" to support kids who are using research-based refusal strategies in high-stakes peer pressure environments. New D.A.R.E. students of 2004 are getting to see for themselves—via stunning brain imagery—tangible proof of how substances diminish mental activity, emotions, coordination and movement. Mock courtroom exercises are bringing home the social and legal consequences of drug use and violence.[34]

The same Web site directs the viewer to a section that discusses an evaluation of the new program. Now geared at 7th through 9th graders, the program focuses on "taking charge of your life." The University of Akron

is studying the success of the program and, to date, finds the program to be effective.

TARGETING THE RIGHT ISSUE

A recent report from the Pacific Institute for Research and Evaluation (PIRE) suggests that although alcohol use by minors is the more significant problem over drug use by adolescents, the alcohol issue remains largely ignored. The study suggests that underage drinking costs Americans nearly $62 billion a year, if you analyze the costs of acts of violence and traffic accidents. The study suggests that alcohol kills four times the number of young people as drugs do, yet spending by the federal government is 25 times higher for drug abuse issues over underage drinking issues. The study states the following:

> The lack of enforcement of legal drinking laws continues to contribute to the problem of underage drinking... Minors obtain alcohol in three principal ways: through illegal purchases, at parties, and from the family liquor cabinet or refrigerator. Research shows interventions can successfully reduce underage consumption, including regular police checks on sellers and servers of alcohol, improving age-checking technology, zero alcohol tolerance for drivers under 21, driving curfews, and "social host" policies that hold adults liable when minors drink at home parties.[35]

Some concern is expressed here that we are targeting the wrong issue although that seems unlikely in the face of such overwhelming statistical evidence. The study suggests in the above quotation that part of the problem is that law enforcement is not taking the issues seriously. The belief is still held that alcohol is not a drug and is not particularly harmful to minors. In the different state statutes, Minor in Possession remains a status offense on some books and not a delinquent act. With today's resources, law enforcement, by necessity, will have to address more serious delinquent offenders and may pull back their work with status offenders and less serious delinquent offenders.

In addition, there may be some political pull. It is estimated that youth will spend up to $22 million a year on alcohol. It is also suggested that the alcohol business spends its advertising dollar, or rather $4.8 billion of them, wisely. Research suggests that youth who are more aware of beer ads are also more likely to indicate positive views about drinking. Children are more familiar with the Budweiser frogs than with Smokey the Bear.[36] Research by The Center of Alcohol Marketing and Youth says that children were exposed to almost one-third again as many alcohol ads in 2004 than they were in 2001.[37]

Also of major significance are the following allegations: the alcohol industry donates heartily to both the Democratic and Republican parties—more than an estimated $11.7 million in 2000. When the American Medical Association released its 2003 study entitled "Reducing Underage Drinking—A Collective Responsibility," the National Beer Wholesalers

Association tagged the report as a misuse of federal funds. In addition, the government's $1 billion dollar initiative "Youth Anti-Drug Media Campaign" was heavily lobbied to exclude information about alcohol by the same association.[38]

LEGALIZATION OF DRUGS?

According to the U.S. Department of Justice in a report entitled "Speaking Out Against Drug Legalization" there are 10 significant reasons why drugs should not be legalized in the United States. They are as follows:[39]

- We have made significant progress in fighting drug use and drug trafficking in America. Now is not the time to abandon our efforts.
- A balanced approach of prevention, enforcement, and treatment is the key in the fight against drugs.
- Illegal drugs are illegal because they are harmful.
- Smoked marijuana is not scientifically approved medicine. Marinol, the legal version of medical marijuana, is approved by science.
- Drug control spending is a minor portion of the U.S. budget. Compared with the social costs of drug abuse and addiction, government spending on drug control is minimal.
- Legalization of drugs will lead to increased use and increased levels of addiction. Legalization has been tried before and failed miserably.
- Crime, violence, and drug use go hand in hand.
- Alcohol has created significant health, social, and crime problems in this country, and legalized drugs would only make the situation worse.
- Europe's more liberal drug policies are not the right model for America.
- Most nonviolent drug users get treatment, not jail time.

Of course, those who lobby for the decriminalization of drugs have different takes on these arguments. In 1999, according to the Cable News Network, then–New Mexico Governor Gary Johnson advocated for the legalization of marijuana and heroin. He believed they should be legalized because of the expense of the war on drugs. He is reported to have stated,

> "Control it, regulate it, tax it. If you legalize it, we might actually have a healthier society. . . .Marijuana is never going to have the devastating effects on us that alcohol and tobacco have on us. If marijuana is legalized, alcohol abuse goes down because people will have a substance choice.[40]

These sentiments echo many of the sentiments heard in the argument to legalize certain illegal drugs.

But would legalization of drugs really accomplish these cited goals? Probably not, according to Robert L. Maginnis of the Family Research Council. He says that the myth that legalization will decrease the crime rate is just that—a myth. According to Maginnis, most criminals commit

crime while on drugs and are not pure drug law violators. Thus, if drugs were legal, crime might increase because drugs contribute to the act, but are not the act itself. It is highly unlikely that this debate will end any time in the near future.

CONCLUSION

The use of alcohol and drugs by minors in American society has presented numerous challenges to society in general and to society's institutions, such as the juvenile courts, in particular. There appears to be no argument that alcohol use by teenagers is greater than drug use is. What does appear to be in question is whether this use is as dangerous and causes as many risks and whether people believe this. The current U.S. debate about the legal drinking age and whether it is too high centers mostly on the threats that youth pose when they drink and get behind the wheel of a car, putting us all at risk. Less concern is expressed about the harm that a reduced drinking age might expose youth to in terms of other issues. Such risks include an increased chance of alcohol dependency and less inhibition about exhibiting high-risk behaviors. As discussed, if these risks are true, then why is underage drinking so largely ignored? In addition, the economic costs are high as are the human costs. Some people suggest that the clout of the alcohol manufacturers and lobbyists works to keep the issue quiet. Another suggestion offered is that law enforcement does not approach underage drinking with the same concern with which they approach the use of drugs by minors.

Drug use by adolescents is decreasing in the United States, although the number remains high. During the peak years of concern about adolescent drug use, the juvenile court saw a tremendous increase in the number of juvenile Drug Law Violations coming to juvenile court. In the early 1990s, one of the responses by the juvenile court was to transfer those youth to the adult court system. Of particular concern were the increased percentage rates of girls and young offenders being referred to juvenile court for Drug Abuse Violations. Along with this concern came the concern that girls use drugs for different reasons than male offenders, and, thus, treatment must be different as well. Currently, most juveniles arrested and formally handled in juvenile court are put on probation and stay in the community. According to the CASA reports, the juvenile legal system currently spends $14.4 billion annually on substance abuse offenders. According to the same report, however, only 3.6 percent of youth in the system receive any type of effective drug or alcohol treatment.

What will the future hold for dealing with this major societal problem? The most widely recognized, used, and funded program, D.A.R.E., has given itself a much needed face-lift and reworked its drug abuse resistance education program into a "substance abuse and violence prevention program fit for 21st century schools." While preliminary data indicate that the program is proving more effective than the original program, the jury

remains out. It is just too early to tell. It is also too early to tell how effective juvenile drug courts will be with juvenile substance abusers. Evaluations of these courts will have to be ongoing and thorough.

Decriminalization of drugs is not likely to happen any time soon. And if it ever does happen, it is highly unlikely that recreational drug use will be made legal for minors. So what will happen? Would adolescent drug use of legalized drugs become a gray area like Minor in Possession is and only carry minor penalties? Would that lead to the treatment that many of these children need? Most likely not, because drug-abusing children would be even more likely to fall through the cracks of society's institutions.

This is a tough call. We can't ignore the problems drugs and alcohol present to our children and thus our society. We have to be glad that the numbers are showing declines, but we have to try to understand why that is and remain vigilant in our fight to find and use approaches that truly work.

NOTES

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5. Office of National Drug Control Policy, hereafter ONDCP, 2006, August.
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CHAPTER 8

Where There's Smoke: Juvenile Firesetting through Stages of Child Development

Alan I. Feldberg, John H. Lemmon, and Thomas Austin

Fire has been a powerful but mysterious force throughout all of human history. All civilizations have attempted to understand and control this essential element. For example, in Greek mythology, Prometheus's gift of fire gave to man something that had heretofore had been reserved for the gods. This was the power to start and use fire safely. His eternal punishment signified that the gods believed man could never be trusted to handle this potent force. Fire has the potential to sustain and advance life, but it also has the power to destroy it. The gods may have been right.

In 2005, fires in the United States accounted for property losses of more than $10 billion, claimed the lives of 3,675 civilian victims, and 17,925 civilian injuries.[1] According to data compiled by the U.S. Fire Administration in 2001, arson is the leading cause of fire in the United States, accounting for more than 267,000 fires annually with property losses estimated at $1.4 billion annually. Arson is also the second leading cause of fire deaths, resulting in 475 fatalities and 2,000 injuries. In 2004, arson accounted for 36,500 structure fires (i.e., buildings), causing 320 deaths and totaling $714 million in property losses.[2]

Arson appears to be a serious problem among children. Almost one-half of all people arrested for arson are juveniles, as reported by the Bureau of Justice Statistics.[3] According to the National Fire Association, children account for more than one-half of the arsons committed over the last nine years.[4] According to recent juvenile arrest statistics, arson was the criminal offense with the highest representation of child offenders in the arrest population.[5] Children are also the most likely victims of juvenile firesetting, accounting for 85 percent of the lives lost.[6]

In addition to the direct impact of fire, several authors have investigated the meaning of firesetting in the development of violence and other forms of criminality. MacDonald studied the differences between more violent and less violent adult inpatient psychiatric patients. He reported that firesetting was one of a triad of predictors that was associated with aggressive adult behaviors, the other two being animal cruelty and enuresis.[7] Current theorists, including Merz-Perez and Heide,[8] primarily focused on the role of animal cruelty as a precursor to violent juvenile crime but also considered firesetting as a risk factor as well. Douglas and Olshaker[9] included juvenile firesetting as an aspect in the profiles of some of America's most violent criminals. To the extent that juvenile firesetting is a precursor to serious criminal behaviors, juvenile firesetters require considerable monitoring and intervention. Firesetting is considered a developmental step toward more serious criminality.[10]

The following section outlines some of the developments in the areas of theory and research that illustrate the movement from general to comparative models of causation and includes key research studies that have examined these models.

ADVANCEMENTS IN THEORY AND RESEARCH

Why do children set fire? The answers to this question have been difficult to ascertain. Historically, Sigmund Freud speculated on unconscious motivations of firesetting related to conflicts over unacceptable homosexual urges. Freud was particularly intrigued by the behavior of some male arsonists who urinated on fires to extinguish them. Based on these observations, Freud formulated his ideas about a dynamic connection between firesetting and urethra satisfaction.

Freud's speculation on the unconscious psychological motivations for firesetting was in vogue into the 1960s. Expanding on Freud's theory building, Lewis and Yarnell[11] studied records of prisoners who had either arson histories or arson tendencies and reported that arsonists were repressed individuals who frequently masturbated at the scene of their fires. Bachelard[12] also theorized about the symbolism of fire, not just in terms of psychopathology, but also in terms of the psyche in general, family functioning, and life-span development from birth to death.

More contemporary researchers have challenged the veracity of early psychoanalytic theory building, including the results of Lewis and Yarnell's research.[13] Other limitations of Freud's psychoanalytic model include problems in verifying unconscious motivations, an overemphasis on a singular cause for all firesetting, and his failure to provide a practical blueprint for treatment. As a result, more contemporary theorists such as Heath, Gayton, and Hardesty[14] have concluded that psychoanalytic thinkers have become less focused on underlying and unconscious factors and more focused on ego functioning and object relations. Modern attempts to understand juvenile firesetting have bypassed Freud's unconscious model in favor of a more conscious and goal-directed psychology.

In contrast to general theories of firesetting that emphasize a singular cause, current theory development features a comparative approach that features multiple causations. In Fineman's review of the juvenile firesetting literature, he questions the assumption that children who set fires have similar backgrounds, motives, drives, and reinforcement histories. Fineman argued that there are four motivational typologies of juvenile firesetting. The majority of firesetters are motivated by curiosity. He indicated that curious firesetters usually set only one fire, which generally frightens them and prompts them to call for help. He suggested that good education programs would generally be effective in eliminating this type of firesetting. Fineman also identified children motivated by crises as well as those who use fire for delinquent purposes. Fineman finally speculated a fourth typology, which he described as pathological firesetting. He believed that pathological firesetters had varied motivations that required extensive psychotherapy.[15] Elaborations on these pathological motivation types are certainly in order to advance our understanding of firesetting behaviors.

Other theorists have also suggested that the motivation for firesetting can be classified into specific typologies. Canter and Fritzon have suggested a four-part typology classified along two dichotomously arranged dimensions that include (1) firesetting directed at people versus objects and (2) firesetting motivated by expressive (emotional) needs versus instrumental (goal-directed) incentives (e.g., expressive-person firesetting motivated by anxiety compared with instrumental-person firesetting motivated by revenge).[16]

Santtila and his colleagues found some evidence to support Canter and Fritzon's typology. Using a sample of 230 juvenile firesetters in England, they were able to classify 35 percent of the fires as instrumental-person (motivated by revenge), 59 percent as instrumental-object (motivated by pragmatic reasons such as covering up a crime), 29 percent as expressive-object (motivated by fire fascination), and 14 percent as expressive-person (motivated by a cry for help). They also identified specific risk factors associated with each typology (e.g., the expressive-person typology was associated with a history of institutionalization for child maltreatment and a diagnosis of depression; the instrumental-object typology was associated with a history of prior convictions for thefts, vandalisms, and burglaries). One implication of the Santtila study is that different motivations to set fires follow different development pathways.[17]

The idea of relating risk factors to motivational types was proposed by Kolko and Kazdin in the 1980s with their presentation of a three-part ecological model of fireplay and firesetting.[18] Their model was a conceptual blueprint of firesetting derived from reviews of the existing literature and included the following: (1) a learning element suggesting that juvenile firesetting was related to early exposure to firesetting activities; (2) an individual risk-factors element that could include such factors as a limited awareness of fire hazards, emotional deficits including discomfort with human interactions, difficulties in handling face-to-face conflicts, social immaturity, or isolation; and (3) a parent/family risk-factors element that could include poor parental supervision, parent-child attachment disorders,

parental pathologies such as histories of alcohol abuse, mental health problems, criminal behaviors, and stressful family life events like divorce or the death of a parent. One implication of Kolko and Kazdin's ecological model is that specific motivational types might be associated with the different risk factors. Furthermore, motivational types may be dynamic, meaning that they vary from early childhood through adolescence, while others may be static, meaning that they remain constant throughout each stage of child development.

Kolko later reported four psychological profiles among juvenile firesetters. These included curious firesetters who set fires out of fascination, pathological firesetters who set fires as a symptom of their psychopathology, expressive firesetters who set fires as a cry for help, and delinquent firesetters who set fires as a function of their antisocial behaviors.[19] In contrast, Putnam and Kirkpatrick argued that there are only two motivational types: (1) expressive (e.g., arson as an expression of psychopathology or unresolved trauma) and (2) instrumental, where firesetting is employed to achieve an established goal (e.g., arson for profit, to conceal a crime, and so forth).[20] The authors also outlined a number of causal explanations.

Researchers have identified specific firesetting risk factors. Their findings suggest that firesetters exhibit higher levels of antisocial behavior, conduct disorder, impulsivity, and lower levels of sociability, and that their families exhibit more dysfunctional parental systems and pathological family dynamics.[21] Little is known, however, about the impact of these risk factors on the development of different motivational typologies. Additionally, Putnam and Kirkpatrick emphasize the need for a validated classification system that distinguishes high- and low-risk youth firesetters.

In addition, little is known about the factors that transition a child from fireplay to more serious firesetting. From a developmental perspective, Kolko and Kazdin discuss using a risk assessment theory explanation, stating that firesetting behavior evolves as the child matures, that it is produced by individual and environmental risk factors, and that firesetting motivations change as children mature.[22] Unfortunately, a paucity of literature elaborates on how firesetting behaviors emerge or change over time.

Currently, there is no consensus in the literature of juvenile firesetter typologies, definition of terms, and explanations about how these typologies might develop over time. We now our turn attention to a conceptual framework that lays the groundwork for a developmental theory of motivational typologies.

TOWARD A DEVELOPMENTAL EXPLANATION OF JUVENILE FIRESETTING MOTIVATION

Examination of developmental changes over the life span has been part of considerable psychological theory building, beginning with Freud's theories of psychosexual development and extending through Eric Erikson's stages of identity, Piaget's exposition of cognitive development, and Kohlberg's concepts of the development of moral reasoning. Each of these theorists indicated qualitative changes in psychological functioning over the

course of human development. Additionally, the community mental health movement has examined and addressed pertinent risk factors to mitigate negative developmental trajectories.[23] Thus, developmental theory has had a considerable impact on treatment approaches as well as preventative efforts with children in many areas of delinquency but not in juvenile firesetting. Many of these psychological concepts have advanced contemporary criminological theories, particularly work in the field of human ecology.

The idea of an ecological approach emphasizing the importance of individual and environmental risk factors affecting child development was initially spelled out by child development experts.[24] The ecological model underscores the life-span theories of youth offending, including Loeber and Farrington's work in the field of developmental criminology. To adequately conceptualize juvenile firesetting typologies, it might be worthwhile to consider life-span models of general youth offending that consider changes in motivations and behaviors over time.[25]

For example, Loeber's stacking model of problem behaviors suggests that serious youth offending is a function of the interaction of biological, family, and community risk factors that place troubled children on a trajectory to a life of chronic and serious criminality.[26] As an illustration, a child is born with neurological impairment caused by low birth weight as a result of poor prenatal care. The poor prenatal care is symptomatic of the mother's attachment conflicts with her unborn child. After the birth, the mother experiences more difficulty attaching to her damaged child, thus inhibiting positive reciprocal social and emotional interaction. Moving into early childhood, the child continues to receive inadequate parental nurturing and supervision, which further exacerbates his cognitive and social impairment. The child's ability to tolerate his growing frustrations becomes overwhelmed. As a result, the child becomes mistrusting, lacking in self-control, incompetent, irritable, and cynical. By the time he enters school, he has established a set of stable, negative beliefs that promote further rejection by teachers and peers who might have helped him. He acts out aggressively and finds membership in a peer group composed of similar children. Within this isolating peer group, he continues to model and refine his antisocial attitudes and behaviors. At this point, the child is on a trajectory toward a delinquent career.

Loeber's research further differentiated three developmental pathways, resulting in specific typologies of antisocial behavior, including status offenses, property offenses, and violent crimes.[27] The authority avoidance pathway begins with oppositional behavior leading eventually to status offenses (e.g., truancy, violations of curfew, and running away from home). The covert pathway begins with minor problematic behaviors particularly lying and minor theft. This leads to more serious property crimes, including vandalism and arson. The covert pathway eventually transitions to felony-level crimes, such as burglaries. The overt pathway begins with minor aggression, such as bullying, which leads to physical fighting and finally transitions to violent crimes, such as aggravated assaults and homicides. Loeber and his colleagues also reported that some children move along multiple pathways (e.g., covert to overt pathways). These youths

tended to be the most serious and persistent offenders. It would be worthwhile to apply a similar developmental analysis specifically targeting juvenile firesetters.

In the following section, we present a seven-part juvenile firesetting typology. Consistent with the ecological model, we will present clinical case studies that illustrate the developmental pathways of different types of firesetters. Our clinical evidence indicates that some of these pathways are static (remain constant) while others are dynamic (changes or varies) over the developmental stage from early childhood through adolescence.

CASE STUDIES ON THE SEVEN MOTIVATIONAL TYPES OF JUVENILE FIRESETTERS

In the present essay, a seven-part typology of juvenile firesetting motivations is espoused. Although there may be other motivations for firesetting, for the most part, they are idiosyncratic. Most juvenile firesetting is well explained by the following typology. In general, the motivation scheme includes three types of firesetting motivation that are considered nonpathological and four subtypes of firesetting that are considered pathological. The terms *nonpathological* and *pathological* are applied in respect to the child having an unhealthy psychological connection to fire, not to other, more general, psychological issues. For example, a child may have serious psychopathology, such as bipolar illness, and be a nonpathological firesetter. Finally, as the discussion unfolds below, the authors want to clarify that motivational profiling relates to the psyche of the child, not necessarily to the intensity, size, or impact of the child's fire. The central element of pathological firesetting is the child's relationship to fire, which serves to inhibit unpleasant feelings or excite a desired state of feeling.

In general, the typology of the firesetting motivation should direct treatment and intervention strategies. Pathological firesetters should receive more robust clinical interventions that focus on firesetting itself. Nonpathological firesetters generally require less robust treatment efforts that focus specifically on firesetting issues. Treating general psychological issues of nonpathological firesetters (such as depression, Attention Deficit Hyperactivity Disorder, and trauma responses) can predictably reduce the incidence of future firesetting. However, the treatment of pathological firesetting demands a clinical treatment approach that undermines the child's psychological relationship with fire and replaces this relationship with healthier ways to regulate psychological processes.

The following three motivations are considered nonpathological. These include curious/accidental firesetting, crisis firesetting, and delinquent firesetting. Each will be discussed below.

Nonpathological Firesetting

Curious and accidental firesetting are usually grouped together and, in fact, they may be closely related to one another. Curiosity-set fires are set

to satisfy some interest about fire and fire dynamics. There is an experimental "I wonder what will happen if..." quality to the motivation of the juvenile. By implication, this type of firesetter does not already know the answer to his or her curiosity and does not understand basic fire dynamics. An example from our clinical population was a client who, as a young child, had seen his parent use a lighter and became curious about whether he could make it work. He picked it up and lit the lighter. The three-year-old became curious about what would happen if he touched the flame to a piece of paper. As the flames burned, the child was shocked at how the flame rose toward his hand and how hot it became.

An accidental fire resulted when the child dropped the paper (because it burned his hand) on a couch, which eventually led to a chain reaction that consumed his parent's home. From a motivational standpoint, one would surmise that the child who set this type of fire was naïve about fire, how it burns, and its potential impact.

From a logical standpoint, as children acquire fire knowledge, curiosity and accidental fires are less likely to be their motivations. While Fineman pointed out that curious firesetters would generally be frightened by their fire in a manner that deters future firesetting, in a minority of cases, curiosity firesetting can be the gateway to other problematic firesetting.[28] In cases such as these, firesetting motivation can change over time to other forms of nonpathological (i.e., delinquent) or pathological firesetting (e.g., fire fascination or thrill seeking).

Frequently, children who set curiosity-motivated fires may have two general psychological characteristics that relate to their fire activity. First, they are frequently more curious than the average child about aspects of their environments, such as mechanical devices (e.g., telephones, computers, and so forth). Second, these children have a strong tendency to satisfy their curiosity through doing, rather than thinking. Their cognitive styles usually involve external actions on their environments rather than being ideationally predisposed.

The second motivational typology is the crisis or "cry-for-help" firesetter. Crisis firesetting can be established as the motivation when two conditions are met. First, the child must be living through a discernable crisis that he or she perceives as inescapable. Second, the child must use the fire as an attempt to avoid or resolve the crisis. An example from our clinical population was a child who was being sexually abused by a caretaker and was too frightened and ashamed to tell authorities. The child set a fire to a back porch, went to his neighbor's home, called 911, waited while emergency personnel extinguished the fire, and when asked if he was responsible for the fire, readily acknowledged that he had set the fire. He was removed from the abusive home environment and, because of this, his safety was restored.

For the cry-for-help firesetter, there is no denial of complicity in setting the fire. In fact, the child will evidence some relief that his or her own crisis is being solved as the result of his or her actions. According to Canter and Fritzon's scheme, crisis firesetting is expressive and person focused.[29] In this type of firesetting, the common metaphor, "where there is smoke,

there is fire'' actually makes a lot of sense, meaning the fire is symptomatic of a serious and unresolved crisis.

The third motivational subtype is delinquent firesetting. In these cases, fire has an instrumental function that demonstrates defiance toward authority and societal norms. This function is used no differently than rocks might be used to break windows or spray cans might be used to produce graffiti. Additionally, fire can be used to disguise another crime. Canter and Fritzon categorized this type of firesetter as instrumental and object focused. In one of our cases, two youths stole a jeep from a neighbor, went joyriding, got into an accident, and then attempted to burn the jeep with gasoline to destroy any evidence that would link them to the theft.

In our experience, the delinquent firesetter is gratified by the excitement and victorious sense of defiance over society's rules rather than with the fire itself. Frequently, delinquent firesetting is done by a group of youths associated within a negative peer culture. They maintain a sense of loyalty to one another when setting their fires. When confronted by the authorities, however, delinquent firesetters frequently are disloyal to their peers. They are prone to blame their coconspirators while absolving themselves of any wrong doing.

Pathological Firesetting

Pathological firesetting occurs when children have significant psychological relationships with fire. A number of considerations reflect this pathological relationship with fire. In a minority of cases, genuinely psychotic children may have delusions and hallucinations in which fire is a prominent feature, or even worse, they may experience command hallucinations ''telling them'' to set fires.

For the most part, however, pathological firesetting is driven by two dynamics: obsession and regulation of emotion. Obsession is a thinking function whereas regulation is an emotional function. In terms of obsession, some children are intensely preoccupied with fire and may think, dream, and fantasize about fire continually. This may be reflected in a preoccupation with movies, television programs, and video games that feature vivid images of fires and explosions.

Children who use fire to regulate their emotions psychologically use fire to inhibit feelings that create emotional discomfort or to generate feelings that invoke pleasure. For some pathological firesetters, fire can be used to excite as well as to inhibit feelings. Among these types of firesetters, fire is a means to regulate emotional experiences. Four subtypes of pathological firesetting include revengeful, maladaptive coping, thrill seeking, and fire fascination. In each of these subtypes, the psychology of fire obsession and the regulation of emotions can be observed and explained.

Revengeful firesetting occurs when fire is used to ''get back'' at another person for perceived or real injuries or insults. The revengeful firesetter uses fire in a manner meant to inhibit the feelings of anger that have accumulated over time. Frequently, these children express feelings of relief

following their firesetting. In addition to anger, revengeful firesetters are frequently ineffective in controlling their environments. The act of firesetting provides them a sense of control, justice, and relief from anger. At times, the trigger within the child's psyche for his or her anger can be highly exaggerated. The child can perceive an injustice and nurture his or her anger for a considerable length of time. Additionally, our culture can reinforce a child's revengeful ideations. For example, the mass media reinforces the notion that fire can be righteous equalizer by depicting evildoers being destroyed by fires and explosions.

In one of our cases, a teenager believed that he was unfairly blamed for starting a fight on his school bus and was denied the privilege of riding the bus for 30 days. Approximately one-and-a-half years later, this teen set fire to the home of his accusers. While in treatment, he talked about his enduring obsessions and conflicts about whether to set the fire. When he finally set it, he felt relief because his need for revenge was met. This case illustrates the pathology of a revenge firesetter driven by his obsessions and needs to regulate his emotions.

The next pathological firesetting subtype is maladaptive coping. In setting a fire, the child uses maladaptive coping when he or she relies on the fire to diminish feelings that create discomfort. Typically, these feelings may include variations of depression, anxiety, or tension. Often these children evidence poor self-esteem in part because they feel rejected by both family and peers. The child who sets fires as a maladaptive coping mechanism may stare into the fire and go into a trance-like state during which time anxiety and tension dissipate. Some maladaptive children may employ an active imagination that accompanies the fire. They may fantasize themselves as strong or invincible in ways that compensate for an underlying sense of powerlessness.

In one of our cases, an older teen set fires in a public park. While the fire was burning, he fantasized about being able to sexually seduce females whom he otherwise felt would never accept him. Because the maladaptive coping firesetter uses fire to reduce unpleasant emotions, he is similar to revengeful firesetters in that both use fire as a way to inhibit unpleasant feelings. Maladaptive coping firesetters, however, are unique in their obsession with setting fires. In our clinical experience, these are the children who set the greatest number of fires, sometimes numbering in the hundreds.

The next subtype of firesetter is excitatory in nature and motivated by thrill seeking. Thrill seekers set fires to experience drama and pleasure. They usually derive enormous gratification from a grandiose notion that they can avoid detection. The thrill seeker usually enjoys the "cat and mouse" game of outsmarting the authorities. Over the course of time, the thrill seeker's fires frequently become progressively more damaging and larger. The fire that once created a thrill is no longer intense enough and a bigger fire is necessary to obtain the same level of satisfaction. An example of one such thrill seeker was John Orr, a prominent fire investigator from California who effectively used his professional expertise to disguise a prolific career as an arsonist.

A clinical example from our caseload featured a teenager who set fires in different neighborhoods of his community alerting the authorities through a 911 emergency call after each fire. Typically, this youth would set three separate fires a day. His fires progressed to become increasingly serious and eventually led to a significant injury of a firefighter. As he set more fires, he developed a sense of invulnerability to ever being caught. Over time, his fires became bigger and he became more arrogant about being apprehended. In fact, he used his arrogance to protest his innocence on several occasions when he was under investigation before finally admitting his complicity after the fourth investigation. The thrill seeker may not be as obsessed with firesetting as this boy was by his perceived prowess in avoiding detection.

The last subtype of pathological firesetting is fire fascination. The fire-fascinated youth, like the thrill seeker, has an excitatory relationship to fire. This type of firesetter is obsessed with one or more aspects of the fire to which he or she is attracted. This attraction may include the colors and motions of flame or the mysteriousness of fire as an element that is not quite solid, liquid, or gaseous. One of our fire-fascinated youths spoke of the almost magical manner in which burning a piece of paper made it shrivel up and then disappear. Fires of this nature are started to "fuel" the psyche's desire for stimulation and fascination. Fire-fascinated youth are stimulated by fire and, even long after they understand the basic dynamics of fire, they continue to set them out of a sense of fascination, excitement, and fun. As in the case of the thrill seeker, the fire-fascinated offender progresses to more serious firesetting. The fire-fascinated youth wishes to create bigger fires to satisfy his or her need for stimulation and excitement.

TWO PATHWAYS IN THE DEVELOPMENT OF PATHOLOGICAL FIRESETTING

In this section, we will explore how the psychology of pathological firesetting can dynamically change or remain static over the child's developmental course. The general consensus is that children are not born as pathological firesetters. Firesetting is an acquired behavior. Consistent with the ecological model, the combination of genetic propensities and environmental factors places children on a trajectory toward serious firesetting behaviors.[30]

In this chapter, we focus on two differing pathways that frequently have been observed in our clinical work. The first represents a relatively static pathway involving fire fascination. The second is a more dynamic pathway, involving maladaptive coping and delinquency. Clinical material is presented to illustrate each pathway.

The Static Fire Fascination Pathway

The development of the fire-fascinated firesetter begins early and usually has a psychologically static (or stable) pattern, at least through adolescence.

The cornerstone of this type of firesetting involves profound attachment disorders that begin in infancy and continue throughout childhood. Neglect occurs early and pervasively. Even when parents are physically present, they are psychologically absent and insensitive to the needs of the child. The lack of attunement between the child and their attachment figures profoundly affects the child's basic internalization (almost like imprinting) of a relationship style. Most likely, one of the deficits resulting from this attachment style includes a lack of visual contact between parent and child that normally is one of the features of healthy attachment. Lack of a sufficient attachment pattern with a parental figure frequently sets the stage for fire fascination.

First experiences with fire are notable. The child is exposed to fire at an early age, often thanks to the smoking habits of the adults in their presence. Cigarette lighters or matches are frequently available so that the child has access to these ignition devices. In addition, the parents fail to teach the child the dangers of "playing with fire." Initial firesetting occurs by the time the child is 4 to 6 years old, if not earlier.

The attachment problems are compounded by the parent's responses to the child's firesetting. Effective correction is absent when the child first begins to "play" or "experiment" with fire. Consequently, the child does not make the connection between fire and danger and does not become involved as a participant in understanding and using fire safety. In addition to the lack of parental supervision, there is a glaring lack of consistency in correcting the child that range from no reaction to erratic and overly harsh punishment, such as burning the child's hand.

In the absence of an adequate attachment to parents, the child develops a faulty attachment to fire as a substitute. The child creates a visual relationship to fire, almost as though this visual process replaces the visual tracking healthier children have to human attachment figures. The child becomes fascinated with one or more visual properties of fire. He or she enjoys his or her ability to control the appearance of fire, a control he or she could not establish in his or her relationship to a person.

As the child develops, the early deficit in relation to the primary attachment figure continues to impede the formation of mutually gratifying and trusting relationships with others, both adults and peers. The firesetter may emulate interactions with others by using a veneer of social skills, but he or she remains distant and puzzled by the relations that others have. Such children become superficial, isolated, and nontrusting of others. When they become "stressed out" or frustrated, they do not have the internal map that helps them to seek out and avail themselves of others to provide solace, even if they could turn to others in their environment.

In elementary school, these children are isolated from others. In middle school, they become more aware of not fitting in to their social environment. They also become aware that there are similar attachment-deficit children in their environment. These children begin to emulate those who are socially engaged, and they create a pseudo-bond to one another. Defensively, they may develop a façade that they are tough and don't need or care about others. They become more conscious of their lack of

connections and their increasing sense of alienation and they further disengage by refusing to meet the goals and expectations of others. At this point, school performance, even when there is considerable intellectual capacity, rapidly deteriorates. If and when their peers become aware of the child's attraction to fire, they may be further ostracized when they are referred to as "pyromaniacs."

Because these children do not have the internal relationship maps, they continue to be alienated and rejected by others, thus exacerbating their attraction to fire. Fire becomes their "friend," and the firesetter has control over this friend. If a small fire provides excitement and a capturing of the symbolic yet elusive attachment figure, a bigger fire does so even more. Fires are set with a sense of excitement, control, and power. Because of the progressive nature of this type of firesetter, at some point, they set a fire large enough to draw the attention of legal authorities.

A Clinical Example

"Matt" was raised by a single parent, barely having any contact with his biological father. His mother was diagnosed with bipolar disorder. She smoked cigarettes and marijuana and was careless with her lighters. As a teenager, Matt took pride in himself for being fearless. As a child, he never learned the concept of danger. By the time he understood the danger of fire, he was so enamored by it that he continued to light fires and had a preoccupation with video games and movies that contained fire themes. As described above, Matt's mother erratically responded to his early behavior problems. On many occasions, she failed to discipline her son. On the occasions during which she did respond, however, she was so heavy-handed that she was charged with physically abusing him.

Matt was an intelligent youngster who was interested in how things worked. At an early age, he began to play with his mother's lighters. At the age of 5, he once found himself in his mother's bedroom with her lighter. While she was taking a shower, he lit one of her lighters and set a piece of her clothing on fire. He held the clothing in his hand and, when the flames made contact with his hand, he dropped the clothing on his mother's bed. The mattress caught on fire and quickly began to burn out of control. Matt's mother became aware of the fire and fortunately was able to get her son and herself out from the apartment safely. Unfortunately, their apartment and four other units were destroyed.

Matt was enrolled in fire safety education following this event. However, this intervention, while usually successful for children, failed for Matt. He continued to have a fascination for the blue color of flame and was attracted to the way this color emerged from fire and moved around in the flames. His firesetting temporarily receded but then resumed. Matt became overly involved in video games that depicted fire. As he got older, cognitively he understood the dangers of fire, but this understanding did not interfere with his desire to continue setting fires. He continued to set a variety of fires into his middle teenage years before his coming to our program.

Matt's relationship style was characterized by its superficiality and manipulative quality. He exuded a tough exterior that spoke loudly to others as it proclaimed "I don't need anybody." He became affiliated with a gang that supported his superficial style. He did not open up to others about himself or the stresses of his life.

Matt had a variety of very intense feelings about his mother, her mood swings, and her sexual liaisons with others. He avoided communicating his distress to others primarily because he had no anticipation that anyone would be psychologically available. Additionally, he had no map "inside his head" that communicating his feelings would lessen his distress. Consistent with this style, Matt had been to see counselors in the past but had never allowed himself to be part of a therapeutic relationship.

Matt is an example of a static, fire-fascinated teen. His fascination began early and has been unabated by attempts at intervention. He has set fires at every stage of his development from preschool, through elementary and middle school, and into high school. He secretly maintains a relationship to fire that he can control and, in some ways, he is more invested in this relationship than he is to people.

A Dynamic Pathway: Maladaptive Coping to Delinquency

Two themes differentiate this dynamic pathway from the static, fire-fascinated pathway described above. First, maladaptive coping firesetters typically do not have an early formation of fire relationships or firesetting history. Their relationship with fire begins in later childhood or early adolescence. More important, whereas fire-fascinated children maintain a constant fixation with fire from early childhood, maladaptive coping is a stress-reduction mechanism that later evolves into other types of motivations such as revenge or delinquency.

Although the maladaptive coping firesetters may experience neglect in their family background, it does not occur as early, as persistently, or as damagingly as with fire-fascinated children. Attachment processes may not be optimal, but they may (at one time) have been adequate. In the case of maladaptive coping, these children begin life with basic safety and nurturing needs being met by their parents and family. As a result, they do not show evidence of having any particular interest in fire during early childhood.

Maladaptive coping children seem to have sufficient resources to develop adequately into their grade-school years. Frequently, however, these children experience an increase in stress sometime in later childhood or early adolescence. This surge of stress is related to events over which they have no control. The increase in stress overwhelms their capacity to cope. An example might be the psychological incapacitation of a parent because of drug abuse or alcoholism, or the loss of a parent as the result of divorce, illness, or death. As the stress increases, these children may attempt a variety of nonfire-related ways to diminish their overwhelming stress. Several examples include substance abuse, sexual promiscuity, acceptance into a negative peer coalition, or self-mutilation. They begin to falter

in school and in their communities. They may have had previous success in school but their grades plummet and they seek escape from what stresses them.

At some point, fire is introduced to them and they discover that fire can be an effective tool for stress reduction. The relationship with fire begins to build based on this functional use of fire as a tool to reduce stress. Once the utility of the fire is discovered, these youths begin to frequently light fires. They typically will continue to employ other forms of maladaptive coping while simultaneously setting their fires.

Although these children have formed adequate parent-child relationships that sustained them early on, their attachment maps are not sufficiently developed to access other caring or competent adults who might provide meaningful support for them. As the stress increases, these children cannot avail themselves of other potentially helpful adults (e.g., teachers, ministers) even when efforts are made to help them. As their parents become increasingly overwhelmed with their own problems, they become psychologically unavailable to their children. The children become distressed and psychologically "lost," and begin to grasp at anything that offers temporary relief from their problems.

Maladaptive coping children eventually develop a relationship with fire that is based on stress reduction. Often times, these children look at fire and "space out." Basically, they use fire to psychologically dissociate themselves from the stress in their lives. Their experience with fire is almost trance-like and hypnotic. To this point, however, the fires are contained and relatively safe. Typically, they engage in persistent firesetting. They may set several hundred fires without creating a destructive one or causing a legal problem for themselves.

Gradually, maladaptive coping firesetters develop a sense of comfort and competency in setting fires. At some point, they "cross over" and begin to use fire for different psychological purposes other than stress reduction. For example, the youth who first set fire to calm down now sets fire to his school to destroy the building out of revenge or to destroy evidence of a delinquent act. It is for these subsequent fires that the youth is arrested and referred to the juvenile justice system.

A Clinical Example

"Ryan" is a 16-year-old youth. His early home life has been fairly stable and he had memories of his family functioning well. During this time, he also functioned well both behaviorally and academically. Ryan recalls that his father drank when he was a child, but his drinking did not seem to be a problem. As Ryan got older, however, his father's progressive alcoholism led to more dysfunction. His father became less rationale and attentive to the needs of his family. For example, his father would begin to vacuum the home late at night while yelling curses and complaints out loud. Both activities would disrupt the sleep of family members. The father's memory functions began to deteriorate as well. Ryan reported asking his father to take him places such as a doctor's appointment. The next day, his father

would have no recall of his commitment to Ryan. As expected, his father's alcoholism created strife in the overall functioning of the family.

Ultimately, Ryan's own functioning began to deteriorate. Although he had been a good student, his grades dropped and he began to skip school. He started to associate with a delinquent peer group. Ryan began to smoke marijuana and drink alcohol. He and his peers began to get together to use drugs and would go into the forest to start campfires. With this exposure, Ryan discovered that fire alleviated his stress. He then began to set small fires on his own. For months, these fires remained small and contained.

Eventually, Ryan and his peers became increasingly disenfranchised with school. They hatched a plot to set fire to the school "to make it go away." Although brighter than average, Ryan gave no thought to the potential impact the fire would have in terms of risk to others or the effect on the community. To start the fire, they brought in water bottles filled with gasoline, spread the gasoline in a hallway, ignited it, and left the scene. Ryan was not motivated to set this fire to destress himself but rather to destroy the building to avoid going to school. Shortly thereafter, the boys were apprehended and held accountable for their crime.

CONCLUSION AND IMPLICATIONS

According to Greek mythology, humankind was incapable of understanding and using fire wisely. Science debunks this myth. Although fires can be mishandled, only a small percentage of people intentionally set them for destructive or lethal purposes. Most people handle fire without creating problems. Science provides a method to understand the motivational factors and pathways that lead to destructive firesetting. Science can also help us to help those who set destructive fires, benefiting them, their families, and their communities.

This chapter presents seven motivational typologies of juvenile firesetting. Our clinical experience tells us that these typologies fall into two broad categories, pathological and nonpathological. The pathological firesetter has developed a psychological relationship with fire and uses it for revenge, maladaptive coping, thrill seeking, or to stimulate a sense of fire fascination. The nonpathological firesetter sets fire out of curiosity, by accident, or for instrumental purposes that can include a cry for help or delinquency.

These typologies follow certain patterns that we call pathways. Some pathways remain static and involve a constant motivational typology over time. Dynamic pathways, in contrast, involve an evolution of different typologies over the period from early childhood through adolescence. The delineation of common pathways of developing firesetting problems has implications for theory building, research, prevention, and the treatment of juvenile firesetters.

Our model identifies seven motivational typologies along with two significant pathways of firesetting behavior, which are consistent with the ecological approach. The model we articulated applies the ideas of the

life-span theorists, particularly Loeber and Farrington's Theory of Developmental Criminology, to a specific population of youth offenders, namely, juvenile firesetters. The ecological approach has aided our efforts thus far but certainly has not been exhausted in terms of its usefulness in understanding juvenile firesetters. The ecological approach has the potential to elucidate the individual and environmental risk factors that underscore the etiology of firesetting. Research is needed to examine the effects of such risk factors as attachment problems, stress/anxiety, child maltreatment, depression, and sociopathy, along with demographic characteristics, to offer a fuller understanding of how these factors relate to various firesetting typologies.

A heightened understanding of these processes will also provide clear nodal points for intervention to further decrease the likelihood of progression from less problematic to more problematic juvenile firesetters. This holistic approach can guide an array of community organization and prevention services along with legal, casework, and clinical interventions.

Several other research-related issues need to be addressed as well. Empirical examination of the seven motivation subtypes is warranted to validate the conceptual model presented in this chapter. One approach would involve comparing equivalent groups of pathological and nonpathological firesetters on such outcomes as age at onset, the number of fires set, the amount of fire damage, or the number of fire victims. Another research question should consider whether some motivational subtypes (i.e., fire fascination) may be more prevalent among juvenile firesetters than others (i.e., revenge). Research is also needed to identify risk factors associated with specific typologies and to determine how these risk factors affect firesetting pathways over time. For instance, parental neglect may be a robust predictor of fire fascination in early childhood, whereas antisocial peer group affiliation may be the strongest predictor of adolescent firesetting. Answering questions of this nature will inform the best practice models of prevention and treatment.

A number of clinical implications emerged from our model as well. Thus far, knowledge of juvenile firesetting has developed primarily through inductive processes. A natural consequence of the inductive process is that knowledge easily becomes fragmented because ideas that seem inherently logical to the practitioners are not empirically validated. Different professionals in different environments are constantly creating their own conceptual blueprints based on personal experiences. It is time to advance the science of juvenile firesetting by subjecting motivational typologies to empirical validation on a variety of children who engage in fire play and firesetting behaviors.

In this chapter, we have argued that motivational typology is a key component of treatment planning. According to our model, different treatment strategies should be applied to children based on their firesetting typology. For curious and accidental firesetters, we recommend fire safety education for the child and their family as the primarily intervention. Additionally, the psychological aftermath of firesetting may include guilt and anxiety that would require psychotherapy, in part to prevent the

repetition of further firesetting activities. For children who set fire as a cry for help, interventions should focus on de-escalation of crises and teaching competencies in problem-solving. Fire safety education may be useful for this type of firesetter. For delinquent firesetters, treatment should focus on correcting problems with authority, helping them to accept positive structure, and replacing their criminal excitement with prosocial pride.

For pathological firesetters, treatment intervention should be more intensive and may have to include the provision of external structure to preclude further firesetting until the pathology is addressed. Because many of these children suffer from attachment problems and trauma, their capacity for increased relatedness needs to be fostered along with a healing of their past traumas. Cognitive-behavioral interventions can be employed to correct the pathological reliance on fire for excitation or inhibition of psychological processes. Finally, pathological firesetters require treatment interventions that focus on increasing their capacities to regulate their emotions in more adaptive ways.

Some examples have been provided suggesting correlates between types of firesetters and types of personality functioning. This material has been based on our clinical experiences. It would be timely to use standardized psychometric measures to confirm and modify this work.

As the science of juvenile firesetting progresses, a more comprehensive risk assessment process needs to be developed that provides for the motivational profile, personality factors, and peer and family relationships. An assessment process of this nature would provide richer data enhancing our understanding of juvenile firesetters while informing our clinical practice models.

Currently, the field of juvenile firesetting has not received the professional attention it deserves. This is due, in part, to the lack of a conceptual understanding of what motivates children who set fires and how to treat them. This chapter presents a model ready for empirical validation and clinical application. Further study in the areas of theory construction, research, and clinical practice is in order to fully develop this field of inquiry.

NOTES

1. National Fire Protection Association, hereafter NFPA, 2006a.
2. U.S. Fire Administration, hereafter USFA, 2005.
3. U.S. Department of Justice, hereafter USDOJ, 1999.
4. NFPA, 2006b.
5. Snyder, 1998; USDOJ, 1999.
6. Putnam & Kirkpatrick, 2005; see also USFA, 2004.
7. MacDonald, 1963.
8. Merz-Perez & Heide, 2004.
9. Douglas & Olshaker, 1995.
10. See discussion in Douglas & Olshaker, 1995; Loeber & Farrington, 2001.
11. Lewis & Yarnell, 1951.
12. Bachelard, 1964.
13. See discussion in Williams, 2005.
14. Heath, Gayton, & Hardesty, 1976.

15. Fineman, 1980.
16. Canter & Fritzon, 1998; see also the discussion in Santtila, Hakkanen, Alison, & White, 2003.
17. Santtila et al., 2003.
18. See discussion in Kolko & Kazdin, 1986.
19. Kolko, 2002.
20. Putnam & Kirkpatrick, 2005.
21. Kolko & Kazdin, 1990; Santtila et al., 2003.
22. Kolko & Kazdin, 1986.
23. See discussion in Caplan, 1964.
24. See Bronfenbrenner, 1977, 1979.
25. See discussions in Catalano & Hawkins, 1996; Gottfredson & Hirschi, 1990; Hawkins, Catalano, & Miller, 1992; Loeber, 1988, 1990, 1996; Loeber & Farrington, 2001; Moffit, 1997; Patterson, Capaldi, & Banks, 1991; Thornberry, Lizotte, Krohn, Farnsworth, & Jang, 1994.
26. Loeber, 1988, 1990, 1996.
27. Loeber, et al. 1993; see discussion in Loeber & Farrington, 2001.
28. Fineman, 1980.
29. Canter & Fritzon, 1998.
30. See discussion in Loeber & Farrington, 2001.

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CHAPTER 9

Weapons of Minors' Destruction: Youthful Offenders and Guns

H. R. "Rudy" Hardy Jr.

In 1991, a 12-year-old student from northern New Jersey fired three rounds from a 0.380 semiautomatic handgun in a schoolyard during recess. The shots missed their target, but injured three other students. Upon questioning, the 12-year-old revealed that he had purchased the firearm on the street three days earlier for $300. During the investigation that followed, an agent from the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) asked the boy if, supplied with $300 and given 30 minutes, could he leave school and return with a handgun similar to the one that he had possessed earlier. The boy replied, "What do I do with the extra 15 minutes?" At that moment, the agent investigating the case realized the severity of the firearms trafficking problem in that area.[1] In this example, the juvenile used a relatively small caliber, but sophisticated firearm, but the public's perception is that youths have access to and use high-capacity and sophisticated firearms. This perception is apparent in news media reports.

Researchers, too, have noted the increasing frequency of youths not only in gangs, but also in schools reporting carrying and using handguns. Surveying high school students about what caliber guns they owned, Sheley and Wright from Tulane University were surprised when one respondent pulled a gun out of his clothes to provide an accurate answer.[2]

THE GUN PROBLEM

Gun violence has led law enforcement agencies and communities to attempt to find solutions to this problem. Although gun control

legislation is inherently difficult to garner support for, The Gun-Free Schools Act passed in 1994 mandated that students carrying weapons into schools face automatic expulsion. According to a report from the Department of Education for the school year 1998–99, more than 3,900 students were expelled for bringing a firearm to school. Of those, 57 percent were high school students, 33 percent were junior high schools students, and 10 percent were elementary school students.[3] The results are not too surprising if you factor in that many problem students, those who may be at highest risk to obtain and carry a weapon, may already have dropped out of school by 10th or 11th grade. Also during this study period, 60 percent of 6th- to 12th-grade students said they could "get a gun if they wanted." And, a 2003 questionnaire[4] found that 6 percent of high school students reported carrying a gun in the 30 days before the survey.

Access to and Sources of Guns

The apparent ease with which juveniles access firearms is particularly troubling. Through the analysis of gun violence problems, it has become obvious that limiting the sources of both illegal and legal guns reduces the number of illegal guns in the neighborhoods. A firearm in the hands of a juvenile increases the seriousness of confrontations that could best be resolved in a different way. Youths involved in gangs, drug trafficking, or illegal drug activities are likely to possess or use firearms. Addressing this problem requires the involvement of multiple agencies and the community, as well as substantial investments in analysis, coordination, and implementation.[5]

In 2000, 28,663 people died from gunfire in the United States. Of these deaths, 16,586 (58 percent) resulted from suicide, 10,801 (38 percent) resulted from homicide, and 1,276 (4 percent) were reported as unintentional self-harm or deaths cased by undetermined intent. Firearm fatalities are the seventh leading cause of death in the United States.[6] These numbers were taken from death certificate reports. In addition, for every fatal shooting, there are roughly three nonfatal shootings.[7]

The impact of gun violence is even more serious among juveniles and youth. The firearm homicide rate for children under 15 years of age is 16 times higher in the United States than in 25 other industrialized countries combined. Of those youth ages 15 to 24, the U.S. firearm homicide rate is 5 times higher than in Canada and 30 times higher than in Japan, and the firearm homicide rate for the 15- to 24-year-old age group increased 158 percent during the 10-year period from 1984 to 1993.[8] A teenager in the United States today is more likely to die of a gunshot wound than from all the "natural causes of death combined"[9] and the chances are more likely for African American males. According to Kennedy,[10] there are almost six nonfatal woundings per homicide among teens, a rate twice that of older adults.

In a 1996 National Youth Gang Survey, youth gang members were reported to have been involved in 2,364 homicides in large cities and 561 homicides in suburban counties.[11] In a 1997 study of juvenile gang

members, 50 percent admitted to using a gun in a crime.[12] There can be no doubt that the effects of firearms violence are a significant national crime problem. The psychological toll on a community is great. Armed drug dealers terrorize parts of our cities, and many citizens live in constant fear. Regardless of the "who, what, when, where, why, and how," some people feel that the type of firearm—that is, its make, model, and caliber—has a huge impact on the homicide rate. It has been hypothesized that the proliferation and use of semiautomatic handguns and large caliber handguns are directly associated with the homicide rate.

DEFINITIONS AND TYPES OF FIREARMS

A crime gun is any firearm that is illegally possessed, used in crime, or suspected to have been used in crime. An abandoned firearm may also be categorized as a crime gun if it is suspected that it was used in a crime or illegally possessed.[13] A Federal Firearms Licensee (FFL) is any person, partnership, or business entity holding a valid license issued by the ATF.[14]

To provide a general understanding of firearms and ammunition, the following concepts and definitions were extracted from ATF[15] and Giannelli[16] and will be used throughout this article. Firearms can be categorized into three basic types: handguns, rifles, and shotguns.

A handgun is a weapon designed to fire a small projectile from one or more barrels. It is held in one hand and has a short stock designed to be gripped by that one hand. There are three classifications of handguns: revolvers, pistols, and derringers. A revolver is a handgun that contains its ammunition in a revolving cylinder that typically holds five to nine cartridges each within a separate chamber. Before a revolver fires, the cylinder rotates and the next chamber is aligned with the barrel. A pistol is any handgun that does not contain its ammunition in a revolving cylinder. Pistols can be manually operated or semiautomatic. A semiautomatic pistol generally contains cartridges in a magazine located in the grip of the gun. When the semiautomatic pistol is fired, the spent cartridge that contained the bullet and propellant is ejected, the firing mechanism is cocked, and a new cartridge is chambered. On the other hand, a derringer is a small single- or multiple-shot handgun other than a revolver or a semiautomatic pistol.

A rifle is intended to be fired from the shoulder. It uses the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger. A shotgun is also intended to be fired from the shoulder. It uses the energy of the explosive, but in contrast to a rifle, it uses a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

A semiautomatic firearm requires a trigger pull for each round that is fired. For example, if someone were to shoot 10 rounds in a semiautomatic firearm, they would need to pull the trigger 10 times (once for each round fired). Compare this with a fully automatic firearm (machine gun), which will continue to fire as long as the trigger is held or until it runs out of ammunition.

The types of ammunition used in today's modern firearms are identified using two classifications: caliber and gauge. The caliber is the size of the ammunition that a firearm is designed to shoot as measured by the bullet's approximate diameter in inches in the United States and in millimeters in other countries. In some instances, ammunition is described with additional terms such as the year of its introduction (0.30/06) or the name of the designer (0.30 Newton). In some countries, ammunition is also described in terms of the length of the cartridge case (7.62 × 63 mm). A shotgun's gauge is determined by the number of spherical balls of pure lead, each exactly fitting the bore that equals 1 pound. The most common gauges of shotguns in the United States are the 12-gauge and 20-gauge shotguns.

THE LAW AND YOUTH FIREARMS POSSESSION

Federal firearms laws supersede any firearms laws in state and local jurisdictions. Current federal minimum age regulations relating to firearms vary by type of gun and means of access. The Federal Gun Control Act of 1968 made it unlawful for federally licensed firearms dealers to sell handguns to people under 21. In addition, the Youth Handgun Safety Act of 1994 generally prohibited the transfer of handguns to people under 18. Exceptions include official military use and the following activities with the written consent of the parent or guardian: employment, ranching, farming, target practice, hunting, and handgun safety instruction. People between the ages of 18 and 21 may still acquire handguns from nonlicensed sellers.[17] There is no federal age restriction on the possession of long guns (including rifles and shotguns). Licensed dealers may only sell rifles and shotguns to people age 18 and older, and there is no age restriction on the transfer of shotguns and rifles by nonlicensed sellers.

The complexity of the firearms market poses a challenge for law enforcement officials who are seeking to develop strategies to attack the illegal market that supplies youthful offenders. The firearms market includes federal firearms licensees, unregulated sellers, and private transferors in what is known as the secondary market and the illegal gun market. The illegal market involves transfers from both federal licensees and from unregulated transferors. The market for guns in the United States is difficult enough that it is helpful to think in terms of several interdependent gun markets. There are both legal and illegal retail markets in guns. It was believed that theft was the main source of guns for the illegal market, but new evidence demonstrates that the legal market is the chief source of supply for the illegal market's crime guns. The intentional diversion of guns from the legal to the illegal market, a process known as "firearms trafficking," has been the subject of intense research and intervention.

The legal gun market is divided into a primary market, comprising all transfers of guns by sources such as federally licensed retailers (gun dealers and pawnbrokers), and a secondary market, consisting of transfers involving less formal sources, such as private parties, collectors, and unlicensed vendors at gun shows. The split between primary market sales by licensed

retailers and secondary market sales by other sources is approximately 60/40.[18] Gun violence is facilitated when firearms are inadequately secured by licensees; common carriers such as the United Parcel Service (UPS™); and gun owners, especially parents with children at home.

THE PROBLEM OF GUNS IN AMERICA

There are approximately 44 million gun owners in the United States.[19] This means that 25 percent of all adults, and 40 percent of American households, own at least one firearm. Of the 192 million firearms that are possessed, 65 million are handguns.[20] Every day there are approximately 37,500 gun sales, which include the sale of 17,800 handguns. This statistic alone elevates the danger of firearms reaching the illegal firearms trafficking market through robberies and burglaries. Yet, this figure does not provide an accurate representation of the number of individuals actually purchasing a firearm. Although 37,500 firearms sold per day is an astonishing number, it should be pointed out that this figure also includes those firearms that are sold during multiple sales transactions. Federal law requires that an official record be kept and documentation is forwarded to the ATF detailing the sale of more than one handgun to an individual during a five-day period. There is no limit on the number of firearms that an individual can purchase at any one time. The firearms multiple sale issue has become a significant issue in the border states of Texas and Arizona. Federal firearms licensees in those two states have a large number of multiple sales transactions because of the proximity to Mexico. A firearm that costs $50 in the United States can be sold for $300 in Mexico or the firearm can be traded for illegal narcotics.

In 1994, it was reported that a quarter-million households had a theft of one or more firearms, which accounted for an estimated 600,000 guns stolen during burglaries.[21] This is another figure that is deceiving because no one truly knows how many guns are stolen each year from both official (FFLs) and unofficial (private individuals) sources. As stated, 600,000 is only an estimate, but some estimates show an even greater theft rate.

In Houston, Texas, there have been recent reports of firearms thefts from a local sporting goods chain. The thieves committed a well-orchestrated "smash and grab" during work hours of numerous firearms. Because of the similarity to past thefts in New Orleans, it is thought that evacuees from New Orleans during hurricane Katrina in 2005 played an important role in these thefts. The disruption caused by several major hurricanes during this period also provided opportunities for guns to be stolen in both store looting and thefts from abandoned homes, to be transported between states, and to be made more accessible to children during periods of transient living.

Since 1993, the number of youth who report that they carry a gun has risen.[22] In 1997, it was reported that 14 percent or one in seven male juveniles reported carrying a gun.[23] Sheley and Wright[24] report that 22 percent of inner-city youth carry weapons. This same report states that 88

percent of convicted juvenile offenders carry guns. However, in a 1999 survey of high school students, the National Youth Violence Prevention Resource Center determined that 9 percent of all male students carried a gun at least once during the 30 days preceding the survey. This figure was down from 13.7 percent when the survey was conducted in 1993.[25]

Firearms are readily available on the illegal gun market and those who are likely to possess guns are young males who are drug sellers and gang members.[26] In one study, 23 percent of arrestees who owned a gun said that they used one to commit a crime. Among juvenile drug sellers who owned a firearm, 42 percent reported using a gun in a crime; among gang members, 50 percent reported using a gun.[27]

In 2004, the ATF received more than 251,000 requests from police departments for gun trace information involving firearms used in crime. Three-fourths of the guns traced were handguns and one-third of the guns were less than three years old. Revolvers and semiautomatic guns are the most frequently used.[28]

In their research, Decker, Pennell, and Caldwell[29] reveal that being a juvenile male, gang member, or a drug seller means a greater involvement in using a gun while committing a crime. Their research found that 23 percent of those who owned a gun also said they used one to commit a crime, but that figure was higher at 33 percent for juvenile males, 50 percent for juvenile gang members, and 42 percent for drug dealers.

Youth Gun Culture

It is widely known that there has been a change in the weapons used by young people. Over the last decade, the weapons involved in settling juveniles' disputes have changed dramatically from fists or knives to handguns. That change in the weapons of choice of juveniles is reflected in the homicide rate for juveniles.[30]

Juvenile and youth gun violence can be attributed to three separate and distinct areas of discussion. The first area is gun violence in schools. School gun violence became a serious public issue with the extensive media coverage of shootings in places like Jonesboro, Arkansas; Pearl, Mississippi; and West Paducah, Kentucky. There were 40 school shooting deaths during the 1997–98 school years.[31] According to the National School Safety Center, school homicides and suicides declined in the 1997–98 school year. According to a study conducted by the Centers for Disease Control and Prevention, there is a less than one in a million chance that there would be a school-related death.[32] From this statistic, it appears that school shootings are rare, but carrying a gun to school is not. During one school year, a survey of 12th-grade males revealed that 1 in 17 carried a gun to school.

Second, guns and drugs contribute a great deal to the U.S. homicide rate. With the introduction of crack cocaine in the 1980s, the homicide rate skyrocketed among juveniles and youth. Other drugs such as methamphetamine have found their way into the urban and rural areas of the United State.[33] Because of the violent nature of the illegal drug business,

firearms have become the weapons of choice among drug dealers. It has been known for a long time that firearms are the tools of the trade for the violent narcotics trafficker. Historically, firearm investigations have crossed the lines into narcotics investigations. More than 80 percent of all the firearms recovered in the United States are those typically used by drug dealers or are firearms used in drug-related crimes. Sheley concluded, "involvement in drugs leads one to possess, carry and use firearms,"[34] but Sheley also states that involvement in illegal narcotics activity does not necessarily lead to illegal gun activity. Sheley's research has revealed that nonusers of illegal narcotics were heavily involved in illegal criminal activity involving a firearm.

Third, in the 1980s, the involvement of youth gangs in drugs became a major concern. In 1980, there were approximately 2,000 gangs in the United States consisting of approximately 100,000 members. In 1996, there were 31,000 gangs consisting of approximately 846,000 members.[35] Gang members are more likely to own guns for protection than nongang members. Gang members are at a higher risk of being killed than the general population. In a 1998 survey of gang members, most of them acknowledged that they owned guns. Ninety percent of the gang members commented that they preferred more powerful handguns.[36]

The firearms study by Ruddell and Mays[37] classified 1,055 firearms that were confiscated from juveniles (those under 17 years of age) in St. Louis, Missouri, from 1992 to 1999. The authors used the National Institute of Justice (NIJ) body armor threat-level scale to classify the lethality of each confiscated firearm. Body armor also known as "bullet-proof vests" are rated on a scale of one to five that designates the ability of the vest to withstand the penetration of various calibers of gun ammunitions. The authors modified the NIJ scale by adding one additional level that would classify weapons that have a very low capacity for injury, such as BB and pellet guns that were also confiscated by police. The authors recognized the fact that the lethality of wounds is related to such factors as the design, velocity, and weight of the bullet. To account for the wide variation of bullet types, the authors presupposed that the most lethal types of cartridges were used in each firearm contained in the data set. The authors also considered the muzzle velocity and the stopping power of the bullet.

Ruddell and Mays concluded that handguns (pistols and revolvers) made up 77 percent of the firearms that were confiscated during the study period. The authors further concluded that 61 percent of the handguns were factored in at Threat-Level 2, which represents low-caliber weapons (0.22, -.25, 0.32) or the so-called Saturday night specials (a term synonymous with small, cheap handguns or "junk guns"). In contrast, 12 percent of the handguns recovered by the police had the greatest threat level. This group of firearms consisted of the 9 mm, 0.40, 0.357, 0.45, 0.41, and 0.44 calibers.

Ruddell and Mays pointed out that the portrayals in the media about juveniles using sophisticated firearms are not supported in this study. The authors found that "youths are more likely to have pellet guns, 0.22 caliber firearms, and Saturday night specials recovered by police."[38] Finally,

the authors made two interesting observation because of their study. The first is that juveniles were not likely to have an assault weapon confiscated and, secondly, a high amount of sawed-off rifles and shotguns were confiscated by police. Although it is often difficult and ill-advised to make any conclusions as to the lethality of the weapons simply from their caliber, the NIJ Threat-Level Scale can be used, with caution, as an indicator of firearm lethality.

Sources of Firearms

In the tragic 1999 Columbine High School shootings, teens Harris and Klebold used a Tec-9 semiautomatic and a 9 mm high-point carbine rifle, both of which had originally been legally purchased from a gun dealer in Denver 18 months before the mass murder/suicides. Tracing the history of those firearms, officials found that they were then sold through various nonregistered transactions until they fell into the hands of the youths plotting the violent attack. The Tec-9 was a modified version of a handgun outlawed under the federal assault weapons ban. It is cheap, light, and potent, as authorities explained, firing 32 rounds in seconds. It is designed to kill many people very quickly and is popular with gangs. Investigations following the incident led to charges against the dealer who eventually sold the weapon to Harris, 17, who was underage at the time of the purchase. The other weapons were given to Klebold by a female friend who was old enough to acquire them legally, and technically, it was not a crime for her to allow the rifle into the possession of someone underage.[39]

Youths arrested with firearms often claim that it takes little time or effort for them to obtain such weapons illegally. And it was found that those who belong to a gang and those who sell drugs are more likely to have easy access to guns. This revelation figures strongly into the association between guns and youth. Among male juvenile arrestees, gun ownership and use is higher than among arrestees in general.[40]

Before seriously studying the firearms trafficking phenomena, it was believed that there were two sources of illegally supplied firearms: old guns that were stolen and new guns that were trafficked. If was further believed that the trafficking occurred in large volume and primarily across state lines. It was also thought that youths and felons always committed firearm thefts. After the implementation of extensive firearms tracing, however, multiple sources of illegally trafficked firearms emerged.

The trafficking in new firearms, interstate and intrastate, results in firearms moving quickly from retail sale into the hands of youths. As many as one-third of the guns used by juveniles and up one-half of those used by people ages 18 to 24 were purchased within the last three years from an FFL, which indicates that a large amount of new guns are being sold to youth illegally.[41] This type of illegal firearms trafficking can best be illustrated in the following example: In March 1996, a gun was recovered from a Washington, D.C., youth and was traced after its obliterated serial number was successfully raised by a crime laboratory. The firearm's trace information led to a licensed gun dealer in Missouri and later to a

Nashville, Tennessee, gun trafficker who sold 200 to 300 guns on the streets of the nation's capital. Through this investigation, 138 semiautomatic firearms originally sold by the Missouri dealer were recovered in crimes in the Washington, D.C., area. These crimes included murder, kidnapping, robbery, and armed assault. In June 1997, the Nashville gun trafficker pleaded guilty to federal charges and was sentenced to serve a term of confinement in federal prison.

The trafficking in used firearms, interstate and intrastate, is brought about by licensed firearms dealers, pawnbrokers, straw purchasers, and straw purchasing rings. This type of firearms trafficking can be accomplished through unlicensed sellers, including at gun shows, at flea markets, or through newspaper ads, gun magazines, Internet sales, and personal associations. The illegal trafficking of used firearms accounts for a significant source of crime guns, and these guns are more likely to show up in the hands of youths.[42] People prohibited from purchasing firearms under federal law because of felony convictions or other prohibitions often use "straw purchasers" with clean records to obtain their firearms. Straw purchasers falsely represent that they are the actual buyers of the firearms; in reality, they are paid to purchase them for prohibited people from outlets, stores, pawn shops, flea markets, and other firearms dealers. Straw purchasers are the second most common way that firearms end up in the hands of criminals. As an example of this type of illegal firearms trafficking, it has been reported that during a four-month period, two traffickers transported approximately 90 firearms from Georgia to New York. Investigators conducted surveillance on the subjects as they transported 11 firearms from Augusta, Georgia, to New York City. The two suspects were charged with illegally transporting firearms interstate, unlicensed dealing in firearms, and conspiracy.

Trafficking in new and used stolen firearms involves firearms that are stolen from federally licensed dealers, pawnbrokers, manufactures, wholesalers, importers and common carries (e.g., UPS), and residences. These firearms range from new to old. The time to crime for new firearms is relatively fast in this type of firearms trafficking.[43] In 1996, investigators in Wilmington, Delaware, arrested a defendant for receipt of a large quantity of firearms stolen by another defendant, who had been arrested for the theft of 390 Llama firearms from an interstate shipment. Interviews with the thief yielded information regarding the identity and role of the recipient of the guns, who was subsequently arrested. The recipient pleaded guilty to possession of stolen firearms and was sentenced to prison.

The final method of illegal firearms trafficking that contributes to youth gun possession is individual thefts of firearms by criminals and juveniles for their own purposes. This simply describes individuals who steal firearms, mostly from residences, for their own criminal purposes. In this case, no trafficking occurs.[44] In one example, a group of young men, the defendants, committed commercial and residential burglaries. The defendants stole entire gun safes out of homes and cut them open inside a small storage unit they had rented. The suspects became increasingly bolder and more violent, ultimately committing a home invasion in which the female

victim was tied up and her house robbed. During the investigation, 200 firearms were recovered. All the defendants were prosecuted and served lengthy prison terms.

In 2002, it was estimated that approximately 250,000 firearms existed in the United States. In a 1996 survey of 10th and 11th graders, 50 percent of the respondents reported that obtaining a gun would be no trouble.[45] This same survey pointed out that family and friends were the primary sources of guns. Few surveyed had asked someone to purchase the gun for them from a legal or an illegal source. It is also reported that 14 percent of the firearms used in crimes by juveniles were sold by private sellers without an FFL, and 10 percent were sold at gun shows or fleas markets.[46]

In a study of guns recovered from youth in Houston,[47] it was found that the majority were sophisticated (semiautomatic) and high caliber (0.38 caliber and above). These findings refute some of earlier results by Ruddell and Mays in their study of crime guns recovered in St. Louis, Missouri. Perhaps surprisingly, only 18 percent of the guns taken from Houston youth were classified as Saturday night specials. Most guns were confiscated by authorities before official charges were developed so the records were more likely to reflect ''weapons offenses'' than any other charges.

PROBLEMS IN RESEARCHING JUVENILE GUN USE

Generally, data obtained from government and private agencies before 2003 were grossly incomplete or nonexistent or came from ungeneralizable sources. One of the major problems in analyzing firearms trend research is that few jurisdictions have collected such data over time, and fewer have divided these data into categories of youth, juveniles, and adults. Another research problem is the subjective nature of some gun classifications, particularly regarding the lethality or sophistication of the firearm, because all are potentially lethal regardless of caliber or sophistication. Furthermore, a wide variety of ammunition can be used in the various calibers of firearms (i.e., 0.22 short versus 0.22 long rifle ammunition, hollow point versus lead versus full metal jacket or Teflon-coated ammunition). For example, a 0.38 caliber cartridge can be fired in a 0.357 caliber handgun, thus in some minds it has a lower-level lethality. All of these cartridges have a certain muzzle velocity (stopping power)—for example, 300 to 400 feet/second for a well-made pellet gun (which can kill with a well-placed shot to the head) to an excess of 2,500 feet/second for a military M-16. All of the other calibers—0.380, 0.38, 0.357, 0.40, 0.44, and so on—fall somewhere in between. In addition, both cheap and expensive ammunition are available and some is even made at home. A 0.44 magnum handgun is a powerful weapon (some say, ''the most powerful handgun in the world'') and is capable of killing an elephant. In contrast, a 0.22 caliber handgun is a significantly less powerful weapon, but still it can incapacitate a human being. Between 1985 and 1996, of the 599 police officers killed in the United States, 75 were killed with firearms with a caliber of 0.32 or less (the so-called Saturday night specials).[48] As far as sophistication goes, a Glock Model 22 0.40 caliber semiautomatic

handgun is a lethal, sophisticated, and expensive weapon as compared with a homemade, much less sophisticated zip gun, but both weapons will kill.

Finally, drawing any conclusions as to lethality cannot be accomplished if a data set does not report the type of ammunition used with the firearm. In addition, many data sets do not identify a "short-barrel shotgun" (sawed-off shotgun) or a "short-barrel rifle" (sawed-off rifle) or firearms that have been converted to fire fully automatic (machine gun).

PROGRAMS TO COMBAT YOUTH GUN VIOLENCE

To address citizens' fear of gun violence, many communities are adopting strategies that are tailor-made for a specific gun-violence problem. This problem-solving approach requires the community to participate in implementing a gun-violence reduction plan. In many cities, local and federal law enforcement are working with the community to combat gun violence. Many of the violence reduction programs are specific to youth gun violence. Below are a few of these enforcement initiatives aimed at reducing youth and violent crime.

Project Exile, originating in the Richmond, Virginia, U.S. attorney's office, created an Exile Task Force composed of federal and local prosecutors, ATF agents, local police officers, state troopers, and a Federal Bureau of Investigation (FBI) agent. The task force reviews every local gun arrest to determine whether it should be prosecuted federally or locally.

As part of the Exile model, the U.S. attorney's office provided training to local police on federal firearms statutes as well as search-and-seizure issues. To expedite cases, the police firearms office was electronically connected to ATF to arrange immediate tracing of seized firearms. Both the Commonwealth attorney and the Virginia attorney general detailed a staff prosecutor to the U.S. attorney for assistance in firearms prosecutions.

A major component of the project has been the innovative outreach and education effort promoted through various media outlets to convey the Exile initiative's message. For example, the U.S. attorney successfully formed a coalition of businesses, community, and church leaders to promote the project. Additionally, a nonprofit foundation was established to fund the media efforts for this outreach program. Media efforts included television ads, billboards, bus wraps, and bumper stickers.

Exile was advertised as being very successful, reducing the number of homicides by 40 percent and armed robberies by 30 percent in its first year (mid-1998), with further decreases in the subsequent two years. The federal Virginia Exile program was successfully replicated in other federal districts, including the western district of New York (Rochester), the southern (Houston) and western (Austin) districts of Texas, the northern district of Indiana, and the district of Colorado. Each jurisdiction consulted with the U.S. attorney in Richmond and implemented the same, or similar, task force approach, referral process, training, and coordination. Denver's Exile program also includes an intensive focus on prosecution of gun dealer violations, Brady denials, comprehensive gun tracing, and identification of violent crime hot spots.

Similar to Exile, Project I.C.E. (Project Isolating the Criminal Element), which originated in the northern district of Alabama, bases its success on its vigorous prosecution of federal firearms offenses in partnership with the Birmingham police department, ATF, and local district attorneys' offices. Project I.C.E. included a training program for local law enforcement as well as a community outreach component. The project was complemented by a comprehensive crime-gun tracing program under ATF's Youth Crime Gun Interdiction Initiative and the Department of Housing and Urban Development's (HUD's) Operation Safe Home, a task force targeting violent crime in public housing.

The Kansas City Gun Experiment focused on reducing crime by seizures of illegal guns. This 1992–93 project targeted directed patrols to an 80-block area where the homicide rate was 20 times the national average. Patrol officers utilized stop-and-frisk methods and plain-view sightings during vehicle stops. During a 29-week experimental period, it has been reported that drive-by shootings dropped from seven to one in the target area, overall crimes dropped 49 percent, and homicides dropped 67 percent.

Project Exile, Project I.C.E., and the Kansas City Gun Experiment are just three of the gun-crime reduction programs that have been implemented across the United States. The Boston Gun Project's Operation Ceasefire is a program that been written about extensively and one that has received the most publicity as the premier youth-crime reduction program in the country. During a five-year period, Boston experienced 155 youth homicides. Most of these homicides occurred by gun. In an effort to contain gun violence in Boston, a National Institute of Justice problem-solving project was launched. It took approximately two years (from 1994 to 1996) for Boston to develop its plan, during which time "Gun Project participants approached the problem in supply and demand terms."[49] The illicit gun markets were targeted by law enforcement. These illegal gun markets supplied guns to the youth in Boston. Using firearms tracing, law enforcement was able to determine the sources of the firearms and have these firearm traffickers prosecuted in federal court.

Through the use of crime-gun analysis, it was determined that Boston's youth had a taste for new guns: 33 percent of the guns associated with gang members were less than two years old.[50] This analysis also proved that the southern states were not the largest source of the firearms. Crime-gun analysis revealed that 33 percent of the traceable guns were sold in Massachusetts and that the next largest source state was Georgia at 8 percent. As Kennedy and colleagues said, "Boston had a large problem in its own backyard."[51]

The Boston Gun Project was meaningful in that it united police, practitioners, and researchers to assess the youth violence problem in Boston. The outcomes from the assessment were responsible for a substantial reduction in youth homicide and youth violence in Boston.[52]

Federal authorities in Camden, New Jersey; Baton Rouge, Louisiana; Memphis, Tennessee; High Point and Wilmington, North Carolina; Stockton, California; and the District of Columbia have replicated Ceasefire by emphasizing deterrence of youth gun violence in selected hot-spot

neighborhoods. For example, the Memphis Operation Ceasefire locates gun-crime hot spots with the assistance of researchers from the University of Memphis and emphasizes its zero tolerance policy for firearms possession in school zones. The Stockton Ceasefire targeted street-level youth gang violence, and it has been reported that this initiative reduced the youth homicide rate by 75 percent in 1998. Conducting its own internal crime mapping, the District of Columbia found success by focusing efforts on youth gang violence and prosecuting large cases as "organized crime" matters involving gun violence. Operation Target in the western district of Pennsylvania obtained the assistance of Carnegie-Mellon University to secure gun-tracing data and crime mapping. The U.S. attorney and the ATF use this information to work with FFLs to detect illegal trafficking and deter straw purchases. Emphasis is devoted to suppressing the use of firearms by probationers and parolees.

Many of these profiled communities have collaborated on issues of juvenile violence and illegal firearms trafficking. Not only is law enforcement involved in these crime protection efforts, but also community residents. Other public and private agencies were also included in the development of these plans. None of these programs comes from a cookie cutter; all are different in that they are shaped to the makeup and the direction of the community. All of these programs, however, do have one thing in common: the goal to attack youth gun violence in the community.

In 2001, President Bush unveiled Project Safe Neighborhoods (PSN), a comprehensive, strategic approach to gun-crime enforcement. PSN targets crime guns and violent offenders in an effort to make streets and communities safer. The plan calls on each U.S. attorney to implement this national initiative, working in partnership with communities and state and local law enforcement agencies. The plan calls for an invigorated enforcement effort that builds on the successful programs already in place or, through new resources and tools, assists in creating effective gun-violence reduction programs.

The human and resource costs of gun violence are enormous. Although some programs have attempted to provide services and compensation for victims of gun violence, most programs are becoming more restrictive and the forms and amounts of assistance are growing smaller. New policies have placed restrictions on who may receive compensation and under what conditions, and caps have been placed on the amount of victim compensation. There are new limits on access to mental health counseling and assistance with medical expenses. In most cases, victims must cooperate with law enforcement investigators and time limits are imposed for filing for aid. This makes it difficult for the poor and those who live in fear in violent neighborhoods to benefit from resources that might help needy victims.[53]

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3. U.S. Department of Education, 2002.

4. Grunbaum et al., 2004.
5. Braga, Kennedy, Piehl, & Waring, 2000.
6. Mokdad, Marks, Stroup, & Gerberding, 2004.
7. Fingerhut, 1993.
8. Office of Juvenile Justice and Delinquency Prevention, hereafter OJJDP, 1999.
9. Fingerhut, 1993.
10. Kennedy, 1997.
11. Moore & Terrett, 1996.
12. Cook & Ludwig, 1997.
13. Bureau of Alcohol Tobacco and Firearms and Explosives, hereafter ATF, 2000.
14. ATF, 1997.
15. ATF, 1993.
16. Giannelli, 1991.
17. Department of Justice, hereafter DOJ, & U.S. Treasury Department, hereafter USTD, 2005.
18. DOJ & USTD, 1999.
19. Cook & Ludwig, 1997.
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23. Centers for Disease Control and Prevention, 1997.
24. Sheley & Wright, 1993.
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31. Donohue, Schiraldi, & Ziendenberg, 1998.
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33. Decker et al., 1997.
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36. Huff, 1998.
37. Ruddell & Mays, 2003.
38. Ruddell & Mays, 2003, p. 243.
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40. Decker et al., 1997.
41. ATF, 1999.
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45. Sheley & Wright, 1998.
46. "Illegal trafficking," 1999.
47. Hardy, 2006.
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CHAPTER 10

Juveniles in Cyberspace: Risk and Perceptions of Victimization

Marilyn D. McShane, Frank P. Williams III, and Ming-Li Hsieh

Over the past century, many technological advances in various forms of media have resulted in parental concern about their negative influences on youth. Among these technologies and adaptations, music lyrics, books, magazines, films, and video games seem to have systematically produced the greatest concern. In some ways, these concerns simply may be a product of generational conflict with reflections of long-held disagreements concerning popular culture and taste. Each new genre of media appears to be objectionable to previous generations and, in many cases, has been viewed as a "cause" of delinquency. Although, to some extent, the contemporary media played some role in inciting concern over the risk of these influences, it has not helped that research on and knowledge of the consequences has been mixed and inconclusive.

Regulating access to perceived threats to the safety and well-being of our children has long been recognized as a parental responsibility. In fact, parents today face increasing pressure over the growing body of legal measures instituted to clarify social expectations for raising children. There appear to be growing real, as well as perceived, expectations for parents to anticipate and proactively regulate the home environment so that their children are exposed to as little harm and risk as possible. The courts have, in many cases, found parents negligent and liable for the failure to maintain and support their children according to rapidly evolving standards in a number of areas, including medical care, gang membership, vandalism, and debts accrued for such things as long-distance phone calls, credit cards, and Internet activity. Increased focus on supervision and fears of child abduction, being reported to child welfare services, and exposing

youth to Internet pornography has spawned a cottage industry of v-chips, AMBER Alerts, fingerprint and DNA kits, and even home urinalysis testing, as well as lead to sophisticated rating systems for video games, movies, and Internet sites.

e-KIDS AND e-RISKS

Today, we live in a cybersociety in which children spend considerable amounts of time alone in an electronic environment with computers, video games, and sophisticated downloaded music systems. Although most of us were raised with exposure to the effects of a growing mass media, the vastness of the Internet and its capabilities are still disconcerting to many parents. The perceived dangers of electronic entertainment creates new risks about child safety and motivates us to find the best ways to protect children, while still allowing them to enjoy the benefits of these technological advancements.

The Concept of Home and Parental Concern

One of the sources of parental fears is clearly the location of the perceived threat. U.S. culture and popular belief has always portrayed the home as a private sanctuary—a fact legally enshrined in our Constitution—and a safe haven for our families. This image affects how we think of the home and events occurring within it. In some cases, the image is so powerful that it becomes difficult to embrace reality. Nowhere is this more true than in the perception that child sex offenders are strangers who lurk outside the home, when most of them are, in fact, relatives and friends. To change this perception, however, runs the risk of destroying the cherished notion of the home sanctuary.

That this notion is so powerful is critical to an understanding of parental concerns about the connection between the Internet and child molesters. With child molesters outside the home, children can be protected in traditional ways: teach them to beware of strangers and keep them safe in the home. Conversely, imagine the implied threat if that stranger is ''virtually'' inside the home, making contact via the Internet with the child in her or his own bedroom. This, then, is the perceived threat of Internet sexual solicitation (in this case, by pedophiles). Under these circumstances, there is a double threat, one to both child and sanctuary, that magnifies fear beyond either individual threat.

Emergent Social Problems

In situations in which fear is magnified, social scientists have identified a systematic set of events, otherwise known as the construction of a social problem (sometimes called ''moral panics''). Social problems are based on a real or perceived threat to social order, but they are not tied to the actual prevalence of the threat. Instead, the important factor is the degree

of concern elicited by the threat, as brought to our attention by media and moral entrepreneurs (people or agencies who, for good reasons, have a vested interest in the threat). Claims-making by the initial moral entrepreneurs are universally exaggerated, and the claimed facts are almost never confirmed when they are first made. When the threat involves protected members of society, sacred ideas and images, or particularly heinous misdeeds, the claims are sensationalized and spread quickly through the media. Moreover, because the news is "terrible," these threats remain unquestioned by the public (and frequently even authorities).

All of this results in multiple calls to "do something quickly." In the heat of the moment, other claimed instances of the threat appear, thus illustrating that the threat is growing. Action and social policy, then, are not far behind. History has demonstrated time and again that the highlighted threat or problem is rarely "worse" than at other times, but our attention (and the attention of the moral entrepreneurs) makes it seem so. Moreover, record-keeping efforts of these threat events are always enhanced, resulting in an increasing number of the events. At some point in the future, the pubic usually loses interest or another problem catches fire and the social problem dissipates (in the process, it is possible that the frequency of the threat event itself has never changed over the course of time and, in some cases, was already declining at the point of initial attention).

Given this process, it would seem that the combination of nervousness about new Internet technology, societal protection of children, and the concept of home—in conjunction with an already existing social problem (sex offenders)—most likely precipitates the social problem. Indeed, we cannot imagine a greater perceived threat than that of a child, playing in his or her own bedroom, being solicited by a stranger intent on sexual molestation. This combination of ingredients is so powerful that it literally demands recognition as a social problem.

The Internet as an Emerging Social Problem

Rapid advances in technology and consumer demands have created greater access to cybercommunications. This access, as well as ways to control it, has opened debate about social control and reinterpretation of basic rights and freedoms in relation to the risks of potential victimization and other forms of criminal behavior. Controversial associated issues range from free speech and expression to commerce between consenting adults and the possibility of civil rights violations in the promotion of practices that subjugate, discriminate, and oppress groups protected by age, race, gender, and religion. With a drive toward controlling or banning certain violent or sexually explicit materials on the Internet, or at least attempting to regulate or control them, these issues are clearly taking the form of an emergent social problem.

According to the U.S. Census Bureau, 53 million children, most of them teenagers, use a computer at home and at school. Although many are just playing interactive games, most are accessing the Internet,

particularly e-mail. The home is the most common station of computer access, but family income and parents' education are significantly and positively related to the proportion of children who use the Internet and also *how* they use the Internet. The Federal Bureau of Investigation (FBI) reports that children are more at risk online in the evening hours and predators often target children by specific activities, traits, or needs that they identify. Chat rooms are specifically indicated as high-risk environments and the FBI has recently established an Endangered Child Alert Program (ECAP) to combat the sexual exploitation of children online.

Arguably, cybersexual exploitation has been sensationalized by the media in a way that often misrepresents what is, in fact, a relatively rare event. This occurs when incidents are reported in a way that suggests people are surprised that offenders have somehow adapted to and are exploiting a new and apparently successful means of committing offenses. Accounts seem to give the impression that predatory behavior by sex offenders is increasing rather than simply changing in its modus operandi. This failure to clarify the context of crime, or compare its incidence with the likelihood of other forms of victimization when weighted for frequency of use, demonstrates the difficultly we have in seeing or understanding these new trends as routine functions of crime and lifestyle changes. Yet, this is precisely how behaviors change and adapt to new situations; it is an expected consequence. Offenders traditionally move to newer and less easily detected methods as potential victims alter the dynamics of their interactions and become available and suitable as targets. Meanwhile, law enforcement races to adapt to these changes and to prevent further victimization. To criminologists, this is a well-established and normal cycle of activity.

This chapter explores a few of the most controversial areas of youthful offending and victimization related to exploration and activity using some of the more popular modern technologies. Many of these products and services have resulted in parental, as well as governmental, attempts to regulate children's behavior and their access to these technologies. Many of these products have an ambiguous nature, particularly those related to Internet pornography, violent video games, and personal Web sites. These activities and products are frequently interrelated and, in many ways, have been subject to scrutiny in their earlier forms, such as television and movie violence, sexually oriented magazines, and the home video industry. We will discuss some of the things parents can do to address Internet safety more proactively.

TECHNOLOGICAL REVOLUTION AND ITS EFFECTS

The literature on television and movie violence supports the notion that exposure to material of a violent nature leads to more aggressive behavior, reported acceptance of violence, and desensitization to violence, particularly in younger children.[1] Studies of sexual violence seem to find similar results. There is some debate, however, about whether exposure to sexually explicit materials, in general, affects established attitudes or sentiments regarding sexual morality.[2]

Even from the early days of public access to the Internet and personal computers, some people were concerned about the fact that racist or hate groups, pedophiles, pornographers, and even Satan worshippers all have access to videos, cable television channels, and computer bulletin boards. For instance, in the summer of 1994, an embarrassed high-security nuclear weapons laboratory acknowledged that hackers were using its vast computer storage capability to warehouse more than 1,000 pornographic images in what might have been a profitable Internet sales scheme.

A number of the more notorious hackers and spammers have been young people. The ability to work from home in one's spare time has made some illicit market activities attractive to the underage compensation seeker. Other people simply delight in the ability to crack into secure Web sites and to brag to online groups of colleagues about their technological skills. Downloading music, films, and videos illegally is a common offense that worries business and criminal justice investigators. The pirating and illegal reproduction of copyrighted material amount to billions of dollars lost to the industry each year. This fact worries delinquency experts who argue that the benefits and lack of sanctions at this level not only encourage criminal activity, but also may cause crime rates to escalate and trigger more serious levels of offenses.

From Computer Bulletin Boards to the Dangers of MySpace

Computer bulletin boards (CBBs) were early versions of what today might be considered Web sites. Dial-up in nature, these sites required knowledge of a specific phone number and were located on a remote server, but not on the Internet. Some CBBs were general-purpose sites, others had specific purposes (such as information for special scientific fields), but few had free access. Most weren't available to just anyone, requiring payment or paid-up membership codes to enter. Those with sexually oriented content were among the latter and, on the whole, did not pose much threat to the nation's youth because the content couldn't be merely happened upon. Conversely, the specialized content of some CBBs included pedophilic materials. At this point, the World Wide Web (WWW) with its graphics-based content had not yet become available. Text-based content was the order of the day on the Internet and downloading graphic content required any of a large number of specialized viewing programs.[3] Thus, CBBs were the solution to accessing and transmitting most graphic content.

In the early 1990s, the Justice Department's Child Exploitation and Obscenity Section established "Operation Long Arm" to track and prosecute child pornography transmitted from personal computers to network bulletin boards. One official related that pornographic magazines were simply being scanned and sent to subscribers.[4] Officials in Mexico and the United States claimed to have broken a child pornography ring run through e-mail with a $250 subscription. The investigation involved sites in New Jersey, California, Chicago, and Tijuana and included 2,000 subscribers of hard-core pornography.[5]

State and federal agents in Florida shut down and seized the equipment from two bulletin boards suspected of transmitting obscene photos and

selling pornographic CD-ROMs. A Florida schoolteacher was arrested by U.S. Customs agents for allegedly possessing and disseminating child pornography via CBBs. Videos were allegedly made as well.[6] Another couple, from California, was charged and convicted of distributing pornography via interstate phone lines that depicted, among other things, bestiality. In that case, the materials were on a members-only bulletin board and downloaded by a postal inspector in Memphis.[7]

Another instance of the availability of pornography, this time on the Internet, was reported in a startling 1994 report based on a research study published in the *Georgetown Law Journal* by a Carnegie-Mellon University scholar. Given nationwide coverage by *Time* magazine and ABC television, the report suggested that pornography was widely available with easy access to text and pictures. Moreover, pornography and erotica were a major part of Internet content (actually the study said it accounted for 83 percent of all Internet images). It was all untrue. The "scholar" turned out to be an undergraduate student who used adult-oriented CBBs for his "research" and only briefly accessed one of the newsgroups on the Internet. Although we do not know the student's motivation, it has the appearance of purposefully misleading people. Carnegie-Mellon University disowned the research, and it was officially declared a scandal. The damage implicit in misleading the public, unfortunately, had already been done. In the public eye, cyberporn was a critical problem and children were in harm's way. The author of the *Times* article on the study put the propitious timing this way:

> So I think any reporter would recognize that this is an interesting thing, to have first crack at what sounded like a definitive study out of Carnegie-Mellon, which is a university with a long tradition in the Internet. It is a study that triggered this controversial crackdown at Carnegie-Mellon. And as it happened, the issue of pornography on the Internet had grown and come to the front burner. The study was going to be breaking at the exact time Senators, goofball Senators, were introducing an amendment to give away our free-speech rights!
>
> You know, the Exon amendment had passed the Senate when I got this study, and it looked like it was headed to the house. Here we had Congressmen debating this issue, parents clearly concerned about it, and everybody talking about porn on the Internet, and nobody really knowing how much there was, how accessible it was, where it was, who was seeing it, and so forth, and in this national context, here comes this study that seems to answer those questions.[8]

Politicians were prepared to attack the cyberporn problem, Senator Grassley had already scheduled a hearing on the issue—the Carnegie-Mellon "scholar" was to be his star witness and had to be pulled at the last minute. Even the resulting scandal was not enough to slow the political wheels. Senators James Exon and Slade Gorton sponsored a bill (SB-314, Telecommunications Decency Act) that proposed censoring and restricting erotic materials on the Internet. Their approach was to have the Internet treated as a telecommunication device. The Exon bill treated Internet transmission

of obscene materials like an obscene telephone call. The major difference between the two, however, is that obscene phone calls are not voluntarily received. Internet "receivers" intentionally seek out and download the erotic products. Thus, the Exon bill actually transcended existing telecommunications laws and attempted to legislate morality. A version of that bill, attached as an amendment to the Telecommunications Decency Act, subsequently passed into law. Federal courts later struck down that portion of the act, but support for the concept remained and several attempts have been made to pass anti-cyberpornography laws since then.

Children's Access to Pornography

The fact is that erotica is not hidden on the Internet. The initial moral panic over the availability of Internet pornography was primarily a CBB issue and this availability was scarce, even for adults. Since that time, the growth of the graphics-based Internet, the WWW, has made the technical abilities required to access materials rather moot. The focus of the WWW is a transparent use of the Internet, even for those who have no knowledge of the technology behind it. Thus, today's browsers require no knowledge of downloading and compiling techniques, no identification of the types of file formats, and no specialized software to access graphics or text. Furthermore, the growth and sophistication of search engines such as Google™ and Yahoo!® make expertise in locating information moot, as well. Rarity of an item or type of material is no longer a bar to locating it. A simple search term and a click of the mouse are all that is necessary to bring up virtually any subject, text, or graphic on today's browsers.[9] Today's children have unparalleled access to information and that includes erotic content.

Although sexual predators and potential kidnappers seem to represent the major thrust of media coverage, access to pornography is a much more common experience and, according to some surveys, a greater parental concern. According to the National School Boards Association parents fears included access to pornography (46 percent), meeting undesirable adults online (29 percent), and violent or other inappropriate content or contact (20 percent).[10] The pedophile or pornography-producing entrepreneur has developed a more sophisticated operation over the years from the use of the Polaroid camera to the home video. These advances have allowed better quality production while affording privacy and the appearance of common household technology. Pornography businesses have adapted various mainstream sale and distribution techniques that allow consumers convenience and anonymity. In a Canadian survey, 34 percent of children ages 12 to 17 reported having visited sites containing pornography, violence, or adult chat-room activity.[11]

Sexual Predators on the Internet

Reported cases of sexual predation on the Internet seem to attract more media attention than other more common crimes, and the effect is to make online socializing appear to be a high-risk behavior. The accounts

reflect a diverse group of predators and methods, although, according to research, most Internet predators are older men and victims are young teenage girls.[12] There are reports of 20 percent of youth ages 10 to 17 having received a sexual solicitation on the Internet.[13] Some of these cases result in arrests. Dr. Thomas Dent, 40, posed as a teenager online to talk to real teens about sex.[14] Gregory J. Mitchel, 38, enticed underage boys to perform sexually in front of Web cams.[15] Douglas French, a sex offender, lured a 17-year-old girl into a relationship with offers of modeling work through the Internet.[16] Sam Levitan posed as a 16-year-old boy and raped a girl he met on the Internet.[17] The FBI, utilizing undercover agents lured Noel Neff into soliciting sex online from a chat room.

The common pubic image of Internet predators is exemplified by the abovementioned cases. Even individuals in positions of responsibility, however, have been among those caught in the act. Brian J. Doyle, deputy press secretary for the U.S. Department of Homeland Security, was convicted of soliciting who he thought was a 14-year-old Florida girl over the Internet. Congressman Mark Foley of Florida, ironically chairman of the House Caucus on Missing and Exploited Children and one of the House's most outspoken members on issues of child pornography and sex offenders, resigned after reports that he had sent sexually oriented e-mails to an underage congressional page. Subsequent reports suggested that e-mail and instant message solicitations may have been sent to other pages as well. It is likely that many of the more recent scandals in the Roman Catholic Church have involved the Internet.

Thus, there is much evidence that sexual predators come from all walks of life. Nonetheless, there are a few commonalities among cyberpredators. Internet monitors indicate that predators prefer chat rooms, personal Web sites, and instant messaging. Most offenders spend two to four weeks cultivating a potential victim before attempting to meet them face to face.[18] Although the rate of offending and range of offenders may be the same as the peeping toms and school-yard and shopping mall perverts of days past, the ingredient most unsettling to parents may be the thought of such acts occurring in the home.

Possibility for Victimization

Officials point to the fact that children more readily divulge personal information in their daily use of the Internet. It is not uncommon for children to display their full names, age, gender, cell phone numbers, pictures, birthdays, hobbies, neighborhood, home address, school, after-school job locations, and other details about their routine activities. For instance, 40 percent of American high school students have posted personal data on an Internet Web site and 12 percent have arranged a meeting with a stranger whom they contacted online.[19] Since MySpace was created in 2003 the number of users has grown to its current enrollment of 60 million members.[20] An overwhelming number of youths are using free Internet accounts, which is a factor sure to close the economic gap once found in both offending and victimization. Close to one-third of all children

involved with online blogs and Web sites, such as MySpace, access it more than twice a week.[21]

According to the Pew Internet and American Life Project, approximately four million children have their own blogs, eight million young people read them, and 60 percent of those who go online have created content on MySpace.[22] Ironically, 60 percent of children surveyed in one Canadian survey related that they had posed as someone else online when contacting and making new friends with other people. The survey indicated that boys had a higher rate of viewing violence as well as accessing gambling sites and adult chat rooms.[23]

Although this is a new technological phenomena, it is not inconsistent with more than 100 years of delinquency research that indicates that youth seeking excitement and stimulation often engage in high-risk behavior despite warnings, cautions, and restrictions to the contrary. And, following principles of risk and benefit, if offenders find it more economical and practical to use these resources for tracking and stalking potential victims, then they will use these resources until we can develop the tools to make it ineffective for them to do so.

COMPUTER BULLYING, PORNOGRAPHY, AND THE LAW

Years ago, the typical bully was a school-yard menace who physically intimated children on the playground. Now the Internet has escalated that scenario on a global scale, causing some teens considerable embarrassment and emotional trauma.[24] Today, 27 percent of children report an experience of cyberbullying and 70 percent report being sexually harassed (different from sexual solicitation) online.[25] There is some indication that children may try to stay home and avoid school because of fears related to this form of intimidation.

In 1994 (*U.S. v. Baker and Gonda*), a student by the name of "Jake Baker" at the University of Michigan was arrested by federal agents under a warrant obtained by the U.S. attorney.[26] Baker was accused of communicating a threat to a fellow student as a result of three erotic-tinged stories he uploaded onto the Internet. The stories contained rape, torture, and murder. Baker also had been communicating to a friend via computer and those communications were instrumental in bring the charges against him. The judge in the Baker case ultimately determined that the charges were without merit and dismissed the case. However, the case itself was widely reported in the media as a real offense, but its dismissal was barely reported.

Because those uploading erotica often use anonymous services or even out-of-country servers to transmit their materials, an incident in Helsinki is also of interest.[27] Finnish agents raided the home of an individual who maintained the most popular "anonymity server" at the request of the Church of Scientology, who claimed that someone had stolen copyright materials from them. Although the owner of the server finally agreed to

provide only the name of the individual in question, the Internet was quickly abuzz about the threat to anonymity posed by such actions. Anonymity on the Internet is highly prized by a wide range of people, ranging from people who simply do not want to receive spam or be tracked from site to site by various marketing cookies to people in law enforcement searching for pedophiles.[28]

Although detecting, investigating, and prosecuting crimes committed on the Internet has posed serious challenges for law enforcement, coordinated agency efforts and time-consuming undercover work has been beneficial. In February of 2006, New York police arrested more than a dozen MySpace users who were sex offenders posing as children on the social networking Web site.[29] Though it is unclear exactly how many offenders and potential offenders use a digital modus operandi, the FBI indicates that at least 50,000 predators are operating online at any one time.[30] The FBI's projections are inherently suspicious, however, because they have grossly overestimated the number of missing children, serial killers, potential school shooters, and, most recently, terrorists. Considering the grand tradition of social problems claims-making by people with vested interests, it is highly likely that the actual number is substantially smaller.

WHAT YOU CAN DO

Regardless of the actual number, it is best to remember that the Internet is effectively a database that can be searched quickly. Thus, information that children post on the Internet, prize forms they fill out, and spam they respond to are all potential sources of searchable data. If adults are victimized by the existence of such data, then children certainly will be. The fact that young people are heavier users of new technology than adults increases their exposure. Applying routine activities and lifestyles theories[31] to their behavior, an elevated frequency of such contacts is literally to be expected: they spend more time on the Internet, engage in riskier behaviors while online, and tend to access the Internet without adult supervision. Although something might be done about the first two elements, the latter is more critical. Lacking the sophistication that maturity usually brings, unsupervised youth run a higher risk of having contact with unsavory elements on the Internet. Thus, parents can have an effect on the relative exposure risk of their children.

Unfortunately, although parents may seem concerned about Internet safety, many are not sophisticated users themselves. They are often uncertain about the specific practices that may constitute illegal activity or high-risk communication, and they are often unwilling or unable to purchase and install software mechanisms that might filter or block inappropriate sites. This means that the Internet, like other youthful activities that parents do not understand, is subject to fears and misconceptions that might be more effectively managed if parents were aware of the context of the situation and its relative risks.

Despite the best intentions of parents to monitor Internet access, 48 percent of children surveyed in one study reported that they "never" use

the Internet with their parents and 42 percent reported that most of the time they were alone when they used the Internet.[32] Networking services like MySpace attempt to regulate activity by posting a minimum age requirement, but these requirements often are circumvented and impossible to enforce. All a child need do is "certify" that they are at least 14 years old.

Officials recommend the following measures for promoting safe Internet use for families with children:

- Instruct children on ways to avoid the display or disclosure of personal details related to names and addresses, and how to avoid posting scheduled activities and what may be interpreted as provocative pictures or language.
- Make children aware that their "friend" may be an adult and that some strangers are not to be trusted easily.
- Keep computers in open areas, such as the living room, family room, or kitchen, where the content of regular use may be monitored.
- Check Web sites that children log onto and make children aware that you are able to track their activity and that you are doing that to protect them.
- Invest in software that will help you to track, monitor, and control Internet access and activities. Exercise your ability to block high-risk sites of which you are aware.
- Share your information and experiences with other parents and with the school. An alliance or network is much more effective and efficient than one person alone. Children need to see the unity of parents in consensus on this issue and they need to be encouraged to bring Internet problems and issues to the attention of adults.
- Arrange to spend quality time with children in meaningful activities, travel, sports, recreation, and leisure time away from the computer to offset their interest and preoccupation in this one form of social activity.
- Talk to your children honestly and in a nonthreatening way about their use of the Internet. Involve them in making up rules and setting parameters so that they are invested in the issues and feel some of shared power that is an important need in their lives as they develop a sense of responsibility and control over their lives.

Although these practices cannot guarantee a safe Internet experience for children, they do provide some surveillance techniques over Internet behavior and suggest a model of how to assess risky activity.

CONCLUSION

The difficulty in dealing with violent and sexually explicit material is the lack of consensus on what constitutes harmful or obscene material and high-risk behaviors online. Great variations exist among jurisdictions on the extent to which First Amendment protections cover the exchange of

print and film between consenting adults, and the degree to which regulations of what children can access is the government's responsibility and what is the parent's responsibility. Over the years, various regulations, codes, laws, and ordinances have been promulgated in an attempt to control the distribution of violent and sexually explicit material (and to keep up with its changing themes as well as evolving technological mediums). These problems of defining and controlling not only the music and film industry but also all of its bootlegged, illegally recorded, and downloaded offshoots are magnified when the Internet is concerned.

Proposed answers to censorship are parent-controlled software, generic legislation (as with the provisions in the Telecommunications Decency Act), and hardware. Software exists to censor the Internet and continues to evolve to balance the needs of access and protection. The consensus of the legal community appears to be that absolute prohibition of "indecent" materials (for adults and children) is clearly unconstitutional. Whatever its direction, the final legislative solution no doubt will work only as well in limiting juveniles' access to violence and pornography as have solutions to the equally thorny problems of alcohol, drugs, and tobacco.

One of the solutions needed is illustrated by the advertising campaigns designed for the war on drugs. Exaggerated statements and stories were disseminated for scare purposes but were presented as fact. In one sense, they had the intended effect, but for the wrong audience—parents. Youth were able to draw on personal and word-of-mouth experiences to determine that the statements and stories were, indeed, scare tactics and in many cases laughably so. Information on Internet risk should be informed by this experience and bear a closer resemblance to reality. The fact is that children, youth, and adults are all going to use the Internet (actually, the Internet is now a commodity and necessity). Without exaggerating risk and creating fear, the task is to determine how to manage potential risk through reasonable behavior. Governments are not going to be in the forefront of this activity, but parents will have to be, and perhaps only after learning to manage their own Internet risk.

NOTES

1. Donnerstein, Linz, & Penrod, 1987.
2. Scott & Cuvelier, 1993.
3. Graphics format had not yet become standardized. Most of the viewing programs, which also had to be individually downloaded, were usable for only a single graphics format. Thus, much of the graphics content available on "newsgroups" was in multiple parts, time-consuming to download with slow dial-up speeds of 9.6–14.4K baud rates, and largely unusable. Because of the multipart nature (necessary because of file size limitations), frequently a special program was needed to piece the parts together in the correct order.
4. "Justice Department warns of porn networks," 1993.
5. Rotella, 1994.
6. "Teacher arrested," 1995.
7. "Couple guilty of sending porn," 1994.
8. Philip Elmer-DeWitt quoted in Brickman, 1995.

9. In doing some quick online research in preparation for this chapter, we can attest that once one defeats the "safe-search" feature on common search sites (usually requiring a click on the "yes" box next to "I am an adult"), there are few taboo topics and graphics not available. Before viewing this fact as an evil, it is wise to reflect on the reason these search engines exist (and why they have become hugely capitalized entities, as well)—that is, for access to information of all types, which has become the hallmark of the twenty-first century.
10. National School Boards Association, 2002.
11. Media Awareness Network, 2005.
12. Kornblum, 2006.
13. ClearTraffic, 2006.
14. Bunyan, 2006.
15. Eichenwald, 2006.
16. Snell, 2006.
17. Garcia, 2006.
18. ClearTraffic, 2006.
19. McNulty, 2006.
20. Clifford, 2006.
21. Braithwaite, 2006.
22. Campanelli, Lubinger, & Dealer, 2005.
23. Media Awareness Network, 2005.
24. Coleman, 2006.
25. Media Awareness Network, 2005.
26. "Student jailed," 1995.
27. Akst, 1995.
28. We note that an anonymity plug-in is a popular download at the Firefox® browser Web site.
29. Proudfoot, 2006.
30. Goodchild & Owen, 2006.
31. Cohen & Felson, 1979; Hindelang, Gottfredson, & Garofalo, 1978.
32. Media Awareness Network, 2005.

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CHAPTER 11

Mother Blame and Delinquency Claims: Juvenile Delinquency and Maternal Responsibility

Bruce Hoffman and Thomas M. Vander Ven

"Mother blame"—attributions of maternal responsibility for juvenile delinquency—has been a major theme of popular and scholarly attention over the past several decades. Major changes in women's roles, the structure of the family, and the contraction of the welfare state, have been accompanied by public fears and scholarly explorations questioning the potential effects of working mothers, single mothers, and adolescent mothers on their children's behavior. Although extreme, the contemporary concern over unconventional mothers and the foregrounding of their behavior as responsible for delinquency is by no means unprecedented. Indeed, the familiarity of these claims raises questions about the historical construction of connections between motherhood and delinquency, and the interests such attributions have served.

In this chapter, we empirically review and assess recent social scientific literature that attempts to explore the connection between delinquency and the behavior of adolescent, single, and working mothers. We next place such studies into their relevant context through an analysis of influential historical and sociological accounts of the "invention" of delinquency during the Progressive Era of the late 1800s. It is our hope that the study of the transformation of family, motherhood, and the dependent nature of the child can help us further understand how contemporary maternal roles, responsibilities, and practices of mother blame for child neglect function as instruments of self-regulation and underlie practices of formal intervention.

DELINQUENCY AND "NONTRADITIONAL" MOTHERS

Research aimed at understanding the manner in which absent, single, or underfunctioning mothers contribute to crime and delinquency grew significantly in the 1990s. Scholars suggest that broad public concerns about the ill effects of maternal employment, family breakdown, and adolescent childbearing were driven, in part, by the culture wars surrounding the Reagan administration's "family values" rhetoric, the backlash against feminist advancements, the welfare reform movement, and Congressman Newt Gingrich's "Contract with America."[1]

Some social critics argued that social pathologies, such as crime, delinquency, and youth violence, were caused by the weakening of the American family and that survey research showed that policy makers had a mandate to reverse this unfortunate tide. Other social commentators and social scientists argued that the American family was not, in fact, declining, but rather changing to meet the demands of structural conditions. From this perspective, mothers have to work because the dual-earning family is an economic necessity, not because mothers are carelessly choosing work over family responsibilities.

Researchers have produced a large body of empirical findings to address these concerns. Although there is no question that maternal support and control influence child developmental and behavioral trajectories, it is not clear how much and in what manner adolescent childbearing, single mothering, and maternal employment affect delinquent outcomes. A brief review of the research centered on these topics is offered below.

Adolescent Motherhood and Delinquency

The U.S. teen pregnancy rate for teens ages 15 to 19 decreased 28 percent between 1990 and 2000. Despite these recent declines, more than 30 percent of all teenage girls get pregnant at least once before they are 20 years old, resulting in more than 800,000 teen pregnancies a year.[2] Furthermore, the United States has the highest teen pregnancy rate in the industrialized world.[3]

As the rate of teen motherhood has remained high, so too has public concern for the wide-scale social consequences of "kids having kids." According to Maynard, the perception of teen pregnancy as a social problem was largely driven by rising rates of poverty and welfare dependency in the 1990s.[4] Over the last two decades, child poverty rates have escalated along with teen pregnancy. Furthermore, adolescent childbearing is particularly worrisome to social commentators and legislators because it is seen as both a cause and consequence of the dramatic increases in welfare dependency in recent decades.[5] Because the general public and politicians alike have set reducing the welfare rolls as a high priority, teen pregnancy has gained importance as a social problem.

Adolescent motherhood is seen not only as a prelude to welfare dependency and, thus, a greater tax burden, but also is regarded as a contributor to the production of social ills, such as crime. As Grogger has

pointed out, between 1950 and 1975 both teen pregnancy and national crime rose dramatically,[6] suggesting a possible link between the two. Although researchers have yet to clearly demonstrate a strong connection between teen pregnancy and crime, policy makers seem to be convinced that a relationship exists.[7] Specifically, it is commonly believed that the offspring of adolescent mothers have a greater propensity to engage in antisocial or criminal behavior.

Indeed, several researchers have found that the children of adolescent mothers are more likely to engage in various forms of crime and delinquency. The evidence, however, is not strong. The strength of association between early childbearing and delinquency has been shown to be moderate at best and the severity of child behavioral problems related to adolescent motherhood varies substantially across studies.

Moore, Morrison, and Greene reported that compared with children born to 20- and 21-year-old mothers, children born to 18- and 19-year-olds were more likely to run away from home. The authors found no association between having an adolescent mother and involvement in more serous delinquent acts such as assault, theft, or illegal drug use.[8] These findings are consistent with research that had suggested that early childbearers are more likely to have children who engage in less serious delinquency and status offenses, such as running away, stealing, and getting into trouble at school.

Other researchers have developed a somewhat tenuous link between adolescent childbearing and more serious criminal behavior in offspring. In an exploratory analysis of four data sets, Morash and Rucker found that the children of early childbearers were more likely to commit offenses against people and that the children of young mothers had penetrated more deeply into the juvenile justice system. The authors report, however, that in most cases mother's age explains only a trivial amount of variation in delinquency and that the association between maternal age and delinquency was significant for white youth but not black youth. Furthermore, the analysis showed that the often weak association detected between mother's age and delinquency depended on the mother's marital status during the child's adolescence: when fathers were present, many negative child outcomes associated with maternal age were ameliorated.[9]

Like Morash and Rucker, Grogger found an association between having an adolescent mother and more serious criminality. Specifically, the analysis involved an assessment of whether a mother's age affects the likelihood of her son being incarcerated. Although the results were modest in size, Grogger found that delayed childbearing on the part of adolescent mothers would significantly reduce the probability that their sons would be incarcerated. As the author acknowledged, maternal age alone is not likely to explain much variation in criminal behavior.[10] And even if maternal age is associated with delinquency, the relationship may be largely spurious, with maternal age and delinquency being caused by economic disadvantage. Younger mothers and their children are more likely to face a wide variety of disadvantages, including poverty, welfare dependency, unstable marital unions and female-headed families, and community disorganization. To understand the causal process linking adolescent motherhood to

delinquency, then, such contextual factors as poverty, neighborhoods, and family stability should be considered.

Nagin, Pogarsky, and Farrington attempted to specify the relationship between an adolescent mother and criminal behavior. Their approach mapped the influence of adolescent motherhood through three competing avenues that were hypothesized to increase the probability of criminal involvement in the adult children of young mothers.[11]

The first explanation, the life course–immaturity account, predicts that younger mothers produce antisocial behavior in their children because of their inability to be mature, sensitive, and effective parents. Young mothers are depicted as being unprepared to meet the challenges of raising a child because of emotional and developmental immaturity. Parental effectiveness, then, is treated as a function of developmental progression; although most adolescents would be regarded as too young to raise a child, they should have the potential to be good parents as they age and gain maturity.

The second explanation, the persistent poor parenting–role modeling account, predicts that those who bear children in adolescence are likely to be those least suited to be good parents. Early fertility, it is assumed, is likely to be caused by a stable personality trait characterized by impulsivity, self-centeredness, and lack of foresight. Drawing from Gottfredson and Hirschi's theory of self-control,[12] teen childbearing may be seen as an "analogous act"—a noncriminal behavior that, like criminal behavior, can be explained by low self-control. According to this account, teen mothers make unsuitable parents because they are likely to be engaged in antisocial behaviors themselves, because they lack the patience and planning skills a good parent needs, and because they are likely to select mates or marital partners who also lack the skills or behavioral habits to be effective parents.

The final explanation, the diminished resources account, predicts that the children of adolescent mothers are more prone to criminal behavior because they are more likely to experience impoverishment. Because early childbearing is likely to fix mothers and their children in a socioeconomically disadvantaged status,[13] children may experience prolonged deprivation of financial resources and cultural objects.[14] Furthermore, because adolescent mothers are less likely to be stably married, children also may be deprived of personal attention and support and are more likely to be raised by a highly stressed parent.[15] Nagin and others found some empirical support for the diminished resources and persistent poor parenting–role model accounts but could not confirm the life course–immaturity explanation.[16]

Finally, Pogarsky, Lizotte, and Thornberry found that children born to early childbearers were more prone to violence and delinquency than children born to later childbearers. This effect is best explained by the unstable, highly transitional composition of the families in which early childbearing is most likely to occur.[17]

Single Mothers, Divorce, and Delinquency

More than one-third of all American children are born to single mothers and more than half of all children will spend some period of their

childhood in a single parent–headed home.[18] Statistics like these might seem alarming to those concerned about the relationship between changing family structures and related consequences for youth behavior. The empirical research findings on the topic, however, are mixed.

One pathway to understanding the single mother–delinquency link is to examine the research focused on divorce/separation and delinquency. Dating back to the nineteenth century, delinquency scholars have consistently looked to the ''broken home''—families disrupted by marital dissolution or separation—as one of the primary explanations for delinquency.[19] Although this line of inquiry has resulted in a large accumulation of studies, the findings have been equivocal.

In the most well-known study of its kind, Wells and Rankin attempted to bring clarity to this issue by performing a meta-analysis of 50 ''broken homes'' studies. They concluded that broken homes had a consistent pattern of association with delinquency. The prevalence of delinquency in broken homes, in fact, was found to be 10 to 15 percent higher than in intact homes.[20] It should be noted, however, that the great majority of children raised in fractured families do not take part in serious patterned delinquency. Although a child of divorce may have a higher probability of delinquency, divorce itself does not doom a child to a life of crime.

The Wells and Rankin study adds to our general understanding of the relationship between family structure and delinquency, but it does not attempt to explain the causal process. More recent research conducted by Rebellon suggests that marital breakdown early in the life course and remarriage during adolescence are strong predictors of status offending. According to Rebellon, much of the relationship between family fissures and delinquency can be attributed to the child's increased involvement with delinquent peers and a corresponding increase in favorable attitudes toward law violation.[21]

The broken home might affect child outcomes in a variety of other ways. A divorce, for example, may result in the prolonged separation of a child from one of his or her parents (usually the father). Although some studies have found that children benefit from paternal involvement after divorce, other investigators have found that the frequency of involvement with divorced fathers is not related to child adjustment.[22]

King argues that frequent child involvement with divorced, noncustodial fathers may carry negative effects because involved ex-spouses are forced to interact more regularly to plan and facilitate visitation. Increased involvement between ex-partners may result in greater parental conflict that could counteract the benefits of father involvement.[23]

Other researchers have found that parental conflict, rather than parental separation, is a more powerful link between family disruption and child behavior. Loeber and Stouthamer-Loeber, for instance, discovered that marital discord, especially overt fighting between parents, is a stronger predictor of delinquency than parental separation.[24] This finding is supported by studies that have found comparable levels of child behavior problems between children from unhappy marriages and children from broken homes.[25] Furthermore, there is consistent evidence that children in

high-conflict, intact families show more behavioral problems than children in low-conflict, single-parent families.[26] Loeber and Stouthamer-Loeber argue that this effect may be attributed to the fact that children suffer emotionally as a result of witnessing parental discord.[27] Observing fighting between parents may cause emotional scars as well as serve as an antisocial model of conflict resolution.

The great diversity of family forms in America and the large number of stable single mother–headed families has required researchers to look beyond the broken homes question to consider the effects of other family structures. Although some research suggests that the offspring of stable single mothers are more likely to experience a host of negative outcomes, including delinquency,[28] other investigators have failed to find that being raised by a single mother is criminogenic.[29]

More recent research efforts demonstrated that teens living with single mothers were more likely to be delinquent and experience school failure[30] and that these effects were best explained by relational instability in the family[31] and the breakdown of parental supports and controls (e.g., supervision, involvement, monitoring, closeness) that may occur in the single-parent home.[32]

Working Mothers and Delinquency

Female labor force participation has increased radically over the last 50 years. According to census data, the proportion of women working in the paid labor market has grown from approximately 28 percent in 1940 to close to 60 percent in 1992.[33] Recent estimates show that more than 60 percent of those mothers with children less than 3 years old are employed outside the home and more than 79 percent of those with children between the ages of 6 and 17 are employed.[34]

Although the greatest increase in maternal labor force participation has occurred in the last 40 years, social commentators and political leaders have expressed anxiety about this trend for some time. Chira argued that that the negative focus on working women can be traced back to the Great Depression when women were depicted in the popular media and in government literature as taking ''men's jobs.'' Even when women were briefly encouraged to work to support the World War II effort, Hollywood films celebrated the sacrificial housewife while denigrating the ''working mom.'' Meanwhile, the post–World War II Congress held hearings about the potential negative outcomes associated with maternal employment and Freudian psychologists added authoritative warnings to the discussion, suggesting that maternal work threatens the sanctity of the mother-child bond. These widespread anxieties, however, were largely fueled by threatened cultural ideals and the tensions created by rapid social change. Empirical inquiries rarely supported rhetorical attacks against the working mother.[35]

Today, the putative effects of maternal employment continue to stimulate much public debate in the popular press,[36] controversial books,[37] talk radio, and prime-time news specials. Working mothers, themselves, often feel a tremendous amount of guilt related to their assumed

preference of work over parenting and its effects on the life chances of their children. These concerns have been driven, in part, by claims made by social critics and childrearing "experts" who have argued that working mothers cannot offer children the support and discipline that they need, which is likely to result in an attachment disorder and severe behavioral problems.[38]

In a well-known examination of the behavioral effects of having a working mother, Belsky demonstrated that maternal employment during infancy is associated with insecure attachment and aggressiveness and noncompliant behavior in middle childhood.[39] These findings, however, have been criticized for being based on nonrepresentative samples and for failing to account for critical background variables such as a mother's human capital and social capital.[40]

More recent research has suggested that concerns about the developmental risks of maternal employment may be somewhat overstated. In numerous studies, Parcel and Menaghan have discerned relatively few negative effects of having a working mother on family functioning or child behavior.[41] The number of hours mothers spent in the paid labor force, for example, was found to have no impact on the emotional support, cognitive stimulation, or physical environment of children between the ages of 3 and 6 years old.[42] Similarly, the 10- to 14-year-old children of regularly employed mothers suffered no deficits in maternal warmth, maternal monitoring, or cognitive stimulation.[43] Furthermore, a similar pattern can be seen in the relationship between maternal employment and child behavioral problems. The number of hours mothers spent in paid employment had no effect on the behavioral problems of 4- to 6-year-old[44] or 10- to 14-year-old youth.[45]

Although few work and family issues have stimulated more empirical investigation than the impact of maternal employment on child development, research on the link between mother's work and delinquency is relatively scarce. Early researchers found positive relationships between maternal work and delinquency, which they typically attributed to reduced supervision.[46] By contrast, some later studies suggested that delinquency is actually less common among children of regularly employed mothers.[47] Yet other research, however, reports little or no effect of maternal work on delinquency.[48]

Most recently, Vander Ven and Cullen found that maternal work, alone, had little effect on delinquency but that children were at a greater risk for delinquent involvement when their mothers worked in coercively controlled jobs in the secondary labor market. These jobs were characterized by low pay, low occupational complexity, and shift-based work schedules. This research suggests that policy makers should focus on creating better access to complex, rewarding, and well-paying jobs for all women, rather than demonizing the working mother.[49]

HISTORICAL PERSPECTIVES ON DELINQUENCY AND MOTHERHOOD

The recent attention given to the effects of the behavior of single, working, and adolescent mothers and the delinquency of their children

during the last two decades raises questions about the distinctiveness of such attributions and their relationship to social change. Has the connection between motherhood and the delinquent behaviors of their children always been apparent, or does it have an apparent origin? Have there been previous periods during which maternal responsibility for delinquency has been stressed? If so, whose interests were served by such attribution? In exploring these questions, we return to the pioneering work on the "invention" of juvenile delinquency, Platt's *The Child Savers* and recent historiography influenced by Donzelot's *The Policing of Families.*

Maternal Justice and Delinquency

Platt's history of the emergence of understandings of juvenile delinquency and contemporary juvenile justice institutions was an early and influential work of revisionist historiography. Running parallel to the countercultural movements of the 1960s and 1970s, revisionist historians sought to challenge orthodox accounts that interpreted the law and social control practices of Western liberalism in terms of humanitarian progress and the expansion of freedom, exposing these interpretations as myths that functioned to conceal the extension of social control in everyday life.[50] In Platt's analysis, the so-called child-saving movement of the Progressive Era, which mobilized juvenile justice reform, was in fact a "symbolic movement" of the middle class, fighting to preserve normative values and the "sanctity of fundamental institutions" in the midst of the breakdown of traditional ways of life that were concomitant with urbanization.[51] Women, as social reformers and mothers, were understood to be central to this movement. Just as the values they defended were the traditional values of the "nuclear family," "parental discipline," and "women's domesticity," Platt argued that the movement reflected the interests of middle-class women by preserving their traditional roles as moral guardians and social workers in the face of social transformation.

Although Platt's work provocatively argues that juvenile justice reform was advancing class interests, not humanitarian ideals, his focus on "rule-makers and rule-making"—which he shares with Howard Becker and other labeling theorists of his day—leads him to direct his attention to the reformers and their formal institutions rather than those groups being acted upon and more subtle processes of change. In a number of ways, Platt's attention limits his study. Platt focuses on the innovations in formal law and the development of juvenile justice institutions, but says little about how concerns over the welfare of children lead to extensive indirect forms of surveillance as well as direct intervention. Of particular significance, although Platt holds that the "nuclear family" was a traditional value to be defended, he only touches on transformations of the family during the Progressive Era and how new conceptions of the relationship between parents, children, and the state enable increased regulation of families and children. Additionally, little is said about the relationship between juvenile justice reform and other agencies and institutions, as well as about the increased importance of expert knowledge in social and political life.

Familization, Expertise, and Scientific Motherhood

Many of the limitations identified above have been addressed by a more recent scholarship critically exploring social control and state. Such works not only interpret the emergence of delinquency in terms of legislation and institutions, but also approach delinquency as one aspect of a complex process of transformation—and regulation—of the family in the late-nineteenth and early twentieth century. Of singular importance is French sociologist Donzelot's 1977 study connecting the transformation of the family to new forms of state governance, *The Policing of Families.* For Donzelot, the development of the liberal state is made possible by the discovery of the "social," a realm outside the direct control of the state that can nevertheless be indirectly governed. It is in this context that Donzelot approaches the transformation of the family. If government authority was once envisioned as directly controlling the family and reciprocally dependent on its compliance, liberal government posits a fundamental distinction between the public and private spheres—that is, a shift "... from a government *of* families to a government *through* the family," restricting the family from direct control but rendering it more susceptible to new forms of regulation.[52] These new strategies of regulation and control require the development of new agencies and institutions to socialize and monitor the family, a process Rose calls "familization."[53]

Such scholarship broadens our understanding of social control processes by approaching regulation not simply in terms of legislation and formal justice institutions, but also as the result of a multiplicity of state and extrastate actors and institutions that are involved in reshaping, redefining, and regulating the family, including education, medicine, philanthropy, psychiatry, religion, and social work. Moreover, each field possesses its own forms of scientific expertise, understood by Donzelot to be at the center of the new approach to governance, which depends on socializing "free" citizens to self-regulate their behavior in predictable and desirable ways. The plurality of overlapping knowledge together works to shape, normalize, and regulate behavior, challenging traditional practices with "scientific" advice of the proper, "modern," and "normal" way to behave.

The confluence of extrastate actors and expert knowledge acted on the families in ways that transformed conceptions of maternal roles and responsibilities as well as the meaning of domestic space. Consider, for example, some of the effects of the public health movement of the late nineteenth and early twentieth centuries.[54] The new medical "germ" theory of disease established a connection between illness and hygienic practices, and was employed to shift the attention of women and public health actors to domestic space and everyday hygienic practices. Such theories aided the professionalization of medicine and shaped what historian Apple has called the "ideology of scientific motherhood," that is, the belief "... that women require expert scientific and medical advice to raise their children healthfully."[55] Medical authority was used to justify changes in informal customs, such as handshakes and kisses; women's fashion

(longer skirts that dragged in the mud were seen as carriers of disease—as were men's beards); and religious practices, such as the common communion cup.[56] Considerations of health and disease led to a fundamental reconception of the importance of housework and of responsibility toward the home; led to "social hygiene" supplanting "moral purity" as a basis of moral reform movements; and called into question the traditional practices of breastfeeding infants and the health of women's bodies.[57]

Scientific motherhood, which "exalted science and devalued instinct and traditional knowledge," came not only from the growing number of medical professionals, but also from childcare manuals, newspapers, advertisements, and, by the 1920s, home economics and domestic science classes.[58] In particular, the ideals and practices of scientific motherhood were circulated through new women's magazines, including the *Ladies' Home Journal* and *Good Housekeeping*, respectively founded in 1883 and 1885, whose names reflect the domestic hygiene movement.[59] Such magazines regularly included articles and advertisements connecting health and parenting practices, and, in the case of *Good Housekeeping*, developed "The Good Housekeeping Institute" to experiment and "test consumer goods and household appliances."[60] Through such messages, women's responsibilities to the home, as housekeepers and as caregivers, were elevated, as well as made a target for increased scrutiny. So, too, were they subject to new forms of scrutiny and targets for intervention—the elevation of women's responsibility as caregivers within the home was paralleled with making women "allies" of medical professionals, which took knowledge and control away from women.[61]

Single Mothers and the Emergence of Child Neglect

Although the discourses of scientific motherhood crossed class lines, they concentrated on self-regulation among middle-class families. The transformation of motherhood and the family, however, also allowed for new forms of philanthropic intervention in the name of the child. Gordon's groundbreaking study of the politics and history of family violence, *Heroes of Their Own Lives*, traces the development of concepts and policies of child mistreatment and intervention in its name. For Gordon, "child neglect" as a category and cause for intervention emerges as a response to the Progressive Era's newly defined norms of family and motherhood. In turn-of-the-century Boston, where "approximately 20 percent of ... families were female-headed ... concern about [single motherhood] as a social problem arose sharply. ..."[62] Deviating from the ideals of family and caught in social structures of poverty, single mothers were perceived as a special challenge for social workers and especially subject to charges of child neglect: "single motherhood and child neglect were mutually and simultaneously constructed as social problems, and many of the defining indices of child neglect, such as lack of supervision, were essential to the survival of female-headed households."[63] By foregrounding the mother's deviation as neglect, such constructions pushed to the background recognition of the circumstances of poverty, cultural differences, and other ways

in which children were subject to violence, such as child labor practices.[64] A concern with delinquency as a consequence of child neglect—and of parental neglect as an explanation for delinquency—only "became one of the major themes in child protection" during World War I, when it was tied to a concern for healthy children as future soldiers.[65] This association between maternal behavior and delinquency strengthened in the following years, in part through the scientific arguments of sociologists such as the Gluecks.

Studies of the contemporary practices of child welfare social workers and of welfare surveillance reveal similar evaluations being made of the mother as Gordon discovered at the start of the Progressive Era.[66] Swift's study of case files of child welfare social workers found that workers assess a mother's parenting skills by drawing inferences based on her physical appearance and emotional demeanor. Significantly, domestic hygiene continues to be an issue of evaluation, as housekeeping skills are frequently referenced in ways that connect cleanliness and order to the degree to which a mother "cares" for her child. And while family violence and conditions of poverty may be incorporated into case workers' evaluations, they remain secondary to the evaluation of the mother, who is held to be singularly responsible for the production of the child.[67]

CONCLUSION

In this chapter, we have explored the construction of a key myth in popular and scientific literature on delinquency, that of maternal responsibility. We have explored the empirical basis for contemporary constructions, finding that the evidence is often related to broader structural conditions associated with maternal behaviors. We have seen, moreover, that the construction of maternal responsibility for juvenile delinquency is not simply a contemporary construction, but one that emerges out of fundamental transformations of the family and technologies of governance and social regulation. Far from being an unprecedented construction, conceptions of child neglect emerge in connection with households led by single mothers. Such findings seem to support the suspicion of authors who believe that recent attention to the role of mothers in relation to juvenile delinquency is in response to uneasiness about changing gender roles. Such attention calls into question the ways in which mothers are foregrounded as singularly responsible for the behavior of youth, in ways that obscure the broader social conditions in which they are situated.[68]

NOTES

1. Chira, 1998; Cohen & Katzenstein, 1988; Faludi, 1991; Maynard, 1997.
2. Henshaw, 2004.
3. Singh & Darroch, 2000; McElroy & Moore, 1997.
4. Maynard, 1997.
5. Geronimus, 1997.
6. Grogger, 1997.

7. Geronimus, 1997.
8. Moore, Morrison, & Greene, 1997.
9. Morash & Rucker, 1989.
10. Grogger, 1997.
11. Nagin, Pogarsky, & Farrington, 1997.
12. Gottfredson & Hirschi, 1990.
13. Morash & Rucker, 1988.
14. Nagin et al., 1997.
15. McLoyd, 1990.
16. Nagin et al., 1997.
17. Pogarsky, Lizotte, & Thornberry, 2003.
18. Demuth & Brown, 2004.
19. Wells & Rankin, 1991.
20. Wells & Rankin, 1991.
21. Rebellon, 2002.
22. Simons, Whitbeck, Beaman, & Conger, 1994.
23. King, 1994.
24. Loeber & Stouthamer-Loeber, 1986.
25. Loeber & Stouthamer-Loeber, 1986.
26. Tschann, Johnston, Kline, & Wallerstein, 1989.
27. Loeber & Stouthamer-Loeber, 1986.
28. E.g., Garasky, 1995; McLanahan & Sandefur, 1994; Thomas, Farrell, & Barnes, 1996.
29. Turner, Irwin, & Millstone, 1991; Watts & Watts, 1991.
30. Demuth & Brown, 2004; Manning & Lamb, 2003.
31. Manning & Lamb, 2003.
32. Demuth & Brown, 2004.
33. U.S. Bureau of Census, 1993.
34. Bureau of Labor Statistics, 2002.
35. Chira, 1998.
36. Dionne, 2002; Kristol, 1996; Strubel, 1996.
37. Flanagan, 2006; Steiner, 2006.
38. See Eyer, 1996.
39. Belsky, 1988.
40. See Harvey, 1999.
41. See Parcel & Menaghan, 1994a, 1994b.
42. Menaghan & Parcel, 1991.
43. Menaghan, Kowaleski-Jones, & Mott, 1997.
44. Parcel & Menaghan, 1994a, 1994b.
45. Menaghan et al., 1997.
46. Glueck & Glueck, 1950; Hirschi, 1969; Roy, 1963; see also Sampson & Laub, 1993.
47. Farnworth, 1984; West, 1982; Zhao, Cao, & Cao, 1997.
48. Broidy, 1995; Hillman & Sawilowsky, 1991; Vander Ven, 2003; Vander Ven, Cullen, Carrozza, & Wright, 2001; Wadsworth, 1979.
49. Vander Ven & Cullen, 2004.
50. E.g., Cohen & Scull, 1983; Ignatieff, 1978; Rothman, 1990.
51. Platt, 1977, p. 74.
52. Donzelot, 1977, p. 92, emphasis added.
53. Rose, 1987, p. 70.
54. Lupton, 1995, p. 42.
55. Apple, 1995, p. 90; see also Lupton, 1995.

56. Tomes, 1998, pp. 104–105, 157–159, 132–134.
57. Ehrenreich & English, 2005, pp. 155–200; Hunt, 1999, pp. 77–139; Wolf, 2001.
58. Apple, 1995, p. 95.
59. Tomes, 1998, pp. 140–41.
60. Tomes, 1998, p. 140.
61. Apple, 1995, p. 91; cf. Donzelot, 1977.
62. Gordon, 2002, p. 86.
63. Gordon, 1994; Gordon, 2002, p. 84.
64. Gordon, 2002, p. 117.
65. Gordon, 2002, pp. 136, 139.
66. Gilliom, 2001; Swift, 1995.
67. Swift, 1995, pp. 101–125.
68. A variety of other scholars argue that a number of emergent social problems can be analyzed as extensions of childhood regulation and maternal responsibility. For Ian Hacking, contemporary attention to child abuse differs from constructions of "child battering" in previous centuries because of the medicalization and normalizing (as abuse) of the discourse. As constructions of child abuse allow for unprecedented intervention in family life at a time when the welfare state is in decline, Hacking suggests that child abuse enables a variety of theses about the construction of familial problems as an alternative form of regulation with the decline of state welfare strategies (Hacking, 1991). For Malacrida, discourses of Attention Deficit Disorder—be they mainstream or alternative—construct and rely on discourses of maternal responsibility, regulating parental behavior far into their child's teenage years based on constructions of maternal responsibility for a child's potential "dangerousness" or being "at risk" (Malacrida, 2002). Anorexia is also grounds for medicalized intervention (Vander Ven & Vander Ven, 2003). Vander Ven and Vander Ven show how expert discourses, both psychological and sociological, are constructed from the 1950s on to problematize girl's deviant eating behavior in ways that invoke maternal responsibility. Finally, in some U.S. states, alternative birthing practices that seek to limit medical expertise, such as midwifery and the home birth movement, have been responded to as a form of negligence, going so far as to label it a form of child abuse (Beckett & Hoffman, 2005).

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CHAPTER 12

The Great Wall of China: Cultural Buffers and Delinquency

Hsiao-Ming Wang

Residents of the upscale southern California community were shocked when a 17-year-old honor student, Stuart Tay, the son of a prominent obstetrician was found bludgeoned, choked, and buried in a backyard. The victim's parents, Chinese immigrants, were horrified to find out during the investigation that their obedient and academically oriented teen was brutally murdered by five classmates, four of whom were also young Chinese Americans. They were led in the attack by Robert Chan, a youth slated to be class valedictorian but who was reputed to have ties to Wah Ching, a Chinese criminal society. The story grew more surreal for the families as it was uncovered that the youth, including Tay, had been trafficking stolen computer parts. The group was planning a burglary but had grown suspicious of Tay's loyalty, which resulted in his murder. The involvement of so many Chinese American youth in a crime of this nature seemed to contradict perceptions of a law-abiding or "model" immigrant population. Could it be that the values of success and achievement had been pushed beyond the limits of acceptable behavior for these youth?

ASIAN AMERICANS AND DELINQUENCY

Asian Americans as a group are underrepresented in all areas of the criminal justice system from arrest through incarceration. As 2004 data from the U.S. Census Bureau indicates, about 4.1 percent of the total population were Asian Americans who contributed to only 1.2 percent of the total number of arrests. In a closer state analysis, about 3 percent of the Texas population was Asian in 2003. However, Asians accounted for

only 0.5 percent of all arrests in that state in that same year. An identical pattern also could be found in the juvenile justice system. U.S. Census data in 2004 indicated that 17.4 percent of all students in grades 9 through 12 reported carrying a weapon at least one day during the previous 30 days, while only 10.6 percent of Asian American students reported the same behavior. The *Sourcebook of Criminal Justice Statistics 2003* presented a similar picture. Although 3.7 percent of Americans under the age of 18 were Asians, they accounted for only 1.5 percent of incarcerated juveniles. In Texas, Asian youth accounted for only 0.6 percent of all incarcerated juveniles.

The above data inevitably led to stereotypes about the ''model minority,'' a concept derived from the Middleman Minority Theory. This theory maintains that the socioeconomic stratum of Asian Americans, specifically Japanese, Chinese, and Korean Americans, is between European Americans and African Americans. Asian Americans represent a collective ''model minority,'' and may serve as a buffer or interface between European Americans and African Americans.[1]

The concept of a Middleman Minority, however, has been criticized for its apparent biases. Opponents point out that ''model minority'' perhaps is a positive label, but the theory itself can be biased. First, Asian American males, on the whole, are underemployed, underpaid, or both. Second, a diverse group of Hispanics and Jews who may also serve as a buffer are totally ignored by the theorists. Third, the theory is an attempt to segregate Asian Americans into a category separated from other racial minority groups in the United States.[2]

From a criminological viewpoint, the model minority thesis may have some merit. To Asians, at least, it had correctly described their characteristics as thrifty, industrious, persevering, delaying gratification, and investing in and expending hard work.[3] Those depictions seem to remind one of Gottfredson and Hirschi's ''General Theory of Crime,''[4] which addressed the human characteristics thought to be related to criminal conduct. Gottfredson and Hirschi maintained that those with low self-control are more likely to commit crime because they enjoy risky, exciting, or thrilling behaviors with immediate gratification. Gottfredson and Hirschi depicted people with low self-control as deriving satisfaction from ''money without work, sex without courtship, revenge without court delays.'' If Middleman Minority theorists' description of Asian American characteristics were correct, in line with Gottfredson and Hirschi's theory, Asian Americans would be less likely to engage in crime and delinquency. Crime data seem to support this assumption.

Research on cultural aspects of crime are often complicated by the use of generic terms such as Asian American, which involves a wide spectrum of ethnicities ranging from Chinese to Indians. Each ethnicity has its own history and culture. It would be problematic to assume Asian Americans to be a homogeneous group. To avoid this problem, it is better to examine a specific issue within the context of a certain culture. To follow this line, this chapter selectively examines the relationship between Chinese heritage and delinquency. To shed some light on this issue, this

chapter begins with an overview of some of the most prominent aspects of Chinese culture.

CONFUCIANISM AS THE THEME OF CHINESE HERITAGE

To understand Chinese heritage, one must appreciate Confucianism, a Latinized term traced back to the Jesuits of the sixteenth century. Confucianism roughly means "the doctrine of *rujia*" or the "School of Ru" in Chinese. The formation of *rujia* was in the early years of the Zhou Dynasty (1100–256 B.C.). *Rujia*, as a distinct school, recognized Confucius (551–479 B.C.) as their master and devoted themselves to the Six Classics: the Book of Poetry, the Book of History, the Book of Rites, the Book of Music, the Book of Changes, and the Spring and Autumn Annals.

Although Confucianism is not a theory about criminal behavior, Confucius' thesis indeed addresses human behavior and social disorder. Confucius believed that social disorder developed from the decay of ritual (*li*). To maintain the social order, social harmony and responsibility must be considered above individual freedom and rights, and the virtues of humaneness (*ren*) and righteousness (*yi*) must be emphasized through education at home and school.[5]

Confucius' followers are split in terms of human nature. Mencius (371–289 B.C.), on the one hand, elaborated Confucius' teaching to maintain that human nature is basically good. And, the purpose of education is mainly to keep that original goodness. Xunzi (298–238 B.C.), on the other hand, claimed that humans are originally evil. To maintain the social order, strict laws and harsh punishments must be exercised, and attention must be paid to ritual through education. The *Fajia*, the Legalist School, later adopted Xunzi's views.

Confucianism did not enjoy official patronage until the Han Dynasty (206 B.C.–220 A.D.). The emperor of Han recognized that the blend of Confucian idealism and Legalist pragmatism was a stabilizing force for society. The neo-Confucianism movement, developing during the Song dynasty (960–1279 A.D.), expanded Confucian concerns and established new methods to attain enlightenment. The impact of Confucianism spread well beyond Chinese territories. Because of China's political and cultural dominance in East Asia, Confucianism had a lasting impact in Japan, Korea, and Vietnam, too. The influence of Confucianism continues to the present day.[6]

Confucianism as a Form of Control Theory

Dr. Sheu, a criminologist in Taiwan, once tried to link Confucianism to criminological theory. Sheu found parallels between Confucianism and Control Theory,[7] and concluded that Confucianism was the earliest form of Control Theory. Sheu argued that both perspectives emphasize the

cultivation of human nature and control mechanisms.[8] First, the primary focus of Control Theory is to explain why people "do not" commit crime, while the main aim of Confucianism is to educate people into becoming "gentleman." Second, Control Theory emphasizes external controls (exerted by family, school, and peer group) and internal control of desired restraint, whereas Confucianism emphasizes the virtues of humaneness (*ren*) and righteousness (*yi*) through education at home and school.

To test his assumptions, Sheu analyzed a self-reported data set consisting of 1,185 youth across four ethnic groups in Taiwan. He found that the difference in educational attainment among these four ethnic groups was significantly related to delinquency (measured by gambling, smoking, drinking, and so on). This finding suggests that educational attainment, a value emphasized by Confucianism, is a protective factor against delinquency.

Sheu further used a data set collected from 417 high school students in an American Chinatown in 1983 to test the effect of "assimilation." The sample group included American-born or foreign-born students. He found that American-born Chinese youth are more likely to assimilate into American culture or lose their sense of Chinese heritage. As a result, they are more likely to be individually oriented and less likely to be attached to school. Even though Sheu's Chinatown data did not directly address delinquency, his findings indirectly implied that Chinese cultural constraints could be an inhibiting factor with delinquency.

THE *THREE-WORD SUTRA*

Prior cross-cultural studies of delinquency point to Chinese heritage as a protective factor, but the process of cultural cultivation is still not clear. In line with Control Theory and Confucianism, the process of cultivation should begin at an early age. To shed some light on this issue, the author examined the *Three-Word Sutra*, the first textbook for almost all Chinese children. If the value of education is essential to social stability, then the ideas of social control should be easily found in the content of this sutra.

There are at least two reasons why the *Three-Word Sutra* is so popular in Chinese societies. The first reason is that it is easy for children to learn. The *Three-Word Sutra* has a total of 216 words, which are organized into three-word clauses and four-clause sentences. It reads like a poem and sounds like a chant. That is why this book is also called the "three-word chant" in English. Children enjoy chanting, and can memorize the lyrics even before they actually recognize the words. The second reason is educational. The content of the *Three-Word Sutra* is precise, addressing the basics of Chinese literatures, mathematics, geography, history, and ethics. Most contemporary educators believe that this book should be the first that children read. Hence, although the *Three-Word Sutra* is not an official textbook in modern education systems, many Chinese parents still want their children to study this book at home.

The *Three-Word Sutra* is not criminology oriented, but the contents of the first seven sentences may be interpreted from a criminological

perspective. The first sentence—"men at their birth are naturally good; their natures are much the same, but their habits might be widely different"—addresses the basic assumption of human nature. The *Three-Word Sutra* essentially reflects Mencius' view, and maintains that human nature is good. However, it also recognizes that human's habits, and the appearance of human nature, might be widely different.

The second sentence—"if there is no teaching, one's nature will deteriorate; the right way in teaching is to attach the utmost importance in thoroughness"—gives a social-process explanation for why human habits might be widely different. The benefit of persistent teaching is that it can preserve the original goodness of human nature. The influence of the second sentence is that Chinese parents always emphasize the value of education, which is indicated in almost all comparative delinquency literature. It is not difficult to find Chinese parents who are willing to save every penny they earn to support their children's education.

Both the third and fourth sentences provide illustrations of the second sentence. However, the third sentence—"the mother of Mencius chose a nicer neighborhood to live; and if Mencius did not learn, she would break a shuttle from the loom"— is more of a reflection of the Chinese view of teaching. It refers to the childhood story of Mencius. Most Chinese people believe that Mencius' success should be attributed to his mother's dedication.

Mencius's father died when Mencius was very young. The life of Mencius' mother was as hard as most single mothers in America today. She could make a living only as a weaver. Initially, Mencius' mother and Mencius lived near a cemetery. Mencius' mother decided to move to a better neighborhood when she found Mencius intensely preoccupied with imitating funeral services as a game instead of studying. Their second home was near a market where Mencius became obsessed with the practices of doing business instead of studying. Mencius' mother decided to move again. They finally moved to a home near a school where Mencius actively imitated school children studying.

Later on, Mencius actually went to school. One day, he came home from school earlier than his normal schedule. His mother asked the reason for this while she was weaving at the loom. Young Mencius replied, "I left because I felt like it." His mother took her knife and cut the finished cloth on her loom. Mencius was startled and asked why. She replied, persistence is the way of studies. Like weaving, only the finished cloth is marketable. Thus, she explained, the result of your truancy is much like my cutting the cloth. Mencius obviously received the message from his mother's teaching. He studied very hard from that moment and eventually became a famous Confucian scholar.

The fifth sentence—"it is father's fault to feed without teaching, whereas it would be the teacher's laziness if he/she teaches without severity"—identifies those who have responsibility for teaching. Traditional Chinese society is patriarchal. The father is responsible for his children's education at home. When the father is not available, then the mother assumes the responsibility (as Mencius' mother did).

Similarly, the teacher takes the full responsibility of teaching at school. Chinese teachers not only are expected to teach but also to exact discipline as necessary. Traditionally, Chinese teachers have the privilege of using corporal punishment on students. Confucius has been recognized as "the ultimate sage master of yore," the greatest Chinese philosopher and educator, because of his dedication to teaching. In memory of his great achievements in education, Chinese people like to erect a statue of Confucius at schools and town halls, including the one standing in front of the Chinese Cultural Center in Houston. If one takes a close look, one may find that Confucius carries a stick. It is said that the stick in the Confucius statue is a figure of a teaching rod. Chinese parents generally believe the adage "spare the rod, spoil the child." Many Chinese American professionals mention their childhood experiences of having their teachers punish them for misbehaving or not studying hard enough by using the teaching rod. In addition, if they dared to complain about this punishment to their fathers, they would most likely receive another punishment when they returned home. This experience highlights the essence of the end of the fifth sentence—"good kids can be taught, as long as parents and teachers work together."

The sixth sentence—"if the child does not learn, this is not as it should be; if he does not learn while young, what will he be when he gets old"—addresses the importance of learning in childhood. The seventh sentence—"if jade is not polished, it cannot become a useful device; if a man does not learn, he cannot know the appropriate behavior"—elaborates the sixth sentence by using the metaphor of jade polishing and points out that the purpose of education is to learn correct manners.

A review of the first seven sentences of the *Three-Word Sutra* presents several ideas related to contemporary criminology. These ideas are summarized below:

- Human behavior is learned.
- Education is a way to prevent delinquent behavior.
- A good environment is essential for a child's education.
- Persistence is the essence of a successful learning journey.
- Fathers and teachers both have a responsibility for the child's education.
- A successful learning journey starts from early childhood.

These ideas are similar to Sutherland's Differential Association Theory.[9] Sutherland identified that the learning process is primarily from intimate groups, but he failed to point out that parents and teachers have the full responsibility to teach children right from wrong. Hirschi, in his Social Bond Theory, mentioned that delinquency could be prevented through four bonds: attachment to conventional institutions (e.g., family and school), involvement with conventional activities, commitment to conventional goals, and belief in traditional values. Hirschi's thesis may be the closest one to traditional Chinese ideas, but it still does not directly point out parents' and teachers' full responsibility. Furthermore, these ideas seem to parallel Interactional Theory. Thornberry conceptualized

delinquency in integrated terms and maintained that different variables affect delinquency at certain ages.[10] For example, lack of attachment to parents is a significant contributor to delinquency among those in "early adolescence" (11 to 13 years old), while a decrease in school bonds and associations with peers assume greater influence in the stage of "middle adolescence" (15 to 16 years old).

This unique idea about parents' and teachers' full responsibility led Chinese parents and teachers to dedicate themselves to their children's education for a thousand years. Chinese media frequently reported stories about successful people from poor families and attributed this success to their parents' dedication to their educations. Chinese media often report stories about criminals and condemns their behavior as bringing shame to their parents. This unique idea was introduced in the United States during several different periods of Chinese immigration.

CHINESE AMERICAN IMMIGRATION

The two major groups of immigrants who became today's Chinese Americans were foreign exchange students and laborers. Both groups can be traced back to the nineteenth century. The first recorded Chinese student studying in the United States was Yung Wing. He came to America in 1847 when he was 19 years old and returned to China with a diploma from Yale in 1854. Yung later led the first group of carefully selected Chinese youth to study in the United States. Many of these former foreign exchange students became leaders in China. With several disruptions and variations, this study-abroad movement continues today.

In the mid-nineteenth century, American businessmen began to import Chinese laborers for the transcontinental railroad's construction. These Chinese men worked long hours in physically dangerous jobs, which few white men were willing to perform. These laborers had few, if any, basic rights or protections. For example, they could not own real estate or bring their family members to the United States. In 1882, the Chinese Exclusion Act was passed, which limited the number of Chinese laborers (not students) entering the United States. This discriminatory law existed until 1943 when China and the United States became allies in World War II.

Chinese Americans are a diversified group in terms of their areas of origin. Before 1949, a majority of Chinese Americans were from Canton, a province in China first exposed to Western influences. The civil war between Nationalists (led by Chang Kai-Shih) and Communists (led by Mao Tzu-Dong) in 1945–49 forced many Chinese refugees from different provinces in China to the United States. In the 1970s and 1980s, thousands of study-abroad students from Taiwan joined the group of Chinese Americans.[11] In 1989, immediately after the Tiananmen Square Massacre, the U.S. government issued special green cards to foreign exchange students from China, which brought even more Chinese immigrants to the United States. The return of Hong Kong to the sovereignty of China in 1997 also resulted in many Chinese immigrants from the former British colony coming to America.

Regardless of where Chinese Americans originally came from, they have a wide range of educational backgrounds. Generally speaking, those who were foreign exchange students usually had advanced degrees, while Chinese laborers may be barely literate. Consequently, Chinese study-abroad students tend to work as professionals, while Chinese labors are more likely to be found in restaurants, laundries, or factories. Despite these differences in educational backgrounds, there seems to be no difference in the parents' perceptions of their responsibility to their childrens' education.

Houston, for example, is the fourth largest city of the United States with a population of more than two million. The Chinese American community in the greater Houston area is estimated at more than 100,000 people. Many of them are highly educated professionals working in the oil, medical, or computer industries. They are more likely to work in Houston but live in Sugar Land, a small city near the outskirts of southwest Houston. The reason for commuting daily between Houston and Sugar Land is mainly due to the quality of education in Sugar Land. Conversely, the Chinese community in Houston also consists of some less-educated immigrants. These immigrants are more likely to reside in the areas of southwest Houston and work in nearby restaurants or shops. When they save enough money to afford a more expensive home, they move to Sugar Land or similar areas for the same reason—to provide better education opportunities for their children.

Chinese American parents' perceptions of their responsibility to their children's education is not only evident in their search for better school districts but also in the form of financial support. Although most American youth depend on scholarships, loans, or part-time jobs for their college education, almost all Chinese American parents are willing to financially support their children through college and even graduate school. Furthermore, this financial support often includes housing costs. For instance, several Chinese American parents in Houston bought condominiums in Austin for their children attending the University of Texas. It would be a big mistake to assume that these Chinese American parents are rich. Most of them came to America with few assets. They worked very hard and lived in a parsimonious way. While other parents may prefer to spend on improving conditions for their children when they are young, the Chinese save for their children's education. They realize that higher education is the pathway to a better future in the United States. They also understand that, being Chinese Americans, it is their full responsibility to help their children fulfill the American dream.

In line with Chinese heritages, the other side of full responsibility for children's education is expectation. First-generation Chinese Americans, regardless of where they originally came from and their education background, tend to impose traditional expectations on their children. They are more likely to ask their children to maintain Chinese cultural traditions, which often means going to Chinese school on the weekend. The weight of these expectations can sometimes cause identity confusion among Chinese American children.[12]

IDENTITY CONFUSION

Erikson, a developmental psychologist and psychoanalyst, coined the term identity crisis.[13] He maintained that identity crisis is the most important conflict human beings encounter when they go through the eight developmental stages in life. Criminologists found that "adolescents undergoing an identity crisis might exhibit out-of-control behavior and experiment with drugs and other forms of deviance."[14]

Self-identity relates to the question, "Who I am?" It is largely based on the internalization of reflections and feedback from other people. People see themselves as others see them. This process starts from the moment we are born. Although most first-generation Chinese Americans see themselves as Chinese, their children are more likely to see themselves as Americans. A survey conducted by the author in 1999 indicated that Chinese American youth generally characterize their parents as being very traditional in the values and in the expectations they hold for their children. Many youth noted that their parents always ask them to study but not play. Some youth further noted that they want to be artists, but their parents wish them to be doctors or engineers. Many youth noted that they perceive themselves as Americans, but their parents insist that they go to Chinese schools on weekend. These different perceptions inevitably cause the issue of identity confusion among Chinese American children.

Chinese culture underscores the notion that children should study hard to earn academic achievements to honor their parents. Many Chinese American youth truly appreciate their parents' support but are often overwhelmed by the magnitude of their expectations.

There are differences, however, between the American-born and the foreign-born (including China, Hong Kong, and Taiwan) youth regarding self-identity. If migration takes place after the children's memory is stabilized, usually by 10 or 12 years of age, and if the Chinese language is maintained, the young immigrants may not suffer from identity confusion.[15]

CHINESE HERITAGES AND DELINQUENCY

When Erikson's theory and Tung's thesis are integrated, it is reasonable to assume that the memory of home country and the practice of the mother tongue may protect Chinese American youth from an identity crisis. Studies on Asian American delinquency in North America have found that Asian American youth, particularly those of Chinese heritage, tend to have lower rates of delinquency.[16] Those studies suggested that Chinese Culture, which emphasizes conformity, harmonious relationships, and respect for authority, might contribute to this unique phenomenon. Conversely, previous research indicates that as youth adopt American values, they may become more likely to reject their traditional heritage. Thus, while Chinese heritage seems to serve as a protective factor against delinquency, this proposition should be interpreted with caution from two viewpoints: the traditional measuring rod and economic advancement.

The Side Effect of the Traditional Measuring Rod

Most Chinese parents tend to use studiousness and academic achievements to measure their children's behavior. Studiousness is usually measured by hours spent reading textbooks, and achievements are measured by the accumulation of trophies and awards. This traditional measuring rod usually triggers considerable tension between Chinese parents and their children. This problem is not as obvious, however, in Chinese societies in which the emphasis is on the success of groups and the society maintains tight social controls. Chinese children tend to recognize that everyone is under the same system of values—everyone follows parental expectations. Thus, they are not the only ones who have to follow these controls, and this mind-set helps them adjust and perform.

In Taiwan, a child is expected, on any given school day, to get up at 6 A.M. and go to classes by 7 or 8 A.M. He or she will study Chinese, math, English, sciences, social sciences, and other subjects at school until 4 P.M. After school, he or she will be sent to "cram schools"[17] for strengthening academic subjects or training in the arts, such as drawing, dancing, or playing piano until 9 P.M. A quick and simple dinner is often consumed either at home, in the cram school, or on the way to the cram school. After the cram school, he or she needs to complete a number of homework assignments before calling it a day. Despite all their efforts, a child cannot evaluate himself or herself as an achiever in Taiwan. Under the traditional measuring rod, a child must be ranked in the top three in his or her class and earn many trophies and awards to honor his or her parents.

For the first-generation Chinese Americans, it would be a problem if they still used this traditional measuring rod. This problem becomes more significant when children begin to go to school, where they are exposed to a less competitive mainstream culture. Many Chinese American children gradually find that they are being asked to do extra homework (most likely by their parents) after school, while other American children just play in their backyards. Additionally, Chinese American children find that they need to go to Chinese school on the weekend, while other American children enjoy recreational and leisure activities at home and with their families. Chinese American children start to question why they do not have the same American experiences. Prior research has indicated that most Chinese American youth will drop their mother language upon entering school because of exposure and the desire to fit in.[18] This change implies a transition of the self-identity from being Chinese to being American. This transition, especially in the initial stages, shocks many Chinese American parents and causes conflicts between them and their children. It is not too difficult to imagine hearing the following conversation in many Chinese American families:

> Parents: Why do you always play on your computer but do not study?
> Child: I am not "playing on" my computer. I am "using" it to contact my friends by the Internet.

Parents: Why are you not practicing piano at home on weekend but instead fooling around with your friends?

Child: We just go to movies, we are not "fooling around."

This conversation specifically highlights the different expectations of children's behavior between the East and West. Traditionally, the Chinese vocabulary does not have an equivalent term for delinquency. Youth in traditional Chinese societies are measured by the standard of maintaining good behavior and studying hard. They are expected to look up to their parents and siblings at home. They are also expected to follow their teachers and study hard at school. Any child who does not meet this standard would be regarded as a "bad kid" who is incorrigible and a shame to the whole family. This concept is not common in Western societies.

In Western society, there is a big difference between "bad kids" and delinquents. This difference can be addressed by a behavioral continuum. The left end of this continuum represents delinquent behavior, while the right end refers to normal behavior. Between these two ends is a gray area in which certain behaviors are neither fully normal nor totally delinquent. Chinese American parents, under the influence of traditional Chinese culture, tend to stand at the right end to evaluate their children's behavior. When their youngsters do not meet their standards, they tend to label their children as "bad kids." Conversely, most Chinese American youth, under the influence of American education, are more likely to stand at the left end to measure their behaviors. As long as they are not involved in what is legally considered delinquency, they tend to consider themselves as not bad.

This different perception of delinquency causes another side effect of the traditional measuring rod—two-faced Chinese American youth. One summer, several Chinese American youth were found drinking alcohol in a camp and bullied other kids into either joining them or not telling. These youth all maintained excellent academic records at high school. Why did they develop delinquent behavior at the summer camp? A different perception of delinquency could be one reason. The Chinese American youth were not involved in any delinquency when their parents were monitoring them as they studied hard, because the concept of studying hard included the connotation of no bad behavior, which is a traditional Chinese perspective. Thinking creatively, however, the Chinese American youth claimed they were not guilty when they were caught because their parents did not expressly ask them not to drink and threaten others while at the camp. In fact, these youth all had learned that drinking and threatening are delinquent behavior at schools. Their excuse squarely recalls Sykes and Matza's neutralization theory, which maintains that youth know right from wrong; they just use excuses to justify their conduct as they drift between the two.[19]

The Impact of Economic Advancement

To fully explore the relationship between Chinese heritage and delinquency, one cannot ignore the impact of economic advancement in

Chinese societies. Economic reform in China in the 1980s and 1990s largely changed Chinese society. On the one hand, China became the world's third largest exporter, surpassing Japan and following only the United States and Germany. On the other hand, the crime rate in China increased to 163.19 per 100,000 people in 1998 from 55.91 per 100,000 people in 1978. There is an observed association between economic development and crime trends. Studies suggested that the increased crime rate is a result of, among other things, changing cultural beliefs and disruption of traditional social control mechanisms.[20]

Taiwan experienced a similar trend during the recent past. According to time-series data (1998–2005) from the Economic Affairs Ministry in Taiwan, the gross national product of Taiwan increased from $278 billion in 1998 to $355 billion in 2005. Another time-series data set (1991–2005) from the National Police Administration, the highest law enforcement authority in Taiwan, indicated an upward crime trend in this same time period. This data set takes 1996 as its base year and standardizes the crime index at 100, whereas the index of 1991 and 2005 are 67 and 122, respectively.

Currently, although not enough evidence exists to say that economic advancement causes the increasing crime trend, the experiences in China and Taiwan suggest a correlation between these two factors. Some scholars have attempted to clarify this issue from a social control perspective.[21] They maintain that economic advancement weakens the effects of Chinese heritage, and thus more crimes are expected.

Theorists argue that China has existed as a stable and organized society for at least 5,000 years. The need for formal law, courts, or law enforcement had never been as great as that of Western societies. The bedrock of Chinese society is the family, which facilitates informal social control. In addition, Chinese people adopt Confucianism as the guideline for their daily life. Thus, Chinese people sought to create a sense of order from within. The impacts of economic advancement on Chinese heritage are twofold. First, economic development inevitably takes parents away from homes for long hours. Second, economic development emphasizes the value of materialism, which conflicts with the values of Confucianism. As a result, contemporary Chinese children receive less supervision and education from their parents at home. Thus, the inner-directed effort—that is, searching for appropriate behavior—becomes less important than before.

CONCLUSION

A significant amount of research has been conducted on factors predisposing youth to delinquency, but less study has been completed on the variables that may insulate or buffer a child from becoming involved in crime. There is an even greater need for information that identifies prevention or deterrence features in the lives of minority and immigrant youth. Each individual culture may have prescribed values, attitudes, and traditions that create a framework to analyze the potential for involvement in delinquency.

This chapter maintains that Confucianism, the dominant theme of Chinese culture, can be found in the content of the *Three-Word Sutra*. The concepts presented by the *Three-Word Sutra* parallel several contemporary criminological theories, including differential association, social bond, and the interactional approaches. Adherence to the principles of Chinese culture is a protective factor or buffer against delinquency. In an examination of Chinese American youth behavior, it was found that the young immigrants who retain their Chinese language may be less likely to suffer from identity confusion. This may be related to the empirical finding that the youth who are steeped in the Chinese culture tend to have lower rates of delinquency. However, this finding should be interpreted with caution. The side effects of the traditional measuring rod and the impact of economic development, the global marketplace, and exposure to Western culture may weaken the function of Chinese heritage as a preventive factor.

Previous research on Chinese American (or, more generally, Asian American) youth seems to document comparatively lower rates of involvement in delinquency than their non-Asian peers, but little work uses self-reported information to assess what factors may be related to success in school and deterrence from criminal behavior. This may be a needed direction for future research.

NOTES

1. Wong, 1998.
2. Wong, 1998.
3. Wong, 1998.
4. Gottfredson & Hirschi, 1990.
5. Yao, 2000.
6. Oldstone-Moore, 2002.
7. Hirschi, 1969.
8. Sheu, 1999, p. 8.
9. Sutherland, 1947.
10. Thornberry, 1987.
11. Some of them claim themselves as Taiwanese Americans for political reasons.
12. Hune & Chan, 1997.
13. Erikson, 1968.
14. Siegel, 2004.
15. Tung, 2000.
16. Le, Monfared, & Stockdale, 2005.
17. Most Chinese parents both need to go to work. They usually cannot return home until 7 p.m. By doing so, their children are expected to be under no supervision for three hours. To fulfill this gap, many retired teachers or incumbent teachers (not openly) run a cram school to provide supervision for this group of children by a way of extra education. This utility makes cram schools a billion-dollar industry in Taiwan.
18. Tung, 2000.
19. Sykes & Matza, 1957.
20. Liu & Messner, 2001.
21. Liu, Zhang, & Messner, 2001.

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Epilogue

Although these articles have covered a broad range of topics related to delinquency, it is easy to see certain consistencies in youthful offending and in our responses to them. It may be argued that, appearances aside, a juvenile crime is a crime and should be treated accordingly. Over time, age seems to have less effect on mitigating the seriousness of charges and the circumstances of bizarre crimes now seem commonplace. An eight-year-old is arrested for choking a playmate, a six-year-old shoots his sister. We shake our heads in disbelief at teens hiding a body from an unwanted birth and then moving on to a movie or a party, or shooting a parent and then shopping at a mall. Ironically, we assess the demeanor of immature youth in terms of our expectations for normal adult behavior. And, as a consequence, we often stop and reevaluate the way we think about youth crime.

Unfortunately, the immediate news versions that seem to form the basis of our perceptions about youthful offenders and their offenses provide some of the most distorted images. Later, when interest in stories has waned and the public has moved on to the next tantalizing story, the facts of juvenile cases, the explanations, the background, and the historical significance of family dynamics, abuse, secrets, and lies play out in ways that would perhaps temper and mediate our original views of what juvenile crime is really like. Much can be learned from these more notable cases. Away from the circus-like atmosphere of television crime events, children break down, reflect, and talk about not only their hopes and dreams but also what went terribly wrong.

LISTENING FOR ANSWERS

For those who are interested in the accounts behind the media hype, some excellent works bring a much more detailed understanding and insight to these unique cases. The complexity of the juvenile justice system, the network of familial pathologies, drug and alcohol abuse, neglect, and other causes and consequences of delinquency stand ready to be examined from a multitude of perspectives and in a more instructive context than the emotional and sensational "infotainment" accounts. Consider researching some of these sources if you are truly interested in learning more about delinquents and the juvenile justice system.

In *Somebody Else's Children*, journalists John Hubner and Jill Wolfson explore the lives of youth who find their way into California's social service system and the progressive court of noted jurist Len Edwards. Both Edward Humes' *No Matter How Loud I Shout* and Mark Salzman's *True Notebooks* are based on the experiences of journalists who spent a year teaching creative writing to some of the Los Angeles area's most serious delinquents incarcerated in the city's detention facility. Face to face with these superpredators, the authors are able to draw out feelings, reflections, and insights that bare the souls of lost youths. Their toughness and hardened demeanor cracks from time to time, as when Salzman played Saint-Saens's *Swan* on his cello and told the boys that it reminded him of his mother. When he finished the piece, he found that most of the boys—the murderers and robbers—were sniffling and wiping their eyes. He was obliged to play it two more times before they were able to end the session.

Legislators should have to read the comments of the detainees as they ponder the latest government efforts to crack down on crime. When asked about a new law that would charge anyone in a car tied to a drive-by shooting with first-degree murder, not just the actual gunman, a young girl responded, "Well, then, I might as well be firing, too." Rather than deter crime, this jaded veteran of the juvenile system knew that her chances of being able to travel independent of her gang member friends, or to separate herself from their activities, was simply unrealistic. She did not see those options in her life.

Options are, you may argue, in the eye of the beholder. Three generations of African American men take on the issue of the environment, opportunities, and choices in books that paint vivid pictures of street life and juvenile pressures. In *Fist, Stick, Knife, Gun*, Geoffrey Canada recalls how, growing up in a matriarchal household, his activities were monitored closely by his grandmother and mother. The poverty and squalor of the tough Bronx neighborhoods in 1960 where fatherless boys congregated oozed potential violence and dead-end lives, but as Canada recalls, the kids still fought by rules, attended school, and feared the consequences of being late for dinner. This is different from the 1970s childhood of *Washington Post* journalist Nathan McCall, whose anger and resentment fueled his vicious attacks on society, both black and white, male and female, rich and poor. Only while serving a lengthy prison term did the stern direction

and discipline of prison mentors turn his life around. Now, he thinks about young men like gangster author Kody Scott and fears that the rage they hold inside propels them into a violent tailspin of "nothing to lose." Scott's memoir of his gang exploits characterizes a late-1980s escalation of violence foreshadowed by Canada as he, too, watched young minority men grow more hopeless and lethal. Incarcerated, yet unrehabilitated, Kody changes his name to Sanyika Shakur, a tribute to the older Muslim prisoners he meets who try, unsuccessfully, to calm him. Mostly, he retains his street moniker "Monster" and remains true to his destructive calling. Is it another time? Or is it another, angrier, young man?

Although the family was a valuable source of strength for young men like Canada, for others, there is the realization that they are playing out some sort of predestined tragedy that the bonds of kinship cannot overcome. Some of the young men in detention write as if it were fate, an unknown force, that kept moving them in opposition to the pleas of their relatives to avoid trouble and obey the law. And for a few, the family is the source of the poison and the pain that inflicts permanent damage on them. Jennifer Toth tracks the case of *What Happened to Johnnie Jordan*, an abused and neglected youngster who survived a horrific childhood only to become a frighteningly violent young man. In conversations with Toth, he admits that he was never cared for by his drug-involved parents but seems to have suppressed the accounts his siblings tell of sexual torture and physical violence, always being hungry, and never being clean. If encouraged to talk about his life after that, of the 19 foster homes he was placed in from the age of 10 to 15, he reflects "I don't let things go.... I might let it slip but its going to come back and I don't know what brings it back ... something in my mind goes with a taste or smell ... and whoever is there just happens to be the victim." Johnnie even seems to detach himself from the murder of his elderly foster mother. He says he does not know why she died, and is reminded that he killed her. "Yeah," he says quietly, his head down, "I don't know why."[1] 1

Still, for every Johnnie Jordan out there, there is another who simply needs to be given a chance. In *There are No Children Here: The Story of Two Boys Growing Up in the Other America*, Alex Kotlowitz reminds us of the universal optimism of children, even those mired in drugs, poverty, and crime. He shares with us an account of two children chasing a rainbow through the projects, wanting to believe that there really is a treasure at the end. Despite being battered by the adult experiences of cynicism, the 11-year-old still has that naive wonder and hope.

> "I was gonna make a wish," he said. "Hope for our family, like get Terence out of jail, get a new house, get out of the projects." When he disclosed his appeal, he had to stop talking momentarily to keep himself from crying. It hurt to think of all that could have been. Lafeyette too conceded that he's wondered about what they would have found at the rainbow's end. Heaped with disappointments, fourteen-year-old Lafeyette wanted to believe. He wanted to be allowed to dream, to reach, to imagine, he wanted another chance to chase a rainbow.[2] 2

The chances youth get represent hope for our future. More than reducing crime and creating healthier communities is the obligation we have not only to study but also to design, implement, and support those opportunities that will best allow children to thrive and realize their potential, to chase their rainbows.

NOTES

1. Toth, 2002, pp. 101–103.
2. Kotlowitz, 1991, p. 285.

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About the Editors and Contributors

Marilyn D. McShane is a trustee-at-large member of the executive board to the Academy of Criminal Justice Sciences. She and Frank Williams have recently published the textbook *Step By Step Through the Thesis Process: A Resource Guide*. Their *Criminological Theory* book is in its fourth edition with the same publisher.

Frank P. Williams III is professor emeritus at California State University. He is author of *Imagining Criminology* and coauthor of four editions of *Criminological Theory*. He also is coauthor of the soon-to-be-released textbook *Step by Step Through the Thesis Process: A Resource Guide*.

Thomas Austin is professor of criminal justice at Shippensburg University and a graduate of Michigan State University. He has authored or coauthored more than 30 peer-reviewed articles on a variety of criminal justice topics, most recently with one of his current coauthors. His article entitled "The Effect of Legal and Extra-Legal Factors on Statutory Exclusion of Juvenile Offenders" appeared in *Youth Violence and Juvenile Justice* (2005).

Robert L. Bing III is an associate professor of criminology and criminal justice at the University of Texas at Arlington. He earned his doctorate in criminology from Florida State University. He is former chair of the department of criminology and criminal justice and the author of more than 25 refereed articles. His research interests include race and crime, juvenile justice, organizational politics in the courtroom, and issues in criminal justice education.

Alan I. Feldberg is a Pennsylvania-licensed psychologist employed by Cornell Abraxas to provide clinical programming and services for the Juvenile Firesetter Programs in South Mountain, Pennsylvania. He has implemented an ever-evolving clinical program that includes cognitive behavioral approaches focused on firesetting issues, filling in areas of deficit, and working with underlying dynamic issues within a unique juvenile firesetter program. In addition to work with juvenile firesetters, his professional interests have included the relationship between trauma and conduct problems, the integration of cognitive behavioral techniques with ego psychology, and family therapy.

Jeannine A. Gailey is assistant professor of criminal justice at Texas Christian University. Her current research interests include organizational deviance, attributing responsibility for wrongdoing, and masculinities. Her work has appeared in such journals as *Social Psychology Quarterly, Deviant Behavior*, and *Journal of Applied Social Psychology.*

Camille Gibson is an assistant professor of criminal and juvenile justice at Prairie View A&M University in Texas. Her publications include work on education and delinquency, law enforcement, child abuse, and Jamaican organized crime.

H.R. "Rudy" Hardy Jr. is an adjunct professor of criminal justice at the Houston Community College-Northwest. He earned his master's degree in criminal justice at the University of Houston-Downtown. Rudy retired in 2003 after a 30-year career as a federal criminal investigator. He is presently under contract as a firearms crime analyst in Houston, Texas.

Bruce Hoffman is assistant professor in the department of sociology and anthropology at Ohio University. His areas of research include criminology, sociolegal studies, and science studies. He is currently working on a book investigating law's power in shaping the consciousness and organization of midwifery and the home birth movement in California, Oregon, and Washington.

Ming-Li Hsieh holds a bachelor's degree in Japanese language and literature from the University of Chinese Culture in Taipei and a master's degree in security management from the University of Houston-Downtown, where she was recognized as the outstanding graduate student in 2006. She has presented research at several academic conferences and plans to continue her graduate studies in criminal justice in a doctoral program.

Lorine A. Hughes is an assistant professor in the School of Criminology and Criminal Justice at University of Nebraska, Omaha. She is coeditor of *Studying Youth Gangs.*

John H. Lemmon earned his doctorate in social work from the University of Maryland and is currently an associate professor of criminal justice at

Shippensburg University. He has more than 30 years' experience working in Pennsylvania's Children and Youth and Juvenile Justice Systems. His research interests include the effect of family life on youth deviancy and clinical treatment of antisocial behavior. His most recent publication, entitled "The Effects of Maltreatment Recurrence and Child Welfare Services on Dimensions of Delinquency," appeared in the March 2006 edition of *Criminal Justice Review.*

Richard McWhorter earned his doctorate in juvenile justice at Prairie View A&M University. He is a Licensed Professional Counselor, a Licensed Marriage and Family Therapist, and a Certified Hypnotherapist. For nine years he has taught graduate courses in the Marriage and Family Therapy Program in the Human Science Department at Prairie View A&M University and currently he is the Graduate Human Science Program Coordinator. In addition, he has more than 15 years of clinical experience working with victims and offenders of violence and sexual offenses.

Ariane Prohaska is an instructor at the University of Alabama. She earned her doctorate in sociology from the University of Akron in December 2006. Her research and teaching interests include gender, work, and family, masculinities, research methods, and statistics.

Frances P. Reddington is a professor of criminal justice at the University of Central Missouri in Warrensburg, Missouri. She earned her doctorate in criminal justice from Sam Houston State University. Her research interests include all aspects of juvenile justice. She has published articles in the areas of juvenile law, juveniles in adult jails, transfer of juveniles to the adult court, juveniles and the age of criminal responsibility, training of juvenile probation officers, the use of charter schools, and the role of Guardian ad Litems in abuse and neglect cases in juvenile court.

Thomas M. Vander Ven is associate professor and director of criminology in the Department of Sociology and Anthropology at Ohio University. His research interests include delinquency and the social control of youth, work, and family; the sociology of social problems; and criminological theory. His publications include articles in *Social Problems, Criminology, Human Studies, Deviant Behavior*, and *Crime and Delinquency.*

Hsiao-Ming Wang is associate professor of criminal justice at the University of Houston-Downtown (UHD). Before beginning his academic career, he was assistant special-agent-in-charge at the Investigation Bureau, Ministry of Justice in Taiwan. He has published articles in several refereed journals such as the *Law & Society Review.* He is the director of Bayou Connection, an international academic cooperation program at the UHD.

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Preface

CHILDREN IN THE ARMS OF THE LAW

The 12-year-old boy in his baggy tailored shirt and oversize prep school pants seems lost at the courtroom table. Perhaps as part of defense strategy, he struggles to see over the table, dwarfed next to his lawyers. The youth is on trial for the shooting of his father two years ago, when he was 10, on Prozac and caught in a bitter divorce drama. Grilling potential jurors, the district attorney hammers home the legal age of intent in this state, the age of responsibility, and the age at which you can be tried for murder and face up to 40 years in combined juvenile and adult prison—that age is 10.

Many of the jurors silently shook their heads. They have raised children, they have grandchildren, and they know that children often say and do things, even serious things, without realizing the consequences, without recognizing the finality of gunshot wounds. Yet those jurors most troubled by the proceedings ahead were summarily dismissed, one by one, leaving a stoic assembly of law-and-order adherents unflinchingly ready to administer the verdict. How did we get to this point? Have we lost sight of the principles that once compelled us to separate juveniles from adults, to seek rehabilitative interventions, and to adjust the harsh court terminology to at least appear more family friendly, more youth oriented, and more optimistic?

The average juvenile case today is a much less dramatic incident. The statistics reflect the frequency of larcenies, drug possessions, and possession of stolen goods. What is more remarkable about youth crime is the likelihood that offenses will be committed in groups or at least by pairs of offenders. And, although some youthful violations seem mostly harmless, such as underage smoking or drinking, incidents of drag racing that kills your teenage passenger or costly vandalism most often unites public sentiments into waves of concern about coddling and overindulgence.

Still, changes in law and policy often occur quickly, literally overnight, and without the benefit of the careful scientific research and theoretical analysis that might help us better isolate effective strategies and interventions. The more we learn about juvenile delinquency, the more we realize that myriad social influences, environmental factors, and available resources change the way we approach the problem and address it.

The collection of readings offered in this volume illuminate some of the secrets from the often-mysterious realm of courts and law. Principles vary from state to state, as do traditions and practices in administering juvenile justice. But trends in philosophy and sentiments about the weight of punishments and the accountability of parents seem to be pervasive themes in our contemporary culture.

CHAPTER 1

Contemporary Juvenile Justice Reform Movements: Theory, Policy, and the Future

Michael P. Brown and Jill M. D'Angelo

We may be witnessing juvenile justice reforms that are as historically important as when the first juvenile court was established in 1899 and when, during the 1960s and 1970s, juveniles were afforded many of the same procedural protections guaranteed defendants in criminal court. The reforms to which we are referring have been unfolding for several decades, but the last 15 years or so have revealed two relatively coherent reform movements that are diametrically opposed. One reform movement is to "dismantle" the juvenile justice system. We refer to this as the dismantling reform movement, and its focus is on social control, retribution, and deterrence. A central element of the dismantling movement includes the provision to transfer adolescents from juvenile to criminal court. The other reform movement, the revitalization movement, is consistent with and generally supportive of a separate system of justice for juveniles. Its focus is on restoring the principles upon which the juvenile justice system was established. Although the revitalization reform movement does not propose the elimination of the legal provisions that were extended to juveniles approximately 50 years ago, it reasserts the developmental differences between adolescents and adults and seeks to provide services that prevent delinquency and rehabilitate offenders.

These reform movements exist alongside each other within local jurisdictions and across the country. All juvenile justice systems have characteristics resembling both reform movements, but one movement tends to be more influential than the other. The predominate reform movement today is to dismantle juvenile justice. There continues to be support, however, for the reemergence of the original notions of juvenile justice.

These competing reform movements, which have polarized the general public, practitioners, and academicians, reflect a justice system that is in transition. Instead of advocating one reform movement over another, we take a critical position and contend that neither reform movement provides an effective, comprehensive response to juvenile crime. Elements of each reform movement, however, could be integrated with other time-tested practices to construct a juvenile justice system that instills positive behavioral changes and provides for public safety.

The purposes of this chapter are to examine these competing reform movements and to propose a course of action that improves the juvenile justice system. To do this, we first present Bernard's theory of juvenile justice reform.[1] Second, with Bernard's framework in mind, we explain the reasons for the establishment of the juvenile court and the principles upon which it was established. By doing this, we see how the juvenile court was a core element of one of the most important justice reform movements in the history of the United States. Third, we use Bernard's reform model to examine the catalysts of the contemporary reform movements. Fourth, we describe and provide examples of the dismantling movement and the revitalization movement. Finally, as juvenile justice reform continues to unfold, we propose a juvenile justice system that is better able to balance the needs of juveniles and the needs of society, and incorporate the principles of restorative justice.

A JUVENILE JUSTICE REFORM MODEL

In *The Cycle of Juvenile Justice*, Bernard indicates that reform movements have a discernable cycle. The model he proposes begins with justice officials and the public believing that the number of delinquent acts has increased to a high level. To address these acts, there are many punitive sanctions but relatively few lenient treatments. In this scenario, justice officials may feel as though they must choose between a harsh punishment and doing "nothing." Consequently, while serious offenders meet with a proportionate sanction for their offense, minor offenders may not be punished for their misdeeds. These misdeeds go unpunished because proportionate sanctions are unavailable and officials believe that a disproportionate response may cause the delinquent to enter further into a delinquent lifestyle.

The second stage of the cycle is characterized by the continued belief that delinquency remains at high levels and that the reason for this problem is, in part, due to a lack of appropriate sentencing options, which Bernard calls "forced choice." That is, because justice officials are forced to choose between punitive sanctions and doing "nothing at all," high levels of delinquency persist; both punitive sanctions and doing nothing increases delinquency.

The third stage of the cycle is juvenile justice reform. The answer to the persistent problem of delinquency is to initiate reform that involves the introduction of treatments that would be proportionate to minor offenses. These sentencing options constitute a "... middle ground between harshly

punishing and doing nothing at all."[2] Then all there is to do is wait, while justice officials eagerly anticipate a reduction in juvenile delinquency.

The fourth stage involves another reform movement. In this stage, delinquency has not been reduced as expected. In fact, delinquency continues to be seen as high, and the cause for the problem is perceived to be the lenient sanctions introduced during the most recent reform movement. Delinquency is high not because of the lack of available sentencing options but because the justice system response has been inadequate. Consequently, this stage is marked by serious offenders receiving even more punitive sanctions than before and minor offenders receiving harsh sanctions as substitutes for those treatments that once served as the middle ground between punitive sanctions and doing nothing. Eventually, punitive sanctions constitute the majority of justice system responses and the availability of lenient sanctions becomes restricted. The cycle continues.

Bernard points out that three fundamental beliefs provide insight into his reform model. First, justice officials and the public believe that delinquency is exceptionally high. Second, a belief exists that current juvenile justice policies are not only inadequately responding to delinquency, but they are actually exacerbating the problem. Third, a belief exists that the juvenile justice system must be reformed to reduce delinquency.

But what explains why one reform movement is adopted more readily than another? Sometimes proposed reforms may be seen as being new and innovative responses to long-term problems. This perception is often held because decision makers are ill-informed of what has been tried in the past and why it failed to perform as expected. At other times, an old idea is repackaged as something new, when in fact no substantive differences have been made in what is proposed from past practices. Because much of what is proposed to respond to delinquency is not new, history repeats itself.

According to Bernard, the reasons why one reform movement is accepted more readily than another are found in two additional beliefs systems. These beliefs are grounded in ideas or assumptions about what causes delinquency and how best to respond to it. Put another way, those things that are believed to be the causes of delinquency influence how society responds. If one believes that delinquency is a selfish act committed for one's benefit, then one may be more likely to advocate for sanctions that seek to deter and punish. Conversely, if one believes that delinquency is a cry for help, a way to get attention, or a function of social forces beyond the control of the offender, then one may be more likely to fashion a sentence to meet the needs of the offender.

THE BEGINNING OF JUVENILE JUSTICE REFORM

Early nineteenth-century America experienced rapid and dramatic social and economic changes as a result of immigration, industrialization, and urbanization. These changes were wide-reaching and by the mid-nineteenth century, much to the efforts of the child savers movement, adolescents were seen as a unique group.[3] They were not simply considered miniature adults, but rather developmentally different from adults

and in need of custodial care, supervision, and guidance. These ideas became ingrained into our larger culture, changed social expectations, and redefined the government's responsibilities as they pertain to youth. Concern over child welfare, coupled with mounting pressure for the government to intervene in the lives of juveniles who were poor and destitute, and genuine alarm over what appeared to be a growing juvenile crime problem[4] were social indicators of still more changes to come.

One is left to wonder whether citizens at that time appreciated the dramatic changes that were to come for the justice system. The House of Refuge movement in the early 1800s marked the beginning of a separate system of justice for juveniles. It was the first juvenile court in 1899, however, that ignited truly revolutionary changes in the American justice system. In less than three decades, juvenile courts had been established in nearly every jurisdiction in every state.

The juvenile court was a social experiment on a grand scale. Rooted in the *parens patriae* philosophy, the juvenile court would act in the best interest of a child. "Justice" was to be personalized to meet the unique needs of each child that came into contact with the court. Therefore, prevention and rehabilitation were the primary goals of the juvenile court. As U.S. Supreme Court Justice Fortas wrote,

> The early reformers were appalled by adult procedures and penalties, and by the fact that children could be given long prison sentences and mixed in jails with hardened criminals. They were profoundly convinced that society's duty to the child could not be confined by the concept of justice alone. They believed that society's role was not to ascertain whether the child was "guilty" or "innocent," but "what is he, how has he become what he is, and what had best be done in his interest and in the interest of the state to save him from a downward career." The child—essentially good, as they saw it—was to be made "to feel that he is the object of the state's care and solicitude," not that he was under arrest or on trial. The rules of criminal procedure were therefore altogether inapplicable. The apparent rigidities, technicalities, and harshness which they observed in both substantive and procedural criminal law were therefore to be discarded. The idea of crime and punishment was to be abandoned. The child was to be "treated" and "rehabilitated" and the procedures from apprehension though institutionalization, were to be "clinical" rather than punitive."[5]

As a government entity, however, the juvenile court had a responsibility to strike a balance between the best interests of the child and providing public safety.

In practical terms, this is a difficult balance to achieve. But being consistent with its original intent, the juvenile court would seek societal protection through the rehabilitation of the child. It would not resort to seeking punishment and retribution, which was the traditional response to law-violating youth until that point in time. Rather, rehabilitation was considered the appropriate justice system response because children were products of their environment. They were seen as victims of society, victims of improper care and custody at home, and victims of their

circumstances. As such, children were considered to be not as accountable for their behavior as adults. Furthermore, most youths were considered amenable to treatment, and juvenile court sentences were to reflect individual needs and circumstances.

As originally conceived, juvenile court decision making would not be confined by procedural safeguards defined in the U.S. Constitution. Vast discretion was a necessary element for individualized justice. Additionally, it was believed that children would not need to be protected from a court that was acting as a benevolent parent, interested in the child's best interest. Extending procedural rights into the juvenile court represents yet another important reform movement in the history of juvenile justice. Although that discussion goes beyond the scope of this chapter, it is noteworthy that conventional notions of procedural fairness affect the functioning of all justice policies. This fact was perhaps most dramatically witnessed with the establishment of procedural safeguards that restricted discretion within the juvenile court, especially with regard to waiver procedures and statutes.

CATALYSTS OF THE COMPETING REFORM MOVEMENTS

The contemporary juvenile court reform movements reflect the convergence of a constellation of factors that are largely consistent with Bernard's model of justice system reform. These factors include a rise in delinquency, the concern that juveniles have become more dangerous, the reemergence of gangs and drug-related violence, and changes in attitudes about the types of justice system responses that are appropriate in juvenile court.

Juvenile delinquency began to rise during the latter half of the 1980s and did not show signs of subsiding until 1994. For about a decade, juvenile involvement in crime, in general, and increases in violent juvenile crime, in particular, brought widespread public fear. Although there was only a 7 percent increase from 1985 to 1994 in arrests for property index offenses, for the same time period, arrests for violent index offenses increased 73 percent.[6]

This increase in arrests translated into increased court activity. There was an increase of 41 percent in the total number of cases processed in juvenile courts.[7] For that same time period, person offense cases were up 93 percent, including a 144 percent increase in homicide cases, a 134 percent increase in aggravated assault cases, and a 53 percent increase in robbery cases. Total property offense cases were up 22 percent, with a 69 percent increase in automobile theft cases and a 46 percent increase in vandalism cases. Total drug offense cases were up 62 percent.

Talk of the emergence of the superpredator[8] put people on edge and instilled deep trepidation about juvenile crime at that time and what the future might hold. Part of this concern was fueled by the belief that delinquents were younger than in the past and that they were committing more serious violent offenses. A study by Butts and Snyder reported that although there was a 47 percent increase in person offense arrests among

those 15 and older from 1980 to 1995, there was a 94 percent increase among those under age 15 for the same time period.[9] In other words, the rise in violent arrests for those under age 15 was twice that of those 15 and older.

If all of that was not enough, Esbensen aptly points out that youth gang activity also reemerged in the 1980s and 1990s, and the mass media brought a glamorized, yet violent and spontaneous, depiction of gang life into America's living rooms.[10] The reality of gang violence took on relevance for many people, no matter where they lived. Gangs were said to have made their way out of the inner city into the suburbs and rural areas; from the coasts to the Midwest. Reinforcing those fears was local television news that regularly reported gang activity and Hollywood productions that portrayed young people as violent, drug-crazed criminals in such films as *Colors* and *Boyz N the Hood*. Additionally, increases in adolescent involvement with the use and distribution of drugs often involves carrying handguns for protection and intimidation, which is likely to be associated with the rise in youth violence.[11]

Whether our perceptions of juvenile crime are driven by media images, irrational fear, personal experiences, or the best available data, what we believe to be true mitigates our opinions about the purposes of juvenile justice. Focusing on public opinion surveys conducted during the 1980s and 1990s, the literature suggests mixed findings about what the juvenile court should do with juvenile offenders. For example, a national survey conducted in 1982 indicated that nearly 75 percent of the respondents believed that the primary goal of juvenile court was rehabilitation.[12] When justice professionals were asked how best to respond to juvenile criminals, however, more than half responded that punishment worked better than rehabilitation.[13] Yet, more than 80 percent of the same sample indicated that it would be irresponsible to ignore attempts to rehabilitate them.

Bernard's reform model provides unique insight into a survey conducted by Schwartz, et al. The findings of that study suggest a critical reason why juvenile justice is in a state of flux. Schwartz, et al., found that nearly 100 percent (from 97 to 99 percent) of respondents were supportive of punishment for serious juvenile personal, property, and drug offenders. At the same time, however, only slightly fewer respondents (from 88 to 95 percent) were supportive of rehabilitation for the same juvenile offenders. This rehabilitation is perceived to be accomplished by placing offenders in punitive programs or facilities with rehabilitation as a primary goal. As for the rest of the juvenile offenders? Rehabilitation was the best response. The public seems to be of two minds, and it does not see a conflict between punishing the worst offenders while simultaneously preparing them to be productive, contributing adults.[14]

THE COMPETING REFORM MOVEMENTS

We begin this discussion of the competing reform movements by focusing on the dominant movement, which is, in many ways, dismantling the juvenile justice system. We will describe the movement's characteristics in

detail and show how it has transformed "justice" for an increasing number of adolescents. We then do the same for the revitalization movement.

The Dismantling Movement

The dismantling movement has a coherent set of principles that drive decision making and policy development. How these principles are implemented in the form of policy is influenced by such things as political jostling. Although the outcomes are not entirely predictable, they are by no means uncertain either.

The central theme of the dismantling reform movement is the process of recriminalizing delinquency. This process is the opposite of what occurred when the juvenile court was established, as juveniles were diverted from criminal to juvenile court. Hence, recriminalization is an "effort to return a part of the juvenile justice system to a period that existed prior to the creation of juvenile courts."[15] Although Singer argues that recriminalization does not eliminate the need for juvenile justice,[16] Feld suggests that elimination of the juvenile court may be the best course of action.[17] But this difference is not a discriminating factor of the dismantling movement. Rather, as Stevenson and associates state, "The sweeping changes in public policy affecting the juvenile court's delinquency jurisdiction have been the responses to concerns about serious, violent, and chronic offenders and the perceived leniency of juvenile court sanctions toward these juveniles."[18] Consequently, we have witnessed changes in the way juveniles are processed that increase the likelihood that they will come into contact with the criminal justice system.

This change in the justice system may be understood in light of van den Haag's oft-cited comments about the elimination of the legal boundaries between violent juveniles and adults. He stated,

> There is little reason left for not holding juveniles responsible under the same laws that apply to adults. The victim of a fifteen-year-old mugger is as mugged as the victim of a twenty-year-old mugger, the victim of a fourteen-year-old murderer or rapist is as dead or raped as the victim of an older one. The need for social defense or protection is the same.[19]

The assumption is that the seriousness of the act is an indication of adult competency and, therefore, culpability. There is also the assumption that adolescents who commit serious crimes are not amenable to treatment. There are two issues to be addressed here. First, there seems to be the belief that chronic or violent delinquents are beyond the hope of rehabilitation. Second, there is also a fundamental lack of confidence in the justice system to rehabilitate and protect society.

Consequently, during the first half of the 1990s, 40 states changed their transfer statutes to make it easier to prosecute juveniles in criminal court.[20] This was accomplished by adding offenses to the list of crimes for which juveniles could be waived and by lowering the age at which they would become eligible for a waiver. Of the three methods by which

adolescents may be waived to criminal court—that is, judicial waivers, exclusionary statutes, and prosecutorial waivers—exclusionary statutes and prosecutorial waivers tend to place public safety above the best interests of the child. Exclusionary statutes (i.e., automatic waivers) now exist in 38 states; prosecutorial waivers exist in 15 states.

The exclusionary statute for the state of Alabama is similar to statutes in other states, and it stipulates that a child meeting statutory age or offense criteria must be ''charged, arrested, and tried as an adult.'' Juveniles are excluded from the jurisdiction of the juvenile court if they are 16 years old and charged with capital crimes, drug trafficking, or a class A felony. The exclusion also applies if they are charged with any felony in which the accused is alleged to have used a deadly weapon, caused death or serious injury, or used a dangerous instrument against such people as law enforcement officers, corrections officers, parole or probation officers, juvenile court probation officers, prosecutors, judges, court officers, grand jurors, jurors or witnesses, and teachers, principals, and other employees of Alabama public schools.

The prosecutor for the Commonwealth of Virginia is given the following guidance:

> . . . Following a finding of probable cause to believe the child was of the proper age [that is, fourteen] and committed the offense alleged [murder; felonious injury by mob, abduction, malicious wounding, malicious wounding of a police officer, felonious poisoning, adulteration of products, robbery, carjacking, rape, forcible sodomy, or sexual penetration with an object], the juvenile court must certify the charge, together with any ancillary charges, to the grand jury, after which its jurisdiction is terminated. On the other hand, in such a case the Commonwealth attorney may also elect not to give notice, and either seek a discretionary waiver or proceed with the case in juvenile court.[21]

One aspect of the dismantling reform movement is the notion that ''once an adult, always an adult.'' Some 31 states have a special transfer category that stipulates once an adolescent has been transferred to criminal court, she or he will be subject to criminal proceedings in future cases.[22] Some states stipulate that ''once an adult, always an adult'' only applies when the charge ends in conviction or subsequent charges are felonies. For example, Ohio's law stipulates that—

> Once a juvenile has been transferred to adult court and convicted of (or pleaded guilty to) any felony, he or she is thereafter deemed not to be a ''child'' in any subsequent case. . . . Future complaints against such a juvenile must be filed initially in juvenile court, but the court's only role is to confirm the previous conviction/invocation and order a mandatory transfer to adult criminal court upon a finding of probable cause.[23]

In some states, such as Delaware, the determination of nonamenability to treatment through a discretionary waiver is the criterion of the ''once an adult, always an adult'' provision.

Although the major focus of the dismantling movement involves transferring certain juveniles to criminal court, it also involves substantive changes in the juvenile court itself. This change is palpable and can be seen in the purpose statements of many juvenile courts today. In recent years, for instance, the states of Kansas, Wisconsin, North Carolina, Washington, and Oregon changed the primary purposes of its juvenile court from one oriented toward rehabilitating juveniles to one prioritizing public safety and holding juvenile offenders accountable.[24]

Blended sentencing is an attempt to marshal the benefits of rehabilitation programs of the juvenile justice system and, at the same time, take a more punitive approach to juvenile offenders. The state of Texas has one of the more punitive forms of blended sentences. Under this sentencing scheme, the juvenile, with no minimum age limit, may be sentenced up to 40 years to a Texas Youth Commission facility until the age of majority and then, at that time, the offender may be transferred to the Texas Department of Criminal Justice.[25]

Minnesota takes a somewhat different approach to blended sentencing by stipulating, in part, that for an—

> "extended jurisdiction juvenile" (EJJ) prosecution in juvenile court, a juvenile may receive both a juvenile disposition and a stayed adult criminal sentence. A juvenile of at least 14 who is accused of a felony (and thus is eligible for certification) is subject to EJJ prosecution if the prosecutor requests EJJ designation and presents clear and convincing evidence that the designation "serves public safety" and any juvenile of at least 16 who is accused of a felony committed with a firearm or an offense that would result in a presumptive commitment to prison under applicable laws and sentencing guidelines (and thus would qualify for Presumptive Waiver to adult court) is subject to EJJ prosecution if the prosecutor either designates the case an EJJ case or files an unsuccessful motion for certification. Although an EJJ prosecution takes place in juvenile court, the juvenile has a right to be tried before a jury.[26]

Such blended sentences serve as a bridge between the dismantling movement and the revitalization movement.

The Revitalization Movement

When separate justice systems were originally established for juveniles and adults, they reflected the presumption that adolescents were less culpable than adults for their behavior.[27] The founders of a separate juvenile justice system intuitively understood that adolescents were developmentally different from adults and, therefore, should not be held to the same standards as adults. What was believed to be true in 1899 is now supported by research findings. Compared with adults, adolescents are less capable of processing information and making choices, especially in stressful situations;[28] less capable of assessing risks;[29] more vulnerable to peer pressure;[30] and less able to consider long-term behavioral consequences.[31]

Even neuroscience research using diffusion-tensor Magnetic Resonance Imaging shows that the brain of an adolescent is less mature than that of an adult, which tends to explain juvenile impulsivity and the general lack of restraint.[32]

This is not to suggest that some juveniles should not be transferred to criminal court.

The 1966 *Kent v. United States* decision that established standards for the transfer of juveniles to criminal court reflects the understanding that, while some juveniles may be waived to criminal court, this should occur only after considering issues pertaining to the development and maturation of the adolescent. On the issue of culpability, the court stipulated that the youth's level of "sophistication and maturity" should be taken into consideration in the transfer decision. Judicial waivers (or discretionary waivers), which exist in 46 states, generally require judges to consider the juvenile's age, level of mental maturity, and capacity before transferring the case to criminal court.[33]

The revitalization movement stresses the importance of transfers that consider not only age and offense seriousness but also a host of other issues pertaining to the juvenile's ability to benefit from the services offered through the juvenile court. Hence, the revitalization movement advocates for the use of judicial waivers (i.e., discretionary waivers) that consider the psychological and cognitive characteristics of adolescents. Because not all judicial waivers do this, it is important to make this distinction.

A survey of all 50 states and the District of Columbia indicates that only four states exclusively use judicial waivers to transfer juveniles to criminal court. The other states use a combination of different types of waivers. Two of the four states, Missouri and Hawaii, consider the adolescent's malleability to treatment. The other two states, Tennessee and Texas, do not.

Missouri's juvenile justice system is considered a model for other states to emulate. Its waiver statute stipulates the following:

> . . . in the case of a child of at least 12 accused of a felony, the juvenile court may order a hearing to consider whether to dismiss the delinquency petition and transfer the child for adult prosecution. (However, the court must at least hold a hearing to consider transfer where the child is accused of one of a number of listed offenses—first or second degree murder, first degree assault, forcible rape, forcible sodomy, first degree robbery, or distribution of drugs—or has committed two or more previous felonies.) Before the hearing, a written report on the child's history, record, offense, rehabilitation prospects, etc., must be prepared for the juvenile court's consideration. Following the hearing, the court may dismiss the case to permit adult prosecution if it finds that the child is not a proper subject to be dealt with under the juvenile law, taking into account a number of determinative considerations (including "racial disparity in certification") specified by law. An order of dismissal to permit adult prosecution must be supported by written findings.[34]

Like Missouri, the state of Hawaii requires the following:

> In all cases, the court must find at a minimum that there is no evidence that the minor is committable to a mental institution. . . . [and] In the case of a

> minor accused of committing any felony after his 16th birthday, besides the requisite finding that the minor is not subject to commitment in a mental institution, the court must also find—on the basis of a ''full investigation and hearing''—that either (1) the minor is not treatable in any children's institution or facility in the state or (2) the safety of the community requires that the minor be restrained beyond the period of his minority.[35]

Conversely, Tennessee's judicial waiver indicates the following:

> . . . Following a hearing, a child meeting age/offense criteria may be transferred to adult criminal court if the juvenile court finds that there are reasonable grounds to believe that (1) the child committed the offense alleged, (2) the child is not committable to a mental institution, and (3) the interests of the community require that the child be placed under legal restraint.[36]

Except for juveniles who require institutionalization for mental illness, community safety is placed above the interests of the juvenile in Tennessee. Texas' judicial waiver statute stipulates the following:

> . . . The juvenile court may waive its exclusive original jurisdiction over a child who meets age/offense criteria if it finds, after a full investigation and hearing, that (1) there is probable cause to believe the child committed the offense alleged and (2) because of the offense's seriousness or the child's background the welfare of the community requires a transfer for criminal proceedings.[37]

The emphasis on rehabilitation is based on the belief that underlying problems are the causes of delinquency, and the juvenile court is equipped to effectively address those problems. But that is not to say that holding juveniles accountable is beyond the scope of the revitalization movement. The waiver statutes for Missouri and Hawaii stress the rehabilitation function of the juvenile court, which seeks to hold adolescents accountable for their behavior. This is likewise true of Missouri's blended-sentence statute:

> In sentencing a juvenile who has been transferred for criminal prosecution, the court may impose both (1) a juvenile disposition and (2) an adult sentence, execution of which is suspended pending successful completion of the juvenile disposition. If the juvenile thereafter violates a condition or commits a new offense, the court may continue the juvenile disposition or revoke it and impose the adult sentence, as it sees fit. When the juvenile reaches the age of 17, a hearing must be held, after which the court must (1) continue the juvenile disposition (if the Division of Youth Services is willing to retain custody), (2) place the juvenile on probation, or (3) revoke the suspension and transfer the juvenile to the Department of Corrections. The Division of Youth Services must petition the court for a hearing if it seeks to release such a juvenile at any time before his 21st birthday, or if it determines that the juvenile is beyond the scope of its treatment programs. In either case, the court must hold a hearing and choose between (1) placing the juvenile on probation or (2) revoking the suspension and transferring the juvenile to the Department of Corrections.[38]

CONCLUSION

Juvenile justice reform movements are a consequence of evolving attitudes and beliefs about adolescents, who they are, what they can understand, and ultimately their level of culpability for illegal acts. Bernard's reform theory provides insight into the contemporary reform movements. Perceptions of an increase in delinquency, ineffective programming, and the popularity of retributive and deterrence-based responses to delinquency give insight into the dominant perspective, which is dismantling the traditional juvenile justice system.

But the dismantling and revitalization reform movements appear more complex than what Bernard's model is able to explain. For example, it was not just a perceived rise in delinquency that fueled contemporary reform movements, but also the perception of an increased level of seriousness of the acts committed by juveniles. Hence, the dominance of the dismantling reform movement may be a function of perceived vulnerability and the lethality of criminal victimization. A second issue is related to the first. That is, the popularity of the dismantling reform movement may be related to the perceived amenability of the offender to treatment. If juveniles are seen as more dangerous, perhaps even amoral and antisocial, they also may be seen as less treatable. This perception again feeds into feelings of vulnerability. One final point on the reform movements, that is, Singer's notion of how recriminalization provides more legal options to deal with delinquent and criminal acts,[39] sheds light on the popularity of waiver statutes, "once an adult, always an adult" provisions, and the growing popularity of blended sentences.

Juvenile justice reform movements have often taken a "silver bullet" approach to delinquency. They attempt to approach a complex, multidimensional issue with a simplistic explanation of delinquency and an equally simplistic approach to curtail a diverse array of delinquent acts. This characterization reflects a system that needs to be revitalized. An improved juvenile justice system requires a reform movement that is grounded in time-tested programs. It is a reform movement that should be driven not so much by political agendas as by what we know about best practices. Although politics will always be a part of any reform movement, such influences must be reduced.

Successes are rarely isolated. Demonstrated success improves public confidence, and resources tend to increase with these results. Bilchik proposes the means by which legitimacy is restored to juvenile justice, and this approach constitutes a comprehensive strategy to reduce delinquency in general and violent offenses in particular.[40]

Bilchik begins with two fundamental premises. First, effective juvenile justice systems hold offenders accountable, help offenders become responsible and productive citizens, and make the larger community safe. These objectives include the adolescent in the larger community and are consistent with the principles of restorative justice. Second, "... effective juvenile justice interventions are swift, certain, consistent and appropriate."[41] This approach is accomplished with effective prevention programs, early

intervention programs, graduated sanctions, and assessments to improve system administration and operation.

For those juveniles who enter the system, assessment processes that determine the risks and needs of each juvenile are needed. These assessments are then matched with appropriate programming. Such programs and services need to be comprehensive and involve not only the individual offender but also the offender's family. For those who fail treatment and other programs, graduated sanctions should be used to reinforce the idea that one is accountable for unlawful behavior. A full range of graduated sanctions involves aftercare programming and waivers to criminal court. Detention should be reserved for preadjudication use, when juveniles are a risk to themselves, to others, or to ensure court appearances. Ultimately, effective programming requires a support system that includes an array of public and community resources.

The dismantling reform movement continues to have momentum today. Although it is the dominant movement, signs indicate that the revitalization movement may be slowly gaining influence. The recent *Roper v. Simmons* decision[42] is perhaps the most decisive break from the dismantling movement in over a decade, and it is an explicit recognition of the developmental differences between adolescents and adults. Is this a step in the direction Bilchik proposes? Was *Roper* the first example of integration of divergent practices that will strengthen the juvenile justice system? Or was *Roper* simply an aberration?

NOTES

1. Bernard, 1992.
2. Bernard, 1992, p. 4.
3. Platt, 1969.
4. Ferdinand, 1989.
5. *In re Gault*, 1967.
6. Snyder & Sickmund, 2006.
7. Butts, Snyder, Finnegan, Aughenbaugh, & Poole, 1996.
8. DiIulio, 1996.
9. Butts & Snyder, 1997.
10. Esbensen, 2000.
11. Blumstein, 1995.
12. Schwartz, Guo, & Kerbs, 1993.
13. Cullen, Golden, & Cullen, 1983.
14. Schwartz, et al. 1992.
15. Singer, 1996, p. 1.
16. Singer, 1996.
17. Feld, 1998.
18. Stevenson et al., 1996, p. 9.
19. van den Haag, 1975, p. 174.
20. Torbet & Szymanski, 1998.
21. Griffin, 2005.
22. Griffin, Torbet, & Szymanski, 1998.
23. Griffin, 2005.
24. DiFonzo, 2000.

25. Griffin, 2005.
26. Griffin, 2005.
27. Zimring, 2000.
28. Scott & Grisso, 1997.
29. Finn & Bragg, 1986.
30. Steinberg & Silverberg, 1986.
31. Scott & Grisso, 1997.
32. Beckman, 2004; Sowell, Thompson, Holmes, Jernigan, & Toga, 1999.
33. Sanborn & Salerno, 2005.
34. Griffin, 2005.
35. Griffin, 2005.
36. Griffin, 2005.
37. Griffin, 2005.
38. Griffin, 2005.
39. Singer, 1996.
40. Bilchik, 1998.
41. Bilchik, 1998, p. 2.
42. *Roper v. Simmons*, 2005.

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CHAPTER 2

Are We Tough Enough? Trends in Juvenile Sentencing

Attapol Kuanliang and Jon Sorensen

Before the emergence of a separate system for juveniles, children and adults were treated alike in the justice system. Juveniles were subject to the same criminal proceedings as adults. The only choice typically available to the criminal court was to send convicted juveniles to adult prison or to release them without any sanction.[1] In 1825, the New York House of Refuge was established as the result of the idea that convicted juveniles should be incarcerated separately from adults. The philosophical rationale was that younger offenders, unlike most adult criminals, could be turned away from a life of crime with proper treatment. By the close of the twentieth century, the first juvenile court was founded in Chicago, in Cook County. Progressive ideas about the care and treatment of juveniles rapidly spread, and along with it, separate juvenile justice systems were created throughout the United States.

Under the original rationale of the juvenile court, sentences for individual juveniles were indeterminate. Judges held vast amounts of discretion over the sentencing of an offender, with decisions rooted in the rehabilitative ideal and focused on the best interests of each child. In the 1960s, however, a fundamental shift in sentencing practices was under way because of a lack of faith in rehabilitation and the realization that the juvenile court was not functioning according to its original plan.[2] Early on the criticism focused on the arbitrary nature of the decision making that violated the due process rights of juveniles. Beginning with *In re Gault* in 1967, these legal decisions caused changes in the court's focus from informal treatment to formal legal procedures, thus transforming the court from its original intent. A preoccupation with offense in the new

sentencing procedures detracted from the needs of the child. Instead of concentrating on how best to rehabilitate the young offender, the new legal procedures encouraged courts to focus on the current offense, age of the offender, and prior record to determine what sentence to impose. Concern for the juvenile was no longer directed toward the child's future and how to prevent further offending, but rather on his or her past and how to punish inappropriate behavior.[3]

More recently, criticism has been directed at the juvenile courts for being "too soft on crime." This criticism has spurred legislation and policies that change sentencing and other juvenile procedures. During 1970s, the general public demanded increased offender accountability and more punitive sentences for juvenile offenders, a demand heeded by politicians.[4] This movement signaled a shift in sentencing philosophy that has moved juvenile processing further away from treatment toward the punishment of juvenile offenders.

SENTENCING REFORM

One of the first efforts at reform was the 1971 Juvenile Justice Standards Project, jointly sponsored by the Institute of Judicial Administration (IJA) and the American Bar Association (ABA). Members numbered about 300 professionals from across the nation, including prominent representatives of every discipline connected to the juvenile justice system: law, medicine, social work, psychiatry, psychology, sociology, corrections, political science, law enforcement, education, and architecture.[5] The project developed comprehensive guidelines for juvenile offenders that based sentences on the seriousness of the crime rather than on the needs of the youth. Ten years and 23 volumes later, the IJA-ABA Juvenile Justice Standards were completed. From that initial premise, several fundamental principles flowed with logical precision, as follows:

- Sanctions should be proportionate to the seriousness of the offense.
- Sentences or dispositions should be fixed or determinate as declared by the court after a hearing, not indeterminate as determined by correctional authorities based on subsequent behavior or administrative convenience.
- The least restrictive alternative to accomplish the purpose of the intervention should be the choice of decision makers at every stage, with written reasons for finding less drastic remedies inadequate required of every official decision maker.
- Noncriminal misbehavior (status offenses or conduct that would not be a crime if committed by an adult) should be removed from juvenile court jurisdiction.
- Limitations should be imposed on detention, treatment, or other intervention prior to adjudication and disposition.
- Visibility and accountability of decision making should replace closed proceedings and unrestrained official discretion.

- Juveniles should have the right to decide on actions affecting their lives and freedom, unless they are found incapable of making reasoned decisions.
- Parental roles in juvenile proceedings should be redefined with particular attention to possible conflicts between the interests of parent and child.
- There should be a right to counsel for all affected interests at all crucial stages of proceedings and an unwaivable right to counsel for juveniles.
- Strict criteria should be established for waiver of juvenile court jurisdiction to regulate the transfer of juveniles to adult criminal court.[6]

At the beginning of the twenty-first century, juvenile court judges remain quite concerned about these proposed standards. Their basic concern is that these standards attack the underlying philosophy and structure of the juvenile court. Judges also are concerned about how these standards would limit their authority. They see the influence of the hardliners behind this movement toward standardization and believe that the needs of children will be neglected in the long run. These judges also challenge the idea that it is possible, much less feasible, to treat all children alike.[7]

Nevertheless, the standards and juvenile justice sentencing reforms have been adopted across the nation. Laws in many states were changed during the 1970s and 1980s to focus on the "just deserts" of the offender, highlighting punishment for the current offense rather than treatment of the real needs of the child. The current reforms fit within a more general cycle of emphasizing retribution over rehabilitation, but are nonetheless striking for their apparent extremism.[8] Evidence strongly suggests a trend toward arresting more juveniles, processing them more quickly, incarcerating them for longer periods of time with fewer opportunities for rehabilitation, and, in general, treating violent or chronic juvenile offenders as adults.[9] Regardless of the cause, these reforms frequently have been undertaken despite lack of information concerning their potential effects and efficacy and despite severe fiscal constraints.[10]

New York State was the first to act on them through the Juvenile Justice Reform Act of 1976, which went into effect on February 1, 1977. The Act orders a determinate sentence of five years for class A felonies, which include murder, first-degree kidnapping, and first-degree arson. This initial term can be extended by at least one year. The juvenile, according to the Act, should be placed in a residential facility at first, but may serve the remainder of the five-year term in a nonresidential program under intensive supervision.[11]

In 1987, a special type of sentencing legislation was enacted in Texas, titled the Determinate Sentence Act.[12] Legislators hoped to create a system of juvenile sentencing that provided more severe punishment of serious, violent, or chronic offenders. These offenders were not eligible for transfer to the criminal justice system or were eligible for transfer but typically would not be viewed as appropriate for transfer. The creation of determinate sentencing essentially introduced a third sentencing option

that bridged the gap between juvenile and adult justice, thereby giving rise to one description of Texas as having three justice systems—a juvenile, criminal, and juvenile-criminal justice system.[13] Apart from minor changes, this legislation remained largely unchanged until 1995, when it was renamed the Violent or Habitual Offenders Act. At the same time, the legislature renamed Title 3 of the Family Code as the "Juvenile Justice Code" and introduced into it the concept of punishment. Two major changes were implemented: (1) the number of determinate sentence-eligible offenses was increased from 5 to approximately 30, and (2) the conditions under which parole or transfer to the adult prison could occur were modified.[14]

With such widespread changes in public sentiment and laws relating to juvenile sentencing, one would assume that juveniles are currently being treated much more harshly in the juvenile justice system. However, systems such as the juvenile justice system have often proved resistant to external directives to change. What exactly has been the impact of these changes? How severely are juvenile law violators currently treated in juvenile courts? Before examining the effect of such changes on the actual sentencing of juvenile offenders, the basic procedures of juvenile justice case processing are reviewed.

JUVENILE COURT PROCEDURES

Juveniles may be referred to the juvenile justice system by law enforcement officers, parents, relatives, school officials, and probation officers, among other people. After the referral, a decision is made to file a petition or to handle the case informally. Juvenile petitions are official documents filed in juvenile courts on the juvenile's behalf, specifying reasons for the youth's court appearance. Filing a petition formally places the juvenile before the juvenile court judge in many jurisdictions, although juveniles may come before the court in less formal ways.[15]

After the petition is filed, the case proceeds to intake. Intake is a screening procedure usually conducted by a juvenile probation officer during which one or several courses of action are recommended. In most jurisdictions, intake results in one of five actions:

- Dismiss the case
- Remand youths to the custody of their parents
- Remand youths to the custody of their parents with provisions for, or referrals to, counseling or special services
- Divert youths to an alternative dispute resolution program
- Refer youths to the juvenile prosecutor for further action and possible filing of a delinquency petition[16]

Cases that are referred to the juvenile prosecutor may be formally processed by the juvenile court. After hearing the evidence presented by both sides in any proceeding, the judge decides or adjudicates the matter in an adjudication hearing. The stage after adjudication is referred to as

disposition; it is the sentencing step of the juvenile proceedings.[17] Although several dispositions are available to juvenile court judges, they can be divided into four types: (1) residential placement; (2) probation; (3) other sanctions, such as community services, referral to an outside agency, or treatment programs; and (4) release.

Dispositions of Delinquent Cases

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) reported that in 2002 courts with juvenile jurisdiction handled an estimated 1,615,400 delinquency cases, 24 percent involving offenses against persons, 39 percent property, 12 percent drugs, and 25 percent public order. In about 42 percent of these cases, a delinquency petition was not pursued. Of the generally less serious cases, the most common disposition was dismissal followed by probation and alternative sanctions. Out-of-home placements were voluntary and rare. In one-third of all petitioned delinquency cases in 2002, the youth was not subsequently adjudicated delinquent. Two-thirds of these cases resulted in dismissal, while the remainder, as with the nonpetitioned cases, resulted in some other sanctions, probation, or only rarely voluntary out-of-home placement.

The more serious cases tended to result in delinquency adjudications or, in rare cases, waiver to adult courts. Among the cases adjudicated delinquent, the most common sanction was probation, accounting for nearly two-thirds of the dispositions. Less than one-quarter (23 percent) of cases adjudicated delinquent resulted in placement outside the home. Even among adjudicated delinquents, then, out-of-home placement is an unusual sanction. Although these results may be somewhat unexpected given changes in the law and rhetoric, it is possible that this pattern represents a tougher sanctioning system than existed previously. It is to that possibility that we now turn, examining trends in dispositions over a 15- to 17-year period.

Trends in Juvenile Delinquency and Sentencing

From 1990 to 1999, crowded detention and confinement facilities and delinquency cases involving detention increased by 11 percent, or 33,400 cases.[18] Regardless of the growth in volume, however, the percentage of cases detained from 1985 to 2002 was essentially the same (20 percent). With 1990 as the peak year for most offense categories (23 percent for all cases), the 12-year tendency has been a decline in the percentage of cases detained. Throughout the 1990s, the number of adjudicated cases resulting in out-of-home placement (e.g., training schools, camps, ranches, private treatment facilities, group homes) increased 24 percent, from 124,900 in 1990 to 155,200 in 1999.[19] As a result, approximately 39 percent of all juvenile detention and confinement facilities had more residents than available beds.[20] Out-of-home placements dropped to 144,000 in 2002, but the problem of available bed space remained.

Between 1985 and 2002, the number of delinquency cases processed by juvenile courts increased by 41 percent. When looking at the type of offense, the number of drug law violations increased by 159 percent, offenses against persons and public order offenses each increased by 113 percent, but cases involving property offenses declined 10 percent.[21] Part of the explanation, then, for the overcrowding in juvenile detention and confinement facilities may simply be the result of more cases entering the juvenile justice system, even though the juvenile crime rate has not increased over the past 10 years.

To determine whether stiffer sanctions resulted from changes in the law, the first stage of case processing to be examined is whether petitions were filed more often in delinquency cases during more recent years. Figure 2.1 confirms that the use of formal processing increased for cases between 1985 and 2000, especially for drug and serious offenses. For both the categories of drug offenses and offenses against persons, such as aggravated assault, the likelihood of formal processing increased 18 percentage points, from 43 percent to 61 percent and from 54 percent to 72 percent, respectively. Property offenses were also handled formally more often. For certain types of property offenses, the percentage handled formally was as high as person offenses, including burglary and motor vehicle theft, which resulted in formal processing in more than three-fourths of the cases. This may be compared with larceny-theft and vandalism cases, wherein 43 percent and 51 percent, respectively, were handled formally.[22] Of those cases petitioned, the proportion adjudicated delinquent remained fairly constant from 1985 through 2000—generally between 60 and 70 percent of petitioned cases of all types adjudicated delinquent.

Another decision with serious implications made during the early stage of case processing is whether to waive jurisdiction and transfer youths to adult criminal courts. Wavier policies were one of the main issues causing controversy in the movement of the juvenile justice system away from its

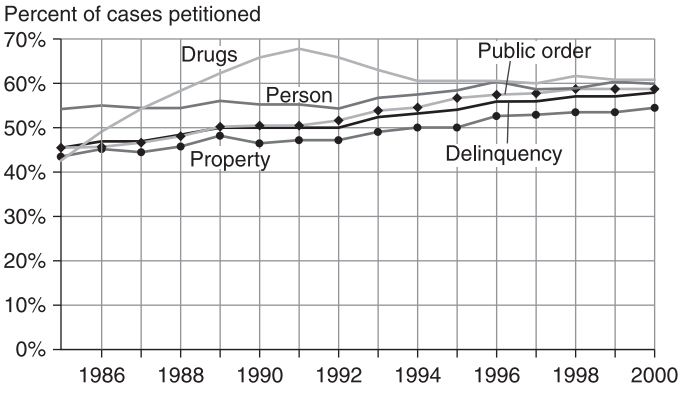

Figure 2.1. Formal Processing of Four General Offense Categories, 1985–2000

Source: Puzzanchera, Stahl, Finnegan, Tierney, & Snyder, 2004.

original philosophy emphasizing rehabilitation. However, the waiver process accounts for only approximately 1 percent or less of all juvenile cases. The number of delinquency cases judicially waived to criminal court in 1994 was 70 percent greater than the number waived in 1985 (see Figure 2.2).

This increase, however, was followed by a 48 percent decrease between 1994 and 2001, with a slight upturn in 2002. As a result, the number of cases waived in 2002 was 1 percent less than the number waived in 1985.[23] One probable reason for the decline in the number of judicial waivers after 1994 was the large increase in the number of states that passed legislation excluding certain serious offenses from juvenile court jurisdiction and permitting the prosecutor to file certain cases directly in criminal court.[24] Even so, youthful offenders under the age of 18 make up less than 2 percent of the incoming adult prison population in a given year.[25] The question of the punitiveness of sanctioning in such cases has been questioned because juveniles who are tried as adults tend to serve shorter sentences, on average, in the adult system than youths adjudicated in the juvenile justice system.[26] Moreover, juveniles placed in adult prisons have a more difficult time adjusting, are more frequently victims of older inmates, and, as a result, place higher demands on prison resources.[27]

The main issue with sentencing in the juvenile justice system concerns the type of disposition received by the juvenile. The most serious disposition in the juvenile justice system is out-of-home, or residential, placement. OJJDP reports that the number of cases adjudicated delinquent that result in out-of-home placement increased between 1985 and 2000. This increase was more than 200 percent for drug offense cases and nearly double for person and public order offense, but decreased overall for property offense cases. In fact, residential placement for all juvenile offenses has been decreasing since 1997 to 2000.[28]

Despite the increasing number of out-of-home placements between 1985 and 2000, the percentage of cases adjudicated delinquent that

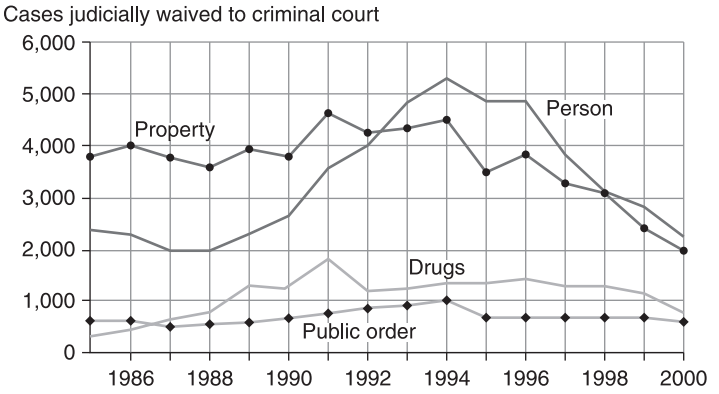

Figure 2.2. Cases Judicially Waived to Criminal Court
Source: Puzzanchera, Stahl, Finnegan, Tierney, & Snyder, 2004.

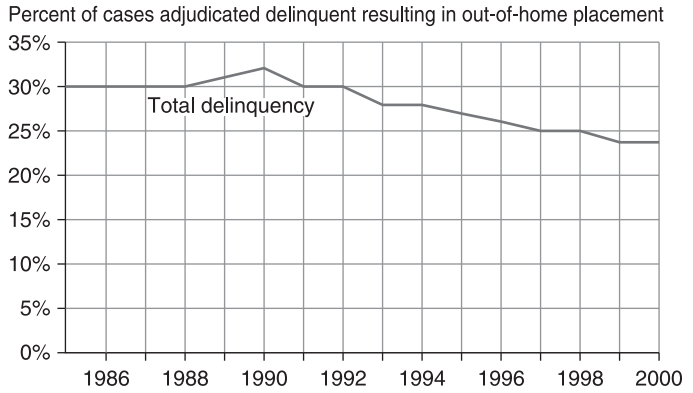

Figure 2.3. Percent of Cases Adjudicated Delinquent Resulting in Out-of-Home Placement
Source: Puzzanchera, Stahl, Finnegan, Tierney, & Snyder, 2004.

resulted in out-of-home placement decreased by approximately 7 percentage points from 30 percent in 1985 to 23 percent in 2002. That is, although the raw number of commitments increased, the percentage of adjudicated cases resulting in commitments decreased (see Figure 2.3). This suggests that the number of cases entering the front end of the system had a greater influence on the final increase in juvenile institutional populations than did newly hatched sentencing policies.

The growth in probation, the most prevalent form of juvenile disposition, has far outstripped that of institutionalization. The number of juveniles who are under probation supervision increased 103 percent between 1985 and 2002. Since 1985, drug offense cases had the largest percent increase (267 percent) in the number of cases adjudicated delinquent that received probation, followed by public order offenses (218 percent), person offenses (198 percent), and property offenses (28 percent).[29] Although more cases may have entered the system, resulting in formal processing, the outcome softened for a larger portion of these cases.

CONCLUSION

The findings presented in this chapter suggest that the "get-tough" movement on juveniles was more rhetoric than reality. Although some transient increases were experienced with waivers, this option was reserved for less than 1 percent of delinquent cases. Furthermore, research has shown that youths waived to the adult system frequently serve less time than similar cases processed in the juvenile justice system. Determinate or juvenile-adult blended sentences have become more common across the states, but the back door remains open ensuring that the vast majority of juveniles receiving these blended sentences serve only the juvenile portion.

This chapter best illustrates the way in which systems react to, or resist, external directives to change. Although the sentencing of juvenile

offenders now occurs with more due process and may be slightly more structured, it has not resulted in the draconian sentences for which some pundits and politicians had pushed. Rather, the most common sanction remains probation, and the proportion of formally processed cases resulting in out-of-home placement actually decreased during the latter part of the twentieth century. That the use of probation increased and out-of-home placements decreased during an era of toughening laws illustrates not only the juvenile justice system's resistance to change, but also the level of internal commitment to the philosophy of treatment over punishment.

NOTES

1. Bernard, 1992; Mack, 1909/1999.
2. Ainsworth, 1991; Feld, 1998; Moore & Wakeling, 1997; Urban, St. Cyr, & Decker, 2003.
3. Urban et al., 2003.
4. Feld, 1993; Singer, 1996.
5. Shepherd, 1996.
6. Shepherd, 1996.
7. Bartollas & Miller, 2001.
8. Feld, 1995; Mears, 1998; Polier, 1989.
9. Snyder & Sickmund, 1999.
10. Bureau of Justice Assistance, 1996.
11. Bartollas & Miller, 2001.
12. Mears, 1998.
13. Dawson, 1988.
14. Dawson, 1996; Mears, 1998.
15. Torbet & Szymanski, 1998; Butts & Snyder, 1997.
16. Hodges & Kim, 2000.
17. Siegel & Senna, 1997.
18. Harms, 2003.
19. Puzzanchera, 2003.
20. Sickmund, 2002.
21. Snyder & Sickmund, 2006.
22. Puzzanchera, Stahl, Finnegan, Tierney, & Snyder, 2004.
23. Snyder & Sickmund, 2006.
24. Puzzanchera et al., 2004.
25. Austin, Johnson, & Gregoriou, 2000.
26. Fritsch, Caeti, & Hemmens, 1996.
27. McShane & Williams, 1989.
28. Snyder & Sickmund, 2006.
29. Snyder & Sickmund, 2006.

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CHAPTER 3

Boys to Men: Transferring Juveniles to Adult Court

David Myers

Throughout much of the 1990s, policy makers and the general public voiced strong support for transferring greater numbers and types of serious and violent offenders from juvenile court to adult criminal court. Years of rising juvenile violent crime rates, combined with sensational media accounts of youth involved with guns, drugs, and gangs, fueled a nationwide concern about youth violence and a perceived generation of young people gone out of control. Critics suggested that the century-old juvenile justice system was ill-equipped to handle this problem and, therefore, something drastic was needed to save society from these dangerous adolescents.

In response to this situation, by the mid-1990s nearly all states had passed legislation designed to strengthen the procedures and sanctions available for handling serious and violent juvenile offenders. The general perception had emerged that juvenile courts were too lenient, violent youths were beyond hope for rehabilitation, and the adult criminal system would be a more appropriate place to hold serious youthful offenders accountable for their actions. In adult court, it was thought, more certain and severe punishment would be imposed, which in turn would have a beneficial impact on juvenile crime.

Unfortunately, legislative efforts to send more juveniles to adult criminal court often were not guided by systematic research and careful planning. The topic of treating juveniles as adults has produced much debate, and during the past 20 years, a number of researchers and scholars have questioned the effectiveness of this practice. By assessing the information and evidence that is available, I attempt to bring better understanding to this controversial approach to juvenile crime, which continues to be important in the operation of both the juvenile and adult justice systems.

CONTEMPORARY CONCERNS ABOUT YOUTH VIOLENCE

During the past several decades, youth under the age of 18 have accounted for roughly one-third of all serious property crime arrests and less than one-fifth of all serious violent crime arrests in the United States.[1] Furthermore, of the total population of juveniles in America, only about 6 percent are arrested each year, and fewer than 1 percent are arrested for a violent offense. Despite these figures, from the mid-1980s to the mid-1990s, a disturbing trend occurred that heightened public fears and greatly contributed to legislative changes in juvenile justice.

Between 1985 and 1994, overall juvenile violent crime arrest rates increased by 75 percent, and the juvenile murder arrest rate alone more than doubled.[2] These increases in offending corresponded with a similar upswing in violent crime victimization among youth, and firearm use appeared to be a key aspect of these trends. Moreover, based on the projected growth in the juvenile population for the early twenty-first century, many were predicting a coming storm of youth violence in which young "superpredators" would be wreaking havoc on the nation's streets. Alarmed politicians and commentators warned that we needed to "get ready" for the onslaught of these morally deprived youth who were immune to juvenile justice system sanctioning.[3]

These descriptions of current and future superpredators were influential on public policy. From 1992 to 1995, 47 states and the District of Columbia passed laws that sought to address the youth violence epidemic, and the basic theme of these legislative efforts was "getting tough."[4] Juvenile court hearings and juvenile offender records became more open and accessible, police were granted authorization to fingerprint and photograph specified youths, and the discretion of juvenile judges was reduced through mandatory sentencing. The most popular change, however, occurred in the area of jurisdictional authority, as virtually all states enacted or expanded provisions to facilitate transferring (commonly referred to as "waiving" or "certifying") serious and violent juvenile offenders to adult criminal court.

In legislatively proclaiming that youths who are charged with certain crimes should be treated as adults, policy makers were encouraged by a variety of public opinion polls showing about 75 percent of those surveyed were in support of adult court processing for serious and violent youthful offenders.[5] Although these same surveys revealed little support for placing adolescents in the same correctional facilities as adult criminals and a limited desire to send increasingly younger offenders to the adult system, "adult time for adult crime" became a familiar battle cry. Although this approach to juvenile offending typically is viewed as a contemporary response to an emerging problem, it actually has a lengthy history that is important to consider in assessing the effectiveness of this practice.

SEPARATING THE MEN FROM THE BOYS

The term "juvenile delinquency" frequently is used in our society during discussions of why children and youth break the law and what should

be done about it. In general, young people are thought to be distinctly different from adults, including children who commit crime. This is such common knowledge that relatively few people would know that the concept of delinquency is actually less than 200 years old, and throughout a great deal of American and European history, children were not treated much differently from adults. In fact, good evidence shows that, although young people have exhibited higher levels of law-breaking behavior down through the ages, it was not until the 1800s that these same behaviors became a major cause for concern, and the concept of delinquency was born.[6] This implies that delinquency is a relatively recent social invention and one that varies significantly from time to time.

Before the 1800s, Americans generally relied on traditional common law that did not allow children younger than 7 years old to be tried or found guilty of a crime. Between the ages of 7 and 14, young people were assumed to be innocent and unable to fully understand the nature of their behavior, unless a judge or jury determined otherwise. Beyond the age of 14, individuals were viewed as adults, but exceptions could be made. This framework began to change, however, as beliefs about childrearing and childhood behavior evolved and urbanization spread throughout the country.

By the early 1800s, authoritarian Puritan ideals increasingly were being challenged, and appropriate childhood behavior began to be viewed more as a product of love and affection, rather than of fear and submission. This corresponded with an emerging concept of adolescence, whereby youth who had been viewed previously as adults came to be seen as more child-like and not yet set in their ways. The growth of major cities, such as New York, Boston, Philadelphia, and Chicago, also raised concerns about poverty and the negative effects of poor living conditions, particularly on children and adolescents from immigrant families. By the 1820s, juvenile delinquency was not only being used to describe the behavior of children and youths who broke the law, but also was being applied to poor young people who appeared to lack adequate parental supervision and guidance and were prone to a deviant life on the streets.[7]

Attention being paid to juvenile delinquency soon spurred the creation of correctional institutions (known as Houses of Refuge) that were designed to confine and rehabilitate delinquents separately from adult criminals. Based on subsequent legal challenges and growing concerns about the harsh treatment and substandard living conditions characteristic of many juvenile institutions, by the late 1880s, the "child-saving" movement had intensified and social conditions became an increasingly important issue to target for change. Nowhere else was this progressive movement more evident than in Chicago at the turn of the century, where a reform effort lead by the Chicago Women's Club culminated in the establishment of the first formal juvenile court in 1899.

In distinguishing itself from the adult criminal court, the juvenile court was to emphasize and employ a unique philosophy (known as *parens patriae*) and procedure. The modern concept of childhood was to be embraced, stressing the notion that children should be treated differently from adults. Hearings were to be of an informal nature, with due process

rights given little attention, to serve the "best interests" of children and provide appropriate rehabilitative services. A distinct language was to be used, denoting caring and concern, rather than punitive punishment. Finally, coercive treatment was to be employed, often through community-based programs and organizations, in an effort to reform "salvageable" children and youth.

Transformation to Criminal

Drawing on Chicago's model, the use of juvenile courts spread rapidly throughout the United States. Although no uniform juvenile justice system was implemented, the implementation of juvenile courts was celebrated as a major achievement, and a great sense of optimism existed with regard to the court's potential for preventing and reducing delinquency. Almost immediately following the creation of the juvenile court, however, debates arose about which children actually belonged within its jurisdiction. In addition to the common practice of diverting younger offenders from juvenile court processing, early juvenile court judges were given the discretion to waive older and more serious delinquents to adult criminal court. Thus, the notion of treating serious and violent juvenile offenders as adults is in no way a new development, but rather one that can be traced over the course of several centuries, both before and after the creation of juvenile courts.[8]

It is interesting that from the outset, juvenile courts seemed to wash their hands of young people who were perhaps the most in need of help. Fearing that laws establishing juvenile courts would be struck down as unconstitutional, juvenile judges did not always assert the original and exclusive jurisdiction provided to them. This allowed another mechanism of transfer to develop, one in which prosecutors' decisions to handle cases of certain adolescent offenders in adult court often were not challenged. Although juvenile court laws and transfer procedures varied from state to state, overcrowded caseloads, issues of constitutionality, and concerns about placing more serious and violent youthful offenders in the company of other children in institutions continued to influence the use of active and passive juvenile transfer throughout the first half of the twentieth century.

By the mid-1900s, supporters of juvenile justice had established that judicial waiver was an essential part of juvenile court operations and was to be used in certain cases in which adolescents were not amenable to the court's rehabilitative efforts and posed a serious threat to public safety. Furthermore, at this time, critics were becoming increasingly vocal about the lack of procedural safeguards granted to youth in juvenile court. During the "due process revolution" of the late 1960s and early 1970s, several U.S. Supreme Court cases established that juveniles could not be denied fundamental due process rights in the pursuit of "individualized justice." For example, in the initial landmark case of *Kent v. United States* (1966), the Court ruled that before being waived to adult criminal court by a juvenile court judge, a youth had the right to a formal hearing to examine the reasons for transfer and the right to counsel at that hearing.

Although initial criticisms of the juvenile court focused on constitutional rights and procedural fairness, a second wave of criticisms and reforms in the 1970s and 1980s was directed at changing the goals and structure of the juvenile justice system.[9] Critics became focused on the growing perceived ineffectiveness of rehabilitation and rapidly rising crime rates. As with the youth violence epidemic of the 1990s, assertions were made that juvenile courts were too lenient, and some commentators even argued that these courts had outlived their usefulness. Similar to changes in ideology that previously occurred in the adult system, juvenile courts began to shift toward a more punitive philosophy that emphasized accountability, deterrence, and incapacitation. It was hoped that these modifications would be an effective response to the increasing public concern about juvenile crime.

Interestingly, calls for abolishing the juvenile court and corresponding juvenile justice reforms in the early to mid-1980s came at a time when juvenile crime, including serious and violent offending, had stabilized and even declined for a period of several years.[10] This preceded the dramatic increase in juvenile violent crime arrest rates from the mid-1980s to the mid-1990s that fueled modern transfer legislation. Since 1994, arrests for serious and violent juvenile offenses have decreased steadily to levels observed in the early 1980s, and concerns about terrorism and homeland security have replaced worries about the onslaught of juvenile superpredators. Waiver laws and policies implemented in the 1990s are still in place, however, and some proponents have credited them for the recent downturn in juvenile offending. The size of the juvenile population still is predicted to grow over the next 25 years, and with funding and other resources directed elsewhere, it is entirely possible that youth violence will reemerge as a significant social problem. It remains important to consider, then, whether transfer to adult court should be perceived as the principal solution.

Methods and Use of Transfer

Today, there are three primary ways to remove a youth from juvenile court jurisdiction: judicial waiver, prosecutorial wavier, and legislative waiver. All states have one or more of these mechanisms in place, and during the past 25 years, virtually all have revised their laws to lower the minimum age for transfer, reduce juvenile court judge discretion in waiver proceedings, expand prosecutorial discretion to file juvenile cases in adult court, and statutorily exclude serious and violent youthful offenders from juvenile court jurisdiction.

Judicial waiver remains the most common transfer provision, whereby a case originates in juvenile court and a juvenile court judge is granted the authority to make the key decision in the transfer process.[11] Only five states currently do not allow for some form of judicial waiver. Although popular in law, relatively few juveniles actually are transferred to adult court under this procedure. Nationwide, judicial waivers peaked at 12,300 in 1994. In more recent years, as youth violence declined and

states shifted to other transfer mechanisms, annual judicial waivers have numbered around 7,500, representing about 1 percent of all cases referred to juvenile court.[12]

Sometimes referred to as concurrent jurisdiction or direct file, prosecutorial waiver allows a prosecutor to file certain charges in either juvenile or adult court, generally based on the offense alleged and the juvenile's age and prior record.[13] Prosecutorial waiver is used in 14 states and the District of Columbia and is probably the most controversial method of transfer because of the wide discretion granted to a typically "crime-control–oriented" court official who may be lacking in background information on a particular case. Current and complete national statistics are not available on the use of prosecutorial waiver, but in states that employ this technique, juveniles transferred to adult court by a prosecutor likely outnumber judicially waived youth by a wide margin. In Florida, for example, prosecutors waive around 5,000 cases per year. It is therefore not unreasonable to estimate that prosecutorial waivers nationwide are double or triple the number produced by judicial waiver.[14]

Finally, legislative waiver (also known as statutory exclusion) places eligible youth into the adult criminal system at the time of arrest, thereby removing the initial discretionary powers of juvenile court judges and prosecutors.[15] Legislative waiver laws, popularized in the 1990s and currently active in 29 states, are a strong indicator of the shift in juvenile justice from an individualized treatment philosophy to a more retributive approach. The most commonly excluded crimes are murder and other violent offenses, but youth charged with various repeat felonies, such as burglary, sometimes are targeted. As with prosecutorial waiver, complete national statistics are not available on the use of legislative waiver. However, in 1996, police directly referred more than 81,500 juveniles to adult court at the time of their arrest, a figure that declined to 51,000 by 2001.[16]

The above estimates of juveniles transferred to adult court do not consider the many thousands of youth under the age of 18 who are prosecuted each year in the 13 states that have set the upper age limit for juvenile court jurisdiction at 15 or 16, rather than 17.[17] If these offenders are taken into account, the available data suggest that in the mid-1990s roughly 250,000 young people under the age of 18 were prosecuted in adult courts nationwide, representing 20 to 25 percent of all juvenile offenders at this time.[18] Although this total figure undoubtedly has dropped in more recent years, it would appear likely that up to 200,000 juveniles under the age of 18 continue to be prosecuted in adult criminal courts under the various laws and procedures available today.

Who Gets Transferred?

During the past few decades, a substantial amount of research has focused on the demographic, legal, and social characteristics of transferred youth.[19] In general, these studies have sought to identify key offender traits to provide an understanding of the types of offenders affected by waiver laws and to assess procedural fairness. Most of what is known about

the characteristics of transferred offenders has been revealed in studies of judicially waived youth, because many fewer studies have been conducted on juveniles processed through prosecutorial or legislative waiver.

Harsher juvenile court sanctions tend to be associated with older youthful offenders (rather than younger ones), and research consistently has shown that older youths are also more likely to be sent to the adult system. Nevertheless, the increasing use of legislative and prosecutorial waiver in recent times does appear to have increased the number of younger juveniles who are transferred. In addition, virtually all studies that examine the race of waived offenders find that nonwhites (primarily African Americans) are highly overrepresented, usually making up 50 to 95 percent of the juveniles transferred to adult court. Although this hints at racial bias, a smaller number of studies that have considered offense seriousness and prior record (along with race and other factors) have found these legal factors generally explain minority overrepresentation in transfer to adult court.

Similarly, a variety of studies using local, state, and national data indicate that about 95 percent of waived youth are male. Offense seriousness and prior record likely explain much of this gender disparity in juvenile transfer, but the low number of females available for research on this topic often leads to male-only samples and analyses, which leads to the possibility of a gender effect on the likelihood of waiver. Nonetheless, the typical juvenile transferred to adult court has been shown to be older, male, and nonwhite (usually African American). Although socioeconomic status is not a well-measured or frequently studied characteristic in waiver research, few would argue with the statement that transferred juveniles are also typically poor, inner-city offenders.

As noted above, offense seriousness and prior record are two important factors to consider in assessing who is most likely to be transferred to adult court. Somewhat surprisingly, studies using data from the 1970s and 1980s indicated that the largest percentage of transferred youth had been charged with property crimes, but these offenders did tend to exhibit lengthy prior records. Studies conducted since the early 1990s, however, show that this situation has changed. Fueled by the youth violence epidemic and corresponding legislative changes, by the mid-1990s, juveniles charged with person or violent offenses accounted for the largest percentage of waived youth. Contemporary research tends to confirm that, if all else is equal, the more violent the offense and the more extensive the prior record of offending, the more likely a juvenile is to be transferred to adult court.

The Case of Nathaniel Abraham

The characteristics and circumstances surrounding the case of Nathaniel Abraham provide a good illustration of much of the information presented to this point. On October 29, 1997, Abraham shot and killed 18-year-old Ronnie Greene outside a convenience store in Pontiac, Michigan.[20] He apparently did not know Greene, who was shot from about 300 feet away with a stolen 0.22-caliber rifle. Abraham was arrested two days later, tried on murder charges, and convicted. He then received a lengthy sentence of

incarceration in a correctional facility. Aside from defense claims that the shooting was accidental, the facts of the case essentially were indisputable, and this type of murder often would not generate anything more than local interest. The convicted killer, however, was less than 5 feet tall, weighed about 65 pounds, and was 11 years old when the shooting occurred. Despite these characteristics, he was prosecuted as an adult defendant.

As perhaps the youngest murder defendant ever to be tried as an adult in American history, Abraham was prosecuted under a new and unique state law that enabled youths under the age of 14 to be charged as adults for certain serious and violent crimes, but the proceedings actually took place in juvenile court.[21] Although older youths remain more likely to be transferred than younger offenders, expanded waiver laws like Michigan's do increase the number of younger defendants who are tried as adults. Abraham was an African American male who committed a very serious offense, with a deadly weapon, and despite relatively little prior juvenile court involvement, he exhibited an alarming history of behavior that resulted in numerous contacts with police and problems at school.

Based on his gender, race, offense seriousness, and history of problem behavior, Abraham represents a somewhat typical juvenile offender who is treated as an adult in this country. At face value, only his young age stands out as unusual, but the statute under which he was charged did not set a minimum age for prosecution as an adult. Other characteristics of this particular defendant, however, seemingly played an important role in the offense and the eventual case outcome.[22]

Born in 1986, Abraham was raised by a single mother, along with an older brother and sister. He began exhibiting a pattern of difficult behavior at a young age, apparently suffered from attention deficit disorder and emotional impairment, and received only a few counseling sessions in an effort to treat these problems. In addition, he grew up in an economically distressed and drug-infested neighborhood, despite living in one of the wealthiest counties in America.

At age 13, Abraham was convicted of second-degree murder for the killing of Greene. Under Michigan's law, the presiding judge had three sentencing options to consider. First, Abraham could have been sentenced strictly as an adult, for which state sentencing guidelines recommended 8 to 25 years in a state prison. Second, he could have been sentenced solely as a juvenile, which would require his release from a juvenile correctional facility by the age of 21. Third, a "blended sentence" could have been imposed, which would have involved placement in a juvenile facility followed by transfer to an adult facility if rehabilitation was not achieved by age 21.

After much deliberation, Judge Eugene A. Moore chose the second alternative of a juvenile sentence, and Abraham was committed to a training school until the age of 21.[23] In doing so, Judge Moore stated that children and youth like Abraham must be held accountable and responsible for their actions, but he also reflected on the history of American juvenile justice and the need for society to do a better job preventing delinquency and rehabilitating young offenders. He asserted that treatment services are more extensive and comprehensive in the juvenile system; the juvenile

system has a higher success rate than the adult system; and adult prison should only be used as a last resort, because incarceration does little to address future criminality and presents the opportunity for brutalization. In other words, the judge in this case made an important and symbolic decision that was influenced not only by the characteristics of the offense and offender, but also by his views on differences between the juvenile and adult systems and the actual effectiveness of treating juveniles as adults.

THE IMPACT AND EFFECTIVENESS OF TRANSFER

The basic rationale for the practice of sending hundreds of thousands of youthful offenders to the adult criminal system is that the juvenile court appears unable to serve the needs of certain young people, and therefore, the adult court should take over their cases. The perceived inability of the juvenile court to handle these cases may be based on a lack of faith in juvenile correctional facilities, a belief that harsher punishment is needed than can be provided in the juvenile system, or the view that some offenders are too dangerous to remain outside the criminal system. Despite the modern shift in juvenile justice philosophy from the rehabilitative ideal to a more punitive orientation, the decision to transfer a case still generally denotes that a youth is beyond whatever treatment capacity remains in the juvenile justice system.

Over the past 20 years, in an effort to assess whether the expected benefits of transfer to adult court actually materialize, a growing body of research has examined the impact and effectiveness of this practice.[24] A fairly large number of studies have considered the case processing outcomes of adolescents in adult court, and some have evaluated differences in case outcomes between similar youths processed in the juvenile and adult systems. Other researchers have investigated the treatment and sanctioning effectiveness for serious and violent young offenders in juvenile and adult correctional facilities. Yet another group of studies have assessed the general and specific deterrent effects that may or may not be realized through modern waiver laws.

What Happens in Adult Court?

Proponents of transferring juveniles to adult court frequently emphasize the perceived advantages of greater accountability and stronger punishment. Overall, research that has assessed how well these goals are being met has produced some surprising and mixed results, along with some findings more in line with what would be expected.[25] For example, studies to date suggest that in the early stages of case processing, a majority of transferred offenders are released on bail before final disposition of their cases, and violent youth in adult court are actually more likely to be released than are similar offenders in juvenile court. Many waived youth are set free with little or no supervision by their family or the adult court, and they are likely to experience lengthy case processing time, which puts them at risk for new

offending. Those who do remain in custody in adult jails appear more likely to experience a variety of adverse consequences (e.g., violent victimization and lack of treatment and educational services), which also may affect the future criminal behavior of these detained youth.

Research that has focused on the likelihood of conviction for transferred offenders generally has found high conviction rates (in the range of 65 to 95 percent) in adult court. The best-designed studies employing comparison groups of similar offenders in juvenile and adult court have produced mixed results, with relatively little difference found in the likelihood of conviction between the two systems. Some evidence suggests that violent offenders are more likely to be convicted in adult court than in juvenile court, but this finding is explained greatly by the fact that the juvenile court often serves a solid screening function, and cases with the greatest likelihood of conviction are the ones typically sent to adult court. Little to no evidence supports the notion that adult courts do a better job holding youthful offenders accountable in the first several stages of case processing. In fact, under modern legislative and prosecutorial waiver laws, adult courts often do provide the case screening previously conducted by juvenile courts using judicial waiver. This results in numerous cases being dismissed, while many others are ''decertified'' or ''reverse waived'' back to juvenile court for further case processing.

Concerning punishment severity, early research on the sentencing of transferred juveniles unexpectedly revealed a ''leniency gap'' in adult court, with probationary sentences being imposed on many youth who did not appear to be viewed as serious offenders in the adult system. More recent studies indicate a change in this pattern, at least for violent offenders, who, when convicted, tend to receive sentences of incarceration that are longer than those imposed on similar youth in juvenile court. Even those findings must be tempered, however, with the recognition that in these studies the juvenile court often was serving the screening function mentioned above (which placed the ''most-deserving'' offenders in adult court). Furthermore, in some jurisdictions actual time served in the adult system may be different (shorter) than the sentence originally imposed.

Although case processing time is a concern and point of emphasis in the juvenile system, adolescents in adult court typically experience lengthy periods of case processing. During this time, they may be released into the community with little or no supervision, or they may remain detained in adult jails. Regardless of whether they are released or detained, many waived youth are initially presented with little or no opportunity for treatment of their drug and alcohol, mental health, or other problems. Whether these needs can be subsequently and effectively addressed through adult court sanctioning is another important issue to consider.

Prospects for Punishment and Rehabilitation

Those who argue in favor of ''adult crime, adult time'' generally assert that criminal court processing is needed to ensure that adequate punishment is imposed on serious and violent youthful offenders. Research

findings may have been unexpected with regard to the case processing outcomes of adolescents in adult court, but many of these youth do receive sentences of incarceration that sometimes are quite lengthy. Moreover, for offenders who stay in juvenile court, a more punitive philosophy exists than was in place throughout most of the twentieth century. A central question, then, pertains to the effectiveness of this punishment-oriented approach to juvenile crime and whether the sanctions and services provided to youth in the adult system have a greater beneficial impact than those given to similar offenders in the juvenile system.

Despite the popularity of the "get-tough" movement and the ever-increasing use of incarceration as the prime method of punishment during the past 30 years, throughout the 1990s there was renewed interest in correctional rehabilitation among politicians, practitioners, and the general public. The extraordinary monetary cost and limited crime reduction generated by large-scale imprisonment could no longer be ignored; the "toughest" intermediate sanctions (e.g., disciplinary-style boot camps) were not producing the anticipated beneficial effects on offender behavior and prison populations; and increasing concern was being voiced about minority overrepresentation in correctional facilities. Furthermore, contemporary studies suggested that treatment and rehabilitation programs actually could be effective in reducing recidivism (repeat offending), if they were properly implemented and offenders were matched with appropriate programs that addressed their specific needs.[26]

Although the general prospects for rehabilitation have been revived in recent years, punitive and incarceration-based strategies remain at the center of criminal justice system operations, and being tough on crime still dominates political platforms. In terms of juvenile justice, however, much more attention has been given to studying and understanding the causes and treatment of serious, violent, and chronic offending. Several books, in-depth reviews of modern research, and meta-analyses of earlier studies were published and revealed important relationships among risk factors, protective factors, and delinquent behavior, as well as provided evidence of effectiveness for a variety of prevention, early intervention, and rehabilitation programs being offered to at-risk children and known delinquents. Essentially, juvenile justice was being revived in a way that emphasized doing things differently from the crackdown and get-tough approaches.

Overall, during the past decade, those in the field of juvenile justice and delinquency prevention have stressed the use of scientific research to (1) guide policy and practices; reduce risk factors and enhance protective factors in families, schools, and communities, and for children and youth; (2) provide treatment and rehabilitation programs that focus on risks and needs assessment; (3) match high-risk youth and offenders with structured services to improve behavioral and social skills; and (4) supply well-designed community-based programs, smaller and more treatment-oriented correctional facilities, and enriched aftercare services. Much scientific evidence exists to support these practices, and at the same time these approaches have been taken, delinquency and youth violence have declined to levels representative of the early 1980s (the start of the "get-tough" movement in juvenile justice).

On any given day, more than 100,000 juveniles under the age of 18 are housed in residential correctional facilities, including roughly 15,000 youths who are incarcerated in adult jails and prisons.[27] They are predominantly male, and most are minorities, as disproportionate minority confinement continues to be a characteristic of both the juvenile and adult systems. Overcrowding, victimization, and poor living conditions still exist in some juvenile facilities, but solid evidence has been generated (from the research mentioned above) that indicates juvenile correctional programming can effectively treat and reduce the recidivism of serious and violent youthful offenders. In fact, juvenile prevention and intervention programs have been found to have the greatest effect when they are directed at the highest-risk youth and more serious offenders. Similar positive results have been obtained in institutional (secure) and noninstitutional programs.

Juvenile and adult correctional facilities and programs are different in several fundamental ways.[28] First, adult criminal justice populations are obviously much older, on average, than juvenile justice populations. Older offender ages are correlated with greater physical size and strength, longer and more violent criminal histories, and more experience within the justice system, meaning that youths transferred to the adult system are exposed to a different type of peer than typically exists in the juvenile system. This exposure often takes place during an extended period of time.

Second, juvenile and adult facilities and programs exhibit basic organizational differences. For example, adult institutions tend to be much larger, many times holding between 500 and 1,000 inmates, or about 10 times the average number held in juvenile institutions. Although overcrowding and disproportionate minority confinement are evident in both the juvenile and adult correctional systems, these problems tend to be more pronounced in adult jails and prisons. Moreover, institutional size and overcrowding have been linked to levels of facility violence and other adverse consequences, and contemporary research on treatment and rehabilitation indicates that smaller and more structured facilities (particularly in the juvenile system) provide more effective services.

Third, staffing patterns are markedly different between juvenile and adult institutions and programs. Adult facilities generally place a high priority on custody and order, with a large majority of personnel hired to address these areas. In a custody-oriented atmosphere, offender perceptions of oppression, alienation, and danger have been found to be higher. Conversely, in juvenile facilities, staffing for education and treatment programs is given higher priority, and inmate-to-staff ratios are much more favorable. In addition, in treatment-oriented programs, relationships with staff and other program participants tend to be more positive, and those in treatment are more receptive to the ideas of change and remaining law-abiding upon release.

Several studies have shown that when compared with offenders placed in juvenile institutions, adolescents in adult facilities are far more likely to be sexually assaulted, attacked by inmates, beaten by staff, perceive unfair treatment, and commit suicide.[29] Other corrections research indicates that younger inmates, who typically lack the experience needed to deal with

the prison environment, are at the greatest risk for physical and sexual assault and exhibit the greatest fear and vulnerability. Further studies show that correctional administrators have serious concerns regarding the placement of juveniles in adult facilities and about what the adult system does and does not offer these youth, because many adult institutions and programs do not provide the specialized services that usually are supplied in the juvenile system. In sum, it is hard to believe that the conditions and culture of the adult correctional system could be an effective way to punish and rehabilitate most serious and violent juvenile offenders.

General and Specific Deterrence

A great deal of evidence suggests that effective treatment and rehabilitation can be provided to serious and violent youthful offenders and that the juvenile system generally provides a better chance for positive behavioral change. Another important question pertains to the deterrent effects of formal sanctions provided through expanded waiver policies and practices. Supporters of this practice contend that, in adult court, a message can be sent to the offenders that the lenient treatment of the juvenile system is no longer an option. Instead, harsh criminal court sanctions will be imposed, which will increase public safety and reduce individual motivations to commit future crimes. Overall, then, adult court is believed to provide greater deterrence through stronger punishment.

Throughout the past 250 years, scholars (and, more recently, empirical researchers) have distinguished between two types of deterrence: general deterrence and specific deterrence. General deterrence refers to the effect of possible punishments on potential offenders in the greater community. The situations in which sanctions are imposed on one person demonstrate to everyone else the expected costs of crime, thereby discouraging criminal behavior among the general population. Specific deterrence pertains to the effect of punishment on the behavior of the individual who is sanctioned. In other words, when someone is deterred in the future through the previous experience of punishment, this constitutes specific deterrence.

A large body of literature has shown that, in terms of general deterrence, the perceived certainty of punishment for illegal acts tends to be more important than the perceived severity of punishment. Policies and programs that focus on increasing the certainty of punishment (e.g., directed police patrols of crime "hot spots") have been found to produce the greatest crime reduction effects.[30] Furthermore, studies focused on the specific deterrent effects of formal sanctions, including many that have examined juvenile offenders, have produced mixed results at best. In fact, many of these studies have found that while controlling for other explanatory factors, harsher sanctions are associated with greater future offending among those who are punished.

Concerning the general deterrent effect of juvenile transfer itself, the weight of the available scientific evidence suggests that expanding waiver laws has little or no impact on aggregate adolescent crime rates.[31] These findings probably are not surprising, because the abovementioned research

supports the general deterrent effect of the perceived certainty of punishment over its severity, and juvenile transfer laws (and their proponents) tend to focus on punishment severity. Limited evidence does suggest that some juvenile offenders cease or reduce their offending as a consequence of reaching the official age of adulthood, but before this time, many adolescents may not be aware of, or fully understand, existing or expanded transfer laws and the associated possibility of being prosecuted in adult court.[32] Without this knowledge or a strong belief that transfer to adult court and enhanced punishment will occur, general deterrence from juvenile waiver really is not possible.

In terms of specific deterrence, a number of studies consistently have shown that as compared with similar youths retained in juvenile court, adolescent offenders waived to the adult system exhibit greater, more serious, and faster recidivism.[33] These findings hold particularly true for juveniles charged with a violent crime. The issue of selection bias is inherent in this research, whereby the "worst" offenders (or those most at risk for recidivism) are more likely to be sent to adult court. The reliable findings on this topic, however, refute the argument that treating juvenile defendants as adults will produce greater specific deterrence.

Juvenile transfer is an extreme response to youthful offending, with potentially severe consequences. Adolescents who are treated as adults often are subjected to a lengthy adjudicatory process, sometimes involving an extended stay in jail, a criminal conviction, and a prolonged prison sentence. Regarding the conditions of confinement, youths in adult jails and prisons appear to receive less-than-adequate treatment services and are more likely to be victimized than similar offenders in juvenile correctional facilities. Subjecting young offenders to this potentially harsh punishment essentially is viewed as being necessary for enhanced public safety and community protection. Available contemporary evidence on the effectiveness of correctional rehabilitation and the general and specific deterrent effects gained from waiver to adult court indicates, however, that these benefits are not nearly as large as expected. In reality, possible short-term gains achieved through longer incarceration in the adult system are offset by greater recidivism once these youths are released from confinement. Therefore, a much more limited use of juvenile transfer appears warranted.

THE FUTURE OF JUVENILE TRANSFER

Following nearly two centuries of efforts to distinguish juvenile delinquents from adult criminals, in the 1990s, the American public and policy makers voiced strong support for treating greater numbers and types of serious and violent juvenile offenders as adults. By the mid-1990s, in response to a decade-long rise in youth violence and fears about a coming wave of juvenile superpredators, almost all states had revised their laws to facilitate the waiver of juveniles to adult court. Since that time, juvenile arrest rates for serious and violent crimes have dropped to a 20-year low, and youth violence is no longer at the top of the list of public and political concerns. But as concerns about terrorism and an emphasis on homeland

security have taken center stage, trends and patterns in juvenile offending also are starting to change.

Many have noted that with diminished support and resources being provided to prevention and intervention programs, declines in serious and violent youthful offending have ended, and increases are again being observed.[34] For example, in Boston, a city well known for its dramatic decreases in youth violence during the latter half of the 1990s, the number of murder victims younger than age 24 nearly doubled during a recent one-year period. This rise followed several years of cuts in federal and state funding that previously supported youth services and programs provided by nonprofit agencies. Nationally, gang violence has reemerged as a disturbing issue. Gang-related homicides dropped from 1,200 in 1995 to fewer than 700 in 1999, but then rose to more than 1,000 by 2003. Furthermore, more than 40 percent of the 2,182 cities responding to the 2002 National Gang Survey reported that gang activity was getting worse (an increase from 27 percent the previous year), and 87 percent of U.S. cities with populations of at least 100,000 reported significant problems with gangs.

These signs of reversing trends in youth violence and gang activity come not only at a time when attention and resources have been shifted elsewhere, but also when the U.S. juvenile population is projected to grow well into the foreseeable future. More juveniles combined with rising rates of youth violence and a lack of adequate funding and resources is a recipe for disaster. Moreover, if recent trends continue, it is quite likely that by the time a growing problem with serious and violent youthful offending is fully recognized, policy makers will react by supporting another crackdown effort that again encourages greater use of transfer to adult court. Studies to date from a variety of researchers suggest that this is the wrong approach on which to rely and that greater use of knowledge about adolescent development and the effectiveness of prevention and early intervention programs is needed.

Adolescent Development and a Comprehensive Strategy

At their root level, juvenile transfer policies assume that adolescents will rationally consider the consequences of their actions; will know about and understand the provisions provided in transfer laws; and, therefore, will choose not to commit serious and violent crime (i.e., they will experience general deterrence). Moreover, if they do decide to commit illegal acts, the experience of being waived to adult court and subsequently punished in a harsh manner will cause them to choose law-abiding behavior upon their return to society (i.e., they will experience specific deterrence). The research evidence previously discussed questions these assumptions, and based on the findings of recent studies on adolescent development, it seems that adolescents simply do not think about and weigh the consequences of their actions in the same manner as adults do.[35]

The teenagers typically targeted by juvenile transfer laws are often psychologically immature and have experienced a variety of negative life circumstances (known as risk factors), which contribute to their impulsive behavior, limited perspective on life, and propensity for engaging in

risk-taking to achieve short-term gains while disregarding long-term consequences. This is particularly true for younger youth (such as Abraham), although modern psychological literature suggests that these same characteristics apply to adolescents up to at least the age of 18. In other words, the lack of maturity in judgment displayed in adolescence seems to make the rational assumption of deterrence theory less than applicable to most juveniles. Furthermore, the stigmatization, sense of injustice, victimization, and exposure to criminal norms and values experienced by transferred youth likely go a long way toward explaining their heightened future offending.[36]

Since the mid-1990s, support has been growing for a more comprehensive, collaborative, and integrative approach to dealing with serious and violent juvenile offending.[37] This strategy is based on research regarding the causes and correlates of delinquency, effective prevention and early intervention efforts, and successful treatment and rehabilitation programs. Rather than responding to youth violence after it has escalated to a high level, as juvenile transfer laws seek to do, the evidence suggests that a combination of prevention and early intervention programs with a coordinated system of treatment and graduated sanctions will be more effective in reducing juvenile crime. This strategy has been supported at the national level by the Office of Juvenile Justice and Delinquency Prevention, which from 1994 to 2002 provided more than $1 billion in funding through its Community Prevention Grants Program. The grants help states and communities to implement programs that can reduce risk factors, enhance protective factors, and decrease adolescent problem behaviors.

Although services to children and their families sometimes are described as fragmented, crisis-oriented, and mismanaged, these problems have been overcome when a comprehensive, community-wide strategy is employed and sufficient funding and other resources are provided. In addition, the development of comprehensive prevention, intervention, sanctioning, and treatment strategies corresponded in time with declining rates of serious and violent juvenile offending. It is therefore important to stress that contemporary investments in children and youth should not be lost because of a renewed faith in punishment-oriented practices (such as transfer to adult court), which are politically wise but limited in their societal benefits.

Final Recommendations

Will transferring juveniles to adult court come to an end in the United States? The answer is probably "no." As long as a separate system of justice is in place for dealing with children and youth, which very likely will continue to be the case in the future, there also will be a perceived need and desire to treat some of these young people as adults. Few would argue that there are not certain older, chronic, and violent adolescent offenders who, for the sake of public safety, should be removed from society for long periods of time. Furthermore, waiver to adult court will continue to exist because of its symbolic importance. Society can use this procedure to express both its fear about serious and violent youth crime and its revulsion for the young offenders who commit it. Having this symbolic

importance makes juvenile transfer resistant to rational and scientific arguments. Nevertheless, the information and evidence that has been gathered on treating juveniles as adults indicate that extending this approach beyond those who are deemed the "most deserving" is not good public policy. The real issue is not whether young offenders should be waived to adult court, but rather which adolescents should be transferred and how they should be processed and sanctioned once they get there.

Various sources indicate that 75 percent or more of all transferred youth are age 16 or older.[38] These findings, combined with what is known about adolescent development and decision making, suggest that a minimum age of 16 should be the standard for adult court processing and sanctioning, at least for all crimes other than murder. This would ensure that younger offenders receive juvenile correctional services and also avoid the potential negative consequences associated with contacting adult criminals and public labeling in the adult system.

Next, instead of using broad categories of serious and violent offenses to establish transfer eligibility, a focus on firearms seems more justified. Firearm use was a key factor in the surge in youth violence from the mid-1980s to the mid-1990s, particularly with regard to the dramatic increases that occurred in juvenile murder rates and youth homicide victimization. Research suggests that violent juvenile gun users tend to receive the most immediate attention and severe sanctions in adult court and that justice system officials believe waiver laws should target gun offenses.[39]

Still, not all adolescent gun users are equal in terms of their behaviors and future risk to society, and many could be effectively handled in juvenile court. Therefore, a youth's prior offending history is another important factor to consider. Juveniles with more serious and extensive offending backgrounds tend to be given more immediate attention and are punished more severely, particularly in adult court, but these same youths also pose a higher risk for recidivism. This implies that a relatively small number of serious and violent adolescent offenders (less than 10 percent of all delinquents, based on current research) with substantial prior records are the most likely to continue their chronic offending well into adulthood, justifying the need for longer periods of incapacitation to ensure public safety.[40]

If the above information was combined for policy purposes, youth age 16 and older who employ a gun and display a notable delinquent background would be the focus of juvenile waiver laws. To specify the needed prior record, one option would be to require a prior adjudication of delinquency on a violent felony offense. Another would be to develop a prior-record scoring system, common in adult sentencing guidelines, which would consider all prior adjudications. This would require improved juvenile record-keeping systems that would need to be made more accessible, at least to those working in the juvenile and adult justice systems.

Following these recommendations would ensure that juveniles in the adult criminal justice system would be older and more violent and chronic offenders who pose the greatest threat to public safety. This would reduce the likelihood of negative experiences and longer-term adverse consequences for younger and less serious offenders, and it would allow for lengthy

incapacitation of the most dangerous youth. This approach contrasts with most modern waiver laws that encompass broad categories of younger, less serious, and lower-risk adolescent offenders. It also suggests greater consideration of how serious and violent young offenders should be processed and sanctioned in both the juvenile and adult systems.

Although there are exceptions, most states use 18 as the age at which criminal courts receive jurisdiction over young offenders.[41] Almost all states also define a maximum age greater than 18 (for example, 21 or even 25) for which the juvenile court can retain custody and supervision beyond the original age of jurisdiction. Rather than waiving increased numbers of juveniles to adult court, an alternative in most states would be to raise the maximum age at which the juvenile court can retain jurisdiction, which would allow for lengthier confinement, treatment, and supervision. This, in turn, would avoid many of the adverse consequences and negative outcomes associated with sending adolescents to the adult system. This approach is compatible with the fact that crime (including violent offending) peaks by the late teenage years and declines thereafter.

It seems logical that juvenile courts should be able to keep control of known offenders into young adulthood, rather than "cutting them loose" at a time when they are most likely to break the law. To fully implement this approach, however, requires a greater investment in the juvenile justice system and a shift in the funding and resources that currently are devoted to dealing with younger offenders in the criminal justice system. Moreover, a relatively small number of older, chronic, and violent adolescent offenders still will need to be prosecuted in adult court and will likely end up in adult jails in prisons, either through standard waiver procedures or blended sentences that entail confinement in juvenile and adult correctional facilities. Minimally, these offenders should be segregated from the rest of the adult inmate population, preferably until the age at which juvenile court jurisdiction would end if these offenders were retained in juvenile court (e.g., at least age 21, but perhaps 24 or 25). A better approach would be to provide smaller and separate facilities and treatment services for these youth, because many will be returned to society and will be expected to be productive and law-abiding community members upon their release.

The key lesson to be learned from more than 100 years of experience with transferring juveniles to adult court is that this practice is not a cure-all for serious and violent youthful offending. As long as we ignore the evidence that is available and emphasize a reactive approach to adolescent problem behavior, cycles of serious and violent youth crime will be met with calls for greater use of juvenile waiver. As informed citizens, however, we could take on the responsibilities of influencing public officials and making a greater investment in children and youth through a more proactive approach to preventing and reducing delinquency and youth violence. We are beginning to more fully understand childhood and adolescent development, as well as what works to guide children toward success in life and correct adolescent problem behaviors. What we choose to do with this information will go a long way in determining how future generations of young people are viewed.

NOTES

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CHAPTER 4

Juvenile Specialty Courts

Victoria Simpson Beck, Lawrence F. Travis III, and Robert J. Ramsey

Until late in the nineteenth century, youths accused of committing crimes were lumped together with adults and faced charges and punishments in the adult system of justice. By the start of the twentieth century, reformers had come to believe that most, if not all, juvenile offenders were "redeemable," and that treating children like adults was a mistake. At common law, children under the age of seven were assumed to be incapable of forming criminal intent—knowing right from wrong. Youth between 7 and 14 years of age were presumed to be incapable of forming intent, but the prosecutor could present evidence to prove the youth "knew better."

Throughout the late 1800s, those concerned with child welfare were confronted with the specter of thousands of young people being tried, convicted, and punished as adult criminals. The consensus of opinion was that this treatment turned wayward youth into hardened criminals. A better system, reformers argued, was to divert youth from the criminal courts. To that end, in 1899, the first juvenile court was founded in Chicago. The solution to the problem of youth crime was defined as the development of a specialized court and separate justice system.

The juvenile court was to be therapeutic and concerned with the best interests of the child. The state, through the juvenile court judge and other juvenile justice officials, would act as a concerned and caring parent, providing help and guidance to the delinquent youth in hopes of returning a law-abiding citizen. The juvenile court was not punitive.

In the past 20 years, the specialized juvenile court has been the subject of two related reform movements. On the one hand, juvenile processing of what are called serious juvenile offenders has been criticized as

ineffective at protecting the public and too lenient toward these dangerous offenders. In response, the juvenile court has become more punitive in its treatment of juvenile delinquents. On the other hand, there has been a rebirth of interest in a therapeutic approach to the problems of youth who are involved in crime.

Although the juvenile court in many jurisdictions has become more similar to the adult courts in its handling of serious juvenile offenders, the notion of a specialized court has also expanded. Current juvenile diversion practices include, for example, "informal adjustment" strategies that "allow youths to avoid formal court processing and adjudicating and the stigma that typically accompanies formal action."[1] Adjustment strategies involve the informal handling of youths by community agencies and programs and may include counseling, crisis intervention, and mediation. A second approach is to develop special dockets in the juvenile court or separate courts to deal with selected types of youth or delinquency problems.

SPECIALTY COURTS

During the 1980s at the height of the crack cocaine epidemic and the "war on drugs," adult criminal courts in many places were overwhelmed with drug offense cases. Many of the defendants in these cases were low-level offenders with substance abuse problems. Attempts to control the criminal and substance-abusing behavior of these offenders generally were unsuccessful. Drug users crowded jails and prisons and substance-abusing offenders swelled probation caseloads and other community programs.

At the same time, treatment professionals grew frustrated with frequent conflicts between the requirements of therapy and those of the criminal justice process. For example, there is reason to believe that motivation to engage in treatment is highest when the user is in crisis. For most offenders, arrest represented a crisis that spurred them to seek treatment. Unfortunately, these offenders had to wait for the courts to take action before they were convicted and ordered into treatment. Often the moment of crisis had passed before offenders entered treatment. In like fashion, substance abuse treatment is full of setbacks and failures. People under criminal justice supervision who "backslide" found themselves removed from therapy and sentenced to jail or prison. Treatment professionals sought a process in which the criminal sanctions could become part of a system of care.

The first formal drug court was established in Miami in 1989. Drug courts are specialized courts, or dockets within courts, designed to deal solely with substance-abusing offenders. The courts rely on identifying eligible offenders (usually those whose criminal behavior is drug related, but who are nonviolent offenders) and merging the criminal justice and drug treatment systems. Offenders are placed under community supervision (probation or other conditional release) and closely monitored by the court. They are supervised by criminal justice agents and enrolled in specialized treatment programs. The goal of the drug court is to prevent future crime by getting the offender to stop abusing drugs.

A drug court can reduce caseload pressures in the general criminal court by removing many of those cases in which the defendant is known to have a drug problem. Specializing the caseload of the court not only allows judges and other court personnel to develop specific expertise in the handling of drug crimes and drug offenders, but also can streamline the criminal court process in general by removing a large number of cases. At the same time, the drug court emphasizes treatment. To date, evaluations of drug courts indicate that, when well designed and operated, the courts succeed in both reducing court delay in the criminal courts and improving the success of treatment efforts.

The federal government supported the development of drug courts by providing funds to local courts to develop and implement drug courts. Nearly 1,200 drug courts are in operation and hundreds more are in the planning stages.[2] The drug court model set the stage for the development of a variety of specialized courts. These courts, focused as they are on particular types of offenses or offenders, have been called "problem-solving courts."[3] This move toward specialized courts that has struck the adult criminal courts has spread to the juvenile court as well. Originally a specialized court in its own right, over the past two decades, the juvenile court has experienced an accelerated movement toward additional specialization.

The past 20 years have seen the development of separate courts or specialized dockets that focus on drug offenders, domestic violence, offenders suffering mental health problems, people accused of driving while intoxicated, "reentry" courts, and community courts. Huddleston, Freeman-Wilson, and Boone write, "There is no doubt that the expansion of problem solving courts is well underway in every state across America. No longer may drug courts, and other problem solving courts, be described as anything other than an appropriate, effective, and productive way for the justice system to function."[4] Although some people might have reservations about problem-solving courts, it is clear that the expansion of these courts is well under way. A survey of courts in early 2004 identified nearly 1,700 problem-solving courts in operation at that time.

JUVENILE SPECIALTY COURTS

Juvenile specialty courts focus on specific types of delinquency (e.g., minor offenses, drug-related offenses, gun-related offenses) and have been designed to address the special needs of youthful offenders. A variety of juvenile specialty courts have developed to divert youthful offenders away from the more punitive and potentially developmentally threatening aspects of the traditional juvenile court system. All juvenile specialty courts are characterized by their small case loads, frequent hearings, immediate sanctions, family involvement, and treatment services. Juvenile specialty courts offer innovative and integrated treatment approaches reflecting community norms and values, encouraging community involvement in the juvenile justice process, and increasing treatment options for youthful offenders.

The underlying principles of juvenile specialty courts are consistent with those of the traditional juvenile court. Most specialty court programs strive

to promote self-esteem, enable self-improvement, and foster a healthy attitude toward rules and authority. Nonetheless, juvenile specialty courts are relatively new and much remains to be learned about how practitioners can most effectively intervene with youthful populations. The remainder of this section describes existing types of juvenile specialty courts discussed in the literature, beginning with the juvenile drug court.

Juvenile Drug Courts

Adapted from the popular innovation in adult courts, juvenile drug courts are special courts that handle substance-abusing youthful offenders through comprehensive supervision, drug testing, treatment services, and sanctions. The juvenile drug court provides intensive judicial intervention and supervision of juveniles and families involved in substance abuse, although other types of youthful offenders may be referred to the court. The judge works with an intervention team (composed of individuals from social service programs, the legal system, and the community) to design an individualized plan that addresses substance abuse problems and other related issues.

Development

Modeled after adult drug courts, juvenile drug courts began to appear in the mid-1990s to address the alarming increase in drug and alcohol use among high school students. The outbreak of juvenile drug courts has been extraordinary. As of 2006, there are 406 juvenile, 166 family, and 14 combined (juvenile and family) drug courts in the United States.[5] An important force behind the drug court movement was the Violent Crime Control and Law Enforcement Act of 1994, which provided federal support for planning, implementing, and enhancing drug courts for nonviolent drug offenders. Additionally, by lending their support to the drug court movement, national leaders raised the status of drug courts.[6]

Process

Because juvenile drug courts are implemented at the local level, they vary by jurisdiction in terms of structure and scope. All share similar goals, however, as noted in Table 4.1.

The Juvenile Drug Court, operating within Jefferson County Family Court, in Birmingham, Alabama, provides one example of juvenile drug court processing. According to the Birmingham Bar Association,[7] a juvenile offender with a substance abuse problem may be referred to the Drug Court from their disposition hearing. Once referred, the youth is ordered into an Adolescent Substance Abuse Program, and then the case is reviewed to determine whether the program is appropriate for the youth (Drug Court will not take a client that is not suited and may not respond well to the less-structured, lighter-sanctioned program). After these initial

Table 4.1.
Goals of the Juvenile Drug Court

Immediate Intervention	Provide immediate intervention, treatment, and structure in the lives of juveniles who use drugs through ongoing, active oversight and monitoring by the drug court judge.
Improve Functioning	Improve juveniles' level of functioning in their environment, address problems that may be contributing to their use of drugs, and develop/strengthen their ability to lead crime- and drug-free lives.
Skills Training	Provide juveniles with skills that will aid them in leading productive substance-free and crime-free lives—including skills that relate to their educational development, sense of self-worth, and relationships in the community.
Strengthen Families	Strengthen families of drug-involved youth by improving their capability to provide structure and guidance to their children.
Promote Accountability	Promote the accountability of juvenile offenders and those who provide services to them.

Source: Bureau of Justice Assistance, 2003.

steps, there are four phases to the program: (1) participants attend court weekly and drug test weekly; (2) participants attend court biweekly and the frequency of drug tests is individualized; (3) participants attend court monthly and the frequency of drug tests is individualized; and (4) aftercare participants attend court and submit to a drug test only if they received a letter or phone call from the court specialist.

In the drug court model, the judge is both the leader and a member of a team designed to reduce drug and alcohol abuse by youth engaged in delinquency. The juvenile drug court deals with similar issues as does the adult court, but juveniles pose specific problems. Because of their age, use and possession of alcohol is an offense for youth when it might not be for adults. Again, because of their age, many delinquents do not have as serious addiction problems as are found in an adult population. As minors, juvenile delinquents have school attendance requirements, and interventions with youth often require family interventions.

Youth identified as eligible for drug court interventions are enrolled in the program. Eligibility is usually defined as showing evidence of drug or alcohol involvement that is related to the delinquency problem, not having a record of violent behavior, and demonstrating evidence to suggest the youth can be helped by treatment. The drug court team usually includes the judge, prosecutor, defense attorney, probation officer, treatment personnel, police, and any other family or community members who might assist (schools, clergy, and so on). The youth normally is placed into some sort of conditional release to the community (probation or even a

residential setting such as a halfway house). Among other things, these conditions usually include drug testing, participation in treatment programs, and frequent reporting. The judge provides supervision and monitoring, sometimes including weekly appearances in court. The team assesses the youth's progress in treatment and decides the best course of action to take.

Effectiveness

There have been many evaluations of drug courts, especially of those serving adult offenders. In general these studies report positive results. Drug courts seem to be effective in selecting and serving offenders with drug problems, retaining these offenders in treatment, and reducing the general caseload of the criminal courts. Drug court programs appear to provide better supervision than traditional probation and to reduce the number of offenders who are sent to jail or prison. Recidivism studies report mixed results, with most evaluations showing that drug court graduates commit fewer new crimes in the short term, at least. Still, the effects of drug court treatment on long-term rates of crime or drug abuse are unknown. For the newer and less numerous juvenile drug courts, as a special subset of all drug courts, the evidence is even less strong.

Concerns

One concern surrounding drug courts is that they provide an incentive to create an overreliance on arrests as a way to address substance abuse problems. Furthermore, the program may not be well suited for all youth. For example, it is not possible to coerce sobriety, and some youth may not be voluntary participants in assigned substance abuse treatment programs. Additionally, drug courts may hold youth accountable without holding the drug treatment facilities accountable. The threat of "net-widening" exposes youth who would not have been subjected to court oversight to the juvenile justice process so that they can be enrolled in the drug court program. This may be especially relevant because most drug courts exclude more serious offenders and those with any record of violence. This not only denies a possibly effective treatment to some youth, but also may mean that youth who do not need the attention of the drug court are now kept in custody. Finally, expectations of the drug courts may be too high. Is it reasonable to assume that juvenile drug courts can really solve a complicated social problem like substance abuse?

Juvenile Gun Courts

Juvenile gun courts intervene with youth who have committed gun offenses that have not resulted in serious physical injury. Unlike other juvenile specialty courts, gun courts augment rather than replace typical juvenile court procedures. Juvenile gun courts were formed as a juvenile justice system response to high levels of violent juvenile crime and criticism

of juvenile courts for not having provided appropriate sanctions and program services.

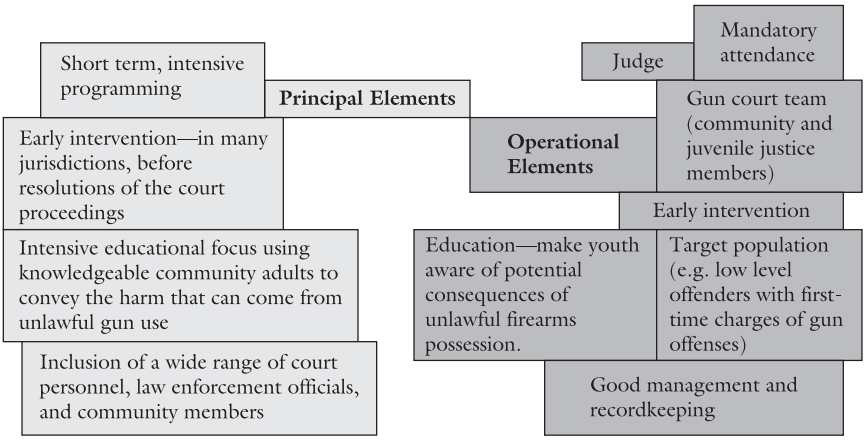
Development

The first adult gun court was established in Providence, Rhode Island, in 1994. It appears that the first juvenile gun court may have been modeled after this adult court and implemented the following year in Birmingham, Alabama, although the literature is not clear on this point. At last report, there were six juvenile gun court programs, and the federal Office of Juvenile Justice and Delinquency Prevention was taking steps to support further development.

Process

Juvenile gun courts are implemented at the local level, resulting in variation across programs. According to Sheppard and Kelly,[8] however, several key elements are included in a successful juvenile court program (see Table 4.2). In comparison with traditional juvenile court processing, gun courts involve the early screening and referral of youth who can benefit from the program, an expanded role of the judge as educator and case manager, and a wider involvement of community members. Sheppard and Kelly write that gun courts can serve not only those youth charged with gun offenses but also youth charged with other weapons offenses, youth who possessed a firearm but were not charged, or those otherwise "at risk" for gun involvement, including gang members, drug dealers, those whose codefendant was armed, and the like.[9]

Table 4.2.
Key Elements of a Juvenile Gun Court Program



Source: Sheppard & Kelly (2002).

Jefferson County's program, in Birmingham Alabama, provides an example of juvenile gun court processes. The Jefferson County Juvenile Gun Court was established, in 1995, in response to an increase in juvenile deaths the preceding year. The goal of the court is to deliver swift and suitable consequences to juveniles found in possession of a gun. Cases in Jefferson County Gun Court are processed as follows: (1) arrest for a qualifying offense (e.g., a first-time offender charged with a nonviolent offense); (2) court intake, during which youth are retained and there is no discretion to transfer case from formal prosecution to diversion programs; (3) detention hearing, which is held within 72 hours, at which time youth may request a trial or plead true; (4) if a youth requests a trial, then the trial must be held within 10 working days; (5) youth who plead true are sent to an intensive boot camp, focusing on, for example, improving social skills, physical exercise, and academics; (6) parents are required to attend workshops, targeting the underlying issues that led to the offense; and (7) after release from boot camp, youth are placed on probation supervision for a period of one to six months.[10]

Effectiveness

Juvenile gun courts are among the most recently developed specialty courts. Consequently, little is known about their effectiveness. A recent evaluation on program outcomes in the Jefferson County Juvenile Gun Court has indicated that the typical program youth was a 15.5-year-old black male, with 88 percent having been charged with gun possession. Additionally, the study findings indicated that youth processed through the Gun Court had significantly lower rates of recidivism. Finally, in examining overall trends in Birmingham, the analyses indicated that between 1995 and 1999 formal juvenile gun charges decreased by 54 percent and violent crime decreased by 57 percent.[11]

Concerns

Before the implementation of juvenile gun court, typically, youth were not arrested for gun possession; they were released to a parent without the filing of charges.[12] Consequently, net-widening is a particular concern for gun courts. The broad boundaries around the types of youth who might benefit from gun court programs (more than just youth currently involved with guns) raises concerns that these programs could significantly increase the reach of the juvenile justice system. Gun and violent crime rates decreased across the country during the 1990s, and it is not clear how, if at all, gun courts contributed to this decline. Until more reliable data are available, gun courts remain a promising, but unproven, response to some juvenile delinquency.

Teen Courts

Teen courts are programs in which juvenile offenders, having committed minor acts of delinquency (e.g., truancy, petty theft), are questioned, defended, and sentenced by their peers. Youthful offenders voluntarily

choose teen court, with parental approval, as an alternative to formal juvenile justice court processing and delinquency adjudication.

Development

Teen court appears to be the pioneer of juvenile specialty courts. Although the exact date of the first teen court has not been established, the literature has noted that in the 1940s a Mansfield, Ohio, youth-operated bicycle court dealt with the minor traffic violations of youth. In 1972, the Odessa, Texas, teen court was implemented, which appears to be the most widely known teen court and regarded as a national model.[13] Teen courts are the fastest-growing specialty court. By 2002, more than 900 teen court programs were operating in 46 states and the District of Columbia.[14]

Process

Diversion to teen court prevents the need for formal juvenile court adjudication and a court record. All teen courts operate within the parameters of state and local law, but most states do not formally endorse teen courts. Rather, most states rely on the discretion of local jurisdictions to fund and operate teen courts.[15] Thus, teen courtroom models and processes may vary considerably across jurisdictions. There are four basic teen courtroom models (see Table 4.3).

The teen court processes vary, but in general the process begins with an arrest or school referral (e.g., truancy, fighting). Once a case has been referred to teen court, an intake agency (e.g., police, court, prosecutor, juvenile justice agency) must confirm eligibility, which is typically determined based on the type of offense and prior record. During the intake process, the charges are reviewed and teen court processes are explained to the offender and the parent to ensure that participation is voluntary. The youth and parents must sign a contract agreeing to diversion to teen court and the youth must accept responsibility for the charges. If the youth

Table 4.3.
Four Models of Teen Courts

	Adult Judge	Youth Judge	Youth Tribunal	Peer Jury
Judge	Adult	Youth	Youth(s)	Adult
Youth attorneys included	Yes	Yes	Yes	No
Role of youth jury	Recommend sentence	Recommend sentence	No jury present	Question defendant, recommend sentence

Source: National Youth Court Center, 2006.

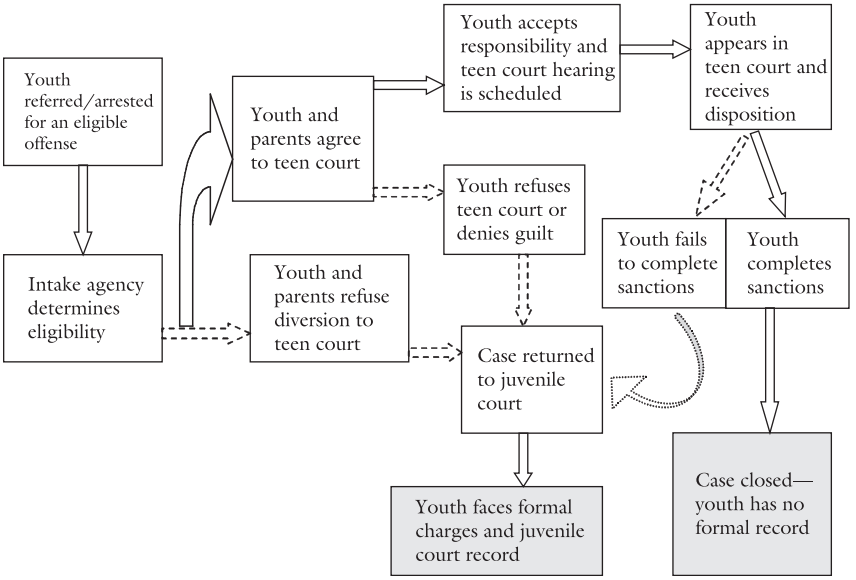


Figure 4.1. Teen Court Process
Source: Butts, Buck, & Coggeshall, 2002.

denies responsibility or the contract is not signed, the case is returned to the juvenile court. If the youth accepts responsibility for the charges and the teen court contract is signed, then the teen court hearing is scheduled.[16] Figure 4.1 depicts this process.

All youth appearing before the teen courts receive some type of informal sanction, which typically requires the youth to repair or repay at least part of the damage caused to the community or specific victim. For example, an offender may be ordered to perform community service, pay restitution, or write a letter of apology. According to a national survey of teen courts, community service is the most common sanction.[17]

Teen courts are structured in one of three basic ways. Some courts are operated by the juvenile courts or juvenile probation agencies. In other places, teen courts are administered by community-based service agencies, including the police and private or nonprofit organizations. Finally, some of these courts are operated in schools. The thinking behind teen courts suggests the programs can be effective in three ways (as shown in Table 4.4).

Effectiveness

Although teen courts have been around longer than the other juvenile specialty courts, relatively little information is available on the effectiveness of these programs. One available study, the Evaluation of Teen Courts (ETC) Project, was conducted by the Urban Institute in 2002. The ETC Project studied teen courts in Alaska, Arizona, Maryland, and Missouri.

Table 4.4.
Methods of Effectiveness

Effect	Process
Peer Justice	Just as association with deviant or delinquent peers is commonly associated with the onset of delinquent behavior, peer pressure from prosocial peers may propel youth toward law-abiding behavior.
Law-related Education	Youth avoid illegal behavior as they develop citizenship skills and procitizenship knowledge, including a belief in the value of democracy and pluralism, dedication to the ideal of justice, respect of human dignity, and an understanding of the role of law in the legitimate resolution of conflicts.
Skill Building	Youth avoid illegal behavior as they develop effective like skills, including conflict resolution, interpersonal communication, public speaking, and group problem solving.

Researchers measured the postcourt recidivism of 500 youths referred to teen court. Based on a six-month follow-up period, the ETC Project found that, in general, programs in all four study sites had low rates of reoffending. More specifically, they found teen court youth were significantly less likely to reoffend than were the comparison group youth in two of the four study sites. In one site, teen court youth were less likely to reoffend, but the difference was not significant; in the fourth site, the findings slightly favored the comparison group, but the difference again was not significant. Furthermore, study findings indicated that there was no statistical difference in reoffending across courtroom models.[18] Officials in many jurisdictions report that the teen court process leads to increased respect for the law and the juvenile justice system by holding youth accountable for their first, minor offenses. These officials also argue that the teen court can respond more quickly and more efficiently to youthful offenders than the formal juvenile court.

Concerns

One particular concern with teen courts is that they provide youth with the ability to determine the punishment of an offender. The peer "jury" in a teen court determines penalties. Use of peer judges may contribute to the labeling of offenders who must admit guilt before their peers. In addition, perhaps even more than with other courts, teen courts have substantial potential for net-widening. Indeed, one of the reported strengths of teen courts is that they involve youth who otherwise may very well have been diverted from the juvenile justice process entirely.

Mental Health Courts

One problem facing courts in the entire criminal justice system has to do with the handling of mentally ill offenders. Developments in patient rights, the closing or downsizing of mental health hospitals, and the development of drug treatments for many mental conditions have all combined to increase the number of mentally ill individuals residing in our communities. Often these individuals experience legal problems and come to the attention of the courts. Approximately 40 percent of adults suffering from a serious mental illness come in contact with the criminal justice system, and 20 percent of youths in the juvenile justice system have serious mental health problems.[19] Ron Honberg, the legal director for the National Alliance for the Mentally Ill, said, "[O]ur nation's jails and prisons have become de facto psychiatric treatment facilities.... It is frankly unfair—and very poor public policy—to saddle criminal justice systems with responsibility for responding to people with mental illnesses in crisis."[20]

As with drug offenders, mentally ill offenders contribute to court delays and may not be receiving adequate treatment and service in the criminal courts. To respond to this problem, several jurisdictions created special adult "mental health courts" during the 1990s. It was not long before some juvenile courts also created mental health dockets.

Development

The forerunner to mental health courts may well have been screening and diversion practices in the New York criminal courts in the 1960s.[21] Responding to a growing number of criminal defendants with mental illness issues, the New York courts instituted a pretrial screening process that sought to identify offenders suffering mental illness and divert them to mental health treatment outside the court and criminal process. In the 1990s, building on the perceived success of the drug court model, some adult courts began to develop specialized caseloads for the mentally ill.

The first adult mental health court was started in Ft. Lauderdale, Florida, in 1997. Criminal defendants found to be suffering from mental illness are asked to volunteer for the mental health court program. Criminal charges are postponed for those who agree to the program and the judge, working with a variety of criminal justice and treatment staff, manages a mental health treatment regimen that is supported by criminal sanctions. Successful completion of treatment results in the dismissal of charges and avoidance of a criminal record. The program began in response to the large number of defendants exhibiting mental health problems. These individuals posed serious problems in terms of jail crowding and court delay. In addition, it was clear that traditional criminal justice approaches to these individuals resulted in a "revolving door" and did not seem to improve the conditions of defendants or reduce future crime.

Relatively soon the idea spread to some additional adult courts, including those in San Bernardino, California; Seattle, Washington; and Anchorage, Alaska. As with other specialty courts, congressional attention to the

promise of effective interventions led to the provision of federal funding to test the mental health court concept in dozens of jurisdictions. By the late 1990s the idea of a specialized mental health docket had been adopted in some juvenile courts as well. The leading examples of juvenile mental health courts include those found in the state of California and Hamilton County in Cincinnati, Ohio.

Process

Although variations exist across different courts, they all share some common characteristics. All of the courts require voluntary participation. In some cases, the defendant must plead guilty, in others the defendant agrees to participate and no action is taken on the criminal charges. All of the courts provide mental health assessments and link participants to treatments that are enforced or supported by the use or threat of criminal sanctions. In all the programs, the court relies on teams of mental health and criminal justice professionals and the court maintains supervision over the case.

The Santa Clara, California, juvenile mental health court is called the Court for the Individualized Treatment of Adolescents (CITA). CITA is reserved for youth who have been diagnosed with a serious mental illness that is related to their criminal involvement or involvement with the juvenile court. All youth are screened for mental illness, and those who seem eligible receive additional testing. The mental health court team includes the prosecution, defense, probation office, and a mental health coordinator. The team selects the youth who are invited to participate.

Serious offenders may be kept in residential placements, but most are placed on electronic monitoring. The program seeks to keep youths in their homes. To remain in the program, youths must agree to any medication, show a willingness to participate in counseling, and generally have a positive attitude. Cases are reviewed in court every one to three months that the youth are on probation. Other California courts include school personnel and community representatives in the mental health court team. The Hamilton County, Ohio, court accepts youth diagnosed with major depression, posttraumatic stress, or bipolar disorders. The program usually involves intensive treatment at home. The program was developed in response to a perceived lack of adequate mental health services for youth in the county.

Effectiveness

Mental health courts are so new that, to date, evaluations of court effects have not been completed. Early reports suggest that the courts are successful at selecting appropriate candidates and that most participants are receiving services that normally would not be available to offenders processed through the courts. It is not clear what, if any, impact these courts will have on recidivism. Many mental health problems are chronic illnesses for which it is difficult to identify ''outcome'' measures. It is also not clear how to contrast participation in treatment (one measure of

"success") with new criminal involvement (one measure of "failure"). It will be some time before conclusions about the impact of mental health courts can be drawn.

Concerns

As with other specialty courts, mental health courts raise concerns about net-widening. Indeed, there is an argument that people whose involvement in crime or the criminal/juvenile courts is the product of mental illness are, by definition, not guilty of criminal behavior and should not be subject to court control. Additionally, although the courts require voluntary participation, it is not clear whether offenders suffering mental illness are competent or capable of volunteering to participate.[22] Other issues include concerns about how to balance the goals of mental health treatment with the goals of criminal processing, a fear that the courts result in forced treatment, and questions about the impact of these courts on the availability of mental health services to individuals not involved in crime.

Miscellaneous Juvenile Specialty Courts

Although we may not hear about them as frequently, throughout the United States at the local level there are probably a variety of locally individualized juvenile specialty courts. For example, since 1958, Hamilton County, Ohio, has had an Unofficial Juvenile Community Courts program. The focus of this program is to divert first-time nonfelony offenders away from official processing to prevent stigmatization and instill "the discipline necessary to remain out of trouble."[23] The juvenile court appoints and trains community volunteers as referees for the 28 diversion courts throughout Hamilton County. Referrals to the diversion program are made by police departments and schools. If the parents and child consent to an unofficial hearing (contested cases are referred to the Juvenile Court), a hearing date is set and the volunteer referee conducts a semiformal hearing focusing attention on the delinquent behavior of the child, reviewing the child's behavior with parents, lecturing the child, and then making a disposition based on parents' prior consent. Dispositions may include, for example, essays, unofficial work details, unofficial probation periods, restitution, and counseling. If no new complaint is filed within a one-year period, the initial report is destroyed and no official juvenile court record is created.

Beck, Travis, and Ramsey[24] conducted an effectiveness evaluation study of the Unofficial Juvenile Community Court, measuring (among other variables) reoffending. Study findings indicated that, of the 393 cases included in the evaluation, only 10.1 percent had reoffended during a one-year follow-up period. Furthermore, 88.7 percent of the parents of children in the study reported that participation in the program was in the best interest of their child, and more than half of the parents expressed gratitude for the program.

This chapter has focused on identified specialty courts serving juvenile delinquents or located within juvenile courts. Hundreds of what are called "community courts" are in operation in the United States. These courts are designed to deal with the crime and disorder problems of communities. They involve court officials and community representatives in efforts to solve problems that result in crime or disorder in communities. Some of these problems might be disputes about parking on the streets of a neighborhood, arguments about property maintenance, trespassing, and similar low-level criminal matters that are actually symptomatic of neighborhood issues. To the extent that these neighborhood problems involve adolescents or younger children, community courts also could become involved as juvenile specialty courts. Data are not available to allow us to estimate what portion of community court caseloads involve juveniles or how effective these courts may be. It is a safe bet, however, that as these courts spread they will increasingly touch the lives of youth.

THE CONTROVERSY SURROUNDING JUVENILE SPECIALTY COURTS

With the exception of juvenile gun court, specialty courts divert youth away from juvenile court processing, thus providing youth with a second chance. Proponents of juvenile diversion programs have argued that the programs "guard against the continuation and exacerbation of delinquency by being less stigmatizing"[25] and result in reductions in recidivism,[26] and that diversion provides services to youth where none existed previously. Opponents have argued, however, that diversion programs extend social control to youth who ordinarily would have been released at the intake or arrest state (an outcome known as net-widening), do not prevent stigmatization,[27] and may increase recidivism.[28] According to opponents, selection for diversion may be arbitrary[29] and participation in juvenile specialty courts requires an admission of guilt, which undermines the principals of due process.

Because of the dearth of research on juvenile specialty courts, it is difficult to determine whether the courts are creating more harm or whether they are taking innovative steps to protect youth. It is clear that the various court programs tend to be competing with each other for the same population of youth. With the possible exception of mental health courts, none of these specialty courts target serious, dangerous offenders. Drug and mental health problems coexist in most offenders, so it is not clear whether a drug court placement or mental health court placement would be best. It may be that the spread of these specialty courts will result in a relatively small percentage of juvenile court cases receiving overwhelming amounts of attention and resources, while the bulk of delinquent youth will be subjected to increasingly punitive treatment.

The juvenile court itself was originally designed as a sort of specialty court that diverted less serious and less dangerous offenders from the adult criminal courts. It is somewhat ironic that this diversionary reform

now seems to require new diversionary reforms. In theory, at least, the traditional juvenile court was well suited to provide the kinds of services and problem-solving efforts that are associated with these specialty courts. That the original juvenile court model is now in need of reform raises troubling questions about the future of today's problem-solving courts.

Many of the specialty courts began as local initiatives aimed at solving local problems, but all of these courts soon attracted national attention and federal support. It is not clear how much the current popularity of problem-solving courts owes to the availability of federal support or to the pressing problem of court delay. Many of these courts, although aimed at particular crime problems or difficulties of delinquents, were motivated by concerns about court delay, jail crowding, or the availability of federal funding. Even if successful at solving the drug or mental health problems of youth, would these courts continue if federal support dried up or if the court caseload was otherwise reduced?

CONCLUSION

Francis Allen's writings on the criminal justice system during the 1950s and 1960s were collected in a volume entitled *The Borderland of Criminal Justice*.[30] One of his primary concerns had to do with the use of the criminal process to provide treatment services. Allen argued that the criminal system, and we can add the juvenile court to this, is not well suited to the provision of mental health assistance. Using the essentially punitive justice process to identify treatment needs and deliver treatment services, he says, is most likely to result in ineffective treatment and a corruption of the justice process. Is it really best to subject a youth involved in a fight at school to a ''teen court'' hearing in front of his or her peers? Is a jail time sanction the best therapeutic response to a mentally ill person who misses a counseling appointment, as could happen with mental health court cases? Are those who engage in treatment programs to avoid jail, as may happen with drug court clients, really motivated to change their behavior?

The problems addressed by specialty courts are real and important, and the goals of court personnel are praiseworthy. Time will tell whether these courts serve to improve the conditions of our communities and whether they provide needed help to the youth who pass through them. We can only hope that continued monitoring and assessment of the operations and impact of specialty courts will provide us with the guidance needed to improve court practices and effectiveness.

NOTES

1. Regoli & Hewitt, 2000, p. 400.
2. Huddleston, Freeman-Wilson, & Boone, 2004.
3. Casey & Rottman, 2003.
4. Huddleston et al., 2004, p. 6.
5. National Criminal Justice Reference Service, hereafter NCJRS, 2006a.

6. NCJRS, 2006b.
7. Birmingham Bar Association, 2006.
8. Sheppard & Kelly, 2002.
9. Sheppard & Kelly, 2002, p. 2.
10. Birmingham Bar Association, 2006.
11. Sheppard & Kelly, 2002.
12. Sheppard & Kelly, 2002.
13. Herman, 2002.
14. Herman, 2002.
15. Butts, Buck, & Coggeshall, 2002.
16. Butts et al., 2002.
17. Butts & Buck, 2000.
18. Butts et al., 2002.
19. Berg, 2005.
20. Quoted in Berg, 2005, p. 16.
21. Goldkamp & Irons-Guynn, 2000.
22. Harris & Seltzer, 2004.
23. Lipps & Hendon, 2004, p. 1
24. Beck, Travis, & Ramsey, 2006.
25. Krammer & Minor, 1997, p. 51.
26. Shelden, 1999.
27. Krammer & Minor, 1997.
28. Shelden, 1999.
29. Regoli & Hewitt, 2000.
30. Allen, 1964.

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CHAPTER 5

Restorative Justice and Victim Awareness

Alida V. Merlo and Peter J. Benekos

The original philosophy of the juvenile court focused on the offender and the treatment of the offender's problems. However, substantive changes occurred in the last 25 years that have redefined the purpose of the juvenile court, the important role of the victim, and the need for accountability. In this evolution, the court moved from a strictly rehabilitative model to a more punitive and retributive model. Rather than concentrating solely on the offender or on punishment, restorative justice is an alternative approach that actively engages the offender, the victim, and the community. It requires the offender to resolve the conflict between the individuals, that is, the primary victim, and the state, and to repair the damage that his or her behavior has caused.[1] Unlike the traditional and retributive models, restorative justice has three clients or customers of the system: the offender, the victim, and the community.[2] Restorative justice operates on an underlying assumption that rehabilitation, sanctioning of deviant behavior, and public safety cannot be accomplished without the participation and involvement of the victims and the community.[3]

The future of the juvenile justice system became a topic of debate in the early 1990s. Traditional juvenile court advocates contended that the court should continue as it had been originally envisioned. They proposed that the court should reaffirm its commitment to the original goals and continue to redirect or reform children through rehabilitation. Conversely, proponents of a punitive model advocated more adult-like handling of youth with stricter sanctions, including adult prison terms.[4] Simultaneously, society's perceptions of youth were also shifting radically. Adolescent behaviors were not viewed as youthful transgressions, but rather as crimes.

Generally, the public's perception was that the perpetrators deserve punishment. Little thought was given to the youths' needs or the risks that they are exposed to in society.[5] Overall, there was a sense that the victim, the offender, and the community were not being well served by the current system, and that a paradigm shift to a fully punitive model was not the solution. It is with this backdrop that restorative justice, an alternative model, emerged in the juvenile justice system.

EVOLUTION OF RESTORATIVE JUSTICE

Restorative justice can be traced to practices and ideas that existed before the Middle Ages. Before the development of systems of law, victims and their families played a significant part in determining the punishment for the offender. Once formal justice systems were instituted, however, the victim's role was reduced and the state assumed the role of the victim.[6] Contemporary interest in restorative justice was preceded by a number of developments in the 1970s and 1980s. Restitution, victim-offender mediation, the victims' movement, the emergence of informal neighborhood justice and dispute resolution techniques, new approaches to human relationships and equity affected by the women's movement, and the peace and social justice movements all affected the reemergence of restorative justice.[7] Restorative justice has also been influenced by the balanced approach that Maloney, Romig, and Armstrong advocated.[8] Instead of dealing only with the offender, the balanced approach acknowledges and includes all three clients in the juvenile justice system: the offender, the victim, and the community.[9]

In addition, the restorative justice movement has been affected by Braithwaite's theory of "reintegrative shaming."[10] Braithwaite discusses the ideas of crime, shame, and reintegration. According to Braithwaite, loving families demonstrate this behavior regularly. These families are highly effective agents of social control in most societies that can impose punishment while maintaining respect for each other.[11] In this model, the community informally condemns the wrongful acts or behavior of the offender, but also provides opportunities to reintegrate the offender into the community.[12]

Shaming and reintegration, however, occur sequentially as opposed to simultaneously. Unlike stigmatization in which there is no attempt to reconnect the offender with the community, reintegrative shaming is a finite period of time that ends with forgiveness. In the process, efforts are made to support bonds of love and respect throughout the shaming period.[13] In his pioneering work, Braithwaite advocates principles of justice that are consistent with restorative justice. The inclusion of the victim in the restorative justice model was a result of deliberate actions and a federal commitment to recognize the role of victims in the system.

The Victim Movement

During his first term of office, President Clinton prioritized victims' rights as part of his public policy agenda and advocated an amendment to

the Constitution guaranteeing their rights.[14] Victim and witness programs had been established in the 1970s, and a victims' bill of rights was part of legislation that many states adopted beginning in the 1980s. Victims' rights groups mobilized and lobbied their state governments demanding a voice in the process. In many states, legislators amended the state constitution and drafted new language and victims' rights amendments that guarantee victim participation in the criminal justice process.[15] The important role of the victim has even been recognized by the courts that have upheld the right of victims to make impact statements at sentencing hearings.[16]

The emergence of the victim as an active participant in the juvenile justice and adult systems has transcended victim impact statements at sentencing or dispositional hearings and evolved into a more active role in victim-offender conferences and mediation. In some states, these changes have occurred through legislation that mandates juvenile courts to involve victims in the process in the same ways that they are involved in the adult system.[17] In the restorative justice model, crime or delinquency is perceived as harmful behavior, and "justice" is a way to reduce the harm that the crime caused. This idea of repair necessitates significant involvement of the individuals who were harmed by the offense in the justice system.[18]

Characteristics of Restorative Justice

Restorative justice is concerned with three specific concepts: offender accountability, competency development, and community protection. In this model, the offender, the victim, and the community are equally important. Restorative justice places certain obligations on all the relevant parties. Furthermore, there is an implicit understanding that rehabilitation cannot succeed until the offender recognizes the harm that he or she has caused victims and communities and tries to make amends or compensate for those wrongdoings.[19] In addition, those who were injured by the harm have to be fully engaged in the criminal justice processes.[20] With offender accountability, the offender is required to either repay or restore losses to the individual victim and to the community These actions can take many forms. For example, the offender may write letters of apology, pay monetary compensation, or engage in volunteer work for the victim or the community.

In conjunction with accountability, youth who enter the juvenile justice system are expected to leave the system better equipped to succeed as productive and responsible citizens. Restorative justice operates on the belief that the youth will undergo some competency development during his or her involvement in the juvenile justice system. Services for youth may include education, drug and alcohol treatment, and vocational and counseling programs.

The third dimension focuses on community protection, and it necessitates that attention be equally directed toward public safety and security. It is the responsibility of the juvenile justice system to protect the public from juveniles who have been referred to the court and to maintain an environment in which conflicts can be addressed peacefully.[21] In this way,

the community is an active participant in preventing and addressing delinquent behavior. When a youth has successfully completed the restorative justice process, other rituals may signify his or her reintegration in the community. For example, some jurisdictions formally participate in reengagement activity by inviting a youth who has successfully completed a restorative justice program to be a member of a teen court jury in the future.[22]

Restorative justice differs from both the original juvenile court orientation and the more contemporary punitive orientation. It represents a significant departure from the traditional juvenile court philosophy. The first juvenile court was based on an individual treatment model. In this model, a youth was perceived as "sick" and in need of "treatment." Routinely, that treatment required juveniles to participate in some type of counseling program, remedial services, or recreational programs.[23] The majority of the youths were placed on probation, but some were sent to institutions designed to offer treatment and restraint. Theoretically, each disposition was made in the "best interests" of the juvenile.[24] By contrast, restorative justice does not exclusively focus on the juvenile offender. Its principles support parity: offender, victim, and the community are equals.

Restorative justice differs from the retributive or punitive model that characterized juvenile justice in the 1990s. Retributive justice is often associated with a "get-tough" philosophy for juvenile offenders, and it is consistent with the Classical School of criminology, which views offenders as needing swift, sure punishment.[25] For example, retributive justice typically focuses on deciding whether the offender is guilty and then applying the punishment through an adversarial process. By contrast, restorative justice focuses on a problem-solving approach and attempts to determine what should occur through a dialogue between the offender and the victim, while following a negotiation model. It is through the relationships among offender, victim, and the community that the conflict can be resolved.[26] Retributive justice views crime or delinquency as an instance of law violation or a violation of the authority of the government. Restorative justice views criminal behavior in terms of its injury to victims, communities, and offenders.[27] In that sense, restorative justice is more concrete; crime is against a person or a community.[28]

In short, proponents of restorative justice contend that it is a departure from both the individual treatment model and the retributive punitive model, which they characterize as insular and one-dimensional. According to Bazemore and Day, their insularity is demonstrated by their focus on only the offender, and their one-dimensionality is manifested in their failure to deal with the community's different interests.[29] Furthermore, advocates of restorative justice perceive it as a way to preserve the juvenile court. With critics advocating the abolition of the juvenile court, restorative justice offers an alternative to redesign the existing court in which "juvenile justice reflects community justice."[30]

Before we examine some examples of restorative justice programs for juveniles, it is helpful to review the events that transpired in juvenile justice.

Models of Juvenile Justice

During the 1980s and early 1990s, juvenile crime and juvenile arrest rates were steadily increasing. In response, legislators throughout the United States reacted with a series of get-tough laws that targeted youth for severe sanctions. This included lowering the age for transfer of youth to criminal court, increasing the number of offenses that qualified youth for transfer, limiting juvenile court judges' discretion, granting more power and authority to prosecutors, and incarcerating youth in adult institutions. These reactive, punitive policies threatened the original intent of the juvenile justice system and changed attitudes toward youth.[31] The ideals of rehabilitation and treatment were eclipsed by retribution and punishment, and the best interests of the child were replaced with the best interests of society and concern for public safety.

At the same time that these reactive policies were polarizing the views and ideologies on juvenile justice (e. g., rehabilitation versus retribution), emergent efforts were seeking to balance treatment and punishment.[32] Some policy makers recognized that the juvenile court's mission to intervene in the lives of youth and to help them overcome delinquency could be consistent with goals of restoring the community and responding to the victims of crime. The concept of restorative justice offered elements for a new model of juvenile justice.

In their study of juvenile justice reform, Bazemore and Schiff found that "restorative justice by the mid-1990s had become surprisingly popular with administrators and policymakers in a number of jurisdictions."[33] They also noted,

> The restorative justice focus on the extent to which harm is repaired, and the extent to which communities increase their capacity to respond to crime and conflict, seemed to offer a broader framework that challenges the role of punishment and treatment as the primary currencies of intervention.[34]

This model recognizes three primary "stakeholders" in the restorative process—victim, offender, and community—and emphasizes strategies that repair the harm to victims and communities, while holding youthful offenders accountable to both and also intervening to improve the youths' skills and competencies.[35] The idea is that all three parties to the harm receive balanced attention. The restorative concept sees crime as a harm to victim, community, and offender that needs to be repaired rather than a violation of law that needs to be punished.

The BARJ Project

As early as 1977, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) recognized that juvenile restitution was a promising intervention that held youth accountable while reducing recidivism and, therefore, as a strategy, warranted further development.[36] In 1992, with a grant to Florida Atlantic University, OJJDP charged a "consortium

of national juvenile justice experts'' to develop a comprehensive plan that would incorporate the goals and elements of restitution into a systemwide approach to juvenile justice.[37] This initiative focused on community-based programs that incorporated principles of the restorative justice philosophy and balanced community safety, youth accountability, and opportunities for competency development for juveniles.[38] The initiative is known as the Balanced and Restorative Justice Project (BARJ).[39]

Contrary to the view that BARJ was a ''repackaging'' of the traditional treatment model, the BARJ approach required ''new performance objectives; new priorities for intervention; and a new view of the role of offenders, victims, and the community.''[40] The BARJ Project identified a new philosophy, principles, values, and mission for juvenile justice and underscored the importance of shifting the juvenile justice system away from the debate between rehabilitation and retribution and toward a restorative model. By the mid-1990s, 24 states ''had adopted or were examining ... the balanced approach or restorative justice model.''[41] By 2004, ''virtually every state (was) implementing some aspect of the restorative justice principles.''[42]

Pennsylvania BARJ

Pennsylvania was one of the states that initially recognized the principles of restorative justice in its ''purpose clause'' for the juvenile justice system and adopted the BARJ model.[43] In the mid-1990s, three demonstration sites were selected by the BARJ Project to receive ''technical assistance'' in ''implementing major systemic change in accordance with the BARJ model'': Dakota County, Minnesota; West Palm Beach County, Florida; and Allegheny County, Pennsylvania.[44]

In 1995, Pennsylvania amended its Juvenile Act to ''envision new roles'' for court and probation staff as well as for victims, offenders, and the community.[45] In 2000, and again in 2002, surveys were conducted to determine the extent of implementation and the outcomes of BARJ initiatives. The most prevalent programs that were established in the state included the following: community service, victim notification, competency development, victim-impact statements, and restitution projects.[46] In addition, 61 of 67 counties had established new positions (e. g., Community Justice Officers) or redefined old ones to integrate restorative principles in department policies and operations.

By identifying a commitment to ''balanced attention'' and accountability, the Pennsylvania approach defined a juvenile crime as incurring ''an obligation to the victim and community.''[47] This includes the opportunity for victims to have an active role in all stages of the proceedings and it requires the juvenile justice system ''to develop community service options that are valued by communities and crime victims.''[48]

While acknowledging initial staff resistance to BARJ implementation in Allegheny County, Pennsylvania (which includes Pittsburgh), Seyko concluded that probation officers have learned new skills, formed ''new partnerships with community organizations,'' established specialized

programs, and instituted "innovative projects."[49] In her study of Pennsylvania probation departments, Blackburn concluded that implementation has not yet been fully achieved, but the goals and principles of BARJ have been recognized and are being integrated into daily operations.[50]

BARJ in Other States

As described for Pennsylvania, many states revised their legislation to adopt restorative justice principles and incorporate BARJ components into their juvenile justice systems. Similar to Pennsylvania, in Idaho, the Juvenile Corrections Act of 1995 established a balanced approach in responding to juvenile offenders:

> The legislative intent ... states that the "court shall impose a sentence that will protect the community, hold the juvenile accountable for his actions and assist the juvenile in developing skills to become a contributing member of a diverse community.[51]

The Idaho model includes a continuum of juvenile programs that emphasizes community involvement in prevention and early intervention. Restorative principles are evident in the philosophy and goals of the Department of Juvenile Corrections, which is defined as a "participatory" rather than a regulatory agency.[52]

In 1999, the General Assembly of Colorado amended its legislation to "improve the public safety by creating a system of juvenile justice that will appropriately sanction juveniles who violate the law and ... provide the opportunity to bring together affected victims, the community, and juvenile offenders for restorative purposes."[53] Although this legislation recognizes the importance of public safety, the state's legislators reemphasized that the juvenile justice system was still committed to the "best interests of the juvenile" and viewed this approach as an effective strategy for reducing the rate of juvenile recidivism.

In Illinois, where the first juvenile court was established in Cook County in 1899, the Illinois BARJ initiative was enacted in 1999. In describing the Illinois experience, Covey identified the importance of "inclusion" in developing programs and implementing the BARJ principles. By engaging community stakeholders and developing quality relationships, Illinois has focused on the sustainability of successful initiatives in reforming its juvenile justice system.[54] As in other states, Illinois has recognized the challenges of changing organizational culture and establishing new rules and roles that ensure that the elements of restorative justice are incorporated in the delivery of services to victims, community, and offenders.

The state of Maine has also faced these challenges in implementing restorative principles in its justice systems, but it has demonstrated a commitment to restorative justice by opening a Restorative Justice Center in Hallowell.[55] The Center brings a more visible profile to the restorative process and provides education and training, technical assistance, and

evaluation of restorative approaches. When it was opened in 2004, the Center was "believed to be the first Center in the United States outside a university setting dedicated exclusively to promoting restorative justice."[56]

Police and Restorative Initiatives

Implementation of restorative justice is generally identified with state legislation, juvenile courts, and juvenile probation departments, but law enforcement agencies also recognize the value of restorative practices in responding to young offenders. In Woodbury, Minnesota (a suburb of St. Paul), police have implemented a community restorative justice strategy that includes victim-offender mediation and conferencing circles as components of a diversion program.[57]

The Woodbury program has developed a partnership between police and community volunteers who facilitate face-to-face meetings between victims and community members and the juvenile offenders to decide "how to repair the harm done and prevent future incidents."[58] Youth qualify on an individual basis and offenses range from felony assaults, school incidents, and drug cases. The most frequent types of offenses include alcohol, theft, and assault. Although the offense and attitude of the juvenile are important, Hines reports that "victim wishes and needs are the most significant factor in deciding how a case will be handled."[59]

In demonstrating that community restorative justice works, an evaluation of 600 cases determined that 85 percent of the "conference cases are successfully completed" and more than 90 percent of agreements are completed. In addition, 97 percent of restitution payments are paid in full and recidivism rates are 33 percent compared with 72 percent before the programs were implemented.[60] Over the nine years that the programs have been implemented, 90 percent of the victims report "satisfaction" with the process and outcomes; 86 percent of the youthful offenders and 91 percent of the parents report satisfaction with the Woodbury program.[61]

Restorative justice policing was also studied in New Zealand by Winfree, who identified elements of "reintegrative shaming" as a goal of specially trained police officers called youth aid officers (YAOs).[62] In describing the philosophical basis for the New Zealand police model of restorative justice, Winfree discussed the role of shaming and mutuality of obligation in intervening with youthful offenders and in using family group conferencing as a method of dispute resolution and sanctioning.[63] In 1989, the Children, Young Persons and Their Families Act formalized family group conferencing (FGC) as "the main decision-making body" in dealing with child welfare and criminal justice for youth.[64] FGC does not begin until after a youth admits to the offense or guilt has been determined. The YAOs are involved early in the process and "play an essential gatekeeping role in RJ [restorative justice] programs"[65] and "is also one of the key participants in the FGC."[66] As Winfree notes, the restorative justice process "involves formal policing structures" and reflects a nationwide commitment to the principles and practice of restorative justice and reintegrative sanctions.[67]

Conferencing determines the harm to victims and the reparations that need to be made. Some of the values and qualities of conferencing include effective communication, building relationships, assessment and analysis, managing and facilitating the conferencing process, self-awareness, and teamwork.[68] In their review of outcomes of dialogue-based restorative justice programs such as FGC, Umbreit, Vos, and Coates found "fairly high satisfaction responses from participants."[69] The opportunity to talk with the offender and explain the impact of the crime was identified as a very helpful component of conferencing. Similarly, McCold and Wachtel found that parents who participated in conferencing were more satisfied and reported a higher sense of fairness than parents of youth who were formally adjudicated.[70]

CONCLUSION

As this brief review indicates, restorative juvenile justice has been widely adapted and includes various practices that reflect the principles of reintegrative shaming, balanced attention, accountability, community protection, and competency development. As summarized by Bonta, "Restorative Justice invites the victims of crime and the community to participate in a process of dealing with offenders and repairing the harm caused by the offender."[71]

The U.S. Department of Justice has identified nine "promising practices" of restorative justice:

- Victim-Impact Statements (VIS)
- Restitution
- Sentencing Circles
- Community Service
- Family Group Conferencing
- Victim Offender Mediation (VOM)
- Victim Impact Panels
- Victim Impact Class
- Community Restorative Boards[72]

Research on the impact of participation in such programs and the outcomes of restorative justice practices indicates that victims, offenders, parents, and police officers express high levels of satisfaction.[73] In addition, Cullen and his colleagues have found that the public supports early intervention programs for youth and generally recognizes the value of prevention and intervention rather than incarceration: "the public supports early intervention strongly and prefers it to incarceration as a strategy to reduce offending."[74]

Restorative juvenile justice and elements of promising practices have been widely recognized and adopted; however, unrealistic expectations and system cooptation of restorative justice principles could diminish the effectiveness of the restorative justice model. Levrant, Cullen, Fulton, and Wozniak, for example, caution that even with good intentions, restorative

justice programs can be "corrupted to serve less admirable goals and interest."[75] They discuss "unintended consequences" of restorative justice, including programs that are more symbolic than substantive and that serve only as a means to get tougher on offenders: "although restorative justice policies are being advocated as a benevolent means of addressing the crime problem, they may increase the punitiveness of the social control imposed on offenders."[76] Winfree also noted the concern that the progressive philosophy of restorative justice could be "co-opted by persons with non-progressive goals."[77]

Another issue that has been raised addresses the offender's participation, which may not be entirely voluntary. For example, it is possible that participants must commit to the restorative justice conference and other protocols or return to the court where they face a more severe sanction. In this view, the juveniles may comply because of fear rather than any real desire to engage in a restorative justice program.[78] Like other kinds of diversion programs, restorative justice programs in Vermont mandate that offenders accept some responsibility before they attend a conference or meeting.[79] Programs in other states may require that the offenders admit their guilt before participating in victim-offender mediation.[80]

McShane and Williams describe another problem—that is, extended victimization. Restorative justice conferences potentially can result in the labeling of the offender's family because of the youth's delinquent act. The family may be perceived as equally criminal as, if not more criminal than, the youth who was involved in the delinquency. The result is even closer scrutiny of family members and less likelihood that the reintegrative processes will succeed.[81]

Victim involvement in the juvenile court process appears to be related to juvenile court judges' perceptions of the system. There is evidence of judicial support for restorative justice, particularly in the programs discussed previously, but also there is concern that judges may be reluctant to embrace restorative justice because of their perceived conflict between victim and offender needs. Bazemore and Leip surveyed juvenile court judges and then conducted focus groups in four states with these courts. They found that judges who indicate a strong commitment to the rehabilitative focus of juvenile court view this philosophy as incompatible with the goal of victim involvement in the system.[82] Because restorative justice is not technically a part of the courts themselves, judges exercise discretion in choosing to use it as a diversion alternative or in making dispositions that facilitate the referral of youths to restorative justice programs.[83] If the perception exists that such programs do not serve the needs of the offender, judges may refrain from actively implementing the restorative justice model in their courts.[84]

In spite of these concerns, the principles and practices of restorative juvenile justice present a viable paradigm for the juvenile justice system. By including stakeholders, developing comprehensive strategies, and balancing the interests and needs of victims, offenders, and community, the ideals and objectives of the BARJ Project offer a model that appeals to both conservatives and progressives. This model transcends the rehabilitation or

retribution debate and uses language and approaches that suggest more holistic, healing considerations. Restorative justice sanctions have the potential to connect accountability and positive social action. The goal is to restore the youthful offender as a responsible member of the community. The research on the effectiveness of restorative juvenile justice is promising, and the outcomes of adopting the BARJ mission are encouraging.

NOTES

1. Umbreit, 1995, p. 32.
2. Office of Juvenile Justice and Delinquency Prevention, hereafter OJJDP, 1997, p. 11.
3. OJJDP, 1997, p. 18.
4. OJJDP, 1997, p. 1.
5. OJJDP, 1997, p. 5.
6. McShane & Williams, 1992, p. 260.
7. Bazemore & Umbreit, 1995, pp. 301–302; OJJDP, 1997.
8. Maloney, Romig, & Armstrong, 1988.
9. Umbreit, 1995, p. 27.
10. Braithwaite. 1989.
11. Braithwaite, 1989, p. 56.
12. Braithwaite, 1989.
13. Braithwaite, 1989, p. 101.
14. Orvis, 2003, p. 1.
15. Orvis, 2003, pp. 2–3.
16. Orvis, 2003, p. 4.
17. Bazemore & Leip, 2000, p. 200.
18. Bazemore & Leip, 2000, p. 200.
19. OJJDP, 1997, p. 18.
20. Van Ness & Strong, 1997.
21. Bazemore & Leip, 2000, p. 200; OJJDP, 1997, pp. 13–14, 16.
22. Kirby-Forgays & DeMilio, 2005, p. 109.
23. Bazemore & Day, 1996, p. 4.
24. OJJDP, 1997, p. 5.
25. Arrigo & Schehr, 1998, p. 636.
26. Bazemore & Umbreit, 1995, p. 302; Umbreit, 1995, pp. 32–33.
27. Bazemore & Umbreit, 1995, p. 302.
28. Kirby-Forgays & DeMilio, 2005, p. 109.
29. Bazemore & Day, 1996, p. 4.
30. Bazemore & Day, 1996, p. 13.
31. Benekos & Merlo, 2000.
32. Merlo & Benekos, 2003.
33. Bazemore & Schiff, 2005, p. 10.
34. Bazemore & Schiff, 2005, p. 10.
35. Bradshaw & Roseborough, 2005.
36. Freivalds, 1996.
37. Bazemore & Umbreit, 1994, p. 1.
38. Bazemore & Umbreit, 1994; Freivalds, 1996.
39. See www.barjproject.org for details.
40. Bazemore & Umbreit, 1994, p. 2.

41. Freivalds, 1996, p. 1.
42. *Kaleidoscope of Justice*, 2004a, p. 6.
43. Seyko, 2001.
44. Freivalds, 1996, p. 1.
45. Blackburn, 2004, p. 2.
46. Blackburn, 2004, p. 4.
47. Juvenile Court Judges' Commission, 1997, p. 5.
48. Juvenile Court Judges' Commission, 1997, p. 10.
49. Seyko, 2001, p. 204.
50. Blackburn, 2004, p. 4.
51. Olsen & Callicut, 2004, p. 60.
52. Olsen & Callicut, 2004, p. 63.
53. House Bill 99–1156, 1999, p. 1.
54. Covey, 2004, p. 2.
55. *Kaleidoscope of Justice*, 2004b.
56. *Kaleidoscope of Justice*, 2004b, p. 6.
57. Hines, 2004.
58. Hines, 2004, p. 12.
59. Hines, 2004, p. 12.
60. Hines, 2004, p. 13.
61. Hines, 2004, p. 13.
62. Winfree, 2004, p. 190.
63. Winfree, 2004, p. 192.
64. Winfree, 2004, p. 197.
65. Winfree, 2004, p. 193.
66. Winfree, 2004, p. 197.
67. Winfree, 2004, p. 195.
68. Winfree, 2004, pp. 201–202.
69. Umbreit, Vos, & Coates, 2006, p. 4.
70. McCold & Wachtel, 1998.
71. Bonta, 1998, p. 1.
72. U.S. Department of Justice, n.d.
73. McGarrell, 2001; Rowe, 2002; Umbreit, Vos, & Coates, 2006.
74. Cullen et al., 1998, p. 187.
75. Levrant, Cullen, Fulton, & Wozniak, 1999, p. 6.
76. Levrant et al., 1999, p. 9.
77. Winfree, 2004, p. 208.
78. Karp, Sweet, Kirshenbaum, & Bazemore, 2004, p. 200.
79. Karp et al., 2004, p. 214.
80. Arrigo & Schehr, 1998, p. 637.
81. McShane & Williams, 1992, p. 268.
82. Bazemore & Leip, 2000, p. 219.
83. Bazemore & Leip, 2000, p. 217.
84. Bazemore & Leip, 2000, p. 200.

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CHAPTER 6

Juvenile Probation: Supervision or Babysitting?

Wesley A. Krause

For almost 80 years, juvenile courts have relied on probation to provide the mixture of supervision and sanction that will hopefully deter youth from greater involvement in delinquency. With almost half a million young offenders under supervision today, probation has become the cornerstone of those who advocate both rehabilitation and accountability. In fact, 4 out of every 10 delinquency cases ultimately end up in probation. Although some youth volunteer to serve a term of probation as part of a diversionary process that will eventually erase their record of wrongdoing, most are adjudicated by the court and enter into a formal contract of conditions overseen by a probation officer. And, although the number of young females serving probation has increased over the years, the profile of an average juvenile probationer at the turn of the century was a white or Hispanic male, 14 to 16 years of age who was adjudicated for a property offense.[1]

The decision to place a youth on probation is often difficult and the juvenile justice system must constantly assess its performance in terms of risks and consequences when someone in the community reoffends. After a delinquency hearing, when the judge is determining an appropriate disposition, he or she relies on the presentence report prepared by the probation department. The presentence report typically examines not only individual risk factors, such as mental health or a history of drug use or child abuse, but also protective factors that may insulate or support youths in their attempts to remain law abiding. This may include positive role models or involvement in sports and civic activities. In addition, judges will weigh the youth's offense history, school performance, record of

violence, relationships with peers and family members, and participation in community organizations.

Realistically, the court may be swayed by external circumstances, such as the availability of beds in more secure facilities, access to treatment programs, and service in the community, as well as any interactions and personal experiences the reporting officer may have had with the offender or family members in the investigative process. Runaways, for example, are less likely to be put on probation than other status offenders and, ironically, those labeled "ungovernable" are more likely to be granted community supervision.

Once placed on supervision, the conditions of probation are not without controversy. Some people think that young offenders are coddled, while others see the tight control as invasive and counterintuitive to the nature of youth, as well as potentially oppressive to nonoffending family members. Conditions often include adherence to curfews and restitution, participation in community service, and attendance at victim-impact, drug treatment, or anger management programs. Some conditions have been challenged in terms of their constitutionality, including those that infringe on places where a youth might seek work, restrict the freedoms of family members (i.e., searches within the homes), and attempt to regulate clothing, music, associations, and language.

THE CHANGING MODELS OF JUVENILE PROBATION

Specific guidelines used in probation may have evolved over time, but there have always been attempts to develop models that reflect the spirit of the community and its concern for the well-being of children. Probation models in the state of California will be explored as an example of the various facets and turns taken by juvenile probation over the past 30 years.

The California Subsidy Program

In the late 1960s, the state of California faced a dilemma concerning its youthful offenders. The population of its juvenile institutions operated by the California Youth Authority was burgeoning. Youth crime was on the rise and the number of commitments to the Youth Authority reflected the increase in juvenile crime. However, the criminal histories of many of the youthful offenders sent to the Youth Authority by the juvenile courts throughout the state did not seem appropriate for the state training schools. The California Youth Authority was designed to accommodate youthful offenders deemed too delinquent, because of the serious nature of their offenses and criminal history, to be supervised by probation officers or housed in local county institutions.

Additionally, state legislators were impressed with the promise of recently developed concepts for supervision and treatment in the community.[2] The state conjectured that the lack of resources in most counties resulted in youth who might benefit from local correctional programs

being sent to the state institutions. If the counties could improve the options available to the juvenile courts, the courts might be inclined to keep these youth in local programs. Then, the county probation departments would be able to offer enhanced local services and effective supervision for offenders entrusted to their care and control. Thus, California began a program of subsidizing county probation departments.

Counties received a subsidy amount based on their reduction in state commitments. The primary focus of the effort was (1) to reduce the ratio of juveniles to probation officer in caseloads and (2) to develop a wide range of innovative and hopefully effective interventions with high-risk, Youth-Authority-bound juveniles. The state would offer training and support to the counties in developing new approaches to supervision and treatment but would leave it to the individual counties to determine what approaches might be most effective in reducing commitments.

Caseload Ratios

Many counties adopted a caseload ratio of juvenile to probation officer of 30 to 1 in subsidized assignments. This ratio had become the accepted ideal caseload by most practitioners.[3] No research supported the effectiveness of supervision when caseloads were kept at this level, and few time and motion studies had been made of probation officers activities. Such studies would have suggested how much and what kind of work probation officers do and how long it takes to do it. No definitive studies indicated that a caseload of 30 would ensure lower recidivism rates, but the standard seemed to have consensus among practitioners in the field.

Treatment Programs

The state of California made no specific demands for treatment programs to be offered by probation officers working in these subsidized caseloads. Nor was the assignment of youth to the subsidized caseloads to follow any established procedure or standard. The youths were simply to be high-risk offenders who, absent this option, were in imminent danger of being sent to the Youth Authority. It did not mean that the juvenile court would have committed the youth on his or her most recent appearance before the court, but rather that the youth was on the path to a commitment because of a serious crime or a series of incidents that brought the youth to the attention of the juvenile court. The bottom line was that if counties did a good job of selecting youth for the program and developing innovative strategies, the commitment rate would be reduced and the state subsidy maximized.

The probation subsidy program operated successfully in California for more than a decade. Overall, the goal of significant reduction in institutional commitments was achieved. However, many believe that it was a combination of social, political, and economic factors that produced the reduction, not the effectiveness of the subsidized interventions. Probation departments faced many challenges to reducing commitment rates. The diversity of options for innovative supervision and treatment allowed great

flexibility and creativity. However, little research was available to guide administrators in the selection of effective interventions.

Many treatment modalities from the world of popular psychology found their way into probation interventions. Therapeutic techniques from marriage and family counseling, such as Reality Therapy and Transactional Analysis, were adapted to probation programs. Simplified personality tests, such as the Firo-B and Luscher Color Test, were also adopted. They were used to match a probation officer to a set of juveniles with complementary personalities to facilitate rapport and the effectiveness of counseling. Administered by probation officers rather than licensed therapists, these tools were often poorly understood and improperly applied. The array of treatment options was diverse and innovative, but the effectiveness of these many new approaches received little study.

Status Offenders

The broad jurisdiction of the juvenile law also presented challenges. California, like most other states, has a juvenile court that has jurisdiction over youth who committed not only violations of laws but also violations of ordinances designed to control youthful behaviors deemed unacceptable by current social standards. These "status offenses" included such behaviors as truancy, curfew violations, running away from home, and general incorrigibility. In the late 1970s, major changes in the juvenile court law restricted the courts' authority over status offenders. But during the subsidy program, these offenders represented a large portion of the juvenile court cases and probation caseloads and as much as 60 percent of the juvenile hall population.[4] These cases often represented the most difficult cases for probation officer.

As might be expected from the incorrigible behavior that brought them to the attention of the juvenile justice system, these juveniles defied parents, educators, probation officers, and juvenile court judges. They were uncooperative with treatment efforts and frequently ran away from their homes and residential programs. The status offender was seen as the "incipient delinquent." It is believed that status offenses and criminal delinquency are strongly related. For many juveniles, incorrigibility and other status offenses are among many delinquent behaviors that will be exhibited throughout adolescence.[5] Failure to redirect the behavior of a status offender ultimately results in escalating delinquency and serious crime.

During these years, much of the available resources of juvenile probation agencies were devoted to addressing the issue of incorrigibility. As the subsidized caseloads reached their maximum, filled in large part by these difficult-to-manage juveniles rather that highly criminal youth, the resources available to supervise juveniles who had committed serious offenses were significantly diminished.

Intensive Supervision

The more intensively a youth was supervised, the more likely that the probation officer would discover minor violations. Some action on these

minor violations was expected. After all, these juvenile were deemed high risk and placed on these special caseloads to control significant delinquent behaviors, protect the community, and protect the juvenile from him or herself. As often as not, the action taken for a violation of probation was detention in a juvenile facility, return to court for a modification of the courts orders, and, ultimately, commitment to the California Youth Authority. The result would be a tendency for intensive supervision probation (ISP) to increase commitments to the Youth Authority. This phenomenon associated with reduced caseloads and intensive supervision would be explored and better understood in research conducted by Petersillia and Turner nearly a decade later when ISP was implemented as a strategy in the control of probation caseloads that had become predominately populated with high risk felons.[6]

The End of Treatment

California abandoned the subsidy program following rising crime rates, political conservatism, and the implementation of determinate sentencing in 1977. It remains a controversial program. Although some maintain that it was successful in reducing state commitments, others question the effectiveness of the community corrections programs that were developed. The demise of the innovative treatment programs was hastened by Martinson's famous 1974 article, ''What Works?'' Martinson is attributed with the sound bite ''nothing works'' in corrections. In reality, what he said was ''the represent array of correctional treatments has no appreciable effect—positive or negative—on rates of recidivism of convicted offenders.''[7] In subsequent publications, Martinson modified his position finding that some correctional treatments did have an appreciable effect. The political wind was blowing in a more conservative direction, however, and the ''nothing works'' sound bite worked for the new public policies emphasizing incarceration, just desserts, and abandonment of the concepts of correctional treatment and rehabilitation.[8]

Lessons of the Subsidy Program

The California Subsidy Program is offered as an example of a departure from traditional supervision in community corrections. It demonstrates many of the problems that lead to disappointment if not total failure in the implementation of innovative supervision practices. Some of the lessons from subsidy probation follow:

- Probation treatment and supervision are broad, poorly defined concepts among its practitioners. The lack of uniformity reduces confidence in the community corrections by the public and other criminal justice practitioners. The implementation of probation services varies over time and geography, constantly changes with administrative philosophies, and increases and decreases in funding, regional priorities, and political influences.

- Quantity of contact alone may increase the discovery of minor misbehaviors and occasionally uncover criminal activities but by itself will not significantly deter undesirable behaviors.
- The use of new and innovative programs not built on a theoretical foundation appropriate to the corrections environment and tested with evaluation research is unlikely to provide positive results.
- There is no ''ideal'' caseload size. Some offenders do better with minimal contact and, in fact, may be influenced negatively by interventions intended to reduce criminality. At the other extreme, some habitual and serious offenders require intensive interventions to ensure a meaningful level of community protection. Between the two extremes, when the intervention is appropriate to the offender's needs and the individual has motivation to change, it works. The size of the caseload is a matter of determining what interventions are to be offered and to how many, and how much time it will take an officer to deliver the required services.
- A phenomenon known as ''net-widening'' is likely to occur when an enhanced supervision program is implemented. Absent an effective controlling policy and effective practices to make the policy work, many of the individuals selected for an enhanced supervision program will likely be those who did not need it in the first place. Traditional sanctions, such as incarceration, will continue to be applied to many of the individuals for whom the program was designed.

SURVEILLANCE AND JUVENILE PROBATION

Can surveillance alone deter delinquent behavior? Let's ''do the math'' on intensive supervision probation. Taking the old ideal standard of 30 cases, what portion of a juvenile's life is affected by the probation officer's supervision? A probation office probably works a standard 40-hour week, but after subtracting off-task hours (including vacation, sick days, meetings, coffee breaks, and so on), the average probation officer has less than 30 hours of on-task time. This leaves one hour per week for each juvenile. And this time would include the time to travel to the juvenile's home or school, assuming not all of the interactions between officer and offender occur in the probation office. That hour, amounts to less that 1 percent of the juvenile's waking hours, leaving 99 percent of the youth's life to be influenced by parents, school, friends, and even the media or other entertainment options (like video games). Some of the juvenile's activities that occur in that 99 percent may be reported to the officer by parents or school officials. Parents and other positive adults in the juvenile's life may reinforce some of the directives and treatment programs provided by the probation officer. Much time is left, however, for the undeterred influence of delinquent peers and for negative behaviors that likely will go undetected. Deterrence is more about the probability of getting caught than the severity of consequences. For most juveniles, even those under

intensive supervision programs, the opportunity to do something and get away undetected is much greater than the probability of getting caught and suffering a consequence. Delinquency is associated with risk-taking and, here, the risk is minimal.

Setting a New Supervision Standard—The Wisconsin Model

In the late 1970s, the Wisconsin Department of Probation and Parole was seeking funding to support the magic 30 caseload ideal. Their legislature questioned the basis for this caseload standard and set the department on a task of defending requests for staffing of probation and parole services. The research and program development that followed would create such a defendable and logical model of probation services that it would be adopted by the National Institute of Corrections as a model for all probation and parole services across the country.[9]

The model first attacked the question of who should receive intensive probation supervision. Using actuarial models, much like an insurance company would employ to determine automobile insurance premiums for different drivers, the Wisconsin team developed an offender classification system that differentiated between probationers unlikely to succeed while on probation and those who were very likely to succeed. By analyzing variables believed to be correlated with criminal behavior and other problematic behaviors associated with probation violations, the researchers developed a classification instrument that predicted which offenders within the total probation population were most likely to fail.

These individuals were designated as being at high risk of further criminal behavior and in high need of interventions to change conditions in their lives. They were assigned to ''maximum'' supervision caseloads for which officers would supervise a relatively small number of offenders. Those with a lower probability of recidivism, but still more likely than not to have some problems, would receive ''regular'' supervision on caseloads for which officers would supervise a much larger number of juveniles and have much less contact with them. A third category included probationers whose risk and need assessment predicted a very low probability of recidivism. These individuals would be assigned to ''minimum'' supervision caseloads for which a single probation officer might supervise well over a hundred cases and have little contact with the any of the juveniles.

The Wisconsin team recognized that supervision was not only about the quantity of supervision and the frequency of contacts, but also about the quality of those contacts. If probation was to be effective, different offenders who presented different problems would require variations in the approach to supervision. Some high-risk offenders, who were committed to a criminal lifestyle, did not suffer from a mental deficiency or handicap, and drug habituation was not a significant factor in their offending. For these offenders, treatment was unlikely to be effective. Setting limits and providing surveillance and control was necessary to reduce the recidivism in this group and to protect the community from their criminal behavior. Other offenders did suffer from mental illness or handicap and

yet others suffered from drug addiction. For both of these groups, addressing their problems through effective treatment options could reduce recidivism. A third group represented the largest portion of the probation population. These were situational offenders, that is, individuals who usually were not inclined to associate with delinquent peers or to commit delinquent acts. Because of a set of influences or circumstances in their lives, however, they did commit a crime. For these individuals, intensive supervision and most treatment programs were unnecessary. With minimal contact and little treatment, this group could fulfill their obligations to the court and successfully complete probation.

The question remained, how large would these different caseloads be? The Wisconsin team analyzed the amount of time a probation officer actually had to supervise offenders. As discussed before, this amounted to substantially less than a 40-hour workweek. The Wisconsin researchers looked at how much time it took for a probation officer to complete various tasks, such as home contact, verification of school attendance, interviews with parents, dispositional reports, and so on. By developing a caseload plan for each offender that was based on the assessment of risks and needs and the classification of treatment needs, the probation officer could determine what kind of activities would be required to effectively supervise an individual. From the analysis of the time it took to complete these various tasks, it would be possible to determine the amount of time that a case would require. When this process was applied over the whole range of cases, the number of officers required to effectively supervise all of the probationers under the department's control could be determined.

The Orange County "Discovery"

Orange County, California, was one of the first counties to fully embrace the Wisconsin model. During the 1990s, this department embarked on a thorough exploration of the recidivism rates of its juvenile probationers. Based on the findings of preceding cohort studies, the Orange County researchers believed that only a small portion of juveniles who come to the attention of the Juvenile Justice System went on to become habitual offenders. Furthermore, they believed that these high-risk repeat offenders consumed the majority of the department's resources and committed a large portion or all juvenile crimes.

Their findings became known as the "Eight Percent Problem."[10] The research team discovered that approximately 8 percent of all juveniles entering the juvenile justice system over a given time would go on to become serious habitual delinquents. One-quarter would have more than one or two additional arrests, but their delinquent careers would fade away. Two-thirds of the juveniles arrested and referred to the probation department would never be arrested for another offense. As had been found in Wisconsin (and in other similar studies), the majority of "juvenile delinquents" were adolescents who, because of a set of circumstances, made poor choices over a relatively brief period of time and then would move on to make better decisions.

DOES SUPERVISION MAKE A DIFFERENCE?

If the majority of juvenile offenders referred to probation departments are unlikely to commit further offenses, is this a glowing endorsement of the effectiveness of probation supervision? In an informal and unpublished survey of juvenile shoplifters arrested for the first time, the choice of official response appeared to have little or no impact on recidivism rates. In the late 1980s, a supervising probation officer in a southern California county probation department responsible for diversion programs conducted a survey of dispositions and recidivism rates among first-offense juvenile shoplifters. The dispositions of the cases were the result of individual officer judgment and discretion among 15 probation officers. Some cases were submitted to the juvenile court for formal adjudication, some were given a program of informal supervision without going to court, and some were counseled and released or assigned to community service. A large group was sent through an educational program designed to raise awareness of the impact of shoplifting on victims and the community. The supervising officer also selected a sampling of cases and simply set them aside without further contact or intervention. After a year, a search was done for subsequent offenses committed by each of these juveniles. Across the board, only 5 percent of the juveniles had been arrested on a new offense. Is it possible that for most juvenile offenders, supervision serves no purpose?

Diversion Programs

In the early 1990s, this same department (and supervising probation officer) developed a community diversion program for first-time juvenile offenders. The program called Youth Accountability Boards allowed a panel of community volunteers to meet with offenders and their parents and resolve minor offenses completely outside of the juvenile justice system. What consequences and supervision came from these boards were administered completely by community volunteers, not the probation department. The program was highly successful with these first-offense youth. More than 90 percent completed their contract with their community board, and recidivism studies revealed that fewer than 10 percent were rearrested over a one-year follow-up period.[11]

Labeling Youth

These informal studies certainly can't be cited as proof that probation supervision has no effect on many young offenders. But, it is pause for thought. If, as found in the Orange County, California study, two-thirds of youth referred to the juvenile justice system do not reoffend, then perhaps their success has little or nothing to do with the intervention they received regardless of whether that intervention is minimal or intensive. In fact, it is possible that there may be a reverse effect. Some theories of delinquency, notably "labeling" theory, suggest that exposure of low-risk

youth to the intensive interventions of the juvenile justice system may stigmatize the juvenile and increase the probability of further delinquent behavior.[12]

A study prepared by Lowenkamp and Latessa for the National Institute of Corrections in 2004 discouraged the practice of exposing low-risk youth to intensive interventions and punitive sanctions. Their meta-analysis strongly suggests that such practices would likely increase recidivism in this group. Placing nondelinquent youth in an environment in which they will associate with delinquent individuals is not a good idea. Nor is it a good idea to place them in a highly structured, restrictive program that would "disrupt the factors that make them low-risk."[13]

In the world of criminal justice (especially with today's crime control mandate), it is difficult if not impossible to study the effect of doing nothing. The emphasis in community corrections today is concerned with protecting the public and holding offenders accountable.[14] However, if it is true that, for the majority of juvenile offenders, probation supervision has no positive effect on their future delinquency (and for many may be negative), then probation interventions are little more than babysitting. It is a waste of probation resources that could be better used for that one-third of juvenile offenders who likely will commit one, two, three, or many more crimes.

Diversion programs are still a viable option for many low-risk offenders. Diversion may be described as any processing of minor juvenile offenses that does not involve the juvenile court and may, as described with the Youth Accountability Boards, entirely remove the processing of the offender from the juvenile justice system. Such programs avoid the stigma of delinquency adjudication, may involve the victim and community members, and save time and money by reducing the burden on the court system. In the long run, they are an exercise of "wise restraint."[15]

EFFECTIVE INTERVENTION

An important question to ask is how can we tell, from his or her first encounter with the juvenile justice system, whether a juvenile is likely to become a serious or habitual delinquent. If we could identify this high-risk group, what is the efficacy of probation services for those juveniles who pose such a serious threat to their communities? Are effective interventions available or is this just more expensive babysitting?

The "Scarce Resource" Approach

In 1995, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) published a guide for juvenile justice practitioners outlining a comprehensive strategy for serious, violent, and chronic juvenile offenders. The guide recognizes that "scarce resources are often wasted on non-career juvenile delinquents who are unlikely to commit further offenses because they are at the end of their short offending span."[16] The guide

concentrates on that small group of juveniles, representing perhaps 10 percent of the total cohort of youthful offenders entering the juvenile justice system each year, who will become serious, habitual delinquents.

Prevention Programs

In addition to the wasted resources mentioned above, other obstacles to effective intervention and tactics to develop effective programs are cited. First, most violent offending is not brought to the attention of juvenile justice authorities. Second, when it is brought to their attention it is often toward the end of the offending career. For the vast majority of these youth, the first arrest for a serious or violent crime occurred "years after their initiation into this type of behavior."[17] Although prevention programs are more desirable than interventions, to be effective, they must attempt to reduce risk factors that over time lead to delinquency. Intervention programs must target career offenders early. They must be comprehensive in nature, addressing multiple risk factors. Effective intervention must be long-term to overcome the negative interactions of multiple risk factors. Finally, some violent and chronic offenders are simply too dangerous and represent too great a threat to their communities to be treated in the juvenile justice system. These individuals are better handled in the criminal justice system.[18]

A Comprehensive Strategy

The Comprehensive Strategy recommended a seven-part approach beginning with prevention and moving through a series of graduated sanction. The full spectrum of interventions would include the following:

- Programs for all youth
- Programs for youth at greatest risk
- Intermediate interventions
- Intermediate sanctions
- Community confinement
- Training schools
- Aftercare[19]

According to the OJJDP, juvenile corrections is responsible for providing "treatment services that will rehabilitate the juvenile and minimize the chances for reoffending." To accomplish this, a continuum of effective services must be offered. But, are there effective interventions within the correctional inventory available to juvenile probation agencies?

Echoing previous findings and policies established by many probation agencies across the country, OJJDP urged differentiated interventions with juvenile offenders recognizing that "all juvenile offenders arrested by police do not need to be detained; all those placed on probation do no need intensive supervision; and all those committed to the custody of a

State correctional agency do not require secure care placement.''[20] To differentiate between juvenile offenders and determine the level of supervision or type of placement, OJJDP supported the use of risk assessment instruments (which have grown significantly in accuracy and sophistication since the work of the researchers in Wisconsin two decades earlier). Additionally, they supported need assessment tools to help identify the specific type of interventions to be delivered.

Evidence-based Decision Making

In the shadow of Martinson's ''nothing works'' declaration, the new offering of interventions must be empirically studied and found to be effective for the specific types of offenders they would impact. In 2002, the National Center for Juvenile Justice (operating under a grant from OJJDP) enlisted contributions from the National Council of Juvenile and Family Court Judges, the American Probation and Parole Association, and the National Juvenile Court Services Association to develop the *Desktop Guide to Good Juvenile Probation Practices*. The guide begins with a rethinking of juvenile probation. The professional consensus recognizes a ''more active, collaborative, results-oriented juvenile probation practice.''[21]

The current philosophy of juvenile probation practices incorporates a large measure of public protection and juvenile accountability. It holds the probation agency accountable, stressing mission-driven practices and performance-based, outcome-focused programs.[22] The new probation practices address Martinson's allegations by applying the large body of research in juvenile interventions that was accumulated in the 1980s and 1990s (primarily as a result of funding for such research by OJJDP). Research into adolescence and development of delinquency supports the appreciation for the challenges of adolescence with its extraordinary physical, intellectual, emotional, and social growth.[23] Most individuals, however, survive the challenges of adolescence without serious behavioral issues. Again it is stressed that ''a very small subsets of youth embark on serious delinquent careers.''[24]

Research has enlightened practitioners with an understanding of risk factors that are associated with increased risk of delinquency. These factors are associated with individual attributes and traits and also with peers, family, school, and the community. Practitioners seek to develop programs that are effective in protecting the individual from these risk factors. The identification of protective factors and the effective delivery of them is a key to prevention. Effective deployment of protective programs involves the participation of many individuals and institutions affecting the lives of youth.

Effective parenting is of great importance. Supervision of a juvenile's activities and involvement in their activities along with love, caring, and family stability provide a protective environment and resistance to delinquency. Juvenile corrections has always included work with the family. The need for improving parenting skills and bolstering the positive influence of

parents suggest that working with parents of juveniles on probation is as critical as working with the youth.

Schools are also important in the development of protective factors. Clear rules and consistent enforcement are important but so is reinforcement of positive behaviors. Teaching stress management, problem-solving, and self-control is important to the prevention of delinquency.[25] School-based probation programs can influence the kinds of programs delivered by educators and provide more contact and better monitoring of juveniles on probation.

Additionally, the community can provide protective factors. Positive opportunities, mentoring programs, and afterschool activities promote positive behavior and association with prosocial peers.[26] Probation agencies can work closely with community leaders to encourage the development of protective programs. In some cases, they may directly offer the services through such programs as day reporting centers where juveniles and their families may receive a variety of educational and family services not offered elsewhere by the schools or community.

A BALANCED APPROACH

The focus of probation today must not ignore offender accountability, victim restoration, or community service, but it is a balanced approach that concentrates on the oldest mission of probation—that is, helping people to change. This approach will involve interventions that address three primary areas of corrections work:

- Skill building: improving living, social, academic, and vocational skills
- Cognitive interventions: making fundamental changes in the way individuals think, solve problems, and make decisions
- Treatment: interventions for serious problems such as drug abuse or mental illness[27]

Cognitive Interventions

The first and third areas of work (skill building and treatment) are not new to corrections practitioners, although the strategies and programs to achieve those goals have evolved and broadened. But the concept of changing the way an individual thinks, solves problems, and makes decisions is something new and different. Past efforts to change behavior may have involved counseling, positive reinforcements, or punishments. Cognitive skill-building interventions and cognitive restructuring are based on the premise that thinking controls overt actions. The interventions target the thinking process to promote behavioral changes.[28] Unlike past interventions designed to change offender behavior—which were based on techniques practiced in other fields of work or based on beliefs rather than empirical evidence—a substantial research foundation supports the positive outcomes of such interventions when delivered by corrections practitioners

to delinquent juvenile populations. Gornik describes the two-pronged approach for the National Institute of Corrections:

> There are two main types of cognitive programs: cognitive skills, and cognitive restructuring.
>
> **1. Cognitive skills training** is based on the premise that offenders have never learned the ''thinking skills'' required to function productively and responsibly in society. This skill deficit is remedied by systematic training in skills, such as problem solving, negotiation, assertiveness, anger control, and social skills focused on specific social situations, like making a complaint or asking for help.
>
> **2. Cognitive restructuring** is based on the premise that offenders have learned destructive attitudes and thinking habits that point them to criminal behavior. Cognitive restructuring consists of identifying the specific attitudes and ways of thinking that point to criminality and systematically replacing them with new attitudes and ways of thinking.[29]

The cognitive restructuring and cognitive skills approaches are complementary and can be combined in a single program. When practiced in a community model, resocialization can be enhanced and accelerated. Both cognitive strategies take an objective and systematic approach to change. Change is not coerced; offenders are taught how to think for themselves and to make their own decisions.

Cognitive corrections programs regard offenders as fully responsible for their behavior. Thinking is viewed as a type of learned behavior. Dishonesty and irresponsibility are the primary targets for change. Limit setting and accountability for behavior do not conflict with the cognitive approach to offender change—they support it.

Reinventing Probation

In the summer of 2000, the American Probation and Parole Association published a report urging all probation agencies to ''reinvent probation'' before critics of community corrections could capitalize on the general lack of faith in corrections service and hasten its demise. The report presented the ''Broken Windows'' model of probation. Based on the model that spawned the development of community policing, it called for a number of changes to make community corrections more accountable and responsive to public concerns. The report cited the failure of probation to protect the public. It criticized probation officers for ignoring violations of court orders and for hiding in their offices rather than working in their communities. The report noted a general lack of partnerships with law enforcement, treatment service providers, community organizations, schools, and victims.[30]

The Reinventing Probation Council focused primarily on accountability for both offenders and probation agencies, but they did not ignore the need for balance in probation casework. Specifically, they noted that the public wants from corrections not only safety from violent predators, accountability for offenses, and repair for damage done, but also education and treatment.[31]

Today, probation practitioners, both in juvenile and adult community corrections, are focused on the delivery of evidence-based practices. The Summer 2006 edition of *Perspectives*, the quarterly publication of the American Probation and Parole Association, was dedicated to evidence-based practices (EBP). Empirically tested programs are intended to answer the question posed by Martinson three decades ago: "What Works?" It is no longer acceptable to borrow techniques from other disciplines that seem intuitively suited to the practice of community corrections and report on their success with only anecdotal evidence. More difficult for probation practitioners, but necessary to stay on course with effective interventions, will be a movement away from programs that lack empirical evidence of effectiveness but are "politically correct" and therefore easily funded. Various versions of the Scared Straight Program and boot camps will have to pass out of corrections repertoire.

A New Generation of Treatment

The new generation of treatment options delivered in conjunction with the necessary control and surveillance aspects of supervision are guided by three principles. The first two already have been discussed: *risk* and *criminogenic need*. The risk principle requires matching levels of intensity of surveillance and treatment with the probability of continued criminal behavior. Risk assessment instruments have evolved in sophistication to assist practitioners in better identifying high-risk offenders. The criminogenic need assessment is somewhat different from past assessments in that it primarily addresses factors that, if changed, could reduce the probability of recidivism. Noncriminogenic needs may be changeable and could improve the offender's quality of life, but because they are not related to criminal behavior, they are not the primary concerns of corrections practitioners.

The third principle previously has not been a component of assessments, at least not in a formalized fashion. It is the *responsivity* principle. Responsivity refers to the delivery of treatment in a manner consistent with the ability and learning style of the offender.[32] It is an effort to match offenders and treatment much as educators would match teaching methods with the learning style of students. The recognition that offenders must be matched to an intervention is challenging. It requires corrections agencies to develop a full spectrum of programs designed to address low-risk to high-risk offenders and, additionally, to tailor the delivery of these programs to the receptivity and learning style of offenders. The reward for meeting this challenge is programs that work. And programs that work result in better public protection because juvenile offenders develop effective life skills, positive decision-making skills, and prosocial values.

CONCLUSION

To change juvenile probation from babysitting to meaningful supervision and intervention requires community corrections to grow and evolve from a field dominated by practices founded on belief and intuition and

driven by political winds to one built on sound theoretical foundations and empirical evaluation. The growth process has been, and likely will continue to be, painful. Probation has for several decades suffered from inadequate funding. But, it has often lamented this handicap, wallowed in self-pity, and allowed fiscal and political obstacles to erode professionalism. As a result, probation has suffered, deservedly, from a lack of public confidence. The road to restoring the value of community corrections will require adherence to high professional standards of its programs and the practitioners who deliver those interventions.

NOTES

1. Puzzanchera, 2003.
2. Greene & Pranis, 2006.
3. Reinventing Probation Council, hereafter RPC, 2000.
4. San Bernardino County Probation, n.d.
5. Elrod & Ryder, 2005, pp. 396–401.
6. Petersillia & Turner, 1993.
7. Martinson, 1974.
8. Lipton, Martinson, & Wilks, 1975.
9. Baird, Heinz, & Bemus, 1979.
10. Kurtz & Moore, 1994.
11. Krause, 1994.
12. Lemert, 1967.
13. Lowenkamp & Latessa, 2004.
14. Griffin & Torbet, 2002.
15. Griffin & Torbet, 2002, p. 49.
16. Griffin & Torbet, 2002, p. 5.
17. Griffin & Torbet, 2002, p. 3.
18. Griffin & Torbet, 2002, pp. 5–6.
19. Griffin & Torbet, 2002, p. 8.
20. Griffin & Torbet, 2002.
21. Griffin & Torbet, 2002, p. 1.
22. Griffin & Torbet, 2002, p. 2.
23. Griffin & Torbet, 2002, p. 21.
24. Griffin & Torbet, 2002, p. 23.
25. Griffin & Torbet, 2002, p. 28.
26. Griffin & Torbet, 2002, p. 29.
27. Griffin & Torbet, 2002, p. 94.
28. Taymans & Jurich, 2000.
29. Gornik, 2003.
30. RPC, 2000.
31. RPC, 2000.
32. Gornik, 2003.

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CHAPTER 7

"You Can't Go Home Again": Disproportionate Confinement of African American Delinquents

John K. Mooradian

If you want to start an argument, all you have to do is solicit opinions about abortion, affirmative action, or American involvement in any war since 1945. Each of these issues has the power to polarize opinions and fire passionate debates. In the field of juvenile justice, the same goal can be accomplished by raising the topic of Disproportionate Minority Confinement (DMC).

DMC refers to the overrepresentation of minority youth in the juvenile justice system and implies that it is a problem. DMC is a controversial issue because it forces community members and juvenile justice professionals to consider issues of punishment and protection, under the deep shadow of race.

The National District Attorney's Association recognizes that prejudice, denial, fear, or a simple lack of information often lead to visceral responses when people are confronted with the issue of DMC.[1] Although the existence of disproportionate racial composition in juvenile justice settings has been empirically established, discussions of its causes, impacts, and resolution often stimulate steamy responses.

In recognition of the controversy surrounding DMC, this chapter attempts to combat prejudice, break denial, calm fears, and provide information that allows movement beyond a visceral response, to one that is more useful. This chapter focuses on African American youth in restrictive placements within the juvenile justice system. It outlines the breadth and depth of the problem, describes its human and systemic effects, charts what is currently known about its causes, and offers suggestions for reducing the imbalance.

RECOGNITION OF DISPROPORTIONATE MINORITY CONFINEMENT

DMC has been defined as a condition that exists when a racial or ethnic group's representation in confinement exceeds their representation in the general population.[2] DMC was officially recognized by the federal government in the 1988 amendments to the Juvenile Justice and Delinquency Prevention Act of 1974 (Public Law 93-415, 42 U.S.C. 5601 *et seq*).[3] Along with recognizing the problem, the federal government instituted a policy that required the states participating in the Title II, Part B, Formula Grants Program to reduce disproportionate confinement of African Americans, American Indians, Asians, Pacific Islanders, and Hispanics in any jurisdiction where it was found.[4]

In 2003, 59,000 minority youth were in residential placements across the United States, and they accounted for 61 percent of the incarcerated population.[5] The national aggregate data break down to show proportions of confined minority youth on a state-by-state basis. Table 7.1 shows that for every state with calculable data, except Hawaii, the ratio of detained minority youth to detained Caucasian youth exceeds 1.0. According to guidelines established by the Office of Juvenile Justice and Delinquency Prevention (OJJDP), a ratio greater than 1.0 indicates the presence of DMC.[6]

The predominant racial or ethnic minority group in juvenile justice settings is African American males. In fact, they made up 38 percent of the total of youth confined in 2003.[7] The Juvenile Justice and Delinquency Prevention Act of 2002 extended the concept of DMC to include minority *contact* with representatives of the juvenile justice system, rather than *confinement* alone.[8]

A review of official statistics from the the U.S. Census Bureau census, OJJDP, and the Federal Bureau of Investigation (FBI) indicates that African American youth are more likely than the general population to be arrested and processed by juvenile courts and to experience dispositions that involve out-of-home placement. These statistics are summarized in Figure 7.1.

African American youth account for 15 percent of the U.S. population between the ages of 10 and 17, but make up 25 percent of all juvenile arrests. Although they represent only 25 percent of the arrests, they make up 36 percent of the cases adjudicated by juvenile courts. They are responsible for 39 percent of the violent crimes reported by victims, but 49 percent of the juvenile arrests for violent crimes. The discrepancies continue to grow as the youth move through the system. The 36 percent of adjudications rises to 43 percent of out-of-home placements, 46 percent of public long-term placements, and 52 percent of the cases waived to criminal courts by juvenile courts. It has been estimated that one in seven African American males will be confined before his 18th birthday, while the estimate for European American youth is only 1 in 25.[9]

These statistics illustrate that African American male delinquents are more likely to be placed out of the home than their European American counterparts, and more likely to be escalated to more restrictive

Table 7.1.
State-by-State DMC, Ratio of Minority to White Rates of Youth Detained, 2003 (overall U.S. ratio 3:1)

State	Ratio	State	Ratio
Alabama	3.1	Montana	3.7
Alaska	5.2	Nebraska	5.5
Arizona	1.3	Nevada	1.7
Arkansas	2.5	New Hampshire	2.3
California	2.2	New Jersey	8.0
Colorado	2.5	New Mexico	1.6
Connecticut	6.9	New York	3.7
Delaware	7.4	North Carolina	3.6
Florida	1.6	North Dakota	5.5
Georgia	2.8	Ohio	3.9
Hawaii	0.6	Oklahoma	2.2
Idaho	2.1	Oregon	2.0
Illinois	4.3	Pennsylvania	5.9
Indiana	3.3	Rhode Island	–
Iowa	3.8	South Carolina	2.5
Kansas	4.0	South Dakota	7.9
Kentucky	5.0	Tennessee	4.0
Louisiana	2.4	Texas	2.3
Maine	1.6	Utah	3.9
Maryland	3.2	Vermont	2.7
Massachusetts	5.6	Virginia	4.4
Michigan	4.4	Washington	1.6
Minnesota	6.9	West Virginia	4.5
Mississippi	3.0	Wisconsin	10.3
Missouri	6.4	Wyoming	2.9

Source: Snyder & Sickmund, 2006.

placements for relatively less serious offenses. Once a youth is placed out of the home, there is a higher likelihood that he will be confined again and again.[10]

Undoubtedly, different readers will react to these facts in different ways. One may be tempted to respond with anger over clear injustice. Another may feel comforted by the effort of the juvenile justice system to protect public safety. Someone else may secretly accept this as an example of what happens in inner-city communities, or as evidence that black youth are more dangerous than their white counterparts.

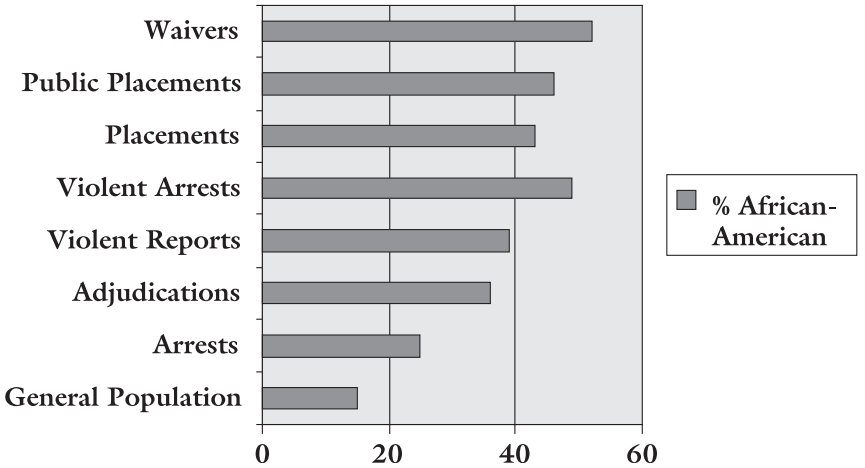

Figure 7.1. Overrepresentation of African Americans in Juvenile Justice
Source: Snyder & Poe-Yamagata, 1995.

Regardless of your reaction, or your concern for social justice, you might recognize that reducing DMC would bring practical benefits. The number of detained youth in the United States increased by 72 percent from 1985 to 1995, and 80 percent of this increase consisted of minority youth.[11] Because the greatest percentage of youth making up this increase were minorities, it is clear that reducing the number of minority youth in secure placements will significantly reduce the public costs associated with expensive confinements.

UNDERSTANDING DMC

The problem of DMC is complex and historical. DMC is complex because it draws attention to criminal behavior perpetrated by youthful offenders who happen to be black. It is historical because differential disposition of juvenile cases involving European American and African American youth has been identified as a long-standing problem of significant proportion,[12] and it extends historical trends in juvenile justice into the present.

The Role of Racism

Discussing DMC without considering the larger issue of racism would be like attempting to ignore the proverbial elephant in the living room. Racism has been described as an ideology that operates at the metalevel of social systems and pervades the American social ecology.[13] Racism consists of a belief that people of a different race are inherently inferior to one's own race, and it uses power structures to systematically disenfranchise, degrade, or divert resources from the subject group. For purposes of this

chapter, racism may be thought of as taking two primary forms. Overt racism entails direct racial discrimination that is personally offensive, discriminatory, bigoted, and openly oppressive. It is evident in explicit statements, personal contacts, and stereotyped descriptors. Few observers imply that overt racism governs juvenile justice decisions or results in DMC,[14] but its total elimination as a relevant factor is in doubt.[15] Covert racism, which is akin to "institutional racism," is exceedingly oppressive in its effect because it is pervasive and much harder to detect, as well as restrain. Although covert racism can be deliberate, it often operates beneath the awareness of its perpetrators. In that sense, covert racism is doubly hidden. Covert racism is embedded in resource allocation, "benign" segregation, and imposition of dominant culture values. Observers of the juvenile justice system are more inclined to redefine this set of attitudes and behaviors as "unintentional discrimination,"[16] but clearly implicate it in discussions of DMC.

The complexity of DMC is connected to the issue of social class, which may crosscut racist attitudes or structures. The primary features of low socioeconomic status are poverty, deteriorating urban environments, limited family cohesion, and ineffective parental control. Perhaps unsurprisingly, these factors are correlates of delinquent and violent behavior.

Historical Roots of DMC

The roots of DMC reach back to what Platt called "the invention of delinquency."[17] Before the early nineteenth century, there was no systematic separation of juveniles from other criminals. When the rise of industrialization drew families to urban centers, children began to congregate in peer groups and become a greater social nuisance. Even if young people did not commit felonies, their troublesome behavior seemed to require external controls. To bolster parental and school authority, the new social status known as "juvenile" was constructed. Parents retained primary responsibility for controlling their children, but the doctrine of *parens patriae* was used to legitimate intercession by the state *in loco parentis* when the parents were seen as failures.[18] Once the state assumed authority over the lives of children, decisions could be made to remove minors from their family homes for purposes of individual rehabilitation and community protection.

This application of government power was motivated by concern for social treatment and social control. On one hand, there was a genuine interest in rehabilitating the wayward child.[19] These "child-savers" viewed the child as the helpless victim of society.[20] On the other hand, citizens had a right to feel safe and expected criminal behavior to be controlled. Then, as now, proponents of social treatment for the child, and proponents of social control for the protection of society, take sides on these issues. Instead of seeing them in opposition, however, it may be more useful to visualize an inextricable link (see Figure 7.2) that governs decisions about the placement of juveniles.[21]

It appears that a disparity in confinement rates across cultural groups has always existed. In the nineteenth century, the urban underclass was

Figure 7.2. Link of Social Treatment and Social Control
Source: Mooradian, 2003.

primarily composed of European immigrants who were seen as the "dangerous classes," and it was their children who were predominantly placed outside their family homes.[22] In twenty-first-century America, European Americans no longer occupy this social position, but African Americans and Latinos often do.

IMPACT OF DMC

DMC holds profound implications for individual juveniles and their families, as well as for service providers and the general public. The OJJDP administrator stated that an effective juvenile justice system should treat every offender as an individual and provide needed services to all.[23] He also noted that a persistent inequity in disposition of cases, especially when associated with race, masks individual difference, brings significant human consequences, and counters the goal of equal justice.

The Human Dimension

Statistical presentations and systemic descriptions certainly have their place in understanding DMC, but it might also be useful to consider the life of an individual juvenile named "Daron." He represents the typical African American youth in placement. His story emerged from an empirical investigation of DMC and clinical intervention with delinquents and their families.[24]

Daron is 15½ years old. For the past year, he's been in a campus-based residential facility, but he grew up in a large city about 50 miles away. His mother and grandmother visit him about once a month. His father is in prison and has been, on and off, since Daron was about three. His family is poor. They've experienced a lot of other stressors, including the shooting death of his cousin, his grandmother's hypertension and heart problems, arguments between Daron and his mother and his uncle, fights between Daron and his mother's boyfriend, and his mother's stress over trying to balance being a single parent and working part time in a small factory. Daron was adjudicated for his third felony, which was aggravated assault on another young man who made negative comments about Daron's deaf brother. The other two offenses on his record are auto theft (he took his mother's boyfriend's car after arguing with him) and assault

and battery involving a fight at school. He went to detention for four weeks for the car theft, and spent nine months in a residential facility following the assault. Now that he's in his third placement, and almost two years of his life have been spent away from his family, he faces the strong possibility that he will be placed in a transitional program.

Pathways to Placement

In a study of 171 African American males like Daron, pathways emerged that explain multiple out-of-home placements.[25] This study took place in a large multisite private agency that operated court-ordered restrictive programs for state government.

Figure 7.3 shows the observed pathways to placement as a connection of variables that are significantly correlated, in appropriate temporal order across the columns.[26]

To interpret the diagram, look at the direction of the arrows and the valence (+/−) of the connections. For example, the double-headed arrow between *Age at Intake* and *Single-Parent Family Type* shows that they exist in the same time frame and that they mutually affect each other. They are also negatively correlated, so youth from single-parent families are likely to be younger at intake into the juvenile justice system than youth from two-parent families. The arrow from *Age at Intake* to *Felony Offenses,* with its plus sign, shows that older youth are more likely to commit multiple felonies.

Some aspects of the model aren't surprising at all. Being locked up longer in the current placement and going home when confinement is finished, necessarily limit the total number of placements. Other aspects are a bit harder to grasp. Why, for example, does living in an urban environment show a directly negative effect on obtaining a successful release, while entering placement from home has a positive effect on program completion? And why doesn't the number of felony offenses increase the length of stay in the current placement or lead to more total placements? These results are surprising because they show that placement decisions aren't necessarily based on the culpability of the youth. Environmental and juvenile justice system factors come into play as well. Another puzzling finding is that youth with more prior placements actually have more highly functioning families. This may be the case because intervention actually helps stabilize these families by averting crises. Intervention can take many forms, however, and incarceration may not be the only way to help families manage their children.

Other aspects of the model are not as surprising as they are disturbing. Coming from a single-parent family directly increases the likelihood that a youth will accumulate multiple out-of-home placements. The experience of family tensions also has a direct negative effect on the child's chances of being returned home after placement. Perhaps support for families, especially single-parent households, would improve the chances that a youth can be retained rather than detained.

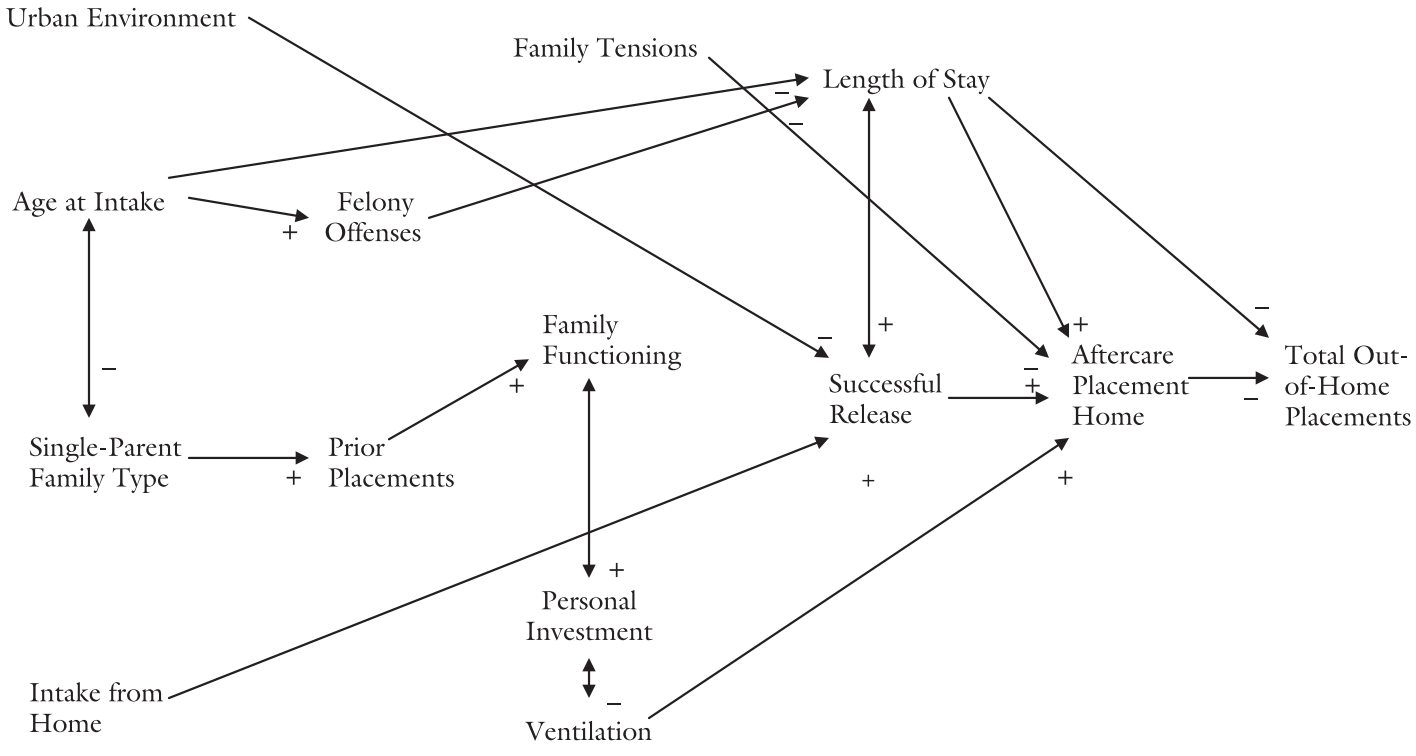

Figure 7.3. Pathways to Placement
Source: Mooradian, 2003.

In summary, there are notable pathways to multiple out-of-home placements for African American male delinquents. These include coming from poor, urban, single-parent families that experience multiple unresolved stressors. Although external intervention seems to stabilize these families while simultaneously controlling criminal opportunities and increasing the confidence of decision makers in the youth's ability to "go straight," options for intervention other than confinement should be tested. In the meantime, for Daron and his brethren, the life story seems to be ominously titled, "You can't go home again."

Causes of DMC

Several causes of DMC have been identified.[27] Among them are differential offending patterns, differential handling of minority youth, indirect effects of race, differential opportunities for prevention and treatment, and unintentionally discriminatory procedural rules.

Some studies indicate that minority youth are more likely to be involved in drug-related offenses,[28] become active in gangs,[29] and commit violent crimes.[30] Patterns of offending also vary by race. For example, white youth are more likely to commit sexual assault and arson, while black youth are likely to commit robberies and drug trafficking.[31]

Without critical thinking, incidence of crime may explain the problem. After all, "if you do the crime," you ought to "do the time," but it's important to remember that delinquency and confinement are two different things. In fact, at least one study found that there was no significant correlation between offense history—including number of felony offenses—and multiple placements for a sample of African American youth.[32] So, although African American involvement in crime may help explain initial contact with law enforcement, it doesn't necessarily explain confinement.

Evidence suggests that African American youth are treated differently at each stage of the juvenile justice process. Both state and aggregate national data show that disparities among races increase at every stage of contact.[33] The causes discussed below may be contributors to this differential treatment.

What has been called the "indirect effects of race" is important to consider. Poverty and exposure to violent communities tend to be associated with race.[34] Therefore, when researchers try to study race effects, they may really be looking at poor, single-parent families, with low academic achievement and exposure to violence, and may not really be studying race itself.[35]

Exposure to violence, in particular, is an inescapable experience for many African American youth in urban environments. The National Centers for Disease Control indicate that homicide is the leading cause of death for African Americans between the ages of 10 and 24.[36] In this context of community violence, including random shootings, drug- and gang-related murders, and the constant threat of physical attacks, many young people learn to use violent solutions themselves. Such learning may be antisocial, but adaptive nonetheless, given their environmental conditions.

Violence can induce trauma. Studies have shown a strong link between exposure to violence and adjustment problems, such as depression, anxiety, and antisocial behavior, as well as post-traumatic stress disorder.[37] Somehow, a future orientation and acceptance of prosocial norms may be adversely affected when a child lives under violent conditions.

Just because these young people are not living in some far-away land ripped apart by military action, their witness of interpersonal violence should not be discounted. One young man in placement told about the time he was sitting next to his uncle, on the couch in the living room of his home, when a bullet pierced the front window and lodged in his uncle's forehead. On a home visit, another teenager located the spot where his niece was wounded by a "stray bullet" in his aunt's front yard.

An additional example of indirect race effects centers on race-related crime and punishment patterns. Alexander and Gyamerah report that possession of three grams of crack cocaine is considered a third-degree felony in Minnesota, punishable by up to 20 years in prison. By contrast, 10 grams of powdered cocaine is considered a fifth-degree felony, punishable by up to five years. This may not seem to be related to incarceration patterns among the races, until you consider that 97 percent of the people arrested for crack possession were African Americans and 80 percent of the arrests for cocaine powder were Caucasian during the period studied.[38]

Recent studies that incorporate improved methodology have begun to establish the indirect effect of race in juvenile justice decision making. Bridges and Steen illustrated the effects of subjective assessments of youth by court workers. In this study, probation officers were more likely to attribute delinquent behavior among African American youth to internal factors such as "lack of responsibility," while they used external factors such as "poverty" to explain delinquency by white youth. Such subjective processes may be seen as covert racism.[39]

Although covert racism is a delicately handled topic because of its potentially inflammatory and divisive nature, it must also be considered as a cause of DMC. A unique experiment conducted by Graham and Lowery investigated the effect of "priming unconscious racial stereotypes" about juvenile offenders among police officers. Two ethnically diverse groups of police officers were formed by random assignment. Before reading hypothetical case descriptions of a racially unspecified youth who committed shoplifting and one who committed an assault on a peer, one group was provided with race-neutral stimuli and the other was subliminally "primed" with words related to the category "black." Officers in the racially primed condition reported more negative ratings of the offenders and judgments of greater culpability, expected recidivism, and the need for harsher punishment. Investigators were careful to assess self-reported racial attitudes of the participants and found no relationship to the outcome. This finding emphasizes the role of unconscious processes. In this study, stereotypes are usefully characterized as "unconscious beliefs" that affect "conscious behavior."[40]

Clear procedural rules for decision making and case disposition have been proposed as solutions to the problem of DMC.[41] Although such reforms can be credited with reducing intentional racial bias, they may not

be very effective in other ways. In fact, they may unintentionally draw more African American youth into the juvenile justice system. For example, so called "zero-tolerance" rules used to deter drug possession in public schools are prevalent in minority school districts and have been shown to result in unintentionally harsher treatment of minority youth.[42] A similar effect is possible when risk indexes that are based on seemingly neutral factors are used to determine disposition. Factors such as the number of prior police contacts or arrests can lead to placement escalation, but may simply be artifacts of increased police scrutiny.[43] Some jurisdictions use a decision-making rule that requires detention when two parents or a biological parent are unavailable.[44] Given the composition of many urban poor families, this requirement may be unintentionally discriminatory. Its negative impact may be further extended because of the kinship and nonblood-related structure that exists in some African American families.[45]

To illustrate the effect of this type of rule, let's assume that you are a juvenile court worker attempting to decide which juveniles go into detention. (Let's further assume that you are not a bigot!) One child has two employed, nicely dressed parents in attendance at your meeting, who promise to do their best to control him and who have transportation and telephones to maintain contact with you. The youth has no prior record of offenses. Another child has a status offense and a misdemeanor on his record and is brought to your office by his grandmother who has just been released from the hospital. She tells you that they were a bit late for your meeting because the bus didn't make their stop on time. When you ask about her availability for phone contact, she sheepishly tells you, "The phone's been cut off." In which case would you expect a higher likelihood that the child would show up for a court date and stay out of additional trouble until then? If you chose the first case, you're not alone, and you would be making a decision that's consistent with many protocols based on statistical risk.[46] Now, recognize that the first youth is white and the second is black. Given the prevalence of these family and socioeconomic factors in Caucasian and African American families, you would also be engaging in unintentional discrimination.

WHAT CAN BE DONE ABOUT DMC

The good news is that everyone who works in the juvenile justice system has an opportunity to reduce the number of minority youth in placement without unduly jeopardizing public safety. Perhaps what would be most productive would be to simply focus attention on the issue and try to consider it in decisions that are made at each stage of the juvenile justice process. Knowledge and attitude go a long way toward solving the problem. The specific suggestions for reducing DMC listed below are drawn from successful innovations conducted in various states, as well as general research.

The first thing that can be done to reduce DMC is to encourage involvement and creativity by building cooperative networks that include representatives from law enforcement, the juvenile court, the intervention system, and the community. These people have direct knowledge that can

be tapped into for solutions.[47] Most states have already complied with federal requirements to create boards responsible for investigating and reducing DMC, but their results are varied.[48] By 2002, only Colorado, Pennsylvania, and Washington had completed the initial identification and assessment phases required by law and were actively involved in implementing and monitoring reduction strategies; and only 44 states provided usable information about their progress to the OJJDP. South Dakota and Wyoming were exempt from the procedure because they did not accept Formula Grant funds.

By building reliable information systems and ensuring accurate record-keeping, several minority youth might receive an intervention other than confinement. Amazingly, inaccurate record-keeping can result in a low-risk offender being confined for weeks.[49] For example, relatively insignificant police ''contacts'' are often inaccurately recorded or miscounted as highly significant ''arrests,'' and then used to make charging, disposition, or placement decisions.

With accurate record-keeping, DMC could be more accurately monitored. Recently, relevant data from the city of Detroit were removed from official statistics by the FBI; the removal was due to widespread inaccuracies and irregularities. Because of the high concentration of African Americans within the city limits, this loss of data was catastrophic for those attempting to measure DMC in Michigan. Several other problems with current data collection and management have been exposed, including limited funding for counties and localities to support data management; use of paper records rather than electronic files that make retrieval difficult; unstandardized race and ethnicity categories; and missing data caused by voluntary reporting, time pressures, and irregular responsibilities.[50]

It may also be useful to address covert racism by using educational and experiential learning activities to increase the awareness of decision makers and the general public. For example, the ''stereotype priming'' experiment described above could be adapted to form an experiential learning module for police officers, court workers, treatment providers, and judges.

Expanded training in cultural awareness might also make inroads on DMC. It has been suggested that learning the language and the behavior patterns of minority youth might prevent misperceptions of the danger they present or the level of motivation they possess to cooperate with representatives of the juvenile justice system.[51] Without requisite knowledge, for example, a court worker may conclude that a 16-year-old African American youth who wears a hood over his head, slumps in his chair, and refuses to make eye contact is disinterested in receiving the help that is being offered. Understanding the value of extended family and non-blood-related relationships in African American families may open placement alternatives that are not immediately recognized by members of the dominant culture. It has also been suggested that representatives of the youth's culture operate as indigenous liaisons between juvenile justice professionals and offenders and their families in the community.[52]

Because minority youth are likely to live in highly patrolled precincts, they are also more likely to come to the attention of the police. Because

their high visibility "through the windshield" of the police cruiser, they are more likely to experience police contact. Community policing has been recognized as a means of reducing this type of unintentional bias and simultaneously protecting the community. It may also be a useful response to environmental violence. Community policing is characterized by a partnership of law enforcement professionals and community members. Officers who know their neighborhood and its residents are more likely to take low-level offenders home or to a relative or neighbor rather than make an arrest that results in detention.[53]

Reviewing community risk assessment inventories (standardized protocols) upon which charging, disposition, and placement decisions are predicated could reduce intentional and unintentional bias. In a technical investigation of various risk assessment strategies, Gottfredson and Snyder recognize that race is a *correlate* of recidivism, but emphasize that it is not a *cause*. They identify predictive causal factors as poverty, school failure, unsupervised time, community disruption, and the amount of police surveillance in the community. They suggest that risk-scale developers use a race variable in the early stages of instrument construction, but remove it from the final instrument as a means of reducing racial bias in the application of the instrument.[54]

Specific steps that have resulted from risk assessment reviews include statutory changes like those enacted in California that restricted the criteria for detention, and other states' decisions to open more options for acceptable placement, including family members and neighbors.[55] Another example is provided by Cook County in Chicago, Illinois, where even moderate-risk offenders may be placed in nonsecure placements, based on use of an approved decision-making tree.[56]

Increased availability of legal counsel would help ensure equal protection by providing a knowledgeable advocate for the youthful offender. Obtaining qualified legal counsel could help combat the effects of economic injustice.

Implementation of evidence-based programming as alternatives to detention would be extremely useful in reducing DMC. A meta-analysis of 305 published studies indicates that mainstream treatment programs are just as effective with African American and other minority youth as they are with dominant culture youth.[57] Although culturally specific intervention may be even more effective, simply making sure minority youth and families have access to regular nonrestrictive programs would be a helpful first step.

Several empirically supported interventions have been reported in the treatment literature. Useful prevention approaches include mentoring programs such as Big Brothers/Big Sisters, Across Ages, and the Gang Resistance Education and Training Program.[58] Juvenile court diversion programs have demonstrated success for several years.[59] The recent use of "balanced and restorative justice" conferences, wherein offenders make amends with their victims, also holds promise for intervention with low-level offenders.[60] Family-centered delinquency treatments that have reported impressive efficacy with serious offenders include Functional Family Therapy[61] and Multisystemic Treatment.[62] The Family

Empowerment Intervention has also reported significant success.[63] Many of these evidence-based approaches incorporate the seminal interventions developed in Structural Family Therapy.[64]

Improvement of the measurement of minority contact at each stage of the juvenile justice process would also be useful. To that end, the OJJDP recently encouraged a change in the method used to measure DMC.[65] The old procedure was known as the Disproportionate Representation Index (DRI) and was calculated by simply constructing a ratio of the percentage of confined youth of minority status to the percentage of minority youth in the general population. The new procedure is called the Relative Rate Index (RRI) and uses a rate-based estimator that may be computed at any stage of contact in the juvenile justice process. The computational formula, which appears on the OJJDP Web site, is a bit complicated.[66] It appears that both indexes may underestimate DMC in areas with small minority populations, but the DRI is still most widely reported index of the two.[67]

An additional step would be to conduct further targeted research to learn more about DMC. Pope, Lovell, and Hsia offer specific suggestions for research focused on law enforcement policies and practices, state and local efforts to reduce DMC, and alternatives to confinement.[68] In addition, Nellis suggests that researchers focus attention on identifying factors that contribute to DMC at various stages of contact.[69] It may prove valuable to assess implicit attitudes of decision makers that affect disposition and placement decisions.

CONCLUSION

DMC is a real and complex social justice issue. The complexity of the issue can be daunting, but the issue itself cannot be ignored. The responsibility that comes with living in a free society requires an ongoing examination of any abridgment of liberty. When identifiable groups of citizens are systematically incarcerated, whether by intention or ignorance, justice is limited and freedom is lost in the society as a whole. It would be useful to remember Martin Luther King's words, "Injustice anywhere is a threat to justice everywhere."[70] From today's perspective, the incarceration during World War II of hundreds of American citizens of Japanese descent seems unconscionable. Somehow, people who didn't look European presented more of a threat than German Americans or Italian Americans. In the same regard, we should consider disproportionate confinement of minority youth as equally unconscionable.

The need to protect the community and the need to provide effective intervention in the life of the offender can no longer be seen as exclusive or competing. True protection of society is only possible when freedom for all citizens is valued as highly as security. When juvenile justice professionals and community members strive to overcome the barriers presented by prejudice, denial, fear, and limited information, much can be accomplished, and social justice can be advanced.

NOTES

1. American Prosecutors Research Institute, hereafter APRI, 2001.
2. Devine, Coolbaugh, & Jenkins, 1998.
3. Hsia, Bridges, & McHale, 2004; Pope, Lovell, & Hsia, 2002.
4. Pope et al., 2002.
5. Snyder & Sickmund, 2006.
6. Feyerherm & Butts, 2002.
7. Snyder & Sickmund, 2006.
8. Nellis, 2005.
9. Hsia & Hamparian, 1998.
10. Snyder, 1999.
11. Justice Policy Institute, hereafter JPI, 2002.
12. Hsia & Hamparian, 1998.
13. Goldberg & Hodes, 1992.
14. APRI, 2001.
15. Hsia et al., 2004.
16. APRI, 2001.
17. Platt, 1977.
18. Ferdinand, 1991.
19. Pumphrey & Pumphrey, 1961.
20. Bruno, 1957.
21. Mooradian, 2003.
22. Montgomery, 1909.
23. Bilchik, 1998.
24. Mooradian, 2003.
25. Mooradian, 2003.
26. If you're statistically minded, note that this is not a true path model because it is not fully specified. The model, however, was constructed from a large pool of reliably and validly measured independent variables.
27. Nellis, 2005.
28. Blumstein, 1995.
29. Farrington, Loeber, Stouthamer-Loeber, Van Kammen, & Schmidt, 1996.
30. Hawkins, Laub, & Lauritson, 1998.
31. Snyder & Sickmund, 2006.
32. Mooradian, 2003.
33. JPI, 2002.
34. Nellis, 2005.
35. U.S. Department of Health and Human Services, 2001.
36. National Centers for Disease Control, n.d.
37. McGee, 2003.
38. Alexander & Gyamerah, 1997.
39. Bridges & Steen, 1998.
40. Graham & Lowery, 2004.
41. Hsia et al., 2004; JPI, 2002.
42. Nellis, 2005.
43. Leiber, 2003.
44. APRI, 2001.
45. Boyd-Franklin, 1989.
46. Farrington et al., 1996; Gottfredson & Snyder, 2005.
47. APRI, 2001.
48. Hsia et al., 2004.

49. APRI, 2001.
50. Post, Hagstrom, Heraux, Christensen, & Joshi, 2005.
51. APRI, 2001.
52. APRI, 2001.
53. APRI, 2001.
54. Gottfredson & Snyder, 2005.
55. APRI, 2001.
56. APRI, 2001.
57. Wilson, Lipsey, & Soydan, 2003.
58. Nellis, 2005.
59. Davidson, Redner, Blakely, Mitchell & Emshoff, 1987.
60. McGarrell, 2001.
61. Sexton & Alexander, 2000.
62. Bourdin, 1995; Henggeler, Melton, & Smith, 1991; Sutphen, Thyer, & Kurtz, 1995.
63. Dembo et al., 2001.
64. Minuchin, Montalvo, Guerney, Rosman, & Schumer, 1967.
65. Feyerherm & Butts, 2002.
66. Office of Juvenile Justice and Delinquency Prevention, n.d.
67. Post et al., 2005.
68. Pope et al., 2002.
69. Nellis, 2005.
70. King, 1963.

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CHAPTER 8

Law and the Treatment of Mentally Ill Youth

Jon R. Farrar

The U.S. Surgeon General has stated that mental illness "refers collectively to all diagnosable mental disorders."[1] The National Mental Health Association reports that as many as 60 to 75 percent of incarcerated youth have mental health disorders and 20 percent have severe disorders. Such disorders include substance abuse, conduct disorder, depression, attention deficit/hyperactivity disorder, learning disabilities, post-traumatic stress disorder, and developmental disabilities.[2] The courts in this country, however, rarely look at these disorders when dealing with the children before them. Consideration of a child's mental health is normally limited to the issue of whether he is mentally ill in the context of commitment or delinquency and criminal proceedings.

THE HISTORY OF MENTALLY ILL YOUTH IN THE COURT SYSTEM

The courts' handling of mentally ill youth is a product of the development of the juvenile court system. Up until the late 1800s, children who committed crimes were brought before the same courts that handled crimes committed by adults. Children below the age of 7 were presumed incapable of criminal responsibility, although a rebuttal presumed that children between the ages of 7 and 14 lacked capacity. Children were not exempt from the type of punishment imposed on adults for criminal behavior, including execution.

The Juvenile Court

In 1899, the Illinois legislature established the first juvenile court in Cook County. Juvenile courts were quickly established throughout the country. By 1925, all but two states had juvenile courts. Juvenile courts were rooted in social welfare policy and were designed to handle the punishment and rehabilitation of juveniles. Advocates of the juvenile court system saw a need for a nonpunitive *parens patriae* alternative to the criminal justice offenders. The objectives were to provide a measure of guidance and rehabilitation and protection for society, not to fix criminal responsibility, guilt, and punishment. Reliance was placed on social workers, probation officers, psychologists, psychiatrists, and physicians to provide information to the juvenile court for assessing and treating the needs of an individual child. Cases were handled informally, as opposed to having an adversarial system. Most states prohibited the prosecution of juveniles for crimes, except when permission was granted by juvenile courts.

The Beginnings of Change—1960s and 1970s

The Supreme Court began scrutinizing the treatment of juveniles in court proceedings beginning in the 1960s. The three most significant cases were *Kent v. United States* (1966), *In re Gault* (1967) and *In re Winship* (1970). These cases established the principles that had to be employed in court proceedings involving juveniles, including cases in which mental illness was an issue. These cases eroded the notion that juvenile court proceedings would be informal and without the traditional due process rules.

The *Kent* case concerned the practices of juvenile courts in the District of Columbia. Morris Kent was placed on probation by a juvenile court when he was 14 years old. In 1961, an intruder entered a woman's apartment and raped her. The police found fingerprints belonging to Morris Kent, who was then 16 years old. Kent was taken into custody and interrogated by police. He was detained for almost a week without an arraignment or a judicial determination of probable cause. His mother retained an attorney, who contacted the Social Services Director of the Juvenile Court. Counsel hired two psychiatrists and a psychologist, who determined that Kent was a "victim of severe psychopathology" and was in need of psychiatric care. Counsel made known his opposition to the juvenile court waiving jurisdiction. However, the psychological needs of Kent were ignored. The juvenile court waived jurisdiction without a hearing or explanation. The juvenile court never conferred with Kent or his parents. Kent was tried in criminal court and convicted on six counts with a range of punishment between 30 and 90 years in prison. Counsel challenged the juvenile court's waiver of jurisdiction in this case, along with the failure to accord Kent basic constitutional rights that adults were entitled to receive. The Supreme Court did not address the issue of Kent's constitutional rights; the case was remanded, however, because the Supreme Court found that the juvenile court's waiver of jurisdiction was invalid. The

Supreme Court found that Kent was entitled to due process and entitled to a statement of reasons for the juvenile court's decision.

The Supreme Court's next important decision regarding juveniles came out the following year in *In re Gault*. A juvenile court found that Gault had engaged in delinquent conduct by making a telephone call to a neighbor and making lewd and indecent remarks. Gault was picked up by the police while both parents were at work. No notice was left that he was taken into custody. A policeman filed a formal petition on the following day and a hearing was conducted. Gault's parents did not receive a copy of the petition until more than two months later. It made no reference to any factual basis for the judicial action. It merely said that "said minor is under the age of eighteen years, and in the need of the protection of this Honorable Court; (and that) said minor is a delinquent minor." The hearing was conducted before a juvenile judge. Neither Gault's parents nor the complainant were there. No one was sworn at the hearing. No transcript nor recording was made. No memorandum or record was prepared. The Supreme Court noted that the information it had about the hearing came solely from the testimony of the juvenile judge. There was conflicting testimony, and Gault purportedly admitted making one of the lewd statements. Gault was kept in a detention facility while the juvenile judge decided to "think about it."

A second hearing was conducted a week after Gault's arrest. The parents, another juvenile and his father, and two officers were present. The complainant was not present. The arresting officer agreed that Gault never admitted making a lewd comment, although the juvenile judge recalled at the habeas corpus hearing that Gault made "some admission." At the conclusion of the hearing, Gault was committed to the State Industrial School. No appeal was permitted under Arizona law, thus the parents filed a petition for a writ of habeas corpus. The Arizona Supreme Court affirmed the denial of relief, concluding that the Arizona Juvenile Code "impliedly" implements due process and the commitment did not violate due process.

The U.S. Supreme Court disagreed. The Supreme Court noted that neither the Due Process Clause of the Fourteenth Amendment nor the Bill of Rights is for adults alone. The Court also noted that the rights of the state, as *parens patriae*, in dealing with juveniles were the product of the highest motives and most enlightened impulses to correct the appalling procedures and penalties employed in adult criminal courts. The Court held, however, that the constitutional and theoretical basis for the juvenile system was debatable and that the results had not been entirely satisfactory. The Court further noted that the "condition of being a boy does not justify a kangaroo court." The Supreme Court limited its decision to the procedures discussed by the Arizona Supreme Court and concluded that, contrary to the decision by the Arizona Supreme Court, a juvenile has a right to notice of charges, to counsel, to confrontation and cross-examination of witnesses, and to the privilege against self-incrimination.

The Supreme Court's third significant case involving juveniles was decided three years later in *In re Winship*. The Court was concerned with

the standard to employ in determining whether a juvenile was a delinquent. New York law defined a juvenile delinquent as a person over 7 and less than 16 years of age who commits any act that, if done by an adult, would constitute a crime. New York law also provided that any determination at the conclusion of a hearing that a juvenile did an act or acts must be based on the preponderance of the evidence. Samuel Winship, a 12-year-old boy, was found to have entered a locker and stolen $112 from a woman's pocketbook. He was placed in a training school, and, under New York law, he could be kept there until his 18th birthday. The case focused on the issue of whether a finding of delinquency had to be based on the preponderance of the evidence or beyond a reasonable doubt. Justice Brennan, writing for the majority, noted that the Due Process Clause of the Fourteenth Amendment requires that the "essentials of due process and fair treatment" must be employed during the adjudicatory stage when a juvenile is charged with an act that would constitute a crime if committed by an adult. He also noted that the higher standard of "beyond a reasonable doubt" had been used throughout the history of this country. The Court rejected the argument that to afford juveniles the protection of that standard would risk destruction of beneficial aspects of the juvenile process. The Court held that when a child is charged with stealing, which could render him or her liable in confinement for as long as six years, then due process requires that the case against him must be provided beyond a reasonable doubt.

The Supreme Court has extended most of the constitutional rights of defendants in adult criminal proceedings to children in juvenile proceedings. In *McKeiver v. Pennsylvania* (1971), however, the Supreme Court did not extend the right to trial by jury to juvenile proceedings. The justices noted that the juvenile court concept still had high promise and that they were not yet willing to give up on its rehabilitative goals.

Continuity in the Court

The principles developed in *Kent*, *Gault,* and *Winship* were important as the backdrop for three Supreme Court decisions issued in 1979 concerning the commitment of children to mental hospitals. The first decision was *Addington v. Texas.* Addington's mother filed a petition for him to be committed indefinitely in a state mental hospital. He had been diagnosed as suffering from psychotic schizophrenia and had paranoid tendencies. He caused substantial damage to property during such episodes. As required by state law, the trial court found that based on "clear, unequivocal and convincing evidence," Addington was mentally ill and required hospitalization for his own welfare and protection or for the protection of others. Addington challenged the findings. He conceded that he was mentally ill, but he argued that there was no substantial basis for concluding that he was probably dangerous to himself or others. The Supreme Court cited *In re Winship* regarding the standards of proof that are required in various types of hearings and that the beyond-a-reasonable-doubt standard is reserved for criminal and delinquency proceedings. It was noted that

children and adults have a substantial liberty interest in not being confined unnecessarily and that the state's involvement in the commitment decision constitutes state action. The Supreme Court added, however, that a civil commitment cannot be equated to a criminal prosecution. It was noted that the "subtleties and nuances of psychiatric diagnosis renders certainties virtually beyond reach in most situations."[3] On the other hand, the preponderance standard employed in typical civil cases falls short of the demands of due process in commitment cases, thus the Supreme Court adopted the mid-level burden of "clear and convincing" evidence in commitment cases.

One aspect of the *Addington* case worth emphasizing concerns the basic standard required to involuntarily commit a person. State law required that there must be a showing or burden of proof that the person was mentally ill and that the person was likely to cause serious harm to himself/herself or others. The standard applied to both adults and juveniles, and remains in effect in Texas and many other states today.[4] As a result of *Addington*, the showing or burden of proof must be made by clear and convincing evidence.

Two months later, the Supreme Court decided *Parham v. J.R.*, a class action lawsuit brought by minor Georgia children, who alleged that they were denied due process as a result of their voluntary commitment by a parent or guardian. It was noted that there was some concern that parents could use mental hospitals as a "dumping ground," although no evidence in the record supported this concern. The Supreme Court presumed that parents ordinarily act in the best interest of a child. On the other hand, it was recognized that the state has a significant interest in not unnecessarily confining a patient in a costly mental health care facility. The Court concluded that because of the risk of error inherent in a parental decision to commit a child, some kind of inquiry should be made by a neutral fact finder into whether the statutory criteria for admission was satisfied. Such inquiry should include an examination of the background of the child and include an interview with the child. A formal or quasi-formal hearing was not required; instead, a review by a staff physician was considered sufficient. The decision maker had the authority to refuse admission if a child did not meet medical standards for admission. The Supreme Court further found that the child's continuing need for commitment must be reviewed periodically by a similarly independent procedure.

On the same day, the Supreme Court decided *Secretary of Public Welfare of Pennsylvania v. Institutionalized Juveniles.* The case once again dealt with the voluntary commitment of children into state mental hospitals upon an application of a parent or someone standing in the place of a parent. The Supreme Court cited *Parham* as the standard to use in evaluating the voluntary commitment of children in Pennsylvania. Pennsylvania provided that after an application was filed for a child less than 14 years old, the child was to be examined, provided temporary treatment, and given an individualized treatment plan by a treatment team. Within 72 hours, the treatment team was to determine whether inpatient treatment was necessary and why it was necessary. The hospital was required to

inform the child and his or her parents of the necessity for institutionalized treatment and the nature of the proposed treatment. The treatment plan was to be reviewed not less than every 30 days. The child was entitled to object to the treatment plan and obtain a review by a mental health professional who was independent of the treatment team. Any child older than 13 could object to his hospitalization. If the director of the facility felt that hospitalization was still necessary, then he or she had to resort to involuntary commitment proceedings. The Supreme Court concluded that the due process provided in Pennsylvania was sufficient. It was specifically noted that the program was acceptable because of the review by independent mental health professionals whose sole concern under the statute was for a child's needs and whether he or she could benefit from treatment.

The next significant Supreme Court decision concerned the level of care provided to an involuntarily committed patient in *Youngblood v. Romeo* (1982). Nicholas Romeo was involuntarily committed because of profound mental retardation, as opposed to mental illness. He had an intelligence quotient between 8 and 10, could not talk, and lacked the most basic self-care skills. While committed, he was injured numerous times by his own violence and by reactions of other residents to him. At one time, he had to be transferred from his ward to a hospital for treatment for a broken arm. He was physically restrained during portions of the day while in the hospital. His mother filed a lawsuit seeking injunctive relief and arguing that officials at Pennhurst State School and Hospital were not providing appropriate care. The Supreme Court held that people who are involuntarily committed are protected substantively by the Due Process Clause, which includes the right not to be confined in unsafe conditions and the right to freedom from bodily restraint. But these rights are not absolute. In certain occasions, the State may have to restrain the movement of residents to protect them as well as others from violence. Citing *Parham v. J.R.*, the Court concluded that judicial interference with the internal operations of the institution should be kept to a minimum, that a decision by a professional decision maker is presumptively valid, and that liability may be imposed only when there was a substantial departure from accepted professional judgment, practice, or standards. The Court also held that a patient is entitled to minimally adequate training as may be reasonable in light of his or her liberty interest in safety and freedom from unreasonable restraint.

Three of the justices filed a concurring opinion, concluding that Romeo was totally denied treatment and that the majority opinion improperly suggested that he was provided inadequate treatment, as opposed to no treatment whatsoever. They felt that the decision should have further held that Romeo was entitled to minimally adequate training necessary to preserve basic self-care skills, such as the ability to dress himself and care for his personal hygiene as well as training to prevent his preexisting self-care skills from deteriorating because of his commitment. They felt that the issue of degree of training needed further development.

Youngblood v. Romeo focused on the right of patients confined in a state mental hospital to receive treatment. The next inevitable question to be

considered concerned the specific treatment a patient is entitled to receive or, alternatively, the type of treatment that may be imposed on him or her. Apart from counseling and psychotropic drugs, most people likely would have no idea about the type of treatment normally provided. The case law covers a wide array of treatment plans. In *Davis v. Balson* (1978), the issue was work. More specifically, forcing mental patients confined in an Ohio State mental hospital to work. Such work included bathing, feeding, changing linens, and mopping floors between four and eight hours a day. The court concluded that mentally ill patients generally could be required to work, although they could not be forced to work when work programs were countertherapeutic. In *Doe v. Public Health Trust of Dade County* (1983), the Eleventh Circuit was confronted with a rule that prohibited communication between a voluntarily committed juvenile and his parents. The court held that the rule could be upheld if it was medically legitimate and therapeutic; in that case, however, there was no medical basis for the rule.

In *Rogers v. Commissioner of the Dept. of Mental Health* (1983), the Massachusetts Supreme Judicial Court held that an involuntarily committed juvenile initially has the right to make treatment decisions, including the refusal to take psychotropic drugs, although a court may find that the patient is incompetent and authorize the forcible use of such drugs. Alternatively, psychotropic drugs could not be forcibly administered until the patient was provided due process, declared incompetent, and substituted consent employed. A similar result occurred in Georgia in *Hightower v. Olmstead* (1996). Patients in a state mental hospital brought a class action lawsuit challenging procedures for the administration of psychotropic drugs. The court noted that Georgia law specified that patients had the right to receive care and treatment that is suited to his or her needs and that is the least restrictive appropriate care and treatment. A patient could consent to the administration of psychotropic drugs;. however, if a patient was incompetent, then substituted consent had to be employed. For juveniles, a parent or guardian could give consent. A court-appointed guardian may be required, in some cases, particularly with adult patients.

A particularly interesting case was *Clevenger v. Oak Ridge School Board* (1984). This case included consideration of the Education for All Handicapped Children Act (20 U.S.C. § 1412). The Act provided for free appropriate public education for all impaired children between 3 and 21 years old. The child in this case suffered a brain injury during birth, was impulsive, aggressive, hostile, and possibly schizophrenic. Specialists believed that the child needed a long-term residential treatment program with locked wards. The local Tennessee school district wanted to place the child in a short-term residential school that provided psychiatric treatment. He had previously been placed there without success. His mother wanted him placed in a more expensive school in Texas that had long-term residential treatment with locked wards. The Sixth Circuit found that the child was entitled to go to the school in Texas where there was a chance of success, as opposed to returning to the local residential school where there was no chance of success at all.

CONTEMPORARY ISSUES

The Eleventh Circuit was forced to contend with today's economic realities in *D.W. v. Rogers* (1997), which examined scarce public resources that resulted in a lack of space for involuntarily committed mentally ill juveniles. An Alabama judge ordered that a schizophrenic teenager, who was a threat to himself and others, be involuntarily committed. The child was placed on a waiting list until space became available. It was noted that children under 12 and adults were immediately admitted when similar orders were issued for them, but space was inadequate for children above 12. The court held that there was no right to treatment until the child was actually committed. In New York, a 2002 class-action lawsuit (*Alexander v. Novello*) focused on a similar problem with juveniles having to wait for months before being admitted to a residential treatment facility for their psychiatric problems. In *Butler v. Evans* (2000), the Seventh Circuit held that parents were not entitled to reimbursement from the State in situations in which they had to temporarily place a child in a private facility until local and state entities were able to arrange placement. These decisions have all too real implications today given that the number of teenagers placed in mental facilities has grown tremendously in recent years and states have not kept up with the need to provide such facilities. This factor has been an important consideration in dealing with mentally ill juveniles who engage in delinquent or criminal behavior. The trend in the juvenile justice system is to simply disregard the mental health considerations of a child in addressing delinquent or criminal behavior and, instead, sentence the child to a juvenile or adult detention facility where the mental health needs of the child may or may not be addressed. This trend will be discussed in more detail later in this chapter.

Mental Illness and Punishment

The previous paragraph raises an important aspect of mental illness concerning how courts consider these illnesses in the context of delinquency or criminal proceedings. The mere presence of mental illness will not excuse a person from punishment for committing a crime. Instead, Anglo-American jurisprudence history has not allowed punishment in cases in which a person cannot be blamed due to insanity. Various tests are used for insanity, but most states use a variation of the M'Naughten Test. The M'Naughten Test specifies that a person who commits a criminal act will be excused from criminal liability if, as a result of a mental disease, the accused did not know the nature or quality of his or her act or did not know that what he or she did was wrong. The distinction between mental illness and insanity for the purposes of criminal proceedings is important.

In *People v. Ricks* (1988), a Michigan court noted that even though a juvenile suffered a paranoia disorder and a schizoid personality disorder, he was able to tell the difference from right and wrong and thus the insanity defense was not viable. While controversial, the insanity defense is actually employed in adult criminal proceedings in less than 1 percent of

trials. Interestingly enough, however, the insanity defense is not universally recognized as a defense by all states in juvenile proceedings. The Virginia Supreme Court has noted that the U.S. Supreme Court has held that there is no constitutional right to an insanity defense in adult criminal proceedings, and likewise there is no right to an insanity defense in juvenile proceedings.[5] By comparison, the Supreme Court of Louisiana has held that juveniles do have a fundamental right to plead not guilty by reason of insanity.[6] The procedures for raising an insanity defense in juvenile proceedings vary among the states, assuming such a defense is available. Typically, however, juveniles historically have not been certified to go to adult courts for trial if they were found to be insane.[7]

The rise in crime rates among juveniles in recent years, however, has resulted in a more punitive system that ignores mental illness.[8] The Texas Legislature, for example, significantly moved from a rehabilitative model to a punitive model in enacting changes to the juvenile justice code in 1996.[9] Under the new law, a mentally ill or mentally retarded child who commits a crime will no longer be assigned to the Texas Department of Mental Health and Mental Retardation; instead, the child will be handled as any other juvenile. A typical example is found in *In re J.L.R.* (2000), in which a 13-year-old child with a history of mental illness was sent to the Texas Youth Commission for an indeterminate time after committing various crimes. The court concluded that it was up to the Texas Youth Commission to provide whatever mental health care was deemed necessary.

Incompetency

A concept often confused with the insanity defense is competency to stand trial. Incompetence to stand trial is the idea that a person has a mental illness or defect that makes him or her unable to understand the proceedings against him or her or to assist in his or her own defense. In adult criminal proceedings, a defendant who is found to be incompetent is typically treated in a mental institution until he or she is competent once again, if ever. In *In re Erick B.* (2004), a New York family court found an autistic child with borderline intellectual functioning incompetent to continue proceedings involving four misdemeanors and had him committed. Most states have provisions postponing juvenile delinquency proceedings while the competency of the child is being considered and treatment provided.

What Happens after a Finding of Insanity?

This brings us to the problem of what to do with a person found not guilty by reason of insanity. Typically the person will be committed to a mental facility if he or she is still considered insane and a threat to himself/herself or others. A noteworthy example is John W. Hinckley, who shot President Reagan in 1981. A problem with this approach was evident in *Foucha v. Louisiana* (1992). Foucha was charged with aggravated burglary and illegal discharge of a firearm. He was initially found to be

incompetent to stand trial. He was found to be competent to stand trial four months later, although the doctors reported that he was unable to distinguish between right and wrong at the time of the offense. The trial court found that he was insane at the time of the commission of the offense and thus not guilty by reason of insanity. He was committed to a mental health facility, but professionals at the facility found that he no longer had a mental disease or defect. It was noted that he had an antisocial personality, but such a condition was not a mental disease or defect. Under Louisiana law, Foucha could not be released from the mental health facility unless he was able to prove that he was no longer dangerous. Louisiana courts kept him in the mental institution even though he did not have a mental illness. The Supreme Court reversed the Louisiana courts and held that he had been denied due process. He could only be kept confined if he had a mental illness and was a danger to himself or others.

Civil Commitment

Despite the holding in *Foucha*, the Supreme Court has permitted states to civilly confine sexually violent predators even if they have not been convicted of a crime and have not been involuntarily committed because of a mental illness. In *Allen v. Illinois* (1986), the Supreme Court was concerned with an Illinois statute that permitted the state to incapacitate individuals who had a mental disorder that resulted in a propensity to commit sexual offenses. The Supreme Court held that the statute made the proceedings civil in nature, and thus the constitutional safeguards in criminal proceedings were inapplicable. The principle announced in *Allen v. Illinois* has been extended to allow states to commit sexually violent predators upon their release from prison in cases in which the person suffers from a behavioral abnormality that makes him or her more likely to engage in a predatory act of sexual violation.[10] Moreover, the offender can be civilly committed even if incompetent because the right to be competent applies only to criminal proceedings.[11] Seventeen states have passed legislation providing for the civil commitment of sexually violent predators.

This concept of committing individuals after they have completed their sentences has been extended to juveniles. In *United States v. S.A.* (1997), pursuant to the Juvenile Justice and Delinquency Prevention Act, the United States committed a juvenile delinquent upon his release from a juvenile facility. The youth was committed because he suffered from a mental disease or defect and posed a substantial risk of bodily injury to another person or serious damage to property of another. The court found that the juvenile could be hospitalized indefinitely. The statute was designed to protect the public and to ensure that the mentally ill receive proper treatment.

CONCLUSION

This brings us to the issue of what is likely to occur in the future. The public's increasing unwillingness to spend money on social programs makes it unlikely that the lack of facilities for juveniles with mental illnesses

will be improved in the near future. Furthermore, the public's attitude of getting tough on crime, including criminal acts by juveniles, makes it more likely that juveniles will be adjudged delinquent or certified as adults and convicted of adult crimes, as opposed to receiving treatment when they suffer from a mental illness. It is also increasingly likely that juveniles will be civilly committed upon the expiration of their sentences if they are still suffering from a mental illness that makes them a danger to themselves or others.

Despite the trend toward getting tough on juveniles and diminishing the role of traditional juvenile courts, alternative approaches have been proposed and implemented in some venues. Interest has been renewed in providing rehabilitation for juveniles, particularly with respect to the creation of therapeutic courts for juveniles with alcohol- and drug-related problems.[12] The first drug treatment court began operation in 1989 in Miami, Florida, and such courts have since proliferated across America.[13] Mental health courts have been established as an alternative to doling out traditional punishment in criminal court. The therapeutic courts have revitalized the concept of rehabilitating juveniles, as opposed to merely placing them in the criminal justice system. The creation of such courts reveals a continuing desire in some venues to handle juveniles with mental needs apart from the criminal courts. The long-term viability of such programs, however, will hinge on financial considerations as well as their ability in the short term to successfully meet societal expectations about youth with mental problems.

NOTES

1. Center for Mental Health Services, 2001.
2. National Mental Health Association, n.d.
3. *Addington v. Texas*, 1979.
4. See, for example, *In re K.S.*, 2004.
5. *Commonwealth v. Chatman*, 2000.
6. *State v. Causey*, 1978.
7. See, for example, *In re K.J.T.*, 2000; *S.D.J. v. State*, 1994; *State v. Simmons*, 2002.
8. Garascia, 1995, p. 489.
9. Johnson, 1998.
10. See, for example, *In re Commitment of Browning*, 2003.
11. *In re Commitment of Fisher*, 2005.
12. Geary, 2005.
13. Geary, 2005, p. 682.

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CHAPTER 9

Initiating Faith-based Juvenile Corrections: Exercising without Establishing Religion[1]

Lonn Lanza-Kaduce and Jodi Lane

The Florida Department of Juvenile Justice (DJJ) has instituted a pilot program that incorporates faith-based interventions with secular programming to serve delinquents and the larger community. The secular programming emphasizes evidence-based interventions (largely cognitive behavioral), and the faith-based features include the introduction of chaplains into juvenile facilities, the facilitation of faith-based volunteer activities, and the recruitment of faith-based mentors who will follow the youth from their residential placement into community aftercare. Cognitive behavioral programming has been shown to have some efficacy in behavior change.[2] Research also fairly consistently shows that something about religion relates to lower rates of delinquent and criminal involvement.[3] The hope is that the faith-based and secular components, working independently or in combination, will enhance behavioral reform even while addressing the spiritual needs of young offenders.

Whether faith-based components will affect behavior depends on how well they can be implemented and how well they fit with other interventions. Obstacles to success include (1) failure to implement faith-based components well, (2) constraints on their implementation, and (3) implementation that counteracts or is counteracted by other program features. This paper examines an important set of legal constraints that apply to faith-based correctional programming and that are further complicated because the Florida initiative deals with juveniles.

Three prospects help establish the importance of the legal issues. First, given controversies regarding the separation of church and state and freedom of religion, poor implementation that disregards the law could result

in expensive lawsuits and jeopardize the survival of a faith-based program. The administrators in both Florida's DJJ and the federal granting agency are sensitive to that possibility. Second, aggressive religious involvement that exceeds legal strictures may result in lack of coordination between the faith-based components and secular programming—programming selected because of its demonstrated efficacy. The result would be diminished behavior change, and in that sense the faith-based features could do more harm than good. The third prospect is reverse consideration. Defensive, timid implementation of the faith-based components may undercut the efficacy of the program. Timid implementation would make it less likely for resocialization to occur, less likely for prosocial associations to develop, and less likely for personal transcendence.

The purpose of this chapter is not to join a debate about how the law should be applied or what policies should be advanced. Rather it is to show how real tensions develop between legal requirements and the incorporation of faith-based elements into juvenile corrections. Left unaddressed, those tensions threaten the viability and efficacy of faith-based interventions regardless of how well intentioned or promising they might be. The analysis derives from semistructured interviews with key personnel and observations made during various training sessions, site visits, and staff meetings.

THE LEGAL CONSTRAINTS

This overview of legal constraints begins with the First Amendment of the U.S. Constitution: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." The first clause is referred to as the establishment clause; the second as the free exercise clause. These clauses have been infused with more meaning by the courts than first appears. For example, the reach of the amendment goes beyond Congress to prohibit all levels of government from either establishing religion or interfering with the free exercise of religion. Hence, faith-based programming in a state's juvenile corrections is subject to the constraints of the First Amendment.

Free Exercise of Religion

This analysis begins with a review of the free exercise clause, which states that "Judicial interpretation of the ... First Amendment has resulted in a policy that the guarantee of free religious *belief* is absolute, while freedom to *act* in the exercise of religious belief is subject to regulation."[4] At one point, the court announced that the constitutional right to exercise or act on one's religious beliefs could only be regulated if the government could show a compelling reason for the regulation and that no reasonable alternative was available to achieve its compelling interest. In *Sherbert v. Verner* (1963), the court held that a state could not deny unemployment compensation to a Seventh Day Adventist who refused to work on

Saturday, because it unduly burdened her free exercise of religion and the state could protect its interests against fraudulent claims in a less restrictive way.[5]

Once the "hands-off" doctrine for prisons crumbled,[6] it appeared that the same logic might be applied to correctional settings. In *Cruz v. Beto* (1972), a Buddhist prisoner in Texas was not allowed to use the prison chapel, could not correspond with his religious advisor, and was placed in solitary confinement for allowing other inmates to read his religious literature. He challenged the prison on First and Fourteenth Amendment grounds. The Supreme Court, *per curiam*, determined that his lawsuit had to be heard on its merits.

The Supreme Court retreated from the compelling government interest standard in *O'Lone v. Estate of Shabazz* (1987). Muslim inmates claimed that work rules that did not allow them to meet for Friday afternoon prayers infringed on their exercise of religion. The court did not require the state to show a compelling state interest to justify the regulation on security grounds. The court found that

> To ensure that courts afford appropriate deference to prison officials, we have determined that prison regulations alleged to infringe constitutional rights are judged under a "reasonableness" test less restrictive than that ordinarily applied to alleged infringements of fundamental constitutional rights.[7]

The court used a standard announced in *Turner v. Safley* (1987). The court analyzed whether a regulation about inmate correspondence was constitutional by considering four factors: (1) whether the regulation was rationally related to the penal goal, (2) whether there were other ways for inmates to exercise their rights, (3) the degree to which an accommodation would have affected guards, other inmates, and the allocation of resources, and (4) the kind of alternatives to the regulation that were available.

> In general, all First Amendment claims are now determined by applying the *Turner v. Safley*, or "rational-relationship," test. If prison officials can identify a legitimate state interest and show that the rule or regulation in question is rationally related to such interest, they are likely to win against any prisoner challenge.[8]

Federal constitutional restrictions are not the only legal constraints. Both the federal government and the state of Florida have enacted legislation that

> prevents government from placing a "substantial burden" on a person's free exercise of religion unless the burden furthers a "compelling governmental interest" and [i]s the least restrictive means of furthering" that interest.[9]

Congress accomplished this through a narrowly crafted provision in the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA).

RLUIPA was used by inmates from ''non-mainstream'' religions to challenge some Ohio prison regulations. The Supreme Court upheld RLUIPA.[10] Thus, states must show compelling interests to regulate the religious practices of inmates and the correctional regulations must be the least restrictive means of serving those compelling state interests.

The federal and state provisions alter the ''due deference'' position taken by courts that usually permit correctional authorities to regulate religious exercise primarily on the basis of finding a rational relationship between the regulations and legitimate correctional goals.[11] The statutory provisions call for more activist judicial review of correctional practices that implicate the exercise of religion and alter what is seen as undue establishment by government.

Nonestablishment Considerations

The first part of the First Amendment is known as the establishment clause. Its purpose goes beyond prohibiting an official state religion. It also means that the government should be neutral. The government should not prefer one religion over another (or no religion); it should not favor religious activities over nonreligious ones. Justice Black invoked the words of Thomas Jefferson to insist that ''the clause against establishment of religion was intended to erect 'a wall of separation between church and State'.''[12]

In 1971, the U.S. Supreme Court set out guidelines for analyzing potential establishment problems (*Lemon v. Krutzman*). According to these guidelines, government activities (1) should have a secular purpose, (2) should neither advance nor inhibit religion, and (3) should not foster excessive entanglement with religion. Subsequent decisions, however, showed the difficulties in sorting out which entanglements were impermissible.[13]

> Beginning in the 1990s the Court began to favor a test that emphasized neutrality, rather than entanglement. In a world of pervasive government benefits and services, the government does not violate the establishment clause [so long as it provides] financial support or other aid to religious entities on the same basis as it does to others.[14]

This position is highlighted in *Rosenberger v. University of Virginia* (1995). Mandatory fees from students at the state university could not be used to fund various student publications without also being available for student religious publications, especially in cases in which funds did not go directly to the religious group itself. The approach to all groups had to be neutral under the establishment clause. Funding did not mean endorsement, so funding religious publications just like other student publications did not endorse or aid religion, but failure to fund religious publications when other student publications were funded was not neutral. The official policy was designed to provide an open forum for diverse viewpoints and disassociated the university from what was published. To be neutral, it

could not discriminate against a religious viewpoint by treating religion differently from other viewpoints encouraged in the open forum.[15]

This is the approach that is incorporated into Florida's DJJ chaplaincy guidelines. "*Accommodation efforts should be consistent.* If a substantial effort is made to accommodate one or some faith groups, then similar efforts should be made to accommodate other groups."[16] The planners and administrators in DJJ frequently refer to the open-forum approach as the one that they need to use, particularly in situations in which opportunities are made available so that no group is advantaged over any other group. This means that the initiative must be neutral both among religions and between religious and nonreligious beliefs.

The federal legal constraints may be compounded by state strictures. Florida presents a clear example of this. Its constitutional provision on establishment is more demanding than that of the U.S. Constitution.[17] Article I, section 3, of the Florida Constitution provides that "No revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution." Florida's chaplaincy guidelines point out that the "no-aid" provision is more restrictive and mandates that Florida's DJJ chaplains refrain from purchasing any religious programming, including paying religious groups or volunteers to support their services (e.g., transportation) unless the service is provided for strictly secular purposes (e.g., taking youth to mental health counseling).

Religious Rights in the Context of Juvenile Corrections

A hallmark of the establishment clause is neutrality—the government must remain neutral regarding its relation to religion. The touchstone of free exercise is whether religious activities or involvements are voluntary. When people's liberties are deprived and they are involuntarily confined, inherent coercion may be involved, requiring special scrutiny to assess how free any religious exercise (or failure to exercise) might be. That assessment is further complicated when dealing with juveniles. Their abilities to make completely voluntary decisions or resist coercion are still developing. To the extent that government actions do not provide an open forum in which all religions (or no religion) are dealt with neutrally, those religious opportunities that are available may unduly sway impressionable youth and affect how they exercise their religious rights.

Champion[18] suggests that another way to appreciate this tension is to look at federal regulations regarding the use of subjects in research. Both "prisoners"[19] and "children"[20] are vulnerable classes for use as subjects, so special legal protections are erected. Because of the prospect of coercion, prisoners must be selected on a fair (e.g., random) basis and their participation must be voluntary. Specific concern is shown for inducements because those living in deprived conditions may be "bought" more easily. Similarly, the use of children is circumscribed. Juvenile involvement not only requires their informed consent but also that of their parents. Because

children's wills can be overcome relatively easily, incentives for participating are scrutinized. When research is conducted with juvenile "prisoners," both sets of special considerations are applied. If such oversight is required before children or inmates can be research participants, at least as much scrutiny will attach to their religious rights.

IMPLEMENTATION—MORE THAN A MATTER OF FAITH

Real-life examples of the tensions between faith-based activities and legal constraints can be found in the planning and initial implementation of Florida's Faith and Community Based Delinquency Treatment Initiative (FCBDTI). The examples highlight how the law has practical implications and poses challenges to the incorporation of faith into juvenile corrections. These examples are reviewed in the hopes that others might learn from Florida's experience.

Shifts in Plans—A Dry Hole in Texas and Adjustments in Florida

First Amendment considerations were pivotal from the outset in Florida. According to interviews with DJJ officials, Florida became involved with the federally funded grant only after other states had been approached. The other states were wary of the sticky First Amendment issues.

An Office of Juvenile Justice and Delinquency Prevention (OJJDP) official said, "the states were afraid of the church-state issues that it would raise, and didn't want to get bogged down in that kind of stuff" (Interview 1). The official continued,

> So they [the Office of Juvenile Justice and Delinquency Prevention] put out some feelers, talked to three or four states, ... and everybody was scared to death.
>
> ... Too explosive.... [But officials in Florida] said, "We are going to do it, get them on the line." (Interview 3)

Florida's original plan was to model a program in a Texas prison, "to replicate the IFI [InnerChange Freedom Initiative] literally" (Interview 6). The "initial idea was to duplicate it with juveniles" (Interview 1). A five-person delegation from DJJ met an official from OJJDP in Texas in November 2003 to learn firsthand about the IFI. One member of the delegation noted the following:

> In 1997, the InnerChange Freedom Initiative (IFI) was given about half the beds of the Texas's Carol Vance prison to operate as a Christian prison ... [sponsored by] the Prison Fellowship Ministries. Prisoners ... must be volunteers for IFI placement ... [and staff] must be practicing Christians.... The concept is to operate a prison as a Christian community.[21]

The IFI program runs for 16 months in-house and 6 months in the community after release. According to another delegate, "[IFI is] a totally Christian-based faith program.... Texas pays for the prison security, food and all that" (Interview 6).

> [IFI offered] a different type of setting, that ... was unabashedly evangelical Christian. The only thing the state of Texas paid for at IFI was the guards on the property. The guards at the entry. Prison Ministries paid for everything else, paid for the programming, paid for the programming staff—of course, the state of Texas paid for their food and their sheets, you know, the basics. (Interview 3)

One of the features of the Texas program that stood out was that it was open to anyone, despite its Christian focus. One delegate explained the following:

> I asked, "What's going on in there?" And he said, "Oh those are the Muslims." I said, "You have Muslims here?" And he said, "Yeah, we don't deny them, and we also have one Jewish guy." But they want to come in, knowing it's Christian, (unintelligible), they can ... participate.... [If] it's a Muslim holy day, or Yom Kippur, they do their thing.... So, they allow anyone in, they don't have to be Christian to get in. (Interview 3)

The Florida delegation immediately discerned some problems with replicating the Texas program for juveniles in Florida. Some of the problems concerned issues of length of stay and of dealing with juveniles rather than adults. One interviewee discussed these problems, "First ... our kids are minors ...; under Florida law, their religious training and orientation is the responsibility of the parents ... The second was that it had to be on a voluntary basis ..." (Interview 1). Another interviewee added, "We realized we didn't have the gift of time that they have in the adult system, our kids may only stay six months. So a lot of what they were doing had to be compressed. We had other things to do as well. Five hours of school each day" (Interview 3). Probably most important, there were potential First Amendment problems. One interviewee explained the following:

> ... [T]hey had replicated IFI in three other locations in the adult system and those three states were all under attack by Americans for Separation of Church and State.... We were in dire need of legal involvement.... At this point they (OJJDP) had decided to get their attorneys involved in Washington. Just like we had. And of course they said the same thing. (Interview 3)

After the trip to Washington, the goal became one of selecting features from IFI (and elsewhere) and adapting them to create something that would work with juveniles in Florida and pass constitutional muster. Those who made the trip knew "we're not going to be able to model this exactly as it was; we had to come up with something ..." (Interview 5).

One of the aspects of the Texas program that impressed the DJJ delegation was the use of faith-based mentors who followed the offenders from incarceration into aftercare upon release. One delegate noted the following:

> Essentially, every prisoner was given a mentor … That mentor came from a church. That church had a team that was responsible for pulling together certain things for that inmate: a place to live; supporting the family while they were inside; beginning to work on vocational placement when they got out. Behind this mentor there were a group of people from that church, who were all focused, they were a committee for this inmate. (Interview 3)

Another feature of the Texas program that impressed at least some of the delegation was the coordinated treatment and release plan for inmates. Because most of the Texas inmates were released to the Houston area, some members of the DJJ delegation went to Houston to check out the aftercare component of IFI. The delegates found that:

> … [T]here … was this old house they had bought and restored. And upstairs were computers, for job searches and whatnot; downstairs for meeting rooms, like AA was meeting in one room when we were there. There were also counselors from IFI there present for the inmates that had been released. A couple of probation officers came by, some parolees came in while we were there. So it was kind of like a resource center … The amazing thing was that they had the inmate do a plan for their release … by the hour for the first week. (Interview 3)

Florida's faith-based plans had to change, but the Texas lessons were useful in the ultimate structuring of its initiative. To achieve this, the delegation—

> … tried to salvage the basic concepts of having that spiritual support in the facility. Doing that through a provided chaplain.… [W]e recognized we needed … [a coordinator] in each of the facilities.… We needed then some people out in the field to do coordination, just like they did. So we tried to salvage the big pieces. Tempered so that it was more voluntary.… (Interview 3)

The original plan called for government funding of several staff members, including a program director for the entire initiative, a research assistant for the director, and facility program and aftercare coordinators at five juvenile residential facilities.[22] The program director administered the initiative with the help of the assistant—these positions were administrative. Each of the five program coordinators were in charge of implementing the initiative in one of the respective facilities. They were responsible for supervising the initiative's staff at the facility and for coordinating the initiative's program with the ongoing activities in the institution, including the secular treatment components. Accordingly, their activities were not religious in nature. The aftercare coordinators were tasked with finding mentors for the youth and devising plans for transitions to the community

and aftercare that worked with these mentors. The activities of the coordinators were secular in nature. Eventually, a treatment coordinator was added at the sites—with duties that also were secular. The initiative is designed so that the tax dollars for the salaries and support of the staff did not entangle the Florida initiative with religion in ways that violate the First Amendment.

The faith-based component of the Florida initiative derived from *volunteer* mentors and other religious-based voluntary services (e.g., Bible study, worship services). The initiative's staff could recruit volunteers and coordinate such activities with other programming that was provided at the facilities and with the juvenile probation officers during aftercare.

During implementation one further adjustment was made in Florida's initiative to ensure that the state stayed neutral and did not become too entangled with religion. The early implementation concentrated almost exclusively on faith-based mentors—the original operational plan was actually dubbed "The Florida Faith-Based Juvenile Corrections Initiative." Excluding other mentors could have compromised neutrality and left the initiative open to charges of religious entanglements. Inattention to other mentors could also constrain choices and freedom about how religious beliefs could be exercised. Two interviewees explained this solution: "... [T]he Feds [OJJDP] suggested that open forum might be the way to go.... [I]n open forum, you just open the forum and stand back and if faith comes, fine. If Big Sisters/Big Brothers, fine" (Interview 2). "[T]he way we avoided many of the church-state conflict is by making it an open forum ... we can provide a forum for folks to come in, but we do not allow any money spent directly on religious items" (Interview 1).

Under the open-forum principle, the initiative morphed into the FCBDTI and staff were instructed to search out mentors from various nonreligious groups and the larger community in addition to those from faith-based organizations. According to one staff member,

> ... [The program] would be one that they [juveniles and their parents] select from, from a bunch of options.... Now we can have faith mentoring and non-faith mentoring in the same program, as long as it's mentoring. Um, that's more of an open forum kind of style than the voucher [strategy] would be. The ... voucher would be more of a "Oh, here's the faith. There's the non-faith." (Interview 2)

The open forum is not the same as an open door, explains another staff member: an "open forum does not necessarily mean that juvenile facilities are open to all who desire to enter" (Interview 6). For example, a south Florida Kabbalah group wants to get involved in the FCBDTI. The south Florida site, however, has "no kids that are ascribing to that faith and they're not involved with the Kabbalah at all.... We're gonna let people in if we get a kid that needs services" (Interview 6).

The need to have an open forum also emerged when considering how to secure consent. Because of the potential of a faith-based component, participation in the initiative needed to be voluntary to meet First

Amendment standards. Therefore, the juveniles and their parents or guardians had to grant informed consent. Because mentoring offers potential advantages over other DJJ programs, parents and youth could not be placed in the position of being disadvantaged if they wanted a mentor but not a faith-based mentor. Voluntary participation required that they be given a choice.

Voluntary participation provided a reason for broadening the initiative to include community mentors. Truly voluntary participation in religious activities means that participants can withdraw from those activities at any time without penalty or consequence. Youth or parents who, for any reason, decided that they did not want to continue with faith-based mentoring had to have the right to withdraw. That choice, however, would be constrained if withdrawal meant having no mentor at all. Such a limited option would not be neutral. The open-forum solution, the neutral approach, would provide the option of a community mentor or a faith-based one.

None of those instrumental in securing funding and implementing the FCBDTI raised issues about whether or not the faith components were compatible with the secular programming. One interviewee said that the cognitive behavioral programs (e.g., Thinking for a Change, Motivational Interviewing, and Strengthening Families) were all "amenable" to the faith perspective (Interview 1). Another averred that these "are evidence-based programs with demonstrable results ... and they are completely, absolutely compatible and complimentary to all basic Western systems of belief—Judaism, Islam, Christianity ..." (Interview 3). The secular and faith-based components are intended to be complementary.

Chaplain Challenges

Within the correctional context, the establishment and free exercise clauses can converge. In fact the legal rationale for allowing tax dollars to pay for chaplains stems from such a convergence. The logic is like that which extends to military contexts—because of constraints on freedom, chaplains can be hired with tax dollars because affirmative steps help people exercise their religious rights.

> The Free Exercise Clause provides the legal authority for correctional chaplaincy—the reason why the State of Florida can pay a chaplain in a prison or detention facility when it would be quite out of the question to subsidize a priest, minister, imam, or for that matter a chaplain, in almost any other setting.... "If an inmate is locked up, away from his books and his minister, a government practice of 'strict neutrality' ... is not truly neutral. To refuse special treatment for religion in this context is to stifle religious expression and practice...."[23]

According to Florida's *Chaplaincy Guidelines*,

> *Children retain their right to freely exercise their religion when they are detained or incarcerated. Therefore, Florida can hire chaplains when necessary to accommodate the free exercise rights of youth in custody.*[24]

Note that this logic does not require a chaplain; it merely permits it.

Chaplains do not have free rein to do as they wish. They must serve the religious needs of the detained residents as best they can, and they must remain neutral in that process. The *Guidelines* state that "[t]he chaplain's primary obligation is to take all reasonable steps to ensure that youth of whatever religious persuasion who wish to practice are served."[25] So, for example, early in the Florida experience a youth began to ask questions and show interest in Buddhism, the faith of his parents. The chaplain, an evangelical Christian, spoke with our evaluation team about how he had to stretch to find accurate and appropriate sources of information for the youth. It was part of his job.

The challenge to remain neutral is not always so easy. In another instance, there was discussion of a youth who wanted to break from the Jehovah Witness religious preferences of his mother. To the extent that a chaplain for juveniles cannot disregard the parents' wishes in attending to the religious needs of her or his charges, the chaplain is constrained.[26]

Issues also arise regarding confessions and religious rites. The importance of this challenge surfaced at a meeting of the faith-based staff from all the sites. Although confession is an important religious rite in some faiths, chaplains were reluctant to perform the rite because of their dual roles—religious leader and employee within the juvenile justice system. The participants agreed that the "best practice" would be to ask volunteer priests and religious leaders from the community to perform rites and rituals to avoid potential conflicts, especially because the chaplain can only perform rituals within her or his own faith tradition.[27] These limitations on the role of chaplain need to be made clear to the juvenile detainees. The restrictions in the *Chaplaincy Guidelines* are explicit: *"Sacramental, ceremonial or otherwise formal rites of initiation should not be conducted under ordinary circumstances."*[28]

Neutrality, Inducements, and Faith-based Services and Activities

Faith-based staff and facility administrators have to take care to remain neutral. Consistent with the open forum principle, the chaplain's services cannot favor one religion. Alternative activities are necessary, as explained in the *Guidelines*: "*Presenting a single program may be impermissible establishment*. Chaplains should not make their sole offering a 'one size fits all' version of the majority faith."[29] Moreover, a "reasonable effort should be made to accommodate all faith groups represented in the facility's population."[30]

In strict observance of neutrality, some of the alternative activities offered in the facility should be secular so youth are not pressured into faith activities because nothing else is available. Facilities that offer only faith-based activities from outside volunteers (e.g., Bible study, evening religious services, faith mentors) may need to seek volunteers from other

organizations to ensure that they do not breach the wall of separation or constrain free exercise rights. The Florida initiative had to broaden its efforts to secure community mentors in addition to faith mentors.

The issue is compounded when food or rewards are provided for activities. According to the DJJ,

> *Providing inducements may constitute establishment.* When youth are offered special inducements to participate in chaplaincy programming [and by extension other faith-based activities], government may be deemed to have endorsed religion over non-religion.[31]

Certainly, the faith-based staff cannot show preference by treating those in the faith-based program to something not available to other residents. If the volunteers who conduct faith-based activities also provide rewards (e.g., pizza/food, Bibles, or small gifts), the best practice is to make such incentives available to all residents regardless of whether they participate in the faith-based activity. An interviewee explained the approach: ''Now if the church brings dinner for the entire crew, ... they can come and do that'' (Interview 6). Rewards for only some of the incarcerated residents may compromise the requirement that choices regarding faith are voluntary. Our field notes show frequent discussions of these issues by faith-based staff members.

The neutrality of the faith-based effort can be compromised in other ways. One concern is that the staff may share the same religious orientation and present, whether consciously or not, a kind of orthodoxy that may override, even subconsciously, the choices and preferences of the juveniles. An interview articulated this concern: staff ''who come out of a church, they rely on that church ... The kids don't get to see different styles'' (Interview 7).

Several situations have emerged that illustrate the problem. The first cropped up in mentor recruitment materials. An early draft featured a form with a response option of Christian versus other (lumping together believers and nonbelievers alike) much to the consternation of DJJ and OJJDP officials.

A second illustrative situation involved faith-based staffing. An interviewee who was involved early on with the initiative was concerned that in one facility, too many of the faith-based staff came from the same church. ''It even made colleagues uncomfortable and may have contributed to the turnover of one of the team members'' (Interview 4).

A third example presented a form of role conflict. A few members of the budgeted faith-based staff (with roles that require neutrality) also volunteered to conduct Bible study classes. The issue is whether the switch in roles gives at least the appearance of endorsing a religion. Will confined juveniles distinguish between the staff member as neutral implementer of the FBCDTI and the staff member as a volunteer for a particular faith? Is there subtle pressure on a juvenile whose aftercare coordinator in FCBDTI is teaching Bible study so that the juvenile may see some extrinsic benefits[32] to participate in ''voluntary'' Bible study? One interviewer? found

that juveniles do turn to faith: "I've seen enough kids that, they found God in detention" (Interview 5).

Unlike many adult prisons, juvenile facilities have a lot of unscheduled time. It can be difficult to schedule activities around the various treatment programs, educational demands, and work details; there aren't always enough hours in the day. So activities involving people from the outside (including researchers and mentors) can create challenges that have to be balanced in a neutral way. In one facility, where common areas have to be shared by high-risk and moderate-risk units, so much "free" time on nights and weekends is taken up by religious activities that time for other activities (including visitation) is squeezed. Mentors and family members may compete over the same time slots—choices may be constrained.

Because some facilities in the Florida initiative have their beds completely filled with faith-based volunteers, another issue is now emerging. How much pressure does the lack of bed space place on youth to stay in the program? Are youth who are in facilities that are totally faith-based really free to withdraw? Can we determine how voluntary their continued participation is? Clear and colleagues[33] remind us that even for adult inmates some of the reasons for engaging in religious activities are extrinsic: safety considerations, material comforts, access to outsiders, getting along with other inmates, and angling for release. To be sure, these considerations primarily raise questions about the sincerity of the religious beliefs, but in the minds of less mature youth, they may also militate against free exercise of religious choice. And even if juveniles were to assert their rights, the system may be slow to respond. An interviewee explained the problem:

> So ... what about the kid who ... gets in the program and says, "Hey, you know I really don't want to participate with your weekly baptisms and whatever?" ... We're just going to transfer a kid because of faith? Excuse me, no! That's, that's not why we transfer kids out of programs. (Interview 5)

This issue is compounded by some concerns over informed consent. Faith-based staff members tell of instances in which youth and their parents (who all signed informed consents at the time of commitment) really do not understand what will happen until they are in the program. Interviews with youth sometimes pick up on this. Although the informed consent may be "legal" in the technical sense that the program was explained and signatures were obtained, it may be based on less than an optimal understanding. Once enrolled, how difficult is it for detained juveniles to withdraw?

Reining in Proselytizing

Proselytizing, no matter how well intentioned, provides two challenges for the FCBDTI. One is programmatic. Proselytizing interferes with evidence-based treatments and may make them less effective. All the cognitive behavioral programs (e.g., Thinking for a Change, Motivational Interviewing, and Strengthening Families) in the initiative stress the

importance of nonjudgmental approaches so that the youth learns to think through issues in different ways. Judgmental views and pronouncements about what is right are explicitly rejected. This position is made clear in the programs' respective manuals and in the training that the evaluation research staff attended. The FCBDTI mentoring training and manual make the same point:

> It is important during your conversations with your youth not to proselytize or give non-solicited spiritual opinions or judgments with the purpose of converting your mentee to your particular religion or denomination.[34]

The position is thought necessary, among other reasons, to foster trust (with the youths and their families) and to facilitate two-way communication so that a long-term mentoring relationship can develop. W. Wilson Goode, former Philadelphia mayor and advisor to President Clinton, forcefully admonished the FCBDTI staff to avoid proselytizing because it does not work. At least that has been his experience with the Amachi organization, a large mentoring program operating to assist the children of inmates.[35]

The second challenge arising from proselytizing is legal. Under the open-forum approach, "the mentoring is going to be content neutral" in that DJJ does not tell the mentors and mentees that "they have to talk about anything in particular" (Interview 2). The *Chaplaincy Guidelines* are blunt: *"Proselytizing must not be permitted."*[36] When DJJ staff members, even the chaplain, engage in proselytizing, they breach the wall of separation between church and state and interfere with the youth's freedom of religious exercise.

By definition, proselytizing is coercive. Proselytizing juveniles under state supervision raises concerns about their freedom to exercise their own religion. Given the doubly vulnerable status of juveniles who are in state custody, faith-based programs that are facilitated by the FCBDTI cannot turn a blind eye to heavy-handed messages of faith volunteers. Arguably, just as the state could adjust affirmatively to the constraints incarceration imposes on the free exercise of religion by funding chaplains, it should also take affirmative steps to ensure that others who the state encourages to work with its wards are not unduly coercive regarding the juveniles' First Amendment rights. Florida's DJJ *Chaplaincy Guidelines* recognize this affirmative obligation: "... the chaplain should ensure that resident youth are not being proselytized. This includes making it clear to chaplaincy volunteers that the nature of their ministry must be pastoral—not missionary."[37] An interviewee explained the rule: "I guess the rule is invite, perhaps even encourage [faith], but not persuade or coerce. So there's, I guess there's, a fine line at some point" (Interview 2).

In practice, the fine line between inviting and proselytizing presents some challenges. A chaplain "can't tell that boy he's going to hell if he doesn't believe in God....[I]f you're having a Bible study, that's different. They [the residents] volunteer to come into it and you're educating and learning about the Bible" (Interview 6).

An interview with one of the DJJ officials who helped launch the FCBDTI raised an interesting prospect. The interviewee took the position that many in the line staff in residential facilities have strong personal faiths and would be "empowered" by the faith-based components—"like to grab a kid and go take him to the chapel" (Interview 3). The official had less clear-cut advice when asked about how to prevent those staff members from proselytizing, and suggested "[f]rank, open discussion with staff and modeling" (Interview 3).

The challenge of educating workers about boundaries and then monitoring them is consequential, especially given the decentralization of service provision (i.e., entire facilities or important services like mental health programs are often "privatized"). The evaluation researchers have observed prominent Christian emblems and heard strong religious sentiments from staffers at various sites. We have seen evidence of some orthodoxy in public testimony about faith and belief in God in facilities and in various meetings. We have observed this in the presence of juveniles. In our role as evaluators, we are not in a position to judge whether or when any of this becomes "coercive" to the incarcerated youth or chips away at the wall of separation. Our evaluation team, however, is in a position to say that questions about proselytizing arise in practice and to wonder whether the decentralization of service provision makes it harder to rein in.

CONCLUSION

The FCBDTI foray to find a way to incorporate faith-based programming in juvenile corrections was necessarily uncharted at the outset. The vagaries of the First Amendment's establishment and free exercise clauses, and the tension between them, left much unknown. Questions about how the legal constraints translate into juvenile corrections only magnified the uncertainties. No wonder several states declined invitations to consider fashioning pilots before Florida accepted the challenge. What emerged from Florida's efforts could be a kind of road map for others if they wish to traverse the terrain and avoid the legal pitfalls.

Because of the special vulnerability of confined juveniles in matters of faith and because of the additional complications of parental authority over religious issues, Florida's choice of the open-forum model seems particularly strategic. It accommodates the religious beliefs and practices of youth and their parents, including those who do not endorse religion. It can avoid viewpoint discrimination in that it is open to different faith and community groups. In that sense, the FCBDTI is content neutral—it facilitates the forum in which youth can develop their beliefs, but it does not pressure them about their beliefs (including rejecting religion). The neutrality is carried over into training—the mentors (faith and community alike) are admonished to avoid proselytizing as are the FCBDTI staff members. This neutrality is consistent with the nonjudgmental approaches of the evidence-based cognitive behavioral secular treatment programming. Thus, pragmatic and programmatic reasons (in addition to legalities) militate toward the neutrality that the open-forum model emphasizes. The

FCBDTI deserves credit for a design that incorporates faith-based components with secular programming within legal strictures and in complementary ways that enhance the prospect of successful outcomes. The design is a necessary first step. At this juncture, it is too early to evaluate whether the design will actually yield the prosocial changes in attitudes and behaviors that its proponents hope to achieve.

The workable design does not, however, preclude all problems. In practice, free exercise and establishment tensions emerge. Staff and volunteers will have questions about what they may or may not do, about what constitutes inducements, and about how much effort needs to be expended on locating and accommodating a wide range of faith and community groups. Throughout the implementation, we may expect pressures toward proselytizing; after all, many participants get involved because of their faith. FCBDTI staff and volunteers are willing to sacrifice proselytizing because they are committed to what they do. Such commitment will be necessary for success but may also push the boundaries of the law. DJJ's active involvement, training, and monitoring probably will need to be ongoing lest slippage occurs and First Amendment standards be compromised.

The members of the university evaluation team are not of like mind when it comes to their orientations toward free exercise and anti-establishment, but we do concur that the DJJ and its FCBDTI staff have picked a careful path to advance the pilot. We note that Florida's DJJ began its journey by putting together a task force that also included diverse voices. The different viewpoints contributed to a process of modifying and refining the operational plan so that it could work. The FCBDTI remains a work in progress, and it continues to be reflexive, learning from successes and failures. The way it has dealt with the First Amendment to this point is a success. The FDBDTI has shown that faith components can be incorporated in ways that fit with constitutional values and that tensions can be managed. Its solutions to the competing First Amendment demands and standards provide real-world lessons for others to follow.

NOTES

1. This analysis grows out of research being conducted under contract with the Florida Department of Juvenile Justice pursuant to its grant from the federal Office of Juvenile Justice and Delinquency Prevention. We wish to acknowledge the contributions of others, especially John Milla, who was the primary author of the Department's *Chaplaincy Guidelines,* and the members of our research team. The analysis and arguments presented in the paper, however, are those of the authors.

2. See Lipsey & Wilson, 1993.

3. See the review in Sumter & Clear, 2005.

4. Pollack, 2006, p. 242, emphasis in the original.

5. A concurring opinion by Justice Stewart noted the potential for tension between the establishment and free exercise clauses, which came to a head when Congress passed the Religious Freedom Restoration Act of 1993 (RFRA) to protect an individual's freedom to exercise religion by reinstating the compelling government interest standard announced in Sherbert in 1963. Congress acted after

the Supreme Court appeared to retreat from the compelling interest test generally in *Employment Division v. Smith* (1990), a case involving workers seeking unemployment after dismissal as drug and alcohol counselors because of their religious use of peyote in their Native American ceremonies. Congress's broad and far-reaching effort to override the Supreme Court through the RFRA was rejected by the Supreme Court in *City of Boerne v. Flores* (1997) because of concerns about separation of powers and federalism.

6. King, 2005.
7. *O'Lone v. Shabazz*, 1987, p. 343.
8. Pollock, 2006, p. 244.
9. Florida Department of Juvenile Justice, hereafter DJJ, 2005, p. 4.
10. *Cutter v. Wilkinson*, 2005.
11. E.g., security; see King, 2005.
12. *Everson v. Board of Education of Ewing Township*, 1947.
13. See for example, *Wolman v. Walter* (1977) in which states could provide funds to religious schools for secular textbooks and diagnostic testing of students but not for such instructional aids as maps or globes or for transportation to field trips.
14. Feinman, 2000, p. 74.
15. For more on viewpoint discrimination, see *Lamb's Chapel v. Center Moriches Union Free School District* (1993).
16. DJJ, 2005, p. 4, emphasis in the original.
17. See DJJ, 2005.
18. Champion, 2005, p. 394.
19. 45 CFR 46.301, et seq.
20. 45 CFR 46.401, et seq.
21. Foster, 2006, pp. 396–397.
22. See Operational Plan, 2004, pp. 61–62; the job descriptions are posted at www.djj.state.fl.us/faith/Staffing_Design.html.
23. Citing McConnell, 1986, p. 161, and *Benning v. Georgia*, 2004.
24. DJJ, 2005, pp. 2–3, emphasis in the original.
25. DJJ, 2005, p. 3.
26. Field notes, December 2004.
27. Field notes, December 2004.
28. DJJ, 2005, p. 9, emphasis in the original.
29. DJJ, 2005, p. 4, emphasis in the original.
30. DJJ, 2005, p. 4, emphasis in the original.
31. DJJ, 2005, p. 4, emphasis in the original.
32. Clear, Hardyman, Stout, Lucken, & Dammer, 2006.
33. Clear et al., 2006.
34. Mentor Training Manual, 2005, p. 69.
35. Amachi Training Workshop, January 28, 2005.
36. DJJ, p. 9, emphasis in the original.
37. DJJ, p. 9.

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CHAPTER 10

Cops in the Classroom: Assessing the Appropriateness of Search and Seizure Case Law in Schools

David Mueller and Richard Lawrence

During the 1999–2000 school year, more than one million serious disciplinary actions were taken against students, involving about 54 percent of public schools in the United States. A majority (83 percent) of the disciplinary actions were suspensions of five days or more; 11 percent were expulsions from school; and 7 percent were transfers to specialized schools. About 20 percent of schools took disciplinary actions for possession of drugs or alcohol in school; 4 percent for possession of a firearm and 19 percent for weapons other than firearms; 35 percent for fights, 22 percent for threats, and 18 percent for insubordination.[1] Lack of discipline and control ranked just behind lack of financial support in a national survey that asked respondents what were the biggest problems facing public schools; use of drugs, fighting, violence, and gangs were also listed among the top five problems.[2] Some believe that school discipline problems such as these are the result of an overemphasis on students' rights.[3]

Despite court decisions that have recognized students' rights in school disciplinary matters, teachers and principals have been given wide authority and power to supervise students and regulate their conduct.[4] Most school districts have regulations and discipline policies that are clearly spelled out to teachers, parents, and students in handbooks and policy manuals. Yet, some teachers still choose to ignore discipline problems and fail to intervene in student disruptions and rule violations because they believe their disciplinary actions will not be supported by school administrators or they will face litigation by students and their parents.[5] Most school administrators and many teachers will at some time in their career be involved in a lawsuit or legal challenge.[6] These educators, however, often lack sufficient

knowledge of Supreme Court decisions that affect them with regard to maintaining discipline and order.[7]

The purpose of this chapter is to review the issues of students' rights versus the need for school administrators and teachers to maintain an orderly and safe school environment. We review case law and court decisions that have addressed the issue of students' Fourth Amendment rights, and discuss whether the exclusionary rule should apply to school disciplinary policies and practices. We review the disciplinary procedures and sanctions that have been upheld by the courts as acceptable for schools to use in enforcing rules. We conclude with a proposal that attempts to strike a balance between students' rights and school safety.

STUDENTS' RIGHTS IN SCHOOL

The U.S. Supreme Court in *Tinker v. Des Moines Independent Community School District* reminded educators and school boards that students do have rights and that school officials may not enforce discipline policies as if they have absolute authority over students. Students do not, in the words of Justice Abe Fortas, "shed their rights at the schoolhouse gate."

> It can hardly be argued that either students or teachers shed their constitutional rights ... at the schoolhouse gate.... School officials do not possess absolute authority over their students. Students in school as well as out of school are "persons" under our Constitution. They are possessed of fundamental rights which the State must respect....[8]

The Court in *Tinker* appeared to weigh in favor of students' constitutional rights over the need to maintain safe and orderly schools. This issue of student rights versus administrative responsibility to maintain order has become more significant in light of a perceived increase in the amount of drugs and weapons in schools.[9] A number of recent court decisions have attempted to address these disciplinary problems in schools, and much of the case law related to drugs and weapons in school has focused on the issue of search and seizure.

Search and Seizure

The Fourth Amendment to the U.S. Constitution provides for "the right of people to be secure in their persons, houses, papers, and effects" and offers protections "against unreasonable searches and seizures." School officials are frequently confronted with the question of whether to search a student's pockets, book bag, purse, locker, or automobile. The Fourth Amendment as applied to people conducting searches generally pertains to law enforcement, court, and security officers. The right of school officials to search students depends on whether any illegal evidence seized may be turned over to law enforcement officers and be used as evidence in juvenile or criminal prosecution.

There are three parts to the Fourth Amendment that apply to students' rights in school.[10] First, students have a right to privacy (''to be secure in their persons, papers, and effects''); second, they have a right against unreasonable searches and seizures; and, third, any search must be specific as to the location of the search and what is being sought. The courts have not required school officials to show probable cause for a search or to obtain a search warrant from a judge before initiating a search. Instead, school officials must have ''reasonable suspicion'' that the student has violated or is violating either the law or the rules of the school before conducting a search. ''Reasonable suspicion'' means that school officials must have some facts or knowledge that provide reasonable grounds to search, and a school search may only be conducted if it is necessary to fulfill educational objectives. A student's freedom from unreasonable search and seizure therefore must be weighed against the need for school officials to maintain order and discipline, protect the health and welfare of students, and provide a safe learning environment.

New Jersey v. T.L.O.

In the case of *New Jersey v. T.L.O.*[11] the U.S. Supreme Court defined students' Fourth Amendment rights and provided guidelines for officials in conducting school searches. T.L.O., a 14-year-old freshman, was caught smoking in the school restroom along with another girl. A search of her purse produced a pack of cigarettes, some marijuana, a pipe, plastic bags, a substantial amount of money, an index card containing a list of students who apparently owed her money, and two letters that implicated her in marijuana dealing. The evidence was subsequently turned over to the police and she was charged as a delinquent. The juvenile court denied her motion to suppress the evidence found in her purse, held that the search was reasonable, and adjudged her delinquent. The state appellate court affirmed the juvenile court's finding, but the New Jersey supreme court reversed, ordered that the evidence found in her purse be suppressed, and held that the search was unreasonable. On appeal, the U.S. Supreme Court ruled that the Fourth Amendment prohibition against unreasonable searches and seizures does apply to school officials, who are acting as representatives of the state. Students do have expectations of privacy when they bring to school a variety of legitimate, noncontraband items; but the Court noted that school officials have an equally important need to maintain a safe and orderly learning environment. In balancing students' Fourth Amendment rights and school officials' responsibilities, the Court ruled that school officials do not need to obtain a warrant before searching a student because such a requirement would prevent ''the maintenance of the swift and informal disciplinary procedures needed in schools.''[12]

A ''Reasonable'' Search

The Court in *T.L.O.* cited two considerations in determining whether a warrantless search was ''reasonable.'' First, ''one must consider whether

the . . . action was justified at its inception''; and second, ''one must determine whether the search . . . was reasonably related in scope to the circumstances which justified the interference in the first place.''[13] The first involves justification or grounds for initiating the search, while the second relates to the intrusiveness of the search.[14] In a later case, a school administrator had heard reports that a student was involved in drugs. A search of the student's locker and car revealed drugs and was found reasonable and constitutional.[15] In another case, a student's car was searched and cocaine was found, after the assistant principal noticed that the student smelled of alcohol, walked unsteadily, and had slurred speech, glassy eyes, and a flushed face. The court found that these observations were sufficient to support reasonable suspicion.[16] School officials must also be able to justify the extensiveness and intrusiveness of searches, and show that there was reasonable suspicion. In one case in which money went missing from a schoolroom, a teacher searched the books of two students and then required them to remove their shoes. The court found the search to be reasonable and not excessively intrusive, because the two students had been alone in the room where the stolen money disappeared.[17]

EXPANDING SEARCH POWERS BEYOND *T.L.O.*

The U.S. Supreme Court expanded school search powers 10 years after *T.L.O.* in *Vernonia School District 47J v. Acton*.[18] The Court allowed the consideration of special circumstances to give school officials the right to conduct random searches without reasonable individualized suspicion. After experiencing several instances of drug possession and use at school, the Vernonia School District instituted a policy that required students who wanted to participate in extracurricular sports to sign a form consenting to random urinalyses to search for drug use among student athletes. The Court upheld the policy, resting the decision on three factors: (1) school officials may determine that ''special needs'' exist to conduct random searches for the use of drugs that place students at risk of personal harm; (2) students in sports programs have a lower expectation of privacy than students who do not participate (the Court also noted in *Acton* that student athletes dress and undress in uniforms, and shower together); and (3) the Court ruled that the method of the search, collecting urinalyses, was not overly intrusive, because the samples were collected by the students themselves in the privacy of enclosed stalls.

The Court used similar reasoning of *Acton* in a 2002 case, once again upholding random, suspicionless drug testing of students. The School District of Tecumseh, Oklahoma, adopted a drug-testing policy that required all students who wanted to participate in any extracurricular school activities to consent to random urinalysis tests. The student plaintiffs in this case were not student athletes, but members of the choir, marching band, and academic team. Writing for the Court majority opinion in *Board of Education of Independent School District No. 92 of Pottawatomie County v. Earls*,[19] Justice Clarence Thomas argued that ''special needs'' may justify

the searches among students in activities beyond those required of all students; second, students in extracurricular activities have a lower expectation of privacy; third, the method of the search was minimally intrusive on students' privacy; and, fourth, the designation of "special needs" does not require the school district to show a pervasive drug problem to justify random suspicionless drug testing. Student safety is the important factor, for both athletes and nonathletes.[20]

Search Guidelines for Principals

The courts have recognized the need for school officials to maintain a positive and safe learning environment in schools, and therefore have required only "reasonable suspicion" rather than the more stringent standard of "probable cause" required for student searches. Courts nevertheless hold firmly to the need for officials to show that reasonable grounds existed to justify a search. Alexander and Alexander have offered some guidelines for school officials in determining whether a search is justified:

- Students do have a right to privacy of their persons, papers, and effects.
- The courts will consider the seriousness of the offense and the extent to which a search intrudes on a student's privacy.
- Reasonable suspicion requires that the school official have some evidence regarding the particular situation, including the background of the student, to justify a search for items that are in violation of school rules.
- Although a warrant is not required, a school official must have knowledge of the alleged violation, where illegal contraband is presumably located, and the identity of the student alleged to be in violation.[21]

Rulings on Types of School Searches

It is an accepted fact that locker searches are permissible at any time, for any locker, without any reasonable suspicion and without a warrant. Students do not have an expectation of privacy in their lockers. The lockers are the property of the school and may be searched for any reason at any time.[22] Other searches in the school are not so clear-cut, and the courts thus have laid out particular principles regarding the constitutionality of canine searches, metal detector searches, and strip searches.

Canine Searches

Court decisions regarding canine searches precede the *T.L.O.* decision. In general, individual suspicion or a risk to the health and safety of students are required for school officials to justify a canine search.

- *Zamora v. Pomeroy*: The Tenth Circuit Court of Appeals upheld the use of dogs in the exploratory sniffing of lockers.[23]

- *Doe v. Renfrow*: The Seventh Circuit held that school officials stand *in loco parentis* and have a right to use dogs to seek out drugs because of the diminished expectations of privacy in public schools.[24]
- *Jones v. Latexo Independent School District*:[25] The decision differs from *Zamora* and *Renfrow* because the school district in *Jones* used dogs to sniff both students and automobiles. The Court ruled against both: without individual suspicion, sniffing of students is too intrusive; and because students did not have access to their cars during the school day, sniffing them was unreasonable.
- *Horton v. Goose Creek Independent School District*:[26] The Court basically upheld the *Renfrow* decision, determining that if they have reasonable suspicion, school officials may search students; but canine searches of students were held to be unconstitutional when there is no individualized suspicion, because of the "intrusion on dignity and personal security."[27]
- *Illinois v. Cabelles*: In *Cabelles* the Court ruled that a vehicle pulled over during a lawful traffic stop may be subject to a suspicionless sniff test by a drug dog without the driver's consent. Although not directly related to the case law above, *Cabelles* seems to nullify the *Jones* ruling by opening the door to suspicionless canine searches of vehicles parked on or off campus.[28]

Metal Detector Searches

According to Garcia, some 15 percent of large urban schools in the United States have resorted to using metal detectors to curb the presence of weapons and to provide a safe learning environment.[29] Detection of weapons entering schools is more than just a school rule violation and may subject the student to arrest and judicial action. Courts have generally upheld the constitutionality of random metal detector searches based on the need for a safe school environment.

- *In the Interest of F.B.*: The Court upheld a metal detector search of a student entering a Philadelphia school who was carrying a folding knife. The search was deemed reasonable and justified in light of the high rate of violence in the Philadelphia schools.[30]
- *People v. Pruit*: The Court upheld the metal detector search in a Chicago high school that revealed a loaded 0.38-caliber revolver in a student's pants.[31]
- *People v. Dukes*: The New York City Board of Education established guidelines for using metal detectors in a high school. All students were subject to a search by police officers in the main lobby; but officers could limit the search by a random formula if the line became too long. In the process of conducting such a search, a student was found to be carrying a switchblade knife, and she was charged with criminal possession of a weapon. The Court denied the legal challenge, and upheld the search, based on the school's need to maintain safety and security.[32]

Strip Searches

In cases dating back to the 1980s, courts have generally ruled that strip searches are overly intrusive and therefore violate students' Fourth Amendment rights. Basically, a search that is more intrusive increases the need to show probable cause. In many cases, the strip searches were conducted to recover stolen money or contraband that did not endanger the health or safety of students or teachers.

- *Bellnier v. Lund*: A New York court held that school officials violated students' constitutional rights when they conducted a strip search of 5th-grade students following classroom thefts. There was no individual suspicion to suggest that the searched students had taken the money.[33]
- *Oliver v. McClung*: The Court ruled that a strip search of a class of 7th-grade girls to recover $4.50 was unreasonable.[34]
- *Doe v. Renfrow*: Commenting on the nude search of a 13-year-old student, the Court ruled that it was—

> an invasion of constitutional rights of some magnitude. More than that: it is a violation of any known principle of human decency. Apart from any constitutional readings and rulings, simple common sense would indicate that the conduct of the school officials in permitting such a nude search was not only unlawful but outrageous under "settled indisputable principles of law."[35]

THE EXCLUSIONARY RULE AND SCHOOL SEARCHES

School officials are concerned with enforcing school rules and policies that aim to assure students and staff of a safe school environment. The objective of the policies is not primarily the criminal prosecution of students. A discussion of the exclusionary rule is appropriate here because illegal substances or weapons that have been seized in public schools may be turned over to law enforcement officials. In *Weeks v. United States*, the Supreme Court ruled that evidence seized without a warrant could not be used in federal courts for prosecution.[36] In *Mapp v. Ohio*, the exclusionary rule was extended to ban illegally seized evidence in state courts.[37] Several cases have addressed the application of the exclusionary rule to public schools, but the courts generally have not applied the rule, thus allowing materials seized by school officials to be used in a criminal or juvenile court prosecution.[38]

However, in *Thompson v. Carthage School District*, the Eighth Circuit Court of Appeals found that the exclusionary rule did apply to an illegal search conducted by school officials.[39] In *Thompson*, a 9th-grade student, Ramone Lea, was patted down by the school principal on suspicion that he was carrying a firearm on school grounds. Although the search did not produce a gun, it did turn up a small quantity of crack cocaine. Following a disciplinary hearing, Lea was expelled for the remainder of the school year. In its decision, the circuit court not only deemed Lea's expulsion to be "wrongful," but also awarded him $10,000 in damages for the illegal

search under U.S.C. 42, section 1983. Although the court expressed concern that application of the exclusionary rule in schools might "deter educators from undertaking disciplinary proceedings that are needed to keep the schools safe," it went on to assert that the impact of the exclusionary rule is mitigated by the fact that "*school officials are not law enforcement officers*, and thus do not occupy a role whose mission is closely analogous to that of police officers."[40]

The *Thompson* decision appears to make a clear distinction between the roles of school officials and law enforcement officers. But some researchers believe that this distinction is not so clear-cut.[41] It may be factually correct to assert that school officials are not law enforcement officers, but a number of recent court decisions have recognized school resource officers as "school officials" rather than police officers. Although this may seem like a minor semantic difference, it has significant implications for the issue of search and seizure in public schools.

When Is a Cop a Cop?

Among the first cases to address the distinctions between school resource officers and school officials was *People v. Dilworth.* In *Dilworth*, a school liaison officer confiscated a flashlight from a student, searched it, and discovered a powdery substance that was later determined to be cocaine. At trial, the student moved to suppress the cocaine evidence arguing that the search was a violation of the Fourth and Fourteenth Amendments. In its ruling, the court outlined three basic categories of school searches that involve police officers: (1) those in which school officials initiate the search and act with minimal officer involvement; (2) those involving a school police or liaison officer acting on his/her own authority; and (3) those in which outside police (e.g., patrol officers or detectives not assigned to the school) initiate a search on their own, independent of school officials. The court reasoned that the first two types of searches typically permit the lesser search standard of reasonable suspicion, while the third typically requires probable cause.[42]

In its decision, the court upheld the officer's search based on reasonable suspicion. In fact, it relied heavily on the Supreme Court's own language in *T.L.O.*, which permits reasonable suspicion searches of students by "a teacher or other school official." Because the officer in this case was assigned to the school on a full-time basis, he was recognized as a "school official."

However, a dissenting opinion in this case argues that the officer in question should not have been construed as a school official for Fourth Amendment purposes because his primary responsibility (as a police officer) was to investigate and prevent criminal activity. According to the opinion, (1) he arrested the offender and took him to the police station; (2) he was not a member of the school's security staff (which the school did have); (3) although he was listed in the school handbook as a member of the support staff, he was in fact a police officer assigned to patrol an area and investigate and prevent criminal activity; and (4) he acted as a

police officer in this case: chasing, detaining, searching, arresting, and interrogating the suspect (with Miranda protections).

Because the *Dilworth* case raises more questions than it answers, courts have looked to other criteria such as employment issues and duties to clarify the officer's status—for example, is the officer employed by the school or the police department? Unfortunately, this line of inquiry also has not proved fruitful, for as Pinard points out, "[E]ven where the officers assigned to the school are ultimately responsible to a law enforcement agency, some courts have declared them to be more aligned with school officials and therefore allowed to search students based on reasonable suspicion."[43]

Another factor that courts have considered when determining the appropriate level of suspicion required for searches involving school resource officers is the underlying purpose of the search. If the purpose is to uncover evidence that the student has violated school rules, courts typically employ the lesser standard of reasonable suspicion.[44] If, however, the purpose is to investigate a criminal violation, courts will often require probable cause. Of course, criminal and school rule violations are not mutually exclusive. By and large, criminal law violations violate school rules; however, school rule violations do not necessarily constitute violations of the criminal law.

Another issue courts have considered is the level and extent of the officer's involvement in the search. For example, did the officer initiate the search on his or her own without the knowledge or consent of school administrators? If a school administrator, in the presence of an officer, conducts a search, what role did the officer play during the search? Rulings in this area generally indicate that as the officer's involvement and participation in the search increases, so too does the likelihood that courts will require the higher standard of probable cause.[45] Conversely, when the officer's participation is minimal, the reasonable suspicion standard will often suffice.[46]

Safety concerns also factor into such decisions. That is, courts seem willing to grant school officials "a certain degree of flexibility" to seek the assistance of law enforcement officers when faced with potentially dangerous situations without sacrificing the more lenient and flexible reasonable suspicion standard. For example, in the case of *In re Alexander B.*, the California appellate court upheld a police search based on reasonable suspicion when the school's dean directed officers to search a group of students after receiving a report that one of them had a weapon.[47] Here, the court defended its ruling by pointing to the California state constitution, which reads in part that "[a]ll students and staff of public ... schools have the inalienable right to attend campuses which are safe, secure and peaceful."[48] In a similar case, a Wisconsin court held that "[s]chool officials not only educate students ... but they have a responsibility to protect those students and their teachers from behavior that threatens their safety and the integrity of the learning process."[49]

In the absence of further clarification on this issue from the U.S. Supreme Court, various state courts have found it appropriate to apply the

reasonable suspicion standard to searches conducted by school resource officers when the search in question is undertaken at the behest of a school official. This may be an appropriate standard given that (1) such searches may involve students in possession of weapons at school, and (2) school officials are not presumed to have the requisite skills and training necessary to deal with such dangerous situations. But zero-tolerance policies toward weapons in school are often applied blindly, discount individual circumstances, and have resulted in suspensions and expulsions (or worse) without considering the age of the student, the kind of weapon possessed, and whether or not the student intended to harm others with it.

One such example is the case of *Shade v. City of Farmington* in which a group of students was transported by bus from their technical/alternative school to an auto body repair shop in an adjoining community. Along the way, appellant Shade attempted to open an orange juice container with a knife he borrowed from a friend. The bus driver observed Shade with the knife and telephoned the school resource office. The officer subsequently searched all the males on the bus; the knife was located (on its owner—not Shade) and it was confiscated. However, Shade was the one charged with possessing a dangerous weapon on school property and he was expelled. The U.S. Court of Appeals upheld the expulsion even though Shade made no threatening gestures with the knife and had no intent of harming anyone on the bus. More important, for our purposes, the search was deemed constitutional even though it had been (1) carried out by a police officer, (2) based on reasonable suspicion, and (3) conducted *off* school grounds.[50]

"SPECIAL NEEDS" SEARCHES AND CRIMINAL SANCTIONS

School searches typically fall into a category known as administrative or "special needs" searches. These searches are generally characterized by a reduction in the traditional requirements for a search; typically, the court engages in a balancing test, weighing the rights of the searched against the needs of the person or institution conducting the search. These searches implicate some form of public safety issue that would be cumbersome or virtually impossible to address using the traditional rules of search and seizure. Another particular characteristic of special needs searches is that they are noncriminal in nature.

The case law in administrative and special needs searches provides strong support for the idea that these searches generally are not used for purposes of uncovering criminal wrongdoing but rather for the purpose of enhancing public safety. In *National Treasury Employees Union v. Von Raab*, the Court approved the drug testing of employees who met particular criteria in their jobs, including the carrying of firearms or the interdiction of illegal drugs. The Court reasoned that officers who intercept drugs being smuggled into the United States are a first line of defense in the

fight against drugs, and the use of narcotics by these officers could seriously compromise their ability to perform their jobs. In addition, if an officer must use a firearm in the line of duty, the influence of drugs could impair their ability to do so properly and could potentially endanger the public.[51] In *Skinner v. Railway Labor Executives' Association*, the Court found that the mandatory drug testing of railroad workers was constitutional. The Court reasoned that individuals operating and working on and around trains perform tasks that, if not done properly, could endanger the public. Because of this, the Court saw a special need to conduct drug tests on railroad employees as a check against drug usage, which could hinder their ability to perform their work safely.[52]

Two noteworthy special needs rulings that focus on schools are *Vernonia School District 47 v. Acton*, and *Board of Education of Independent School District No. 92 of Pottawatomie County v. Earls*.[53] In *Acton*, the Court determined that the suspicionless drug testing of high school athletes was constitutional; the Court later extended this decision in *Earls* to include all students who participate in extracurricular school activities. The Court reasoned that students who engage in extracurricular activities while under the influence of drugs could jeopardize their health and safety. One of the key aspects of both *Acton* and *Earls* is that evidence of student drug use would not be used for purposes of criminal prosecution; it would simply disqualify them from participating in extracurricular activities. Additionally, drug-testing results would not be handed over to law enforcement for purposes of criminal prosecution; they would stay within the school. Clearly, the *Acton* and *Earls* cases demonstrate that the intent of the special needs search is not to gather evidence for later use in a criminal prosecution.

Likewise, the *T.L.O.* ruling was crafted to disencumber school officials from the more stringent and demanding search and seizure standard applied to police officers. Reducing the search and seizure standard for school officials was deemed appropriate because schools have a special need to maintain order and discipline in an environment conducive to learning. School officials were granted this flexibility to provide "an immediate response to behavior that threatens either the safety of schoolchildren and teachers or the educational process itself."[54] But within the school context, this flexibility was granted exclusively to school officials, not police officers. By limiting this power to school officials, the *T.L.O.* decision is consistent with the idea that "*the mission of teachers is to educate*, unlike that of police, who are trained to use the fruits of a search to bring a criminal prosecution."[55] So, how is it that today's state courts are interpreting the special needs doctrine to justify (1) reasonable suspicion searches conducted by police and school resource officers in schools, and (2) allowing items seized by these officers in school to be used in a criminal prosecution?

Extending the special needs doctrine to police officers in schools seems to be a blatant misinterpretation of both the Supreme Court's expressed and implied intent in the *T.L.O.* decision. As noted earlier, one of the primary motivations in granting school officials the power to search students

under the reasonable suspicion standard was to free them from the search warrant requirement and the onerous standard of probable cause. The decision may also have been a more subtle recognition of the fact that if the Court applied the reasonable suspicion standard too broadly—to school officials and police officers alike—then public schools could quickly spiral into a pseudo–police state. Perhaps this is why, as Jones suggests, the lower search and seizure standard was reserved exclusively for school officials; because "school officials are not law enforcement officers, and . . . do not occupy a role whose mission is closely analogous to that of police officers."[56]

Clearly, school officials have a special relationship with their students, and one of their primary duties is to educate young people about the difference between right and wrong. But recent court decisions that blur the distinction between the police and school officials would seem to undermine this relationship, casting teachers and other school personnel in the role of law enforcement officers. Granted, there will always be a need to discipline unruly students. But when this need arises, the disciplinary process should further the goals and objectives of the broader educational process. Rarely do school disciplinary problems require the full force of the criminal law.

Additionally, permitting the introduction of evidence seized by police in schools under the reasonable suspicion standard for the purpose of criminal prosecution seems to violate the Court's expressed desire to enhance public safety without resorting to criminal sanctions. This again would seem to be an obvious misinterpretation of the Supreme Court's later rulings in both *Acton* and *Earls*.

No Small Issue

In the 20 years since the *T.L.O.* ruling, police officers and security personnel have become regular fixtures in many public schools throughout the nation.[57] The Office of Community Oriented Policing Services (COPS) recently claimed to have awarded almost $748 million to more than 3,000 law enforcement agencies to train and fund more than 6,500 school resource officers through the Cops in Schools Program.[58] Estimates suggest that as many as 14,000 dedicated school resource officers work in public schools across the country.[59] Although these officers perform a variety of beneficial functions for schools (e.g., order maintenance, crime prevention, public relations, and so on), it is important to remember that they do not occupy the same role as educators. Their primary duty is to detect and apprehend law violators and gather evidence for criminal prosecution. What is particularly disconcerting about today's new search and seizure standards for police in schools is that America's institutions of public education seem to be drifting toward what Mello has referred to as a constitutional "free zone." Judges may pay lip service to the idea of the Fourth Amendment, "but the reality is that virtually any search and seizure . . . will be upheld as reasonable and therefore constitutional."[60]

DISCUSSION

Our argument here should not be interpreted as a call to abolish all police officers from the school setting. Indeed, neighborhoods situated around middle schools and high schools invariably represent "hot spots" for crime and disorder that require a visible police presence. Additionally, police-sponsored initiatives such as the Drug Abuse Resistance Education (D.A.R.E.) and the Gang Resistance Education and Training (GREAT) programs offer hope of proactively preventing some of the most vexing forms of juvenile delinquency. In fact, our concerns about the proliferation of police officers in schools lies not so much with the police per se, but with the way teachers and school administrators have come to rely on these officers to handle problematic situations.

As police officers have become more embedded in American schools (largely in reaction to high-profile school shooting incidents), teachers and school administrators appear increasingly willing to relinquish their traditional responsibility for discipline and rule enforcement to the police and other security personnel. As noted earlier, school administrators may wish to avoid confrontation with problematic students because of fear of being sued.[61] Another reason to defer to law enforcement experts is that school officials may lack sufficient knowledge about Supreme Court decisions regarding school discipline and order maintenance.[62] But a third explanation strikes us as more telling—that is, the explanation that schools have become somewhat rule-bound in their approach to handling incidents of student misconduct and education policies have taken on a get-tough philosophy. Following this approach, problem students are removed from school for arguably trivial offenses without considering the legitimacy or the long-term ramifications of such action.

Even a cursory review of the academic literature from the fields of education and criminal justice suggests that "getting rid of the troublemakers" is an increasingly popular solution to dealing with problem students.[63] Zero-tolerance policies regarding student misconduct have become pervasive in school districts throughout the nation. These policies, initially created in response to student drug use, have been extended to address a wide range of disciplinary matters, including weapons-carrying, violence, and perceived acts of violence by students. Students who violate the school's zero-tolerance policy typically are suspended from school or, in more extreme cases, are expelled from school for up to a year.

Although we can all agree that drugs have no place in our public schools, excluding a student from school for a first-time drug offense denies them the opportunity to learn from a "teachable moment." Even more disintegrative is the policy that permits the student to be simultaneously expelled from school and then arrested and prosecuted. It is possible to debate the merits of prosecution and its long-term benefits for secondary crime prevention, but we believe it is better, if the student is to be prosecuted, to have them sentenced to a period of probation with the stipulations that they (1) refrain from further criminal activity, and (2) attend school (perhaps an alternative school) regularly. Prior research clearly

shows that forced removal from school is a strong predictor of dropout[64] and dropping out of school is closely associated with a host of negative outcomes for youth, including increased likelihood of arrest,[65] welfare reliance,[66] and incarceration in later adulthood.[67] Logic dictates that keeping kids in school—perhaps an alternative school and under probation supervision—is better than banishing them from school altogether.

A similar approach could be taken with students who carry weapons to school. In spite of the extensive media coverage of the 1999 attack on Columbine High School, research suggests that students rarely carry guns to school.[68] Schiraldi and Ziedenberg highlighted a few of the more trivial examples for which students have been expelled for "weapons-carrying" at school.[69] Space limitations do not permit a review of those incidents here; suffice it to say that it is not beyond the realm of possibilities for educators to at least inquire into the nature of the offense: Why was the student motivated to carry the weapon to school in the first place? Was the weapon so dangerous as to warrant expulsion? Did they actually intend to harm someone with it? If so, then expulsion and prosecution is warranted. But Sheley and Wright report that students who carry guns (to school and elsewhere) typically do so in reaction to a perceived threat, for self-protection, or out of fear of attack.[70] Expelling and prosecuting a student under these circumstances is akin to punishing the victim while ignoring a potentially ongoing threat to the safety of others.

Policy makers should consider taking a closer look at the long-term utility of expelling or prosecuting students for participating in acts of violence at school. The *Indicators of School Crime and Safety* report shows that violence in schools is rare, and public schools are among the safest locations in any given community.[71] Incidents of serious juvenile violence in school are even more rare and tend to take place *away* from school, out in the community.[72] That said, of all the disciplinary actions taken by school administrators, mutually combative fights (e.g., simple assaults) between students are by the far the leading cause of suspensions. But here again, unless the problem is persistent, banishing a student from the school setting is likely to severely diminish his or her life chance and opportunity to learn the boundaries of acceptable behavior. There is no question that school administrators must "do something" to communicate that violence in school will not be tolerated, but it is hard to accept the claim that "society must be permitted to give up on students who are threatening the educational opportunities of their classmates."[73] Researchers like Zimring vehemently disagree with this claim by arguing that violence is, unfortunately, a "normal" aspect of adolescence.[74] Zimring writes elsewhere that for kids to develop social competence and become well-adjusted adults, policy makers and the public must learn to be more patient with adolescent offenders when they make mistakes. He writes,

> In blackjack, an "ideal" career is never to lose a hand. In the game of learning to make free choices, winning every hand is poor preparation for the modern world ... We want adolescents to make mistakes, but we hope they make the right kinds of mistakes ... An important part of cutting our losses

> during this period of development is minimizing the harm young persons do [to] themselves, and keeping to a minimum the harm we inflict on them. . . .[75]

By denying juveniles the opportunity to make and learn from their mistakes, and treating them as social pariah when they fail, it is easy to forget that most will eventually grow up to become productive, law-abiding citizens.

CONCLUSION

This chapter has shown, through numerous case law examples, that the legal trend in school discipline today is to establish safe schools through a punitive approach that is underlined by a heavy and arguably unfettered police presence in schools. We contend that an informal educational approach to school discipline would be not only more consistent with the constitutionality of student rights, but also more humane. The best social control is a good education, a fact that is in the slogan, if not the intent, of the *No Child Left Behind Act*.

We all agree that weapons and illegal drugs have no place in schools. Violation of school rules (and violations of the juvenile law) must be sanctioned. However, compulsory school attendance laws were developed for a reason, and the positive effects of regular school attendance (e.g., higher learning, improved social bonds, behavior modification, positive commitment, and attachment to a conventional lifestyle) are well documented. Given that, does it not make more sense to sanction inappropriate student conduct informally through the traditional educational process with an eye toward keeping kids *in* school rather than kicking them out?

For more serious offenses, it makes sense to sanction the behavior through the formal justice system, resulting perhaps in a probation sentence with special conditions and requirements to "attend school regularly and obey all school regulations." But widespread deployment of police into public schools, coupled with a lowered standard for search and seizure, will almost assuredly lead to a greater number of arrests and prosecutions. Durable sanctions like these should be used sparingly.

ACKNOWLEDGMENT

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NOTES

1. DeVoe et al., 2004, p. 28.
2. Rose & Gallup, 2004, p. 44.
3. Devine, 1996.
4. Lawrence, 1998.
5. Devine, 1996.

6. Chandler, 1992.
7. Reglin, 1992.
8. Justice Abe Fortas, *Tinker v. Des Moines Independent Community School District*, 1969, pp. 506, 511.
9. Brown & Benedict, 2004; National Center on Addiction and Substance Abuse at Columbia University, 2001.
10. Alexander & Alexander, 2005, p. 398.
11. *New Jersey v. T.L.O.*, 1985.
12. *New Jersey v. T.L.O.*, 1985, p. 340.
13. *New Jersey v. T.L.O*, 105 S. Ct. 733 (1985), p. 744.
14. See Alexander & Alexander, 2005, p. 399.
15. *State v. Slattery*, 56 Wn.App. 820, 787 P.2d 932 (1990).
16. *Shamberg v. State*, 1988.
17. *Wynn v. Board of Education of Vestabia Hills*, 1987.
18. *Vernonia School District 47J v. Acton*, 1995.
19. *Board of Education of Independent School District No. 92 of Pottawatomie County v. Earls*, 2002.
20. See also Alexander & Alexander, 2005, p. 400.
21. Alexander & Alexander, 2005, p. 401.
22. *In re Patrick Y.*, 2000.
23. *Zamora v. Pomeroy*, 1981.
24. *Doe v. Renfrow*, 475 F. Supp. 1012 (N.D. Ind. 1979); 631 R.2d 91 (7th Cir.1980); 635 F.2d 582; 451 U.S. 1022 (1981).
25. *Jones v. Latexo Independent School District*, 1980.
26. *Horton v. Goose Creek Independent School District*, 1982.
27. Alexander & Alexander, 2005, pp. 401–402.
28. *Illinois v. Cabelles*, 2005.
29. Garcia, 2003.
30. *In the Interest of F.B.*, 1995.
31. *People v. Pruit*, 1996.
32. *People v. Dukes*, 1992.
32. *Bellnier v. Lund*, 1977.
34. *Oliver v. McClung*, 1995.
35. *Doe v. Renfrow*, 631 F.2d 91 (7th Cir.1980); 635 F.2d 582; 451 U.S. 1022 (1981).
36. *Weeks v. United States*, 232 U.S. 383, 34 S.Ct. 341 (1914).
37. *Mapp v. Ohio*, 367 U.S. 643, 81 S. Ct. 1684 (1961).
38. Alexander & Alexander, 2005, p. 403.
39. *Thompson v. Carthage School District*, 1996.
40. Jones, 1997, p. 390, emphasis added.
41. Beger, 2002; Jones, 1997; Kagan, 2004; Pinard, 2003.
42. *People v. Dilworth*, 1996.
43. Pinard, 2003, p. 1084; see also, e.g., the case of *In re Ana*, 2002.
44. Stefkovich & Miller, 1999.
45. See *F.P. v. State*, 1998; *State v. Twayne H.*, 1997.
46. *State v. N.G.B.*, 2002.
47. *In re Alexander B.*, 1990.
48. See also *People v. Butler*, 2001.
49. *In re Angelia D.B.*, 1997.
50. *Shade v. City of Farmington*, 2002.
51. *National Treasury Employees Union v. Von Raab*, 1989.
52. *Skinner v. Railway Labor Executives' Association*, 1989.

53. *Board of Education of Independent School District No. 92 of Pottawatomie County v. Earls*, 2002; *Vernonia School District 47 v. Acton,* 1995.
54. *New Jersey v. T.L.O.*, 1985, p. 353.
55. Beger, 2003, p. 337, emphasis added.
56. Jones, 1997, p. 390.
57. Beger, 2002; Kagan, 2004.
58. U.S. Department of Justice, 2004.
59. Siegel, Welsh, & Senna, 2006, p. 410.
60. Mello, 2002, p. 377.
61. Devine, 1996.
62. Reglin, 1992.
63. Bowditch, 1993.
64. De Ridder, 1990.
65. Thornberry, Moore, & Christensen, 1985.
66. Rumberger, 1987.
67. Arum & Beattie, 1999.
68. DeVoe et al., 2004.
69. Schiraldi & Ziedenberg, 2001.
70. Sheley & Wright, 1998.
71. DeVoe et al., 2004.
72. Lawrence & Mueller, 2003.
73. Toby, 1980, p. 38.
74. Zimring, 1998, p. 27.
75. Zimring, 2005, p. 18.

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CHAPTER 11

The Death Penalty for Juveniles in the United States: An Obituary

Robert M. Bohm

The death penalty for juveniles in the United States is dead. This is its obituary. On March 1, 2005, in the case of *Roper* v. *Simmons*,[1] the U.S. Supreme Court, by a vote of five to four, ruled that the U.S. Constitution's Eighth and Fourteenth Amendments prohibit the execution of offenders who were under the age of 18 at the time they committed their capital crimes. It thus ended a practice that began in America during the seventeenth century and that currently is used in only a handful of countries.

HISTORICAL BACKGROUND

Throughout the history of the United States, the death penalty has been reserved almost entirely for the crimes committed by adult men. Fewer than 3 percent of the approximately 20,000 people executed under legal authority in the United States have been women and fewer than 2 percent were juveniles. Most of the juveniles executed (about 70 percent) were black, nearly 90 percent of their victims were white, and approximately 65 percent of them were executed in the South. The first juvenile executed in America was Thomas Graunger in the Plymouth colony in 1642 for the crime of bestiality. He was 16 at the time of his crime and execution. The youngest nonslave executed in the United States was Ocuish Hannah. On December 20, 1786, she was hanged at the age of twelve for a murder she had committed in New London County, Connecticut. At the time the Bill of Rights was ratified in 1791, American law only prohibited the execution of children under the age of seven. Besides

murder, juveniles in America have been executed for sodomy with animals, arson, robbery, assault, and rape.

Before the 1980s, the age of a capital offender received little public or legal scrutiny, probably in part because death sentences were rarely imposed on juveniles. Most death penalty states had death penalty statutes that established a minimum age eligibility requirement at the time of the crime. Indiana's death penalty statute allowed juveniles as young as 10 years of age at the time of their crime to be executed. Montana's statute provided the death penalty for juveniles as young as 12 years old. Mississippi's minimum age was 13. Other states had minimum age limits ranging from 14 to 18. Some death penalty states set no statutory minimum age limits.

Eddings and the First Post-*Furman* Executions of Juveniles

The U.S. Supreme Court first considered the issue of age in capital cases in *Eddings v. Oklahoma*.[2] Monty Eddings was sentenced to death for killing a highway patrol officer. He was 16 at the time of the crime. Although on appeal Eddings challenged the constitutionality of the death penalty for juveniles, the Court vacated his death sentence on narrower grounds. The key issue for the Court was not his age, which was presented as a mitigating circumstance at trial, but the trial court's failure to consider two other mitigating factors—his unstable family life and emotional disturbances. Even though the Supreme Court sidestepped the broader constitutional question in *Eddings*, it did stress that chronological age was an important mitigating factor that must be considered during the sentencing phase of a capital trial.

Between 1983 and 1986, the Supreme Court had five more opportunities to rule on the constitutionality of the death penalty for juveniles but declined in each case. Also, during that period, three juveniles were executed. They were the first post–*Furman v. Georgia*[3] executions of juveniles, and the first juveniles executed in more than two decades. *Furman* was the landmark decision in which the Supreme Court held for the first time in American history that the death penalty, as administered, was unconstitutional. The three juveniles were Charles Rumbaugh, who was executed in Texas on September 11, 1985; James Terry Roach, who was executed in South Carolina on January 10, 1986; and Jay Pinkerton, who was executed in Texas on May 15, 1986. They were all 17 years old at the time of their crimes. (At the time of their executions, Rumbaugh was 28, Roach was 25, and Pinkerton was 24.) By the end of the decade the Court finally agreed to consider the constitutionality of the death penalty for juveniles in *Thompson v. Oklahoma*.[4]

Thompson, *Stanford*, and *Wilkins*

William Thompson was one of four people convicted and sentenced to death for the brutal murder of his former brother-in-law. Thompson was

15 years old at the time of the murder and was certified to stand trial as an adult. In *Thompson*, the Court held that the Constitution prohibited the execution of a person who was under 16 years of age at the time of his or her offense. The Court reasoned that (1) besides the special certification (as an adult) process used in the *Thompson* case, Oklahoma had no statutes, either criminal or civil, that treated anyone under 16 years of age as anything but a child; (2) although states varied in the line they drew demarcating childhood from adulthood, they were near unanimity in treating a person under 16 years of age as a minor for several important purposes; (3) of the 18 death penalty states that had established by statute a minimum age for death eligibility, none of them allowed the death penalty for anyone under 16 years of age; (4) respected professional organizations and peer nations had expressed the view that the execution of people younger than 16 years of age at the time of their offense offended civilized standards of decency; (5) the evidence of thousands of murder trials showed that jurors, as representatives of the conscience of their communities, had generally found it abhorrent to impose the death penalty on a 15 year old; and (6) the imposition of the death penalty on people under 16 years of age had not made, nor could be expected to make, any measurable contribution to the goals of capital punishment, especially the principal goals of retribution and general deterrence. The Court stipulated, however, that the decision applied only when a state had not specifically legislated a minimum age for its death penalty, as was the case in Oklahoma at the time.

The next year, in the cases of *Stanford v. Kentucky* and *Wilkins v. Missouri*,[5] the Court determined that the Eighth Amendment did not prohibit the execution of people who were 17 (in *Stanford*) or 16 (in *Wilkins*) years of age at the time of their offense. Kevin Stanford was convicted and sentenced to death for raping, sodomizing, and murdering a female service-station clerk in Jefferson County, Kentucky, on January 7, 1981. Heath Wilkins was certified to stand trial as an adult and was convicted and sentenced to die for stabbing to death a young female liquor store clerk in Avondale, Missouri, on July 27, 1985. Together, the three decisions in *Thompson*, *Stanford*, and *Wilkins* suggested that the Supreme Court would not allow the execution of people under 16 years of age at the time of their offense.

Following the Court's decisions in *Thompson*, *Stanford*, and *Wilkins*, death penalty jurisdictions began amending their death penalty statutes to conform to the Court's age rulings. By 2001, 23 states and the U.S. military allowed by law the execution of people who were younger than 18 years of age at the time of their crime. Five states had a minimum age of 17, and 18 states and the U.S. military had a minimum age of 16. No death penalty state allowed by statute the execution of a person younger than 16 years of age at the time of the crime. Thus, the amended death penalty statutes institutionalized a long-standing American tradition. Historically, fewer than 20 percent of all juveniles executed in the United States were younger than 16 years of age at the time they committed the offense for which they were executed.

The Last Executions of Juveniles in the United States

After the execution of the three 17 year olds in the 1980s, 19 or 20 more young men were executed in seven states. (Whether the number is 19 or 20 depends on whether Jose High is included. High was executed in Georgia on November 6, 2001. His age was in dispute, but it is generally believed that he was 17 at the time he committed his crime. He is counted here.) The last juvenile executed in the United States was Scott Allen Hain in Oklahoma on April 3, 2003. Of the 23 juveniles executed, 10 were white, 12 were black, and 1 was Hispanic. More than half of the 23 executions took place in Texas and about 70 percent of them in Texas and Virginia. The others were executed in Georgia (2), Louisiana (1), Missouri (1), Oklahoma (2), and South Carolina (1). All but 1 of the 23 juveniles executed were 17 years of age at the time of their crimes. The other juvenile, Sean Sellars, who was executed in Oklahoma on February 4, 1999, was 16 years old at the time of his crime. The last 16 year old (at the time of his crime) executed in the United States was Leonard Shockley. Shockley was executed in Maryland on April 10, 1959.

Between 1990 and Hain's execution in 2003, the United States was one of only eight countries that executed anyone under 18 years of age at the time of the crime; the others were Iran, Pakistan, Saudi Arabia, the Republic of Yemen, Nigeria, the Democratic Republic of Congo, and China. The Court found this fact instructive but not controlling in its landmark decision in *Roper v. Simmons* (discussed later).

JUVENILES ON DEATH ROW

On December 31, 2004, 72 people who committed crimes before their 18th birthdays sat on death rows throughout the United States awaiting their executions. That represented about 2 percent of the total death row population. The typical juvenile on death row was a 17-year-old minority male who killed a white adult female, after robbing or raping her. Of the total number of juvenile death row inmates, 46 percent were black, 33 percent were white, and 21 percent were Hispanic. Although all of the juvenile death row inmates were either 16 or 17 at the time they committed their crimes, by the end of 2004, their ages ranged from 18 to 43. They had been on death row from 4 months to 24 years. No juvenile females were on death row as of December 31, 2004. Only five females who were younger than 18 years of age at the time of their crimes have been sentenced to death since 1973 (following the landmark *Furman v. Georgia* decision and the beginning of the modern death penalty era), and none of them were executed. Four of them had their sentences reversed, and one had her sentence commuted. The 72 juvenile death row inmates as of December 31, 2004, were on death rows in 12 of the 21 states that at the time authorized the death penalty for juvenile offenders. Texas, by far, had the largest number of juvenile death row inmates, 29, or 40 percent.

A study of 14 juvenile death row inmates conducted in the mid-1980s revealed that (1) 14 of them had head injuries as children; (2) 12 had

been brutally abused physically, sexually, or both; (3) nine had major neuropsychological disorders; (4) seven had psychotic disorders since childhood; (5) seven had serious psychiatric disturbances; (6) five had been sodomized as children; (7) only three had at least average reading ability; and (8) only two had intelligence scores above 90 (90–100 is considered average).[6]

Sentencing Juveniles to Death

Between 1973 and December 31, 2004, jurisdictions in the United States had imposed death sentences on 228 offenders under the age of 18 at the time of their crime, which represented about 3 percent of the 7,528 death sentences imposed for offenders of all ages during the period. Three states—Texas (58), Florida (32), and Alabama (25)—accounted for about half of the death sentences imposed on juveniles. As noted above, only 72 of those death sentences remained in force at the end of 2004. Even before the *Simmons* decision, however, the chances of any juvenile on death row being executed was remote. Since 1973, the reversal rate for juveniles sentenced to death was about 90 percent.

Public Opinion Following *Thompson*, *Stanford*, and *Wilkins*

After the Court's decisions in *Thompson*, *Stanford*, and *Wilkins*, the question of whether or not juveniles should be subjected to capital punishment received more attention. In a 1994 Gallup Poll,[7] for example, 60 percent of Americans thought that when a teenager committed a murder and was found guilty by a jury, he (the survey item did not address female teenage killers) should get the death penalty (compared with 80 percent who favored the death penalty for adults), 30 percent opposed the death penalty for teenagers, and 10 percent had no opinion. Among those who favored the death penalty for adults, 72 percent favored the death penalty for teenage killers. When asked whether juveniles convicted of their first crime should be given the same punishment as adults convicted of their first crime, 50 percent of Americans believed juveniles should be treated the same as adults, 40 percent believed they should be treated less harshly, 9 percent responded that it depends, and 1 percent had no opinion. When asked whether juveniles convicted of their second or third crimes should be given the same punishment as adults convicted of their second or third crimes, 83 percent of Americans believed juveniles should be treated the same as adults, only 12 percent believed they should be treated less harshly, 4 percent thought it depends, and 1 percent had no opinion. As for how juveniles who committed the same crimes as adults should be treated, 52 percent of Americans believed they should receive the same punishment, 31 percent believed that juveniles should be rehabilitated, 13 percent responded that it depends on the circumstances, 3 percent chose another sanction, and 1 percent had no opinion. One problem with alternatives to capital punishment was that Americans had

little confidence in the rehabilitative programs available to juveniles. Only 25 percent of Americans believed that rehabilitation programs for juveniles were even moderately successful. However, nearly half (48 percent) of the respondents also believed that the rehabilitation programs for juveniles had not been given the necessary money and support to be successful.

THE DEBATE

As the death penalty for juveniles was being debated, both sides mounted strong arguments for their positions. Among the reasons given for not subjecting juveniles to capital punishment were the following:

- Our society, as represented by legislatures, prosecutors, judges, and juries, had rejected the juvenile death penalty.
- Other nations had rejected the juvenile death penalty. (The United States and Somalia were the only two countries in the United Nations not to ratify Article 37(a) of the U.N. Convention on the Rights of the Child, which bans capital punishment for anyone less than 18 years of age.)
- The threat of the death penalty did not deter potential juvenile murderers, because juveniles often did not consider the possible consequences before committing their murderous acts and because, even if they did consider these consequences, they would realize that few juveniles actually received the death penalty.
- Juveniles were especially likely to be rehabilitated or reformed while in prison, thus rendering the juvenile death penalty especially inappropriate.
- The juvenile death penalty did not serve a legitimate retributive purpose, because juveniles were generally less mature and responsible than adults, and should therefore be viewed as less culpable than adults who committed the same crimes.

An additional reason for treating juveniles different than adults in the administration of justice was that juveniles were already treated legally different than adults in other areas of life, such as driving, voting, gambling, marriage, and jury service.

Conversely, some of the reasons for subjecting juveniles to capital punishment were as follows:

- The evidence of a societal consensus against the juvenile death penalty was nonexistent, or at least too weak to justify a constitutional ban.
- The views of other nations were irrelevant to the proper interpretation of our Constitution, at least absent a consensus within our own society.
- The threat of the death penalty could deter potential juvenile murderers, or at least the judgments of legislatures and prosecutors to that effect deserved deference.
- The most heinous juvenile murderers, who were the only ones likely to receive the death penalty, were not good candidates for rehabilitation or reform.

- Some juvenile murderers were sufficiently mature and responsible to deserve the death penalty for their crimes, and thus the juvenile death penalty served a legitimate retributive purpose.

As for other areas of the law that distinguished between adults and juveniles, proponents of capital punishment for juvenile offenders stressed that, although juveniles may not vote conscientiously or drive safely, they did know that killing other human beings was wrong.

Another reason for supporting the death penalty for at least some juvenile capital offenders—and one that, for some people, made the practice of excluding most death-eligible juveniles from the death penalty discriminatory—was that the designation of "juvenile" was arbitrary and only a proxy for more relevant social characteristics. In the first place, it was not until the sixteenth and seventeenth centuries that the young began to be viewed as anything other than miniature adults or property. Before that time, juveniles as young as five or six years old were expected to assume the responsibilities of adults and, when they violated the law, were subjected to the same criminal sanctions as adults. Moreover, it is debatable whether significant differences exist on any relevant social characteristic between a 17 and 18 year old, other than what has been created by law. Given that, is it really meaningful to consider a 17 year old a juvenile and an 18 year old an adult?

In considering whether a person deserved the death penalty from a retributive standpoint, it had been argued that age was largely irrelevant. It was used because it served as an imperfect proxy for more relevant social characteristics. Whether a murderer, regardless of age, deserved the death penalty depended, not on age, in this view, but on maturity, judgment, responsibility, and the capability to assess the possible consequences of his or her actions. In some cases, juveniles possessed those characteristics in greater quantity than some adults did, or in sufficient quantities to be death-eligible; in other cases, they did not. According to the argument, because age was an imperfect proxy for the more relevant characteristics, the use of age as a basis for determining who was or was not death-eligible was discriminatory. Regardless of one's position on the subject of the death penalty for juveniles, it remained a controversial issue.

A NATIONAL CONSENSUS

By 2002, it appeared that a national consensus had developed about the desirability of executing juveniles. In a 2002 Gallup Poll,[8] for example, only 26 percent of respondents favored the death penalty for juveniles, 69 percent opposed it, and 5 percent didn't know or refused to answer. Among subgroups, only 31 percent of males, 21 percent of females, 25 percent of whites, and 29 percent of nonwhites favored the death penalty for juveniles. This was a dramatic change from the results of the 1994 Gallup Poll in which 60 percent of respondents favored the death penalty for juveniles. The Supreme Court was slow to move, however, perhaps because the Justices generally do not consider the results of public opinion polls probative. Toward the end of 2002, the Court by a five to four vote

declined to hear another appeal by Kevin Stanford (the appellate in *Stanford v. Kentucky*). Stanford's execution date was set for January 7, 2003, but the Kentucky governor refused to sign the death warrant, giving the reason of Stanford's age at the time of the crime. On December 8, 2003, the Kentucky governor commuted Stanford's death sentence to life in prison without opportunity of parole.

By 2005, 18 death penalty states prohibited the death penalty for juveniles, and the 20 death penalty states that had not prohibited it, infrequently imposed it. A majority of the Court found these indications probative of a national consensus. The dissenters did not, noting that only 47 percent of death penalty states prohibited the execution of those less than 18 years of age. (At the time *Stanford* was decided, 42 percent of death penalty states prohibited the execution of those less than 18 years of age, which the Court concluded was insufficient as evidence of a national consensus.) More important, by 2005, Justice Anthony Kennedy had changed his mind on the issue.

Simmons and the End of the Death Penalty for Juveniles

Based on the aforementioned developments, the Court, in *Roper v. Simmons*,[9] affirmed by a five to four vote the decision of the Missouri Supreme Court and ruled that the Eighth and Fourteenth Amendments forbid the imposition of the death penalty on offenders who were under the age of 18 at the time their crimes were committed. Justices Kennedy, Stevens, Souter, Ginsburg, and Breyer formed the majority; Justices O'Connor, Scalia, Rehnquist, and Thomas dissented. The Missouri Supreme Court had set aside Simmons' death sentence in favor of "life imprisonment without eligibility for probation, parole, or release except by act of the Governor." It should be noted that the dissenters in the recent *Simmons* decision were particularly incensed by the Missouri Supreme Court's flagrant disregard of the Court's controlling precedent in *Stanford*. Before the Simmons' decision by the Missouri Supreme Court, it was understood that it was the Court's sole prerogative to overrule one of its own precedents. According to Justice Scalia,

> To allow lower courts to behave as we do, "updating" the Eighth Amendment as needed, destroys stability and makes our case law an unreliable basis for the designing of laws by citizens and their representatives, and for action by public officials. The result will be to crown arbitrariness with chaos.[10]

Christopher Simmons, seven months shy of his 18th birthday at the time of the crime, and a 15-year-old companion broke into a home near St. Louis early one morning in 1993 to commit a burglary. A woman, alone in the house, awoke and recognized the two boys. Simmons and his partner bound the woman and drove her to the river, where they threw her off a bridge. She subsequently drowned. Simmons, who had no previous criminal record, had repeatedly told his friends that he wanted to murder someone and bragged that, because he was a minor, he could "get

away with it.'' Simmons confessed to the crime, and about nine months later, he was convicted of the murder and sentenced to death. Under Missouri law, he was tried as an adult. In 1997, the Missouri Supreme Court affirmed Simmons' conviction and death sentence, and, in 2001, the federal courts denied his petition for a writ of habeas corpus.

Following these proceedings, in 2002, the U.S. Supreme Court decided *Atkins v. Virginia*,[11] after which Simmons filed a new petition for state postconviction relief. Simmons argued that the reasoning of *Atkins* established that the Constitution prohibited the execution of a juvenile who was under 18 at the time the crime was committed. In 2003, the Missouri Supreme Court accepted Simmons' claim, and, in 2004, the U.S. Supreme Court granted certiorari.

In *Atkins*, the Court ruled six to three that it is cruel and unusual punishment to execute the mentally retarded. The Court reasoned that the death penalty's two social purposes—(1) retribution, that is, ''just deserts,'' and (2) deterrence of capital crimes by prospective offenders—are not served by the execution of mentally retarded capital offenders. Regarding retribution, the Court believed the lesser culpability of mentally retarded offenders by virtue of their cognitive and behavioral impairments did not merit that form of retribution; as for deterrence, the Court averred that those impairments made it less likely that they could process the information of execution as a possible penalty and, therefore, control their behavior based on that information. The Court surmised that exempting the mentally retarded from execution would not lessen the death penalty's deterrent effect for offenders who are not mentally retarded. The Court was especially concerned that mentally retarded offenders faced a special risk of wrongful execution because they might unwittingly confess to crimes they did not commit, be less able to meaningfully assist their attorneys, be poor witnesses, and possess demeanor that may create an unwarranted impression that they lacked remorse for their crimes. The debatable question, of course, was whether a 17-year-old offender was in the same class as, or equivalent to, a mentally retarded offender with regard to culpability and susceptibility to deterrence.

In *Simmons*, the Court identified three differences between juvenile offenders and adult offenders that diminished the former's culpability. First, ''[j]uveniles' susceptibility to immature and irresponsible behavior means 'their irresponsible conduct is not as morally reprehensible as that of an adult.' '' Second, ''[t]heir own vulnerability and comparative lack of control over their immediate surroundings mean juveniles have a greater claim than adults to be forgiven for failing to escape negative influences in their whole environment.'' Third, ''[t]he reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character.''[12]

In support of his position, the petitioner in *Simmons* (Donald P. Roper, superintendent, Potosi Correctional Center) claimed that, ''given the Court's own insistence on individualized consideration in capital sentencing, it is arbitrary and unnecessary to adopt a categorical rule barring the imposition of the death penalty on an offender under 18.'' The petitioner

argued that jurors "should be allowed to consider mitigating arguments related to youth on a case-by-case basis, and in some cases to impose the death penalty if justified."[13]

The Court's majority, however, was not willing to take that risk. It noted that in the very case before it, the prosecutor had argued that Simmons' youth was aggravating rather than mitigating. Thus, in response to the petitioner's argument, the Court opined,

> An unacceptable likelihood exists that the brutality or cold-blooded nature of any particular crime would overpower mitigating arguments based on youth as a matter of course, even where the juvenile offender's objective immaturity, vulnerability, and lack of true depravity should require a sentence less severe than death.[14]

The Court concluded,

> When a juvenile commits a heinous crime, the State can exact forfeiture of some of the most basic liberties, but the State cannot extinguish his life and his potential to attain a mature understanding of his own humanity. While drawing the line at 18 is subject to the objections always raised against categorical rules, that is the point where society draws the line for many purposes between childhood and adulthood and the age at which the line for death eligibility ought to rest.[15]

With those words the Supreme Court brought an end to a more than 350-year-old practice in the United States. Years from now, will we ask ourselves how a society could have executed juveniles, or will we ask whether the decision not to execute juveniles was a wise one? The natural experiment has begun.

NOTES

1. *Roper* v. *Simmons*, 2005.
2. *Eddings v. Oklahoma*, 1982.
3. *Furman v. Georgia*, 1972.
4. *Thompson v. Oklahoma*, 1988.
5. *Stanford v. Kentucky* and *Wilkins v. Missouri*, 1989.
6. Lewis, D. O., Pincus, J. H., Bard, B., Richardson, E., Prichep, L., Feldman, M. & Yeager, C. (1988). Neuropsychiatric, psychoeducational, and family characteristics of 14 juveniles condemned to death in the United States. *American Journal of Psychiatry,* 145, 584–589.
7. Moore, 1994.
8. Jones, 2002.
9. *Roper v. Simmons*, 2005.
10. *Roper v. Simmons,* 2005, p. 630.
11. *Atkins v. Virginia*, 2002.
12. *Roper v. Simmons*, 2005, pp. 569–570.
13. *Roper v. Simmons*, 2005, p. 572.
14. *Roper v. Simmons*, 2005, p. 573.
15. *Roper v. Simmons*, 2005, p. 574.

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About the Editors and Contributors

Marilyn D. McShane is a trustee-at-large member of the executive board to the Academy of Criminal Justice Sciences. She and Frank Williams have recently published the textbook *Step By Step Through the Thesis Process: A Resource Guide*. Their *Criminological Theory* book is in its fourth edition with the same publisher.

Frank P. Williams III is professor emeritus at California State University. He is author of *Imagining Criminology* and coauthor of four editions of *Criminological Theory.* He also is coauthor of the soon-to-be-released textbook *Step by Step Through the Thesis Process: A Resource Guide*.

Victoria Simpson Beck is an assistant professor of criminal justice at Indiana University East. Her published works have appeared in the *Journal of Criminal Justice*, *Juvenile and Family Court Journal*, the *Journal of Psychiatry and Law*, and the journal of *Violence and Victims.* Her research interests include juvenile diversion court programs, sex-offender notification policies, and corrections.

Peter J. Benekos is professor of criminal justice and sociology at Mercyhurst College. His research interests include juvenile justice, corrections, and public policy. Most recently he completed the second edition of *Crime Control, Politics, and Policy* (coauthored with Alida V. Merlo).

Robert M. Bohm is professor of criminal justice and legal studies at the University of Central Florida. He has published widely on the topics of criminal justice, criminological theory, and capital punishment. His most

recent article entitled "'McJustice': On the McDonaldization of Criminal Justice" appeared in *Justice Quarterly.*

Michael P. Brown has been at Ball State University since 1993. He earned a doctorate in sociology from Western Michigan University. His research interests include juvenile delinquency, community corrections, and pedagogy.

Jill M. D'Angelo is an assistant professor of criminal justice and criminology at Ball State University. Her primary research specialty is juvenile court judges' decision making. She is, however, broadening her research agenda to include the study of women in prison.

Jon R. Farrar is the chief staff attorney for the U.S. District Court for the Eastern District of Texas. He earned a Juris Doctor from the University of Houston and a doctorate in criminal justice from Sam Houston State University. His prior experience includes being the administrator of Inmate Legal Services for the Texas prison system; an assistant district attorney for Orange County, Texas; and a criminal justice instructor for University of Texas at Tyler.

Wesley A. Krause is a retired deputy chief probation officer of San Bernardino County Probation, California. He has more than 30 years of experience in juvenile justice and community corrections and currently is an adjunct lecturer at the California State University San Bernadino.

Attapol Kuanliang is a doctoral candidate in the Justice Studies Department at Prairie View A&M University. His main areas of interest are juvenile justice, evaluation research, and correction. He has participated in multiple research projects involving the Texas Juvenile Crime Prevention Center and other agencies.

Jodi Lane is associate professor of criminology, law, and society at the University of Florida. She earned her doctorate in social ecology from the University of California, Irvine. Her interests and publications focus on fear of crime, juvenile justice, corrections, crime policy, and program evaluation.

Lonn Lanza-Kaduce is professor of sociology and criminology, and chairperson of the Department of Criminology, Law, and Society at the University of Florida. He is a 2004 ICARE (Institute for Child and Adolescent Research and Evaluation) Development Grant recipient. His research interests include social learning in crime and deviance, criminological theory, drug and alcohol behavior, delinquency, sociology of law, and deviant behavior.

Richard Lawrence is professor of criminal justice at St. Cloud State University in Minnesota. He is the author of several book chapters and journal articles. His most recent publication is *School Crime and Juvenile Justice* (in its second edition).

Alida V. Merlo is professor of criminology at Indiana University of Pennsylvania. Previously, she was a faculty member in the Criminal Justice Department at Westfield State College in Westfield, Massachusetts. She has conducted research and published in the areas of criminal justice policy, juvenile justice, and women and the law. In the last three years, she has coauthored or coedited three books, including the second edition of *Crime Control, Politics, and Policy* (coauthored with Peter J. Benekos), the second edition of *Women, Law and Social Control* (coedited with Joycelyn M. Pollock), and *Controversies in Juvenile Justice and Delinquency* (coedited with Peter J. Benekos).

John K. Mooradian is an assistant professor in the School of Social Work at Michigan State University, where he coordinates the Certificate in Clinical Social Work with Families. He holds a doctorate in social work from Michigan State University, and is a certified social worker, licensed master social worker, and a licensed master and family therapist. His research focuses on issues that affect oppressed and marginalized populations. He is author of *Disproportionate Confinement of African-American Delinquents.*

David Mueller is associate professor of criminal justice at Boise State University. He has written several articles and book chapters on school crime issues, including a recent article entitled "School Shootings and the Man Bites Dog Criterion of Newsworthiness" (coauthored with Richard Lawrence).

David Myers is the doctoral program coordinator at Indiana University Pennsylvania. He is author of *Boys Among Men: Trying and Sentencing Juveniles as Adults* and *Excluding Violent Youths from Juvenile Court: The Effectiveness of Legislative Waiver.*

Robert J. Ramsey is director of the criminal justice program and an assistant professor of criminal justice at Indiana University East. His published works have appeared in the *Juvenile and Family Court Journal*, the *Salem Press*, and *The Journal of Psychiatry and Law.* His research interests include wrongful conviction, juvenile justice, and corrections.

Jon Sorensen is professor of justice studies at Prairie View A&M University. He has published numerous articles on prison violence and capital punishment, and he is coauthor of *Lethal Injection: Capital Punishment in Texas during the Modern Era.*

Lawrence F. Travis III is a professor of criminal justice at the University of Cincinnati. He has directed a number of local, state, and national research projects, including a national study of the role of law enforcement in public schools. Dr. Travis has published five books and monographs and more than 70 articles and book chapters on a range of criminal justice topics.

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Preface

The bright lights of the juvenile training center, a euphemism for a large prison for youths, glare across the horizon. It is only early summer, but the temperatures are already in the steamy range and evening activities are concluding. Groups of state wards file toward the living quarters, swarms that seem tense, loud, and expansive. The energy in the area as the population surges is particularly nerve-wracking. If it were to erupt, what would happen and, given the volatile nature of the elements, why doesn't it?

For visitors, the scene that plays out at the facility is frighteningly surreal. Across America hundreds of secure facilities house undereducated, angry, overmedicated youth bristling with testosterone, adorned with tattoos and scars, just waiting for release. Although many forms of treatment and services are legally mandated, they are often inappropriately and halfheartedly delivered and even less enthusiastically received.

Several of the youths we talk to are not optimistic about their release. Their families are entrenched in habits and activities that are destined to lead to their revocation. One of the confounding aspects of disproportionate minority confinement is the cyclical nature of crime in poor and immigrant families from neighborhoods characterized by social disorganization. How long can they remain out of the eye of authorities when cousins, uncles, brothers, and parents are continually drawn into the petty crimes and activities of the streets that bring the police and, inevitably, the juvenile authorities?

For too many years corrections officials have been paralyzed by public stinginess and vindictive tirades about why criminals should not get valuable services and programming that law-abiding poor are denied. The problem is in the false dichotomy—the poor should not be denied either. The problem is that none, least of all offenders, are able to obtain programming and services from the state. We have become a soulless machine that

blames and punishes without humanitarian concern for the rehabilitation and improvement of the wayward. These are the people on whom we focused during early American civic development. Then, we took pride in our ability to reform and recycle offenders back into the fabric of a working citizenship. Today, there is only an unforgiving litany of just desserts and cold, hard consequences. Perhaps it is time to break the pattern of institutional defeatism, to abandon the system of complex processing that only serves to discard and abandon people, and to adopt a rehabilitation mindset.

To do so, we must break the cycles. Cycles of violence, cycles of abuse, and cycles of crime all lead us to question whether there is really any intervention or treatment that offers hope for delinquents today. Do we have the resources and the patience to develop more individualized treatment strategies that might result in more successful outcomes? The suggestions offered in this volume give us much to think about in terms not only of what types of programming would be most effective but also why programming itself is critical for the future of youth corrections.

For us to engage in effective youthful corrections, it only takes imagination. Imagine working in a system in which children are valued; one in which their needs are addressed in unique and individual ways. Imagine workers who are optimistic and upbeat, encouraging and caring. Workers who take the time to mentor and teach, discipline and listen, and work with families to repair and restructure themselves into healthy functioning units. Imagine healing lives and seeing progress and hopefulness, jobs and education, come together as a reality despite the struggle and resistance, complications, and setbacks. Imagine seeing it work. When someone asks, ''what did you do today?'' imagine what you would say.

CHAPTER 1

What Works with Juveniles? Intervention, Treatment, and Rehabilitation

Clete Snell and Beau Snell

In recent years, a number of federal and state initiatives have had the objective to identify "what works" with juvenile offenders. The result has been a number of reports concerning programs and practices to reduce juvenile crime, including *Diverting Children from a Life of Crime: Measuring Costs and Benefits; Investing in Our Children: What We Know and Don't Know about the Costs and Benefits of Early Childhood Interventions*; and *Preventing Crime: What Works, What Doesn't, What's Promising*. The overriding message in these reports is that a growing body of knowledge demonstrates that many programs work. Currie examined a number of programs that had crime-reduction potential and concluded, "the best of them work, and they work remarkably well given how limited and underfunded they usually are."[1] This chapter will focus on a number of innovative programs that have demonstrated effectiveness in preventing, treating, and rehabilitating juvenile offenders.

HOW DO WE KNOW WHAT WORKS?

Before discussing programs that work with juvenile offenders, an important question to consider is, how do we know what works? The programs and policies that will be discussed in the following sections underwent *evaluative designs*. The purpose of an evaluation is to determine whether a program was effective in accomplishing its goals. Experimental evaluative designs are an especially effective way of determining whether a program is working. It includes a *control group* of untreated juveniles. This makes it possible to compare the *treatment group*, the group receiving the

intervention or program, with a group that does not receive the treatment. In this way, researchers can answer such questions as the following: is the treatment more effective than simply leaving juveniles alone or providing them with the typical services?

An extremely important component of experimental evaluative designs involves *random assignment* procedures, such that juveniles are randomly assigned to the treatment group or the control group. Random assignment gives researchers confidence that the treated and untreated groups are equivalent in important ways at the beginning of the program. If the purpose of a program is to reduce delinquency, random assignment should ensure that both groups are equal in their frequency of delinquent offenses before a program begins. Random assignment helps ensure that differences between the groups after a treatment or program are due to exposure to the program and not other factors. Because this type of research design rules out so many alternative explanations for differences in outcomes between treated and untreated groups, no other type permits as much confidence in linking treatments or program goals with results.

Unfortunately, for a variety of reasons, it is not always possible to randomly assign individuals to groups that receive a treatment or program intervention and those that do not. In these cases, researchers attempt to compensate by creating a comparison group that is nearly equivalent in important ways such as age, gender, race, and socioeconomic status.

Another important component of evaluation research is the inclusion of *follow-up measures*. Initial results of a program or treatment may show that the treatment group improved in some way, such as had lower delinquency rates or a decrease in drug use. Follow-up measures are important because they allow researchers to assess the stability of initial findings. Sometimes they show that initial findings remain essentially unchanged over time. On other occasions, follow-up measures may reveal that initial differences have disappeared. This result suggests that the program or treatment did not have a lasting impact.

Finally, evaluations of programs and treatments should be repeated in other settings and with different participants. This is called *replication*. As treatment hypotheses or program goals are repeated and similar results are reported, researchers gain confidence in the effectiveness of the treatment approach or the program.

In 1996, researchers at the University of Colorado developed the *Blueprints for Violence Prevention Program*. The sole goal of the program was to identify effective interventions to prevent or reduce juvenile delinquency. To be judged effective the following components had to be in place: (1) a strong evaluation design (generally using random assignment) had to be included; (2) the evaluation must show that the program had *significant* prevention effects (the difference in outcomes between the treatment group and control group cannot be so trivial that it does not justify the costs of the program); (3) the effect must be sustained over time, at least one year, with no evidence of loss of effectiveness; and (4) the program must be effective in more than one site. The researchers examined hundreds of programs and only found about a dozen model

programs that meet all of these criteria. Those programs will be discussed in the following section. It's important, however, to first discuss why so many other interventions have fallen short.

Ellis and Sowers discussed what they consider the common characteristics of intervention failures with juveniles.[2] First, many programs are not sufficiently comprehensive. In other words, they focus on only one aspect or problem in the life of a juvenile offender. Other programs have failed because they used ineffective strategies to address specific problems. Many programs have suffered from a lack of trained, professional workers. High turnover or staff without basic knowledge and skills to aid offenders has plagued other programs. Similarly, quality of service delivery has been a frequent problem. In many cases, practitioners find it difficult to consistently provide the services they were trained to provide for many possible reasons, such as high caseloads. Many programs are ineffective because of a lack of family participation. In institutional settings, juveniles are frequently taken far away from their family. In other cases, where families could participate, many do not. Finally, other problems include inadequate follow-up to treatment and insufficient funding.

In contrast, successful interventions have a theoretical base, are highly structured, and are comprehensive in nature. Successful programs confront the known risk factors for delinquency, including breakdowns in parenting and the family, school failure, peer reinforcement of delinquency, lack of community involvement in the lives of youth, abuse and neglect, and early childhood aggression. Early intervention in the lives of children at risk of delinquency is a consistent theme among these programs. Another theme is that multiple channels or networks that reinforce prevention messages should be used. Drug prevention programs are somewhat overrepresented among the model programs. Why is that the case? The public health community has found successful prevention methods for gateway drugs such as tobacco, alcohol, and marijuana. Not only are these drugs gateways to illicit substance abuse, but also the use of these drugs is highly correlated with other forms of delinquency.

MODEL PROGRAMS

The Midwestern Prevention Project

The Midwestern Prevention Project (MPP) is a comprehensive, community-based, multifaceted program designed to prevent adolescent drug use. The MPP involves an extended period of programming. The program is initiated in a school setting, but unlike Drug Abuse Resistance Education (D.A.R.E.) and similar programs, it goes beyond the school to include family and community contexts.

The MPP is designed to bridge the transition from early adolescence to middle through late adolescence. Thus, programming starts with whole populations of 6th- or 7th-grade students. Studies consistently indicate that early adolescence is the first risk period for gateway drug use

(i.e., alcohol, cigarettes, and marijuana). Research shows that youth who experiment with these drugs are more likely to abuse other illicit drugs later in life.

Recognizing the tremendous social pressures to use drugs, MPP provides training skills in how to avoid drug use and drug-use situations. These skills are initially learned in the school program. However, they are also reinforced through parents, the media, and community organizations.

The MPP message is distributed through a system of coordinated community-wide strategies that include mass media programming, a school program and school boosters, parent education, community organizations, and a means to work toward local policy changes regarding tobacco, alcohol, and other drugs. The primary component of the programming occurs in the school, but the other components are introduced sequentially to the community at a rate of one per year. The mass media message is distributed throughout all the years of the program.

The school program uses social learning techniques such as modeling, role-playing, and discussions with student peer leaders assisting teachers. The family gets involved when youth have homework assignments. Parents also get involved when they meet with the school program members through parent-principal committees. These committees review school drug policy and provide parent-child communications training. Mass media coverage, community organizations, and local health policy changes work together to deliver a consistent message that drug use is not the norm. Representatives from all of the program components meet regularly to review and refine programs.

Evaluations of the MPP have shown impressive results. Youth involved in MPP had a 40 percent reduction in daily smoking and a similar reduction in marijuana use compared with a control group of youth that did not receive these messages. Smaller reductions in alcohol use were achieved through grade 12. Long-term follow-ups have shown positive impacts on daily smoking, heavy marijuana use, and some hard drug use through early adulthood. Evaluations have shown that MPP has led to increased communications between parents and their children about drugs. The program has also helped to establish prevention programs, activities, and services among community leaders.[3]

The program costs approximately $175,000 over a three-year period. This includes the costs of teacher, parent, and community leader training and curriculum materials for the school-based program that serves 1,000 students.

Big Brothers Big Sisters of America

Mentoring programs have become extremely popular over recent years. Big Brothers Big Sisters of America (BBBSA) is a mentoring program that has been providing adult support and friendship to kids for almost a century. In 1991, BBBSA had a network of nearly 500 agencies across the country, with more than 70,000 youth and adults matched in one-to-one relationships.

The program typically involves youth ages 6 to 18 from single-parent homes. BBBSA delivers services by volunteers who meet regularly and engage in activities with a youth on a one-to-one basis. Managers, who follow through on each case from the participant's initial inquiry through closure, use a case management approach. The case manager screens adult and youth applicants, creates and supervises the matches, and terminates the match when eligibility requirements are no longer met, or either party decides not to participate fully in the relationship.

BBBSA has developed rigorous standards and procedures that other mentoring programs lack. Participants go through an initial *orientation* session. Volunteers are screened using background checks, an extensive interview, and a home visit. The screening process attempts to exclude volunteers who may inflict psychological or physical harm, do not have the capacity to form bonding relationships with children, or who are unlikely to honor time commitments. The youth assessment requires a written application by the parent, along with interviews of both the parent and child, and a home visit. It is intended to help the caseworker learn about the child so that the best possible match is made. Matches are based on a number of criteria including the needs of the child, the volunteer's abilities, parental preferences, and the capacity of program staff.

Program staff maintains supervision through an initial contact with the parent, the child, and the volunteer within two weeks of the match. Afterward, monthly telephone contact is made with the parent or child and the volunteer in the first year. Quarterly contact is then made with all parties for the duration of the match.

One evaluation of the BBBSA program found that after eighteen months, participants were 46 percent less likely to initiate drug use and 27 percent less likely to initiate alcohol use as compared with a control group. Participants were about one-third less likely than the control group youth to hit someone, and demonstrated better academic behavior, attitudes, and performance. Finally, participants were more likely to have better relationships with their parents and their peers as compared with the control group.[4] The cost of the program is approximately $1,000 per year for making and supporting each match.

Life Skills Training

The Life Skills Training (LST) program has been evaluated more than a dozen times and has consistently been found to dramatically reduce tobacco, alcohol, and marijuana use. Perhaps more impressive, these studies show that the program works with a diverse range of adolescents, produces long-lasting results, and is effective when taught by teachers, peer leaders, or health professionals.

Initially, LST is introduced in grades 6 or 7 depending on the school structure and continues through middle and high school for three years. Like the MPP, LST was designed to prevent or reduce gateway drug use. Generally, the program has been implemented in school classrooms and delivered by teachers. The program is delivered in 15 sessions in the first

year, 10 sessions in the second year, and 5 sessions in the final year. The sessions generally last an average of 45 minutes and can be delivered once a week or as an intensive minicourse.

The program consists of three major components that teach students general self-management skills, social skills, and information and skill development specifically related to drug use. Training techniques are fairly diverse using instruction, demonstration, feedback, reinforcement, and practice.

All evaluations of LST have revealed the program's effectiveness. Averages of the outcomes from more than a dozen evaluations of LST have found that it cuts tobacco, alcohol, and marijuana use by 50 to 75 percent. Long-term program follow-ups (six years after the intervention) have found that it reduces multiple drug use by 66 percent, pack-a-day smoking by 25 percent, and use of inhalants, narcotics, and hallucinogens.[5] LST can be implemented at a start-up cost of $2,000 per day for the initial training (training lasts one or two days), and at a continuing cost of $7 per student per year.

Multisystemic Therapy

Multisystemic Therapy (MST) is an intervention that uses intensive case management to target multiple problems with a juvenile offender and his or her environment. The assessment and intervention approach of MST is based on systems theory. Systems theory claims that individuals are integral parts of several different and overlapping social systems. The behavior of individuals affects the systems with which they interact and, in turn, the behavior of the systems affects the individual. Thus, this theory suggests that when juveniles commit crimes, it is in part due to choices the juvenile made and, in part, influenced by factors in his or her environment. According to this theory, for interventions to be lasting, they cannot focus solely on the juvenile.

In MST, a therapist or case manager is assigned to individual juvenile offenders. A team of other professionals assists the case manager, and they are the source of all services to the offender and his or her family. This team is available 24 hours per day and 7 days per week. The team identifies and addresses multiple problems in the juvenile and throughout his or her social systems. Caseloads are kept necessarily small. Specific interventions are used for specific situations such as cognitive-behavioral therapy for the offender and family. Other strategies may target other social systems, such as the school, peer groups, and the community. The case management team has frequent contact with the family throughout the early stages of the intervention. The number of contact hours gradually decreases as prosocial competence in the offender grows and problems are solved.

There have been several outcome evaluations of MST. One of the strengths of this program is that it has been used with several different offender groups, including sex offenders, substance abusers, neglectful and abusive families, and inner-city offenders. All evaluation studies have demonstrated positive results.

Evaluations have shown that serious juvenile offenders who participated in MST had reductions of 25 to 70 percent in long-term rates of rearrest and reductions of 47 to 64 percent in out-of-home placements. Additionally, MST participants experienced measurable improvement in family functioning and significantly fewer mental health problems than serious offenders receiving standard treatment.[6]

MST has achieved these results at a much lower cost than the usual mental health and juvenile justice services, such as incarceration and residential treatment. At a cost of $4,500 per youth, a recent policy report concluded that MST was the most cost-effective option of a wide range of intervention programs aimed at serious juvenile offenders.

Nurse-Family Partnership

Nurse-Family Partnership (Formerly Prenatal and Infancy Home Visitation by Nurses) was designed to serve low-income, at-risk pregnant women who are having their first child. Nurses visit the mother's home throughout her pregnancy and during the first two years of the child's life. The primary mode of service delivery is home visitation. However, the program also uses a variety of other health and human services to achieve its positive effects.

There are several goals of the program. One goal is to help women improve their prenatal health and the outcomes of pregnancy. The program attempts to improve women's personal development, planning for future pregnancies, development of education goals, and job placement. Finally, to improve the health and development of children, the program attempts to improve the care provided to infants and toddlers. Generally, a nurse visitor is assigned to a family and works with that family throughout the length of the program. The program has been applied in urban and rural areas and has supported white and African American families.

Evaluations of the program have found positive results for all program goals. For example, an evaluation was conducted of primarily white families in Elmira, New York. Program recipients were low-income, unmarried women who were provided a nurse home visitor. Women in the program had 79 percent fewer verified reports of child abuse or neglect than a matched comparison group. Program recipients had 31 percent fewer subsequent births, averaged intervals more than two years greater between the birth of their first and second child, and received 30 months less of Aid to Families with Dependent Children. In terms of criminal and behavioral issues, program recipients had 44 percent fewer behavioral problems caused by alcohol and drug abuse and 69 percent fewer arrests. Some of the program participants were young teenage women. Among 15 year olds in the program, there were 60 percent fewer instances of running away, 56 percent fewer arrests, and 56 percent fewer days of alcohol consumption than in the comparison group.[7]

In 1997, the program was estimated to cost $3,200 per year per family during the first three years of program operation. Once the nurses were completely trained and working at full capacity, the cost drops to $2,800

per family per year. Actual costs vary according to community-health nurse salaries. Many communities involved in the program have used a variety of local, state, and federal funding sources, including Medicaid, welfare-reform, maternal and child health, and child abuse prevention dollars.

Multidimensional Treatment Foster Care

Multidimensional Treatment Foster Care (MTFC) was created for youth diagnosed with antisocial personality disorder, emotional disturbances, and delinquency. It is a cost-effective alternative to group or residential treatment, incarceration, and hospitalization for youth with serious and chronic behavioral problems and for youth with histories of severe criminal behavior who are at risk of incarceration.

Community families are recruited, trained, and closely supervised to provide MTFC youth with treatment and intensive supervision at home, in school, and in the community. MTFC parents must complete a preservice training session before placement. Afterward, MTFC parents attend a weekly group meeting run by a program case manager. Supervision and support of MTFC parents continues through daily telephone calls to check on youth progress and problems.

The training provided to MTFC parents emphasizes numerous behavior management techniques, including the following: clear and consistent limits with appropriate follow-through on consequences, positive reinforcement for appropriate behavior, a relationship with a mentoring adult, and separation from delinquent peers. The goal is to provide troubled youth with a structured living environment.

MTFC recognizes that the program cannot make changes with the adolescents it serves without also making changes to their home life. Therefore, family therapy is provided for the youth's biological (or adoptive) family. The ultimate goal is return the adolescents to their homes. The parents are taught the same behavioral approaches and structure that is being used in the MTFC home. Parents are encouraged to maintain contact with the MTFC case manager and get information about their child's progress in the program. The MTFC case manager also maintains contact and coordinates with the youth's probation officer, school officials, employers, and other adults in the youth's life. Evaluations of MTFC have found that program youth have made impressive strides in comparison to youth in control groups. One year after completing the program, MTFC participants spent 60 percent fewer days incarcerated, had significantly fewer rearrests, were three times less likely to run away from home, and were much less likely to abuse hard drugs.[8] The cost of the program per youth is $2,691 per month, and the average length of stay is seven months.

Olweus Bullying Prevention Program

The Olweus Bullying Prevention Program has the goal of reducing and preventing bully-victim problems. The program is provided in a school

setting, and school staff are primarily responsible for introducing and implementing the program.

Because bullying behavior generally develops at a young age, the program targets students in elementary, middle, and junior high schools. Although all students in a particular school participate in the program, other individual interventions are directed to students who are identified as bullies or victims of bullying.

The program is implemented at the school level, class level, and individual level. First, at the school level, an anonymous questionnaire is administered to assess the nature and prevalence of bullying at each school. Additionally, a school conference day is held to discuss bullying at school and develop interventions. One intervention is a Bullying Prevention Coordinating Committee to manage all aspects of the program and to supervise areas of the school where bullying typically takes place.

Within the classroom, class rules are created and enforced concerning bullying, and regular class meetings are held. Interventions are provided for particular children identified as either bullies or victims and include these children's parents. Counselors and other school-based mental health experts may assist teachers. The Olweus Bullying Prevention Program has been found to achieve its primary goal—that is, to substantially reduce bullying and victimization among boys and girls. The program has had the added benefit of reducing other problem behaviors, such as vandalism, fighting, theft, and truancy. Students who participate report improved order and discipline in the classroom, more positive social relationships with peers, and a better attitude toward school and academics.[9] Costs for an on-site program coordinator vary from site to site. Other program expenses are approximately $200 per school to administer the survey and $65 per teacher for the costs of classroom materials.

Promoting Alternative Thinking Strategies

The primary goals of Promoting Alternative Thinking Strategies (PATHS) are to promote emotional and social competencies among elementary-age children and reduce aggression and behavior problems. The curriculum attempts to enhance the educational process in the classroom. Educators and counselors deliver the program over several years throughout an entire elementary school. The program was developed to be delivered at the entrance to schooling and continue through the 5th grade.

PATHS has been field tested and researched with children in typical classroom settings, but it has been used with a variety of special needs students. The PATHS Curriculum is delivered three times per week for a minimum of 20 to 30 minutes per day. It provides teachers with developmentally based lessons, materials, and instructions for teaching their students emotional literacy, self-control, social competence, positive peer relations, and interpersonal problem-solving skills. Teachers who participate receive training in a two- to three-day workshop and in biweekly meetings with a curriculum consultant.

One of the primary objectives of promoting these developmental skills is to prevent or reduce behavioral and emotional problems. Students who receive PATHS lessons are taught to identify and label their feelings, express feelings, assess the intensity of feelings, and manage their feelings. They are taught the difference between feelings and behaviors, and how to delay gratification, control impulses, and read and interpret social cues. Finally, the curriculum teaches students how to understand the other's perspectives, problem-solve, develop a positive attitude toward life, and use both nonverbal and verbal communication skills.

The PATHS Curriculum has been shown to reduce behavioral risk factors. Evaluations have demonstrated significant improvements for program youth, including special needs students, as compared with control youth in several important areas. Youth who participate in the program have been found to improve self-control, improve understanding and recognition of emotions, increase the ability to tolerate frustration, use more effective conflict-resolution strategies, and improve thinking and planning skills. Special needs students were more likely to experience less anxiety and conduct problems, symptoms of sadness, and depression. Finally, there were fewer reports of conduct problems, including aggression, among program participants.[10]

Program costs over a three-year period range from $15 to $45 per student per year. The higher cost would include hiring an on-site coordinator, while the lower cost would include redeploying current staff.

The Incredible Years

The Incredible Years is similar to PATHS in the sense that it has the goals of promoting emotional and social competence, as well as preventing, reducing, and treating behavior and emotional problems in young children. The program targets youth ages two to eight who are at risk or already engaging in conduct problems such as aggression, defiance, and oppositional and impulsive behaviors. The program is designed to promote the social adjustment of high-risk children in preschool programs, such as Head Start; at-risk, elementary-age youth through grade three; and other children who have begun to demonstrate conduct problems.

The Incredible Years includes a series of programs that address multiple risk factors across settings related to the development of conduct disorders in children. Facilitators use videotape scenes to encourage group discussion, problem-solving, and sharing of ideas for parents, teachers, and students. The BASIC parent series is a necessary component of the prevention program, while the parent training, teacher training, and child components are strongly recommended with particular types of kids and parents.

The Incredible Years parenting series includes three distinct programs for parents of high-risk children or for parents with children displaying behavior problems. The BASIC program introduces parenting skills known to encourage children's social competence and reduce behavior problems.

These skills include learning how to play with children, helping children learn, using reinforcement through praise and incentives, setting limits, and applying strategies to handle misbehavior.

The ADVANCE program emphasizes parent interpersonal skills, such as effective communication, anger management, problem-solving between adults, and ways to give and get support. Another program, termed SCHOOL, helps parents promote their child's academic success and emphasizes reading skills, development of homework routines, and building good working relationships with teachers.

Incredible Years Training for Teachers emphasizes effective classroom management skills. Some of these skills include use of teacher attention, praise and encouragement, incentives for difficult behavior problems, and proactive teaching strategies. The training provides instruction about how to manage inappropriate classroom behaviors, the importance of building positive relationships with students, and how to teach empathy, social skills, and problem solving in the classroom.

The final area of the Incredible Years involves training for children. The Dinosaur Curriculum emphasizes training children in such skills as emotional literacy, empathy or taking the perspective of another, friendship skills, anger management, interpersonal problem-solving, adherence to school rules, and success at school. The program is used for small groups of children identified as displaying conduct problems. There have been six randomized control group evaluations of the parenting series. These evaluations have shown that parents who participated in the program increased the use of positive praise and reduced the use of criticism and negative commands. Parents also increased their use of effective limit-setting, replaced spanking and harsh discipline with nonviolent discipline techniques, and increased monitoring of children. There were reductions in parental depression and increases in parental self-confidence. Families that participated experienced increased positive family communication and problem-solving. They also were able to reduce conduct problems in their children and gain greater compliance to parental commands.[11] Two randomized control group evaluations found that teachers who participated in the program increased their use of praise and encouragement and reduced their use of criticism and harsh discipline. These teachers experienced greater cooperation among their students, found that their students had more positive interactions with peers, and saw that their students were more engaged with school activities. Importantly, they also reported greater reductions in peer aggression in the classroom.[12] Two randomized control group evaluations of the child training series found that children who participated in the program significantly increased their ability to solve problems and were better able to manage conflict with their peers.[13] These youth also reduced their conduct problems at home.

The costs of curriculum materials (including videotapes, comprehensive manuals, books, and other teaching aids) for the Parent Training Program are $1,300 for the BASIC program, $775 for the ADVANCE program, and $995 for the SCHOOL program. The Teacher Training Program costs $1,250, and the Child Training Program costs $975.

Project Towards No Drug Abuse (Project TND)

Project TND is an effective drug abuse and violence prevention program that targets high school youth from all types of demographic backgrounds at both traditional and alternative schools.

Project TND consists of 12 in-class interactive sessions that provide motivation skills and decision-making material targeting cigarette, alcohol, marijuana, and hard drug use, and violence-related behavior. The topics of the sessions include the following: (1) active listening; (2) stereotyping; (3) myths and denials; (4) chemical dependency; (5) talk show; (6) marijuana panel; (7) tobacco use cessation; (8) stress, health, and goals; (9) self-control; (10) positive and negative thought and behavior loops; (11) perspectives; and (12) decision making and commitment.

Each classroom lesson is approximately 40 to 50 minutes in length and designed to be implemented over a four-week period. The instruction to students provides motivation enhancement activities to not use drugs, detailed information about the social and health consequences of drug use, and correction of common misperceptions about drugs. The instruction addresses a variety of topics, including active listening, effective communication skills, stress management, coping skills, tobacco cessation techniques, and self-control to counteract risk factors for drug abuse relevant to older teens.

Project TND has been tested in three experimental field trials. Approximately 3,000 youth from 42 schools participated across the three trials. In comparison with youth who received traditional antidrug education, after one year participants were 27 percent less likely to use cigarettes in the past 30 days, 22 percent less likely to use marijuana in the past 30 days, 26 percent less likely to use hard drugs, 9 percent less likely to be baseline drinkers, and 6 percent less likely to be a victim of violence.[14]

The Project TND Teacher's Manual costs $70, and student workbooks cost $50 for a set of five. A two-day training session, which includes the trainer's fee and travel, is $2,500.

The Perry Preschool Program and Head Start

The *Blueprints for Violence Prevention Program* mentioned several programs that it considered promising for reducing problem behaviors but that failed to make their list because they were not supported by rigorous studies. One of those programs is the Perry Preschool Program. Although it was an "honorable mention," so to speak, it's a unique program that has been widely discussed for many years because of its effectiveness.

Many young children from disadvantaged neighborhoods and low-income families come to school unprepared. Their language skills are often less developed, and their motivation to achieve and self-confidence are lower than that of middle-class children. Essentially, they begin school at a tremendous disadvantage. Delinquency studies tell us that school failure frequently leads to a host of problems later in life. Beginning in the 1960s, educators and researchers began creating developmentally focused preschool programs.

In 1962, a psychologist named David Weikart developed the Perry Preschool Program. Among the early preschool programs, it was one of the few created specifically to prevent delinquency later in life. Dr. Weikart recruited 123 African American children ages three and four from low-income families in Ypsilanti, Michigan. All families had incomes below the poverty line. Children were randomly assigned to either the experimental preschool program or to a control group. Perry Preschool instruction lasted two-and-a-half hours per day for two school years. The program included many important features, such as a high teacher-to-student ratio (1 to 5), team teaching, weekly home visits lasting about one-and-a-half hours, and student participation in planning classroom activities.

Evaluations of the program have revealed some impressive results.[15] By the age of 19, program participants were more likely than the control group to have graduated from high school, and were more likely to have a job, attend college, or pursue further training. More important from the perspective of delinquency prevention, the rates of arrest for Perry participants were 40 percent lower than the control group. The rate of teen pregnancy was 42 percent lower among the Perry group as compared with the control group. A cost-benefit analysis of the Perry Preschool Program indicated that the program costs about $5,000 per child, but that a two-year program will yield $3 for every $1 invested.

The Perry Preschool Program and similar initiatives provided the foundation for Project Head Start, which is widely considered to be one of the most ambitious antipoverty programs in American history. Head Start was designed as a comprehensive program designed to eliminate the physical, intellectual, and social barriers to success in school. Evaluations of Head Start and similar programs have found that participants were less likely to be held back a grade or placed in special education during middle and high school than comparison students. Most important, however, Head Start reached only 20 percent of children in need in 1990. Congress has increased funding of Head Start, but researchers question whether the program has the resources needed to be effective. Unlike the Perry Preschool Program, most Head Start programs spend about 60 percent less per child and do not employ professional staff.[16]

ARE WE PRACTICING WHAT WORKS?

The 1980s and 1990s will long be remembered as a time when we "got tough" on juvenile offenders. A large increase in juvenile violence in the late 1980s and early 1990s led to much tougher measures to decrease juvenile crime. In terms of community corrections, there has been a greater use of juvenile boot camps, intensive probation, and scared straight programs.

There has also been a tremendous increase in the frequency of juveniles waived to adult courts. That is, the juvenile court either voluntarily released jurisdiction over youth or were required to by legislators or

prosecutors. The result is that many youth are prosecuted as adults and receive adult punishment. Some states have passed habitual juvenile offender laws, much like three-strikes laws, for youth who commit several acts of delinquency. Finally, until last year when the Supreme Court overruled itself, the death penalty was an option for juveniles age 16 or above. All of these policies have been evaluated for their effectiveness as well. Worrall states, "The verdict for juvenile crime control, as opposed to prevention, is not a favorable one. With the possible exception of restitution and treatment, most of the popular methods of addressing juvenile crime after it has been committed do not appear to work."[17]

Not only do they not work, but also they are much more expensive than the prevention and intervention programs discussed above. They cost more fiscally, and they certainly cost more in the loss of productive youth. Blumstein observes, "If you intervene early, you not only save the costs of incarceration, you also save the costs of crime and gain the benefits of an individual who is a taxpaying contributor to the economy."[18] "Getting tough" may actually have the opposite effect of specific deterrence from a life of crime. Most of those juvenile offenders sentenced to long terms in adult prisons will be released, and many will come out bitter, disillusioned, and lacking basic skills to succeed. Instead of getting tough on juvenile crime, it's time to get smart and innovative. We have a good working knowledge of what works, we just need to do it.

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CHAPTER 2

Delinquency Programs That Failed

Pamela J. Schram

This chapter provides an overview of three nationally recognized programs for juveniles that have been considered "failures." Before focusing specifically on these three programs, however, it is essential to understand how a program is considered "successful" or "unsuccessful." To appreciate how programs are deemed successful or unsuccessful, one needs to understand the importance of conducting evaluation research. This chapter begins with a general discussion of evaluation research as well as key issues pertaining to this type of research. This chapter next provides a general overview of three juvenile programs that have been deemed failures: the Juvenile Awareness Project ("Scared Straight"), Drug Abuse Resistance Education (D.A.R.E.), and boot camps.

IS THE PROGRAM A SUCCESS OR FAILURE?

Evaluation Research

Compared with other types of research, such as experimental or survey, evaluation research is not so much a research *design* as it is a research *purpose*. Specifically, the purpose of evaluation research is to provide scientific evidence that guides public policy or programs. Designs used in basic research are easily adapted for implementation in evaluation research.[1] Evaluation research attempts to answer such questions as the following: "Do the programs work?" "Do the programs produce the intended result?" "Do the programs provide enough benefits to justify their costs?" and "Should the programs be sustained or discontinued?" Thus, "evaluation

research can be defined as measurement of the effects of a program in terms of its specific goals, outcomes, or particular program criteria."[2]

There are two general types of evaluation research—process evaluation and impact evaluation. Process evaluation focuses on the relationship between the results of program participation (such as the number of arrests) and the program inputs and activities (such as the selection of participants and program delivery). Impact evaluation examines the relationship between outcomes (such as crime reduction) and inputs, activities, and program results. Other approaches to learning about a program include assessment and monitoring. Assessment, or needs assessment, attempts to identify an activity or resource for a particular area or organization. Monitoring examines whether the plans for program implementation have been met; for instance, do the program activities correspond to the program inputs?[3]

To further illustrate what is meant by evaluation research, Rossi and Freeman maintained that *comprehensive evaluations* consist of three general groups of activities. These activities are listed below along with examples of questions associated with these activities:[4]

- *Program conceptualization and design:* What is the extent and distribution of the target problem and/or population? What are projected or existing costs and what is their relation to benefits and effectiveness?
- *Monitoring and accountability of program implementation:* Is the program reaching the specified target population or target area? Are the intervention efforts being conducted as specified in the program design?
- *Assessment of program utility:* Is the program effective in achieving its intended goals? Is the program having some effects that were not intended?[5]

Key Issues Pertaining to Evaluation Research

It is essential to appreciate that evaluation research is not conducted in a "vacuum." Rather, this type of research is conducted in the field. Thus, various factors, intended as well as unintended, can have an effect on the research project. Some of these issues include implementing an experimental design, defining success, identifying the interest of stakeholders, and understanding the political climate.

The Experimental Design

Some maintain that one of the most rigorous methods used to evaluate a program is the experimental design. This type of design randomly assigns the research subjects into an experimental or a control group; the experimental group would receive some type of stimulus or treatment whereas the control group would not receive this stimulus or treatment. With respect to relevant factors, however, these two groups would be equivalent (e.g., age, gender, prior criminal history).

Other situations in which the research subjects are randomly assigned to either an experimental or control group can raise legal, ethical, and practical issues. For instance, some may argue that to deny individuals treatment only because they were randomly placed in a control group is unethical. Researchers also face practical issues when conducting an evaluation. For example, some programs may have difficulty identifying enough individuals for a program; thus, those individuals who were designated for the control group may be placed into the program. This could be a major issue if agencies need to "justify" the funding for the program by assessing the cost of the program *per* participant. Maintaining the integrity of the research design can also be problematic. For instance, if agency personnel are responsible for identifying individuals in the experimental or control group, as opposed to research staff, the criteria used for random assignment may be compromised and thereby increase the probability of biasing the groups.[6]

Defining Success

Traditionally, within a criminal justice paradigm, program success has been determined in terms of recidivism. As mentioned previously, this is primarily due to the perspective that comparison group studies, or *true* experimental designs, are the most robust type of research design. Furthermore, in an experimental study, some comparable outcome measure must relate to the goal of the program. In criminal justice, the primary goal of any program or intervention strategy tends to rely on the basic criterion of reducing future recidivism. As a result, recidivism usually is the preferred variable to determine program success. Although there is little disagreement that the goal of any criminal justice program should be to curtail future offending, there is a great deal of dissension as to the best approach to achieve that goal.

Difficulty in measuring program success in terms of recidivism was highlighted by Clear and Dammer.[7] They noted that a common criterion for measuring effectiveness (such as probation) is recidivism, or the return to criminal behavior:

> Recidivism in probation can be measured in at least four different ways: (1) violations of the conditions of probation, (2) arrests for new offenses committed by probationers, (3) convictions for new offenses, and (4) revocations of probation. Any one of these or a combination may display some level of recidivism.[8]

They continued by noting that this issue is further complicated by the amount of discretion used by the probation officer. For instance, if a probation officer considers the offender's behavior to be insignificant, such as a minor violation of the probation contract, then the officer might not consider any of the abovementioned actions as recidivism while on probation. Thus, although recidivism initially appears to be a logical goal of a program for probationers, the measurement of recidivism is not necessarily so simple.

Stakeholders

When evaluating a program, one should realize that many individuals may have an interest in the program as well as the results of the program evaluation. These interested individuals have been designated as *stakeholders.*[9] When conducting an evaluation, researchers may work with some stakeholders who are supportive of such a study; other stakeholders may be less supportive to the extent of opposing such an evaluation; and yet other stakeholders may be indifferent.

Kemshall and Ross provided a model for conducting an evaluation of a project that involves different agencies or stakeholders. They emphasize the importance of developing and maintaining partnerships. Further, they note that—

> [a]s resources continue to shrink and community organizations compete for relatively small sums of money which are nevertheless essential to their survival and the retention of staff, [agencies] will face increasingly difficult decisions on funding. Value for money, evaluation of desirable outcomes, and quality will be essential components of such decisions.[10]

In an attempt to understand the various barriers to conducting rigorous outcome evaluation, Petrosino conducted in-person interviews with research and evaluation managers working in different agencies in one state. When asked as to why, among the thousands of programs administered by these agencies, no randomized experiment had been conducted, three such reasons were given, including (1) we know our programs work (why evaluate them?); (2) we know they are not harming anyone; and (3) if the program helps a single child, it's worth it (again, why evaluate?).[11]

As mentioned at the beginning of this section, evaluation research is not conducted in a vacuum, devoid of other factors and influences. As Kemshall and Ross note, other issues are also at play, including funding and program retention. Another interrelated aspect to stakeholders is political climate.

Political Climate

The political climate can influence, directly or indirectly, not only the evaluation but also the continuation of a program. For instance, a "get tough on crime" perspective could influence funding for a more punitive-type program as opposed to a more rehabilitative-type program. As Maxfield and Babbie argue, "[p]olitical preferences and ideology may also influence criminal justice research agendas by making funds available for some projects but not others."[12] This issue is illustrated with the various programs that are discussed in this chapter.

Furthermore, when combining the issues of political climate and stakeholders, Seiter maintained that—

> [a]lthough determination of policy from program evaluation seems logical, criminal justice programs are often started and continued even when the

> program is not accomplishing its stated objectives. However, this seemingly inefficient management is not solely the responsibility of the program administrator; the pressures under which he [or she] operates must also be examined. Within the "fish bowl" operations of public programs, it is more difficult to accept failure and make changes than in the private sector.[13]

Thus, when determining whether a program is successful or unsuccessful, one needs to appreciate the various factors that influence not only program implementation but also the evaluation of that program. Having presented some of these issues, below are four programs that have been deemed so-called failures. It is essential, however, to consider such issues as implementing an experimental design, defining success, identifying stakeholders, and understanding the political climate.

JUVENILE PROGRAMS

Juvenile Awareness Project

One of the most well-known and controversial prison-based programs to scare juveniles straight was the Juvenile Awareness Project ("Scared Straight") at Rahway State Prison in New Jersey. The Scared Straight Program in New Jersey received a great deal of media coverage, especially given the Academy Award–winning documentary and academic debate over the program's effectiveness on juveniles' subsequent delinquent behavior.[14] Approximately 15 years earlier, however, a similar program was implemented at the Michigan Reformatory in Ionia, Michigan. An evaluation of the Michigan Reformatory Visitation Program revealed that of those juveniles who participated in the program, 43 percent subsequently received a probation violation or a court petition compared with 17 percent of the juveniles who were in the control group.[15]

History of the Juvenile Awareness Project (Scared Straight)

The Juvenile Awareness Project was originated by a group of prisoners serving sentences of 25 years or more in New Jersey's Rahway State Prison. In late 1975, this group of prisoners, identifying themselves as the Lifers' Group, was formed in part to address what they considered the general public's stereotyped, Hollywood image of prisons and prisoners. The Lifers maintained that this image portrayed prisoners as immoral and inhuman. Thus, they wanted to dispel these images and demonstrate that they were productive and worthwhile individuals.

One of the committees formed within the Lifers' Group was the Juvenile Intervention Committee. Richard Rowe, president of the Lifers, was instrumental in developing the Scared Straight Program. Because of concern over his then–12-year-old son who was getting into trouble, Rowe wanted to implement a program that could divert juveniles from further involvement in the criminal justice system. Furthermore, the Lifers realized that groups of college students were eligible to visit the prison for tours;

thus, if college students could tour the prison, why not juveniles? A significant difference, however, was that the college tours were focused on education, whereas the juvenile visits were designed "to deter or scare delinquency out of the kids."[16]

To put their idea into action, the Lifers had to first obtain permission from the superintendent of the prison, Robert S. Hatrak, to allow these juveniles to tour the prison and meet with the prisoners; second, they had to obtain the cooperation of an official or agency to bring the youths to Rahway. Rowe's wife contacted the local police chief and juvenile court judge for their support. Subsequently, they convinced Hatrak to permit such a program. In September 1976, the first group of juveniles toured the prison and met with the prisoners.[17]

Program Implementation

Deterrence theory is a fundamental aspect of Scared Straight. Essentially, deterrence theory proposes that the fear of punishment *deters* individuals from engaging in criminal activity. According to deterrence theory, a juvenile will rationally calculate the potential consequences of various actions. A key aspect to this rational calculation is the youth's perception of the speed, certainty, and severity of the punishment associated with engaging in certain illegal behaviors. Research has revealed that—

> youngsters were not so much concerned with how quickly or harshly they might be punished, but they did show some concern for how certain it would be that they would be punished.[18]

The Scared Straight Program centered around the concept that the fear of severe punishment inhibits juveniles from engaging in delinquent activity.

Intensive confrontation sessions were thought to be one approach to alter juveniles' perceptions of the severity of punishment. Initially, "[t]here was no overt attempt to intimidate or terrorize the youths ... but this later became a more prominent and dramatic feature of the project."[19] Thus, at the beginning, the program was not as confrontational. A correctional officer met each group of youths. These youths were given a brief overview of the program and then were processed through prison security. Next, the prisoners talked to the juveniles about prison life, including the harsh realities such as assaults, rapes, and suicides. The juveniles were given the opportunity to ask the prisoners questions about prison life. Subsequently, the youths were given a tour of the institution. During the beginning stages, a large number of youths participating in the program admitted to being neither delinquents nor predelinquents (i.e., demonstrating some indications of potential delinquency or at-risk factors).[20]

The prisoners, however, soon realized that this "big-brother" approach was not reaching the youths. Thus, a more confrontational and shocking approach was soon adopted.[21] The more well-known version of Scared Straight—in-your-face, intimidating, and harsh language—soon emerged.[22] It was this version of Scared Straight that received a great deal of media

coverage. With this approach, when sharing their experiences of prison life, the prisoners would shout, swear, and make threats of physical abuse. The following are examples of statements directed at the youths by the prisoners:[23]

"I'm gonnna hurt you."
"You take something from me and I'll kill you."
"You see them pretty blue eyes of yours? I'll take one out of your face and squish it in front of you."
"Do you know what we see when we look at you—we see ourselves."
"If someone had done this to me I wouldn't be here."

Some contend that this confrontational approach may have gone beyond taunts and threats. The Juvenile Awareness Program implemented two primary techniques: exaggeration and manhandling. The latter technique has likely led to certain incidents that generally are unknown by the public. For instance, there were allegations of various youths being "culled about, lifted by the head and shaken, 'goosed' or pinched in their behind."[24]

Evaluation of the Juvenile Awareness Project

Professor Finckenauer initially planned to evaluate the Juvenile Awareness Project by implementing an experimental design with random assignment. The successful implementation of this random assignment was strongly determined by the cooperation of the agencies who referred youth to the program. For various reasons, however, some of these agencies did not follow the protocol established for selecting youths for the experimental and the control groups. As a result, the research was modified in two important ways: (1) the sample size was reduced from 50 juveniles in each group to 46 in the Rahway group (i.e., experimental group) and 35 in the control group; and (2) the experimental design was changed to a quasi-experimental design (i.e., random assignment to the two groups was discontinued).[25]

A six-month follow-up period was established to track each youth's court record: six months after the prison visit for the Rahway group and six months after the pretesting for the control group. A major finding from this evaluation was that a significantly higher proportion of youths who did *not* participate in the program did better with respect to subsequent delinquent behavior compared with the Rahway group. Specifically, among the control group, 88.6 percent had no new recorded offense compared with 11.4 percent who did have a new recorded offense; among the Rahway group, 58.7 percent had no new recorded offense compared with 41.3 percent who did have a new recorded offense.[26]

Finckenauer's research revealed that among the Rahway group, 6 of the 19 youths (31.6 percent) with no prior record subsequently engaged in delinquent behavior. He noted that there could be various explanations for this outcome:

First, there is something about the project that actually stimulates rather than prevents or deters delinquency. Or second, these kids were simply

> hidden, closet delinquents who happened to get caught after attending the project.[27]

Additional analyses revealed that the Rahway group did significantly *worse* than the control group.

These findings are consistent with other programs similar to Scared Straight. Petrosino, Turpin-Petrosino, and Finckenauer conducted a systematic review of nine randomized experiments of the Scared Straight Program or similar prison visitation programs. Seven of these programs, including Finckenauer's evaluation of the Rahway State Prison Program and the 1967 evaluation of the program at the Michigan Reformatory, reported first effects in a negative direction. These researchers concluded that the results of the systematic review are sobering. Furthermore, these findings indicate that, despite the best intentions, the programs not only failed to met their objectives but also backfired, resulting in more harm than good. Given this potential to cause harm, the government has an ethical responsibility to rigorously evaluate, on a continual basis, the policies, practices, and programs it implements.[28]

An interesting aspect to the Scared Straight Program is the public response to the project. Finckenaeur noted that the release of his findings resulted in an "uproar" with a storm of response. He detailed the various types of reactions he received, including the following portions of a letter to Golden West Television from a juvenile court judge in Indiana:

> The Rutgers report and the ensuring criticism calls to my mind Walt Kelly's line in *Pogo*: "We have met the enemy and it is us." I am convinced that if Jesus Christ appeared tomorrow, then certainly some professor or college institute or government bureaucrat would quickly release a study, complete with statistics, to clearly prove that what we know to be true was false.[29]

Furthermore, the media coverage of the Scared Straight Program illustrates how the political climate can influence the public's perceptions of a program's effectiveness as well as reflect society's ideology about crime and criminals.

In March 1979, the documentary *Scared Straight* was nationally broadcasted in more than 200 markets. After airing the documentary, television stations were flooded with phone calls and letters praising the project.[30] The documentary, however, amplified or exaggerated its effectiveness. First, is amplified the extent of delinquency involvement among the juveniles participating in the documentary; at the worst, most of the youths had committed status offenses. Second, the documentary amplified the effectiveness of the program on subsequent delinquent behavior. Third, the documentary amplified the dramatic brutality of prison life; although rapes and assaults do occur in prison, the major problem prisoners deal with is boredom.[31]

Cavender argued that Scared Straight was a media-generated phenomenon:

> The media lured the public with crime statistics and success figures and manipulated and/or reinforced stereotyped perceptions of crime and

> criminals. Based on the distorted reality, the film offered a solution to crime, one that was kept before the public with supportive media coverage. . . .[32]

The Juvenile Awareness Project, and the mass media coverage of this project, revealed an interesting relationship between mass media portrayals of crime and criminals and public perceptions about crime and criminals. This relationship, however, did not develop during the Scared Straight Program. For instance, during the late-nineteenth century, reformers such as the "child-savers" informed the public of the problems of lower-class urban youth, which resulted in the establishment of the juvenile justice system.[33]

D.A.R.E.

The Drug Abuse Resistance Education (D.A.R.E.) Program is a school-based drug prevention program that focuses on educating youths about the consequences of using and abusing tobacco, alcohol, and other drugs. Compared with other school-based programs, D.A.R.E. has various unique features:

- The program is implemented by law enforcement officers, whereas other programs are usually implemented by teachers.
- D.A.R.E. officers complete approximately two weeks of intensive training whereas more drug prevention program training is shorter in length.
- D.A.R.E. officers are strongly encouraged to deliver the curriculum in sequence rather than departing from the lesson plans, whereas teachers in other drug prevention programs can modify their curricula.
- The officers' performance is usually monitored and evaluated in a more structured manner compared with others who implement drug prevention programs.
- The mission of D.A.R.E. officers is exclusively on drug prevention, whereas other programs also incorporate issues in addition to drug prevention.[34]

History of D.A.R.E.

The D.A.R.E. Program was originated in 1983 by the Los Angeles Police Department in collaboration with the Los Angeles Unified School District (LAUSD). The original core curriculum was developed by Dr. Ruth Rich, a health education specialist of the LAUSD. This core curriculum was based on an examination of various drug prevention programs with a specific focus on Project SMART (Self-Management and Resistance Training). D.A.R.E. was developed as a continuing drug education program for youths in kindergarten through high school. The junior high and senior high curricula were subsequently developed in 1986 and 1988, respectively. The D.A.R.E. Program designed a parent curriculum to instruct and inform parents how to recognize as well as prevent drug use among their children.[35]

During the first year of implementation, 10 officers were responsible for teaching the D.A.R.E. curriculum in 50 Los Angeles elementary schools. Currently, D.A.R.E. has been adopted throughout the United States as well as in some countries in Europe and Asia. The D.A.R.E. organization claims that 36 million school children around the world have participated in D.A.R.E. with approximately 26 million in the United States (D.A.R.E., n.d.). Thus, some have designated the D.A.R.E. program to be the largest as well as the most popular drug prevention program in the United States.[36]

Program Implementation

Some have maintained that the D.A.R.E. Program is "atheoretical,"[37] but others contend that it is grounded in both theory and research.[38] The D.A.R.E. Program is founded in the social skills and social influence model of drug education. Specifically, this "psychosocial" approach incorporates such factors as psychological inoculation (a psychological "vaccine" such as simulated temptations and pressures to use drugs), resistance skills training (teaching and learning skills to resisting negative social influences to use drugs), and personal and social skills training (general skills focusing such as socially learned behaviors and attitudes that are considered to be associated with substance abuse).[39]

The D.A.R.E. curriculum is modified to fit the varying grade levels: early elementary (kindergarten through 4th grade), elementary core curriculum (5th through 6th grade), middle school (7th through 8th grade), and high school (9th through 12th grade). The overall purposes of all the D.A.R.E. curricula include the following:

- Teach students to recognize pressures to use drugs from peers and from the media
- Teach students the skills to resist peer inducements to use drugs
- Enhance students' self-esteem
- Teach positive alternatives to substance use
- Increase students' interpersonal, communication, and decision-making skills[40]

The curriculum for each of the different grade level groups is periodically revised and updated.

Regarding D.A.R.E. officers and their training, law enforcement agencies are primarily responsible for identifying those officers who are designated as D.A.R.E. officers. Overall, these officers must be full-time, uniformed officers with at least two years of experience. It is recommended that agencies consider such factors as the officer's ability to interact with children, his or her organization skills, and the officer's ability to handle unexpected situations. Furthermore, potential D.A.R.E. officers need to be exemplary role models and must avoid making sexual, racial, stereotypical, or inappropriate remarks.

As mentioned previously, those selected officers are required to complete two weeks of intensive training. This training includes learning the core curriculum as well as practice lessons with peers and in the actual classroom environment; additional training includes public speaking, teaching skills, and classroom management. During this training, officers are evaluated and critiqued by mentors who are specifically trained in the D.A.R.E. Program. Additional speakers and consultants are involved in this training to assist the officers in areas that may require special expertise, such as a psychologist providing information on the various stages of child development.

A key feature of D.A.R.E. is how this program combines drug education efforts and community policing. Carter highlights the ways that implementing D.A.R.E. Programs complement the community policing component of law enforcement. Some of these complements include the following: (1) D.A.R.E. ''humanizes'' the police so that youths can relate to officers as people rather than see them only in terms of uniforms or part of an institution; (2) D.A.R.E. allows students to perceive police officers in a helping role, not just in an enforcement role; (3) D.A.R.E. provides a source of feedback to the police department to communicate the fears and concerns of youths; (4) D.A.R.E. can serve as a stimulus for youths to become more involved in other responsible activities, such as the Police Explorers, Police Athletic League, or other such programs; and (5) exposure to life in the public schools can enhance officers' perspectives on, and understanding of, community concerns and issues.[41]

Evaluation of D.A.R.E.

In the 1990s, there was a growing debate between D.A.R.E. advocates and the research community pertaining to demonstrated effectiveness of the program through rigorous scientific research. Interestingly, D.A.R.E. is one of the most extensively studied drug prevention programs in the world. These numerous studies, however, vary with respect to their methodological rigor. The two most rigorous longitudinal studies of the program revealed no overall effects on drug use after 6 and 10 years.[42]

One study, sponsored by the National Institute of Justice was conducted by the Research Triangle Institute.[43] This study conducted two types of assessments. First, the researchers examined the implementation of the program such as the structure and operations as well as how the program is perceived by program coordinators at the school-district level. Second, the researchers assessed the outcomes or effectiveness of the program by conducting a meta-analysis. A meta-analysis follows a research approach or analysis that synthesizes the results of previous studies to assess the short-term effectiveness of a program's core curriculum. This evaluation study compared the effectiveness of D.A.R.E. to other school-based substance abuse prevention programs.

In reference to ''user satisfaction,'' the research supported previous assertions as far as the prevalence, popularity, and support for the D.A.R.E. Program among students, school staff, parents, community

representatives, and law enforcement agencies. In terms of effectiveness, the findings were not as positive:

> [A]s our findings confirm D.A.R.E.'s prevalence and popularity, they also suggest that the original D.A.R.E. core curriculum has not been as successful in accomplishing its mission to prevent drug use among fifth- and sixth-graders as have interactive programs. Review of the rigorous evaluations of the original core curriculum, the heart of D.A.R.E., showed that D.A.R.E. has only limited immediate effects on students' drug use.[44]

Specifically, the meta-analysis revealed that the D.A.R.E. Program did enhance students' knowledge about substance abuse as well as their social skills. However, the short-term effects of substance use among 5th- and 6th-graders were small. The only significant short-term effect among this group was tobacco use.[45]

Based on research implementing rigorous methodological approaches to evaluating D.A.R.E., Rosenbaum summarized what is known about the effectiveness of the program as follows:

- D.A.R.E. has some immediate beneficial effect on students' knowledge and attitudes about drugs.
- These effects are short-lived and usually dissipate within one or two years.
- D.A.R.E.'s effect on drug use behaviors are extremely rare, and when found, they are small in size and dissipate quickly.[46]

In their 1998 review of the literature evaluating D.A.R.E. Programs, Rosenbaum and Hanson noted an inverse relationship between the strength of the methodological design of the study and the possibility of revealing positive outcomes. Thus, "[t]he stronger the research design, the less impact researchers have reported on drug use measures."[47]

Given the questionable effectiveness of the D.A.R.E. Program on subsequent substance use, Wysong, Aniskiewicz, and Wright attempted to explain why D.A.R.E. has emerged as a popular programmatic policy response. First, this type of response focuses attention on the role and interests of political elites and the media in constructing the drug war and, in turn, promoting antidrug policies to address this problem.

Second, this type of response alerts the public of the importance of symbolic dimensions of ameliorative social programs in generating political and public support:

> The latter point refers to the idea that the public reassurance features of such programs are likely to be more important in generating political and public support than their actual substantive effects. Furthermore, the reassurance value of such programs can be viewed as linked to the extent to which they are grounded in widely respected and legitimate institutions and cultural traditions.[48]

Thus, this illustrates how the political climate can influence the implementation and continuation of a program. For instance, Wysong, Aniskiewicz,

and Wright maintained that this type of program provides symbolic qualities, such as D.A.R.E.'s relationship with the schools and the police, that provide widespread acceptance regardless of effectiveness.

Boot Camps

In an attempt to define what is meant by a boot camp, the Office of Justice Programs outlined common elements of boot camps that include the following: (1) participation by nonviolent offenders only; (2) a residential placement of six months or less; (3) a regimented schedule emphasizing discipline, physical training, and hard labor; (4) participation among inmates in various education opportunities, job training, and substance abuse counseling or treatment; (5) and availability of aftercare services that are coordinated with the program during the time of confinement. In reference to boot camps for juveniles, the program guidelines included the following: (1) education, job training, and placement; (2) community service; (3) substance abuse counseling and treatment; (4) health and mental health care; (5) individualized case management; and (6) intensive aftercare services.[49]

History of Boot Camps

During the late 1800s, inmates spent a large part of their time involved in some type of trade or labor for manufacturing retail goods. These goods were subsequently sold at a much lower price because the manufacturers used inmate labor. Thus, these products undercut the prices of their competitors. Both the unions and the manufacturers argued that this competitive inmate labor was unfair and called for some type of legislative action. In 1905, President Theodore Roosevelt signed an executive order that banned the use of inmate labor on federal projects. In 1929, Congress passed the Hawes-Cooper Act, which allowed states to prohibit the importation of inmate products from other states.[50]

Because of these changes in the use of inmate labor, prison administers needed to find other activities that would occupy inmates' time. The New York Reformatory was one of the first prisons to consider some form of military-style training. In 1888, Elmira incorporated military organizational components into various aspects of the facility. Administrators thought that this approach had numerous benefits, such as helping inmates to reform their behavior and to learn honest skills. In the early 1900s, there was a major change in correctional ideology and practice. The militarization of facilities was replaced by a more therapeutic approach to helping inmates. In the 1970s, however, the therapeutic programming and rehabilitation approach was questioned and soon another major shift developed in correctional ideology and practice. This shift was a "get-tough" approach.[51]

This get-tough perspective revitalized military-style facilities:

> One of the primary factors in revitalization and subsequent proliferation of boot camp programs throughout the United States was that the harsh,

> physical nature of discipline and activity in these types of programs was in tune with the emerging political climate.[52]

In 1983, Georgia and Oklahoma were the first states to establish correctional boot camps for adults. For instance, to avoid federal takeover of their overcrowded state prison system, Georgia developed a 50-bed, 90-day program. Boot camps for young adult offenders continued to grow in the 1980s.[53] The first juvenile boot camp was established in Orleans Parish, Louisiana, in 1985.[54] In the 1990s, the number of boot camps for juveniles continued to increase. A 1995 survey of state and local correctional officials revealed that a majority of the 37 boot camp programs were established after 1993, most of which were in response to the 1994 Crime Act.[55]

The earliest boot camps have sometimes been referred to as ''first-generation'' camps. These camps emphasized military-based program activities; they did not provide much treatment or aftercare programming. The ''second-generation'' boot camps were characterized as toning down the military emphasis and increasing programming such as substance abuse, education, and cognitive training; these boot camps enhanced post-release supervision and services. Some have argued that a ''third generation'' of boot camps has been developed. These boot camps establish daily regimens that move away from a military emphasis toward a greater emphasis on programming and treatment. However, ''[t]hese latter programs are still quite uncommon, and especially so in relation to boot camps for adults.''[56]

Program Implementation

One example of how juvenile boots camps are implemented comes from an evaluation of three demonstration programs funded by the Office of Juvenile Justice and Delinquency Prevention (OJJDP) and the Bureau of Justice Assistance. The three demonstration cites were Cleveland, Ohio; Denver, Colorado; and Mobile, Alabama. As mentioned previously, these juvenile boot camps were similar in implementation to the adult boot camps, but the camps for juveniles also emphasized treatment and rehabilitation. Interestingly,

> [s]taff ... reported that the programs had some difficulty achieving a healthy balance between adhering to the strict requirements of a military model and addressing the unique correctional needs of juveniles. Instructors and counselors with military backgrounds, for example, cited the frustration of trying to adjust to youths who were younger, more defiant, and less accustomed to structure than military recruits ... staff without military experience were not familiar with military procedures and drills, and many favored rehabilitation over the military model.[57]

The program goals included the following: (1) serve as a cost-effective alternative to institutionalization; (2) promote discipline through physical conditioning and teamwork; (3) instill more values and a work ethic;

(4) promote literacy and increase academic achievement; (5) reduce drug and alcohol abuse; (6) encourage participants to become productive, law-abiding citizens; and (7) ensure that offenders were held accountable for their actions.[58]

The youths selected for these boot camps were males, between the ages of 13 and 18 years old. Most of these juveniles had committed a property, drug, or other felony offense involving no injury or a small dollar amount. All three sites implemented a 90-day residential program that included military drills and physical conditioning as well as rehabilitative activities. Other common features included the following: (1) Spartan facilities located on the grounds of an existing correctional facility; (2) on-site drill instructors, teachers, and case managers as well as staff with military backgrounds; (3) military-style uniforms for youths and drill instructors and use of military jargon, customs, and courtesies; (4) a daily routine, starting at 5:30 or 6:00 A.M. and ending around 9:00 or 10:00 P.M.; (5) punishment for minor breaches of rules and a progression of sanctions; and (6) a public graduation ceremony.[59]

In terms of boot camps in general, however, it is essential to emphasize that juvenile boot camp programs vary on such facets, including the following: (1) adherence to the original military model; (2) the background and age of the youths; (3) the length of stay at the camps; (4) the cost per juvenile; and (5) the amount and type of aftercare. Furthermore, there are varying positions as to whether these programs should be continued, discontinued, or enhanced.[60]

Evaluation of Boot Camps

The effectiveness of juvenile boot camps, in terms of recidivism, has not been encouraging. The OJJDP study, mentioned in the previous section, implemented an experimental design by randomly selecting youths for participation in one of the three boot camps (i.e., Cleveland, Ohio; Denver, Colorado; and Mobile, Alabama) between April 1992 and December 1993.[61] The control group consisted of matched youths sentenced to traditional incarceration and parole. Recidivism was defined as a new offense that subsequently resulted in a court action. For those youth in Cleveland, 72 percent of the participants were adjudicated for a new offense compared with 50 percent of the youths in the control group. In Denver, the experimental group also had a higher recidivism rate but the difference was much smaller (i.e., 39 percent and 36 percent, respectively). In Mobile, however, the boot camp participants had a lower recidivism rate than the control group, but this difference was small. Youths participating in all three boot camp sites reoffended in less time than the control group. For instance, in Mobile the average length of time to reoffend among the participants was 156 days compared with 232 days among the control group.

In 1994, Salerno maintained that although boot camps have been a fast-growing alternative sanction for adults, as well as juveniles, these programs are doomed to fail. Thus, boot camps should be phased out

immediately. He had three significant criticisms. First, screaming at someone to prepare for combat may be necessary to accomplish some type of goal, but what is the goal when yelling at a juvenile offender? Second, why would a military-type program help offenders when these individuals are rejected for military service? One possible reason for this is the relation between criminality and character disorder and the problems of authority often associated with criminals. Third, participating in a military-type program is not necessarily voluntary. Thus, a continuing problem is associated with these types of programs—that is, the value of coerced treatment.[62] However, a study by MacKenzie, Wilson, Armstrong, and Gover revealed that, compared with juveniles in traditional facilities, juveniles in boot camps perceived their environment to be more positive or therapeutic, as well as less hostile and dangerous, and to provide more structure.[63]

In their survey of the literature on juvenile boot camps, Tyler, Darville, and Stalnaker provided various insightful conclusions regarding these programs. First, shock incarceration programs, such as juvenile boot camps, have done little to reduce recidivism. However, these programs seem to be more popular among the general public. Thus, "we let superficial short-term results, the needs of political power and public demand for increased vigilance against delinquency color our perspective of a program's effectiveness."[64] Second, national recidivism rates for juvenile boot camp graduates are often high, with few exceptions. Third, although some evaluations have revealed that the long-term impact of juvenile boot camp programs is similar to traditional sanctions, the latter are usually less costly than boot camps. Fourth, boot camps are not "stand-alone" solutions. Specifically, it is naïve to presume that participation in a program for a few months will subsequently make permanent changes in these youths' lives.[65]

CONCLUSION

This chapter first provided a general overview of evaluation research with a particular emphasis on specific issues pertaining to this type of research. Subsequently, three programs that have been deemed "failures" were discussed in reference to their history, program implementation, and evaluation. Furthermore, these three programs illustrated how those specific issues pertaining to evaluation research (i.e., implementing an experimental design, defining success, the interest of stakeholders, and the political climate) were factors when evaluating the effectiveness, as well as the continuation, of these program.

The primary purpose of this chapter, however, is not necessarily to focus on these three programs. Rather, by using these three programs as examples, the purpose is to illustrate how those specific issues pertaining to evaluation research can influence any criminal justice policy or program. Thus, researchers, practitioners, policy makers, and the general public, should consider these issues when assessing the effectiveness of any policy or program.

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CHAPTER 3

The Role of Police in School Safety

Julie Kiernan Coon and Lawrence F. Travis III[1]

Crime and safety in schools has been a concern for at least the past 30 years, but recently it has been the subject of increased attention. Reports of violent incidents in schools—such as those that occurred in Red Lake, Minnesota; Littleton, Colorado; Jonesboro, Arkansas; Pearl, Mississippi; and West Paducah, Kentucky—have led to a range of efforts to reduce crime in schools. One common strategy has been to increase law enforcement involvement in schools. The current role of police in schools, however, has yet to be adequately explained nor has the role of police in public schools been determined.

This chapter presents findings from a national survey of public schools that was designed to learn about the role of law enforcement in schools. First, we briefly discuss prior research about school safety. We explain what was known, and not yet known, about the role of police in schools. Furthermore, we identify a wide range of activities police may participate in at schools, and then describe what we learned about the level and frequency of police involvement in these activities. The results presented are based on responses to a 2002 survey of more than 1,300 public school principals.

WHAT WAS KNOWN

Growing Interest

School safety was a major concern for many years and media reporting of high-profile cases of school violence captured the attention of parents, school administrators, and law enforcement. This growing interest in school safety was reflected by government sponsored research during the

1970s and 1980s. Some examples include the National Institute of Education's (1978) study, *Violent Schools-Safe Schools: The Safe School Study Report to the Congress*, and a special issue of *Crime and Delinquency* (1978) that specifically focused on the topic of school crime. Furthermore, the U.S. Department of Justice presented results from a national study of crime in schools in *Reducing School Crime and Student Misbehavior: A Problem Solving Strategy* (1986).[2] School crime became known as a special type of criminality,[3] and schools and government agencies sought effective responses to crime in schools.

Media coverage of school shootings during the 1990s created a sense of urgency about school crime. Early in this period, the problem was often specifically defined as school violence, rather than the broader issue of safety in schools.[4] Several federal projects and scholarly efforts attempted to address what was perceived to be a crisis in school safety. The Office of Juvenile Justice and Delinquency Prevention published numerous reports aimed at helping schools and youth-serving organizations reduce crime.[5] Furthermore, projects sponsored by the U.S. Department of Education and the U.S. Department of Justice—such as *Indicators of School Crime and Safety*; *School and Staffing Survey 2003-04*; *Safe School Initiative*; *Annual Report on School Safety 2000*; and *Principal/School Disciplinarian Survey on School Violence 1996-97*—examined school problems with the intention of helping to prevent school violence. Schools were encouraged to adopt "zero-tolerance" policies regarding drugs or weapons on campus, and programs aimed at prevention and heightened security at schools became commonplace.

Factors Related to School Safety

Studies of school crime tend to indicate that many factors are related to school safety. For example, research suggests that crime is most common in "poor" schools.[6] Gottfredson and Gottfredson contend that location and community characteristics, school population makeup, school size, school resources, school rules, as well as practices and perceptions of the school environment are related to disorder in schools.[7] Additionally, Cantor and Wright found that high schools with the greatest violence problems tended to be large urban schools (average of 1,060 students), had a high percentage of minority students, and were located in disadvantaged neighborhoods that lacked residential stability. These researchers also noted that it was not solely urban schools that were violent, indicating that violence occurs across a variety of settings.[8] Furthermore, Lab and Clark reported that school safety levels were affected by styles of discipline in school, and the National Institute of Education's *Safe Schools Study* found that perceptions of safety were related to management styles.[9]

Clearly, numerous factors may influence actual and perceived levels of school security. It is apparent that, despite its relative rareness, the potential for violence in schools affects both students and teachers.[10] Schools may be able to reduce levels of crime and fear using security products,[11] improvements in policies and training,[12] social skills development,[13] and law enforcement involvement in schools.

Myths about School Crime

Although concern about school crime and violence appeared to be escalating, research suggests that school safety had not changed significantly over this time period.[14] For example, the introduction to the *2000 Annual Report on School Safety* states, "The vast majority of America's schools continue to be safe places."[15] Overall, the rate of student victimization at schools decreased from 1993 to 2003, but there were no significant changes from 2002 to 2003 in total victimization, violent victimization, and theft.[16] Despite these crime trends, awareness and fear of school violence seemed to have increased.

Joint Efforts to Address School Safety

There has been a widespread call for preventive measures to address school safety problems. It is generally agreed that school safety is a community concern, which can be best addressed through joint efforts involving the entire school community. The *Safe Schools/Healthy Students* initiative of the U.S. Departments of Justice, Education, and Health and Human Services encourages extensive community involvement in promoting school safety. For example, officials from law enforcement, juvenile justice, social service, and mental health organizations may work with schools to form partnerships.[17] Furthermore, the federal government has shown a commitment to supporting such school safety efforts. During 2005, this initiative provided more than $76 million in grants toward reducing school violence and substance abuse in schools.[18]

Role of Law Enforcement in School Safety

Law enforcement agencies may be involved with schools in many different ways. Reporting on police partnerships with youth servicing agencies, Chaiken found that "... partnerships between police and youth-serving organizations take many forms."[19] Furthermore, the use of school resource officers (SROs), who are sworn police officers assigned to schools and work under the supervision of school administrators, represents a merging of law enforcement with schools. Law enforcement officers can also serve on school safety committees, advisory boards, and planning bodies. Additionally, some schools may rely on law enforcement agency expertise for assessing school security, Drug Abuse Resistance Education (D.A.R.E.) Programs, staff training, and other special projects.

In some schools, law enforcement may be involved in less formal ways, such as speaking to classes or school assemblies, providing assistance with school events, and mentoring students (see Table 3.1 for types of police activities in schools). Like other clients of the police, schools can rely on law enforcement in emergency situations in which crime or violence occurs or is suspected. Some schools may "contract" with the police for special services, such as security at sporting and social events, while other schools choose to avoid contact with law enforcement.

Table 3.1.
Types of Police Activities in Schools

Type of Activity
Law Enforcement Related (e.g., patrol school grounds)
Advising/Mentoring Activities with Staff (e.g., advise staff on law-related issues)
Advising/Mentoring with Groups (e.g., advise parent-teacher organizations)
Advising/Mentoring with Students or Families (e.g., help students with court involvement or intervention)
Presence at School Events (e.g., present at athletic events)
Teaching (e.g., teaching antidrug classes)
Safety Planning (e.g., working with school to develop written plans for crisis situations)

Source: Travis & Coon, 2005.

Law enforcement has been acknowledged as a potentially important partner for schools in the effort to improve school security.[20] In reaction to school shootings during the 1990s, some police departments dramatically changed officer training for handling potential shooters, with the hope that these changes would reduce the number of victims during a crisis situation.[21] Additionally, federal grant money made it possible for many law enforcement agencies to dedicate current officers or hire new personnel as SROs. As of 2005, the U.S. Office of Community Oriented Policing Services had supported the addition of more than 6,500 law enforcement officers in schools.[22] In addition to this federal assistance, there was already a strong interest among school administrators to increase the use of security measures and police officers.[23]

Obstacles to Improving School Safety

Although it is appealing to believe that schools and law enforcement can work together to improve the safety of our schools, interactions between schools and criminal justice agencies are not always smooth. For example, Lawrence examined the connection between the juvenile justice system and schools. He found numerous obstacles to cooperation, including distrust. Lawrence described the conflict as ''fear of crime'' by the justice officials and ''fear of labeling'' by school personnel.[24] Similarly, school personnel and law enforcement officials may not always agree about how to handle school problems. The goal of safer schools may be shared, but differing views on how best to achieve this may create barriers for school and law enforcement partnerships.

As noted by Green regarding security technology, school administrators often resist security measures (this presumably applies to law enforcement involvement) because of fear that such efforts will negatively effect the school's social and educational climate. Also, if school personnel believe

that police are solely focused on crime control, it is unlikely that law enforcement will be fully included in the operations of the school. As comments during the Strategic Planning Meeting on School Safety suggested, school personnel often view police officers as "muscle" to be relied on for disciplinary matters, but they may not view law enforcement as a preventive or general resource.[25]

WHAT WAS UNKNOWN

Law enforcement can be involved with schools in many ways. Before, little was known about precisely how, and with what frequency, police and schools worked together in school safety efforts. It was established that police officers could be assigned to schools, but the actual role(s) of police in public schools across the country was not yet understood. For example, it was unknown whether police were most likely to be engaged in law enforcement activities (e.g., patrolling the school, investigating crime leads, performing drug sweeps) or had greater involvement in less traditional activities such as mentoring and teaching. Furthermore, we did not know the frequency of police presence in schools. Although law enforcement might be involved in a particular task in schools, we did not know if police engaged in this activity on a daily, weekly, monthly, or yearly basis.

It was largely unclear what the driving forces were for having a presence of law enforcement in schools. For example, we did not know if schools wanted police involvement in their schools because of specific incidents at the school, or if police presence in schools was related to community policing efforts. Although media attention to high-profile violent events in schools might explain some of the initial involvement, other possible reasons for police presence in schools had yet to be fully explored.

The goal of our national survey was to describe the role of law enforcement in schools. We first explain how we conducted the national mail survey of public schools. We then describe principal responses to the survey about how law enforcement works with schools to address school safety.[26] We conclude with a discussion of what we think our results mean and what they do not mean.

SCHOOL SURVEY PROCESS

We developed a nine-page questionnaire that was distributed to schools in our sample. The survey incorporated items from previous surveys, particularly the *School Survey on Crime and Safety* and the *National Assessment of School Resource Officer Programs Survey of School Principals.*[27] The survey included questions about a wide range of possible police activities in schools, the frequency of police presence, the reasons for having SROs, and the use of various security products (e.g., cameras, alarm systems, locks, metal detectors). We obtained information about the school, such as measures of achievement, expenditure per pupil, and characteristics of the student body (e.g., percentage of students eligible for free lunch).

We selected a representative sample of schools from the U.S. Department of Education's Common Core of Data (CCD). The CCD contains detailed information on approximately 90,000 public schools in the United States. The advantage of selecting a representative sample is that the results should more accurately describe the role of law enforcement in schools across the nation.

Surveys were sent to more than 3,000 schools, and we received almost 1,400 completed surveys for a response rate of nearly 45 percent. Compared with the population of public schools in the CCD, our respondents differed in several ways. For example, our respondents were more likely to be rural, Midwestern high schools, with higher proportions of white students, lower proportions of students eligible for free lunch, and a fewer number of grades in the school. There were no significant differences between the sample and the population in terms of other characteristics examined.

Law Enforcement Survey

In addition to the survey of schools, we surveyed the law enforcement agencies that worked with those schools. We received a very good overall response from law enforcement agencies. A total of 1,508 law enforcement surveys were sent, and 1,140 public law enforcement surveys were completed, for a 76 percent response rate.

Site Visits

For the last phase of the study, we conducted site visits at 14 schools. The sample represented all levels of education and types of communities. At the community level, we collected data from four urban schools, four suburban schools, and six rural schools. At the education level, we collected data from five elementary schools, two junior high schools, and seven senior high schools.

Each site visit involved two researchers who interviewed school principals, faculty, staff, SROs, police chiefs, and other law enforcement officers that served the school. Whenever possible, we conducted at least one focus group with students and at least one focus group with parents. In addition, researchers completed a school climate survey (one per researcher) that noted physical and behavioral details of the campus and its environment. Site visits were scheduled for two to three days per campus, depending on the school's availability.

WHAT WE LEARNED

Law Enforcement Reliance

The vast majority of schools (97 percent) indicated that they relied predominantly on public law enforcement rather than private security. We asked schools whether they relied on SROs (defined as officers assigned by a police department or agency to work in collaboration with schools).

Almost half (48 percent) of the principals surveyed reported that their school relied on SROs.

Schools that had an SRO provided a range of reasons for the officer's presence. Approximately 25 percent of schools reported that the use of an SRO was a response to national media attention about school violence. About 18 percent of schools stated that the police presence was a reaction to disorder problems (e.g., rowdiness, vandalism), 6 percent said it was due to parents wanting an officer in the school, and only 4 percent reported that having an SRO was due to the level of violence in the school. Almost half of respondents chose the "other" answer to the question and explained that having an SRO was due to all of the listed factors, or a combination of factors, including crime prevention, available funding through grants, school policy, opportunity to build relationships with students, part of community policing and D.A.R.E. efforts, and safety and security purposes. Principals who reported that their school did not have an SRO most often cited there was no need for an officer in their school or a lack of funding.

Not surprisingly, there were differences in the level and frequency of police activity in schools between those served by an SRO and those without an SRO. More than half of the principals from schools with an SRO reported police engaging in 26 of 42 separate activities listed in one section of the survey, while more than half of the principals in schools with no SRO reported only 8 of the 42 activities. We learned that SROs were significantly more likely to be assigned to schools that were larger, located in urban areas, had higher levels of crime and disorder, located in higher crime neighborhoods (as described by principals), and had students in higher grades. SROs were also significantly more common in schools located in Southern and Western states.

Police Activities

The school survey included a wide range of possible activities in which law enforcement officers may be involved at schools. In addition to questions that had yes or no responses, we asked principals to report how frequently police were involved in various activities (see Table 3.2). We found that the most common (occurring in a majority of schools) and most frequent (e.g., occurring on a daily or weekly basis) police activities tended to be law enforcement related. For example, 70 percent of principals reported that police responded to crime and disorder reports from school staff, patrolled school grounds, and patrolled student travel routes. In terms of frequency of activities, activities occurring on a daily basis for many schools were as follows: police patrolling school grounds (30 percent); patrolling school facilities (26 percent); patrolling drug-free zones beyond school boundaries (23 percent); patrolling student travel routes (23 percent); and performing traffic patrol on or around campus (18 percent). Furthermore, more than 10 percent of principals reported that the police responded to crime and disorder reports from school staff or students, investigated crime and disorder leads provided by staff or students, and wrote police reports at least weekly.

Table 3.2.
Frequency of Police Activities in Schools as Reported by Principals

Type of Activity	Daily	1–4 Times per Week	1–3 Times per Month	1–3 Times per Semester	Once per Year	Never	*N*
	(Percentage)						
Law Enforcement–Related Activity							
Patrol school facilities	26.2	14.0	11.3	13.4	4.8	30.3	1,262
Patrol school grounds	29.9	17.2	11.0	12.8	5.5	23.5	1,263
Patrol drug-free zones beyond school boundaries	23.0	18.7	12.2	9.9	3.0	33.2	1,193
Patrol student travel routes	23.3	19.7	13.7	11.6	4.2	27.5	1,217
Operate metal detectors	0.9	0.4	1.3	2.9	1.5	92.9	1,271
Conduct safety and security inspections	4.8	4.0	6.9	13.3	19.9	51.1	1,266
Respond to crime/disorder reports from school staff	7.0	9.0	12.3	34.4	17.4	19.9	1,289
Respond to crime/disorder reports from students	6.6	7.4	7.2	17.5	12.2	49.2	1,275
Investigate staff leads about crime/disorder	5.0	6.4	9.2	19.1	20.3	40.0	1,259
Investigate student leads about crime/disorder	5.8	6.7	8.6	15.6	16.2	47.2	1,249
Make arrests	1.6	2.8	6.2	15.6	16.2	57.6	1,266
Issue citations	1.7	5.0	8.7	16.6	13.1	55.0	1,267
Write disciplinary reports	2.0	4.1	5.8	12.9	9.6	65.7	1,267
Write police reports	4.3	6.6	10.6	26.1	20.3	32.2	1,265
Enforce truancy laws or policies	3.3	3.5	8.6	14.9	14.1	55.6	1,274
Solve crime-related problems	4.0	5.1	8.4	16.5	21.7	44.3	1,257
Perform traffic patrol on or around campus	17.5	13.5	10.6	14.6	8.5	35.2	1,277
Perform sweeps for drugs	1.6	1.6	4.7	12.5	12.8	66.8	1,269
Perform sweeps for weapons	1.7	1.4	2.8	7.7	7.8	78.5	1,263
Advising/Mentoring Activities with Staff							
Advise staff on school policy changes	1.7	1.4	4.3	9.4	17.1	66.1	1,266
Advise staff on school procedure changes	1.2	1.3	4.4	9.5	16.2	67.5	1,261

(continued)

Table 3.2. (*continued*)

Type of Activity	Daily	1–4 Times per Week	1–3 Times per Month	1–3 Times per Semester	Once per Year	Never	*N*
	(Percentage)						
Advise staff on physical environment changes	1.0	1.7	4.2	8.7	14.9	69.6	1,259
Advise staff on problem solving	1.9	2.4	5.3	11.1	14.3	64.9	1,258
Mediate disputes among staff	0.7	0.2	1.2	2.5	4.3	91.2	1,260
Advise staff on avoiding violence/victimization	1.1	1.5	3.0	8.7	18.2	67.4	1,259
Advise staff on student behavior modification	1.2	2.1	3.1	9.1	13.2	71.3	1,260
Advise staff on student rule/sanction enforcement	1.4	2.0	4.2	8.8	11.9	71.8	1,257
Advise staff on law-related issues	2.1	2.1	6.2	13.3	20.2	56.0	1,262
Advising/Mentoring with Groups							
Advise parent–teacher organizations (e.g., PTOs, PTAs)	0.2	0.3	2.1	7.1	27.1	63.2	1,263
Advise police athletic/ activities league (PALs)	0.7	1.3	3.0	4.3	8.3	82.3	1,220
Advise school athletic teams	0.7	1.5	2.9	5.1	8.6	81.3	1,226
Advise community outreach programs	0.4	1.1	4.8	9.8	15.9	68.0	1,219
Advising/Mentoring with Students or Families							
Mentor/provide guidance to individual students	7.4	8.3	12.0	20.9	13.2	38.3	1,246
Help students with court involvement or intervention	2.5	4.7	10.2	15.2	13.6	53.8	1,224
Work with parents to help their children	4.3	7.9	11.2	21.4	14.8	40.5	1,222
Refer students to other sources of help	3.7	7.3	9.5	19.6	11.9	48.0	1,220
Refer parents to other sources of help	3.3	6.1	9.9	21.3	14.1	45.3	1,218

(continued)

Table 3.2. (*continued*)

Type of Activity	Daily	1–4 Times per Week	1–3 Times per Month	1–3 Times per Semester	Once per Year	Never	*N*
	(Percentage)						
Present at athletic events	7.2	18.2	14.6	9.7	4.8	45.6	1,227
Present for school social events (e.g., dances, open houses)	5.2	9.5	12.8	20.1	12.5	39.8	1,258
Present for school performances (e.g., school plays, concerts)	4.0	6.9	9.3	16.7	12.0	51.1	1,252
Chaperone school field trips	1.1	1.5	3.0	5.5	9.1	79.7	1,246
Present at award ceremonies	2.8	2.5	4.1	11.4	22.9	56.3	1,252

Source: Travis & Coon, 2005.

In addition to asking about law enforcement–related activities, the survey included questions about the frequency of advising and mentoring activities and police presence at school events. Advising and mentoring activities were not as common as law enforcement–related activities. When police were involved in advising and mentoring, it tended to be with students and families rather than staff or groups, and it was most likely to occur on a semester or yearly basis. Approximately 25 percent of principals indicated that police were present at school athletic events at least weekly, and more than 10 percent reported a police presence at school social events and school performances at least weekly. Among the least common of all activities were the following: police operating metal detectors; performing sweeps for weapons; mediating disputes among staff; advising athletic or activities leagues; advising school athletic teams; and chaperoning school field trips.

In addition to examining how frequently police were involved in law enforcement–related activities, advising and mentoring, and school events, we also wanted to know whether police had a teaching role in schools. We asked principals to report whether or not police officers taught 13 specific classes (see Table 3.3). Principals reported that police taught a variety of classes for schools with the most common being D.A.R.E. (52 percent); other antidrug classes (34 percent); alcohol awareness/DUI (driving under the influence) prevention (30 percent); crime prevention (24 percent); and other safety education (24 percent). The least commonly taught classes were firearm safety (11 percent) and antihate education (13 percent).

Table 3.3.
Teaching Activities of Police in Schools

Teaching Activity	Yes (%)	No (%)	*N*
D.A.R.E.	51.6	48.4	1,326
Other antidrug classes	33.9	66.1	1,304
Alcohol awareness or DUI prevention	30.4	69.6	1,295
Antigang classes	20.9	79.1	1,282
Antibullying classes	21.0	79.0	1,293
Antihate classes	12.7	87.3	1,280
Law-related classes	20.3	79.7	1,286
Firearm safety classes	11.1	88.9	1,284
Other safety education classes	24.2	75.8	1,283
Crime awareness or prevention	24.3	75.7	1,286
Career training	19.8	80.2	1,285
Conflict resolution	23.6	76.4	1,290
Problem-solving	21.7	78.3	1,177

Source: Travis & Coon, 2005.

Another area in which police may be involved is school safety planning (see Table 3.4). We asked principals whether or not police participated in numerous safety-related activities: 86 percent said they had an emergency plan agreement with the police, 55 percent reported that law enforcement worked with the school to develop written plans for crisis situations, and 47 percent reported that representatives of law enforcement attended school safety meetings. Other types of safety planning were less common, such as regularly scheduled meetings with public law enforcement to discuss specific incidents (30 percent) and law enforcement working with the school to review school discipline practices and procedures (30 percent).

SCHOOL CHARACTERISTICS RELATED TO POLICE INVOLVEMENT

We were interested in learning more about what types of schools tended to have greater police participation in activities at their schools. We included several school characteristics in our analysis that we believed might be related to the level and frequency of law enforcement involvement in schools. Total level of involvement refers to the number of activities in which police participated, with no reference as to how often police were engaged in these activities. Frequency of a particular activity was measured as either frequent (includes daily, one to four times per week, and one to three times per month) or infrequent/never (includes one to three times per semester, once per year, and never). By using this categorization, we were able to create a measure of the overall frequency of police

Table 3.4.
Police Involvement in School Safety Plans and Meetings

School Plans/Meetings with Public Law Enforcement:	Yes (%)	No (%)	*N*
Emergency plan agreement with law enforcement	86.3	13.7	1,359
Law enforcement attend school safety meetings	47.4	52.6	1,350
Regularly scheduled meetings with public law enforcement to discuss general school issues	32.3	67.7	1,322
Regularly scheduled meetings with public law enforcement to discuss specific incidents	29.8	70.2	1,305
Law enforcement work with school to develop written plans for crisis situations	54.6	45.4	1,361
Law enforcement work with school to review school discipline practices and procedures	30.3	69.7	1,356
Law enforcement work with school to develop programs to prevent or reduce violence	31.2	68.8	1,354
Law enforcement conduct risk assessment of security of building or grounds	42.2	57.8	1,352
Law enforcement work to develop a plan for increased levels of security	38.8	61.2	1,355

Source: Travis & Coon, 2005.

involvement. We then used regression analysis,[28] which allowed us to assess how each school characteristic was associated with the level and frequency of police involvement.

We found that several school characteristics were associated with the level of law enforcement presence in schools (see Table 3.5). Not surprisingly, we found that schools with more reported school crime and disorder tended to have greater police participation in activities. Also, as might be expected, the presence of an SRO was a significant predictor of higher levels of law enforcement involvement. Additionally, schools with higher grade levels also reported greater police presence in their schools. It was somewhat surprising that urbanism (measured as urban, suburban, rural) was not related to the level of police involvement.

Several school characteristics were also related to the frequency of law enforcement involvement in schools. As we found with total level of police involvement, schools with an SRO, higher level schools, and schools with more reported crime and disorder tended to have more frequent law enforcement presence. Additionally, we found that larger schools were more likely to have frequent police involvement. Furthermore, we found that urbanism was a significant predictor of frequency of police presence, but not in the way we expected. Specifically, rural schools reported more frequent police participation in activities than was reported by suburban and urban schools. It is possible that police officers in urban school

Table 3.5.
Predictors of Level and Frequency of Law Enforcement

School Characteristics	Total Level (Scope) of Police Involvement	Total Frequency of Police Involvement
Expenditure per student per year	0	0
Total number of students	0	+
Region	−	0
Urbanism	0	−
School level	+	+
School crime	+	+
Percent minority students	0	0
Neighborhood crime	0	0
Percent free-lunch students	0	0
Presence of school resource officer	+	+

Notes:
+ indicates positive relationship significant at 0.05 or 0.01 level.
− indicates negative relationship significant at 0.05 or 0.01 level.
0 indicates significant relationship.
Negative relationship (−) for region and total level of police involvement indicates that non-Southern schools were less likely than Southern schools to use law enforcement.
For all other variables, positive sign (+) indicates positive relationship (e.g., + for presence of SRO indicates that schools with an SRO were more likely to have greater level and frequency of law enforcement involvement).
Source: Travis & Coon, 2005.

districts have a greater number of schools for which they are responsible and therefore cannot devote all of their time to a single school.

WHAT OUR RESULTS SUGGEST

Our study indicates that public schools, for the most part, are safe places. Although the majority of schools are not dangerous, enhanced security often is needed. During our site visits, many respondents expressed concern about potential problems with unauthorized access to the school often attributed to the physical structure of the building (e.g., open design, portable outbuildings, pods) or with the location of the main office, which made it difficult to monitor access to all entrances through which people could enter the school. Potentially dangerous traffic patterns during arrival and dismissal and misbehavior on buses were commonly mentioned by administrators, staff, and parents. Despite these concerns, most of the staff and students reported they felt safe on their campuses and in their buildings. Furthermore, the vast majority of principals reported few serious crimes, and violent crime was rare for most schools.

We learned that police may be involved in a wide range of activities in schools, but mostly they engaged in traditional law enforcement–related tasks.

Our survey suggests that principals tend to perceive the current role of law enforcement in public schools to be largely preventive and reactive through patrol, investigating crime leads, and writing reports. From the perspective of many principals, police involvement in schools is a reaction to potential crime and security risks rather than a response to serious crime problems.

We found that opinions regarding the ideal role of police in schools varied widely among school staff, parents, and students. The general trend was that respondents thought police should assist in addressing problems; however, there was a lack of consensus regarding the extent of police involvement and level of authority police should exercise in schools. Respondents stated that they would like to have, in varying combinations, police as educators, legal resources, security, law enforcers, disciplinarians, counselors, role models, and mentors.

SROs tended to see their roles as diverse, with involvement in education, discipline, counseling, and serving as a role model. In some schools, the function of an officer in the school seemed to be limited to performing traditional law enforcement–related activities, teaching D.A.R.E., and providing security for social events. Other schools, however, seemed to view officers as a valuable resource as part of a comprehensive school plan.

It also seems that many police officers want to maintain an official law enforcement position and not be disciplinarians. Schools want order and safety, and therefore may prefer police to assume a more comprehensive role to achieve this. Different perceptions of the appropriate function of law enforcement in schools may lead to conflict. The role of police in schools seems to be something that must be negotiated or defined at the school level.

Police may have various roles in public schools, and based on our site visit data, these roles seem to reflect differences in school-based perceptions of what the problems may be and what the police should do. We found that it is common for the police function to differ by particular school characteristics. For example, the survey results indicate that the type and frequency of police involvement in schools differs by school level, and the results from the site visits indicate that police, school administrators, staff, parents, and students still want this role to continue to vary by school level. Generally, elementary schools have more limited roles for police. Elementary school respondents did not want police in their schools on a daily basis, but they did value police as mentors and wanted them to be available if needed. Respondents at secondary schools generally expressed greater support for broader and more frequent police involvement at their schools. Also, as would be expected, schools that reported higher levels of crime or violence typically had a greater police presence. Not surprisingly, schools with SROs were much more likely to have greater law enforcement involvement in their schools than those schools without a dedicated resource officer.

There were several advantages to law enforcement involvement in schools. Parents and staff believed that officers served several functions, such as deterring student misbehavior and delinquent activity; responding to emergencies; acting as role models; and providing a presence that makes students, staff, and parents feel safer. Participants who believed there were disadvantages to police involvement in schools mentioned that the constant

presence of an officer gives the impression that something is wrong at the school or might generate fear; felt that a gun on campus may be undesirable; and thought that, if students became too familiar with officers or became "buddies," they could lose respect for them and their authority.

Overall, students, parents, and staff were supportive of having police in their school. Similarly, law enforcement officials were eager to have dedicated SROs if funds were available and if a police presence was deemed necessary or beneficial for the school. According to some schools, greater presence or involvement of law enforcement was a response to increases in violence or a tragic event.

The site visits also indicated that conflicts sometimes exist between school administrators and police, for example, different expectations about the role of police in schools. We frequently heard from police that they did not want to enforce school rules. Written agreements outlining school and police expectations could clarify the role of police in schools and reduce conflicts and misunderstandings. Additionally, support for police in schools was higher when the administration and staff believed that their SRO did not overstep certain boundaries. It became clear that officers were supervised by their police departments rather than schools. Furthermore, there were a variety of ways officers may be selected or volunteer to become SROs. Efforts to match school needs with officers who are sensitive to school concerns may result in a more appreciated and effective role for police in schools.

In sum, our findings do not suggest that there is a one-size-fits-all solution to school problems. The disagreement about the appropriate role of police in schools, in part, leads to the conclusion that there is no single ideal role for police in schools. The police role should vary by the needs of the school, and often this need is associated with school level, environmental factors, and school climate. The policy of having officers assigned to several schools, however, should be carefully examined. Officers who work at more than one school are often limited to dealing solely with security issues. Although we do not suggest that all schools benefit from full-time law enforcement presence, many schools want to have at least some police involvement. Whether that police presence is full time, part time, or on an as-needed basis, schools tend to value partnerships with law enforcement in working toward the shared goal of safer schools.

NOTES

1. This research was supported by the National Institute of Justice, award number 2001-IJ-CX-0011. Findings and conclusions of the research reported here are those of the authors and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

2. Rubel & Ames, 1986.
3. Gottfredson & Gottfredson, 1985.
4. Zins, Travis, Brown, & Knighton, 1994.
5. Arnette & Walseben, 1998; Catalano, Loeber, & McKinney, 1999.
6. For example, *Safe Schools Study* by the National Institute of Education, 1978.
7. Gottfredson & Gottfredson, 1985.
8. Cantor & Wright, 2001.

9. Lab & Clark, 1996.
10. Metropolitan Life Insurance Co., 1993, 1999.
11. Green, 1999; Johnson, 1999.
12. Ohio Crime Prevention Association, 2000.
13. Lieber & Mawhorr, 1995.
14. Hanke, 1996; U.S. Departments of Justice and Education, hereafter USDJE, 2000.
15. USDJE, 2000.
16. DeVoe, Peter, Noonan, Snyder, & Baum, 2005.
17. USDJE, 2000.
18. U.S Departments of Justice, Education, and Health and Human Services, 2005.
19. Chaiken, 1998, p. xv.
20. Dwyer & Osher, 2000; Dwyer, Osher, & Warger, 1998.
21. Harper, 2000.
22. COPS Office, 2005.
23. Trump, 1998.
24. Lawrence, 1995.
25. Green, 1999, p. 5.
26. For more about the findings from the law enforcement survey and site visits, please see Travis & Coon, 2005.
27. Finn & Hayeslip, 2001; National Center for Education Statistics, 2000.
28. Regression analysis is a form of statistical analysis that allows multiple predictors to be used to determine which variables are most important in predicting an event.

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CHAPTER 4

Juveniles and Reintegrative Shaming

Jennifer L. McGivern

John Braithwaite's theory of reintegrative shaming[1] is a relatively recent theory of crime and that is a part of the larger restorative justice movement. Based on the two main principles, shame and forgiveness, the theory enjoys widespread application in such countries as Australia, New Zealand, England, Wales, the United States, Canada, and Northern Ireland in the form of family conferences within the juvenile justice system.[2] An alternative to the formal criminal justice system, these meetings unify the offender, victim, and support members from both sides in an attempt to reduce future predatory delinquency. Seemingly successful, these programs have been in effect for more than 10 years. Principles of Braithwaite's theory have been examined in the past decade in studies seeking to determine the role that shame and forgiveness play within the problems of school bullying and drunk driving.

This chapter opens with an overview of Braithwaite's reintegrative shaming theory, beginning with a description of the theory's main elements and its key hypotheses. Second, the role that reintegrative shaming plays within the larger context of restorative justice is presented. Third, the reader is familiarized with the research conducted to date on reintegrative shaming theory, as well as its many applications in the legal system. Fourth, modern-day applications of shaming in the United States that do not include reintegration processes are examined, along with the problems that they invite. Closing remarks are made about the future of reintegrative shaming in the United States.

THE THEORY OF REINTEGRATIVE SHAMING

Braithwaite's 1989 theory of reintegrative shaming is the product of the integration of several dominant theories of crime in sociology today, including labeling theory, subculture theory, control theory, opportunity theory, and learning theory. Braithwaite synthesizes core concepts from these theories into an integrated theory that is useful in explaining *predatory crime* (the violation of laws that prohibit a person from preying on another person) and *secondary delinquency* (reoffending). Reintegrative shaming is most often discussed and applied in the case of juvenile offenses. This may be due to the fact that meetings built on reintegrative shaming principles are focused on rebuilding the offender's conscience against committing future crime, which seems most viable when dealing with a youth who may have a more malleable mind than a hardened, older offender. In addition, these meetings provide an appealing alternative to the juvenile justice system, especially for young offenders without any prior criminal history.

Braithwaite acknowledges that reintegrative shaming is useful only in the reduction of predatory crimes, such as robbery, assault, and crimes against property.[3] Shame is only a useful means of *social control* (the process of ensuring members' conformity to the groups' norms) when there is a core consensus that the behavior in question is wrong. In the United States, for example, although it is a criminal behavior, there is no majority opinion on the wrongfulness of smoking marijuana. In essence, there is no guarantee that the offender will be shamed by the ordinary citizen for engaging in this behavior, which is essentially what the theory relies on to work. In the case of nonpredatory offenses such as this, reintegrative shaming will not work and should not be applied.

The key principle of Braithwaite's theory of reintegrative shaming is that the sequential process includes initial disapproval of the offending act (shaming) and subsequent reacceptance of the offender back into the law-abiding society (reintegration). An important agent of social control, Braithwaite argues that the family embodies the main principles of reintegrative shaming because it "teaches us that shaming and punishment are possible while maintaining bonds of respect."[4]

Shaming

Braithwaite argues that "cultural commitments to shaming are the key to controlling all types of crime."[5] Culturally specific, shaming can be expressed through nonverbal, verbal, subtle, and direct gestures, as well as through gossip, the mass media, popular culture, and official pronouncements.[6] Treated within the theory as indistinct from guilt, shame is intended to moralize with the offender about the wrongfulness of their actions through the evocation of their conscience. A uniquely social process, Braithwaite argues that shaming is a positive and integral part of social control that specifically deters the offender from reoffending in the future. It also serves as a warning to observant community members and

would-be offenders who are contemplating the commission of a crime. This should not be interpreted to mean that shaming is a painless experience for the offender; indeed, shaming can sometimes be quite harsh and even outright cruel. When the shaming becomes quite punitive and is not followed with any reconciliation between the offender and the community, there runs a very real danger of turning the offender into an outcast and a repeat offender.

Labeling theorists within sociology disagree with Braithwaite, arguing that shaming is not a positive force but instead a counterproductive and stigmatizing force that fosters further delinquency. This argument is best exemplified by the arrest, trial, and conviction sequence. A labeling theorist would argue that when the legal system officially pronounces an individual as an offender (during the arrest) or as a convicted offender (with a guilty verdict), the process changes the individual's *master status* (main identity) of "law-abiding citizen" into that of "delinquent." Because of his new status as delinquent, the offender is subsequently rejected by the law-abiding society, which includes his family and friends. Instead the offender must seek out criminal subcultures that are composed of similarly labeled delinquent peers to find companions. The new group teaches the offender an ideology that is favorable to law violation as well as criminal techniques (e.g., how to break into buildings), and also provides the offender with real opportunities to engage in secondary delinquency. The personal bonds the offenders have formed with these delinquent peers in the criminal subculture not only encourage them to commit delinquent acts, but most important, reduce their remaining attachment to law-abiding parents and peers, ultimately weakening their stake in any type of conformity to the law-abiding community.

The upside to this common situation is that although criminal subcultures may exist in every society, Braithwaite argues that most people do not have the specific taste or opportunity to join them.[7] Consequently, newly labeled deviants may choose to reject an available subculture that they do not find appealing and reintegrate themselves into a law-abiding society. Alternatively, they may decide to act as a lone delinquent, although this does not appear to happen as frequently. According to Braithwaite, the consequence of *stigmatization* (the act of labeling someone as deviant) that results from shaming an individual without providing any form of reintegration into the community depends largely on whether the offender finds or decides to join a criminal subculture.

Reintegration

Braithwaite would agree with labeling theorists that shaming can have negative consequences; however, he provides a viable solution to this problem. To reduce an offender's risk of seeking out a criminal subculture to begin with and committing any subsequent delinquent acts, Braithwaite argues that it is essential to make informal or formal gestures that reintegrate the offender into the law-abiding community after the shaming

ceremony. A ceremony that decertifies, or removes, the offender's master status of "delinquent," coupled with gestures from the community that express their genuine forgiveness and reacceptance of the offender, are the key principles of the "reintegration" in reintegrative shaming. At the core of this process is the family model; the ceremony emphasizes the wrongfulness of the action and the goodness of the person's character, while bonds of respect are preserved among all members. Braithwaite argues strongly that internal crime controls are more effective in the long run than external crime controls. Therefore, the most effective way to reduce the risk of secondary delinquency is to rebuild the offender's moral conscience that abhors crime and to sustain the bonds of attachment between offenders and their law-abiding parents through reintegrative shaming.

There are two main hypotheses within Braithwaite's reintegrative shaming theory: (1) reintegrative shaming will decrease an individual's delinquency; and (2) the stigmatization of an individual (shaming an offender without offering any reintegration) in a community in which criminal subcultures are present increases the chances of future delinquency. Braithwaite argues that reintegrative shaming will always be useful, even in communities in which criminal subcultures are absent. The act of reintegration strengthens the individual's moral conscience against committing crime, and maintains the interpersonal bonds that make shaming most effective.

Two additional factors that Braithwaite argues may influence the reintegrative shaming process are interdependency and communitarianism. *Interdependency* refers to the interconnectedness among individuals, or their web of networks, that creates a dependency on others for things they need.[8] Informal sanctioning is most successful when the shame derived from failing to live up to the standards of others is important to the offender. A *communitarian* society is one in which the individual recognizes that his or her duty is foremost to the group, even over personal rights and needs.[9] The stronger the sense of dependency and duty that the individual feels toward the community, the greater the interpersonal cost that he or she will experience when committing delinquent acts. Reintegrative shaming, then, should be most effective in a community in which levels of interdependency and communitarianism are high.

Braithwaite argues that females, young children and mature adults, employed people, married people, and those committed to their long-term goals in education or their occupation will experience lower rates of delinquency, in part because of their strong interdependencies that command a great interpersonal cost following criminal activity.[10] Investment in long-term goals at school or work increases the mutual obligation and trust between student and teacher, or employee and boss, because they rely on each other to maintain their current position and achieve a future goal.[11] Braithwaite also predicts that as the urbanization and residential mobility of a community increase, reintegrative shaming will not be as effective and delinquency rates will increase. This is largely due to the lack of interpersonal bonds and sense of duty established among citizens.

RESTORATIVE JUSTICE

In 1996, Walgrave and Aertsen[12] wrote a reaction to a statement that Braithwaite made during a visit to Belgium and the Netherlands. Braithwaite was observed to have said that he would no longer use the term "reintegrative shaming," but rather adopt the phrase "restorative shaming." In the article, Walgrave and Aertsen consider this statement from a scholarly perspective, and argue that the two terms, reintegrative and restorative, are not interchangeable as Braithwaite posits. Instead, they argue that the real outcome of reintegrative shaming is the rehabilitation of the offender. Restorative shaming, on the other hand, uses shame to promote the making of restoration; this is done on the behalf of the victim (restoring their position as a right-bearing citizen in the community) as well as on the behalf of the community (restoring their value in the norm that was violated by the offender's behavior).

Although it may seem like Walgrave and Aertsen are splitting hairs, the use of the term "restorative" comes with a long history of disagreement. As Mika and Zehr note, there is no singular definition of restorative justice in the field.[13] They, as well as Braithwaite and Strang,[14] argue that there is general agreement among scholars on the main values or processes that underlie restorative justice, which can be characterized by two core concepts. The first concept involves the process of uniting stakeholders who must work together to right a wrong that they have suffered. The second concept characterizes restorative justice principally as a healing process that operates specifically in opposition to the state's punitive justice system. Van Ness and Strong[15] add a third component to the restorative justice process, which calls for the recognition that criminal offenses typically injure more people than is evident by the actual breaking of the criminal law. In a way, Van Ness and Strong's addition explicates the motivation or stimulus behind the other two principles.

As presented by Walgrave and Aertsen, the Leuven Experimental Program provides a useful real-life example from which to examine the connection between the key principles of reintegrative shaming and restorative justice. Beginning in 1993 and continuing for three years in Leuven, Belgium, this program included victim-offender mediations that occurred in conjunction with the offender's formal court hearings. Results of the meetings show a restorative effect experienced by the victim; this typically occurs following an angry confrontation with the offender about the offense, and the offender's expression of shame. This sense of shame on the part of the offender, in turn, may increase the offender's feeling of responsibility and genuine intent to make reparations with all of those injured by his or her behavior. In addition, Walgrave and Aertsen emphasize that the meetings often highlight the fact that the offense affects many more people than just the offender and victim, including children, partners, colleagues, and the larger community, and that these people should be involved in the proceedings as well.

This example showcases the great extent to which reintegrative shaming embodies the three main principles of restorative justice when applied in a

real-life criminal justice setting. In their closing, Walgrave and Aertsen suggest that, contrary to Braithwaite's statement, the terms reintegration and restoration are not synonymous and interchangeable. Instead, it seems most appropriate to characterize reintegrative shaming and restorative justice as complementary concepts. The former uses personal relationships to restore harmonious community living, and the latter invokes a formalized response that ends in a constructive manner. It seems evident from the Leuven study example as well as the larger restorative justice literature that this assertion is correct. Restorative justice includes a wide spectrum of programs and ideologies that can vary on multiple dimensions. Although reintegrative shaming does indeed embody the main principles of restorative justice, it is only one small theory within the larger restorative justice concept.

RESEARCH ON REINTEGRATIVE SHAMING THEORY

There are several ways in which scholars can study the effectiveness of reintegrative shaming on the reduction of secondary delinquency. Of the available scientific methods, one of the most favored and rigorous is the empirical study. This method allows the researcher to collect or use previously collected data from both large-scale, national surveys and small-scale data sets, as well as from experiments. To date, the empirical studies researching reintegrative shaming have employed all three of these forms of methodology.

Early Empirical Tests

Contrary to the widespread implementation of the theory's principles, very few empirical studies have tested the veracity of the key hypotheses. They have also produced rather mixed and oftentimes discouraging results.

Makkai and Braithwaite[16] are the first researchers to conduct an empirical test of the hypotheses within Braithwaite's theory of reintegrative shaming. Using data on nursing home compliance with 31 federal standards of care, they test the degree of compliance between two observations in time in relation to the inspector's attitude during the first compliance visit. Makkai and Braithwaite find that, consistent with Braithwaite's hypotheses, the inspectors who stigmatized their clients had a 39 percent increase in noncompliance on the second visit, whereas the inspectors who used reintegrative shaming had a 39 percent reduction in noncompliance at on the second visit.

Two of the early empirical tests focus on the cultural aspect of reintegrative shaming. In one study, Zhang[17] examines whether there are differential applications and outcomes of reintegrative shaming between African American and Asian American cultures. In general, Zhang finds that although Asian American parents use shaming tactics consisting of verbal reprimands more frequently than do African American parents, both

groups use disciplinary techniques consisting of nonverbal shaming, communitarian shaming, and reintegration. The second study, conducted by Vagg,[18] explores Hong Kong's Chinese culture to determine whether this Asian culture has a predisposition to interdependency and communitarianism that should work in favor of reintegrative shaming. Although Vagg finds that Hong Kong's culture embraces the two concepts, Chinese culture uses shaming to label and exclude individuals who do not conform to expectations, rather than to disapprove of the offender before reintegrating him or her into society.

Recent Empirical Tests

Three of the most recent empirical studies that test hypotheses within Braithwaite's theory use microlevel, or individual-level, survey data. The first such test, conducted by Hay,[19] finds that, consistent with the theory, interdependency significantly increases the use of both shaming and reintegration. As expected, reintegrative shaming significantly reduces secondary delinquency. Inconsistent with the theory's predictions, however, results indicate that stigmatization significantly reduces delinquency.

A second recent test of reintegrative shaming theory is Zhang and Zhang's[20] analysis of data from the National Youth Survey, a national probability sample of 1,725 adolescents between the ages of 11 and 17. Contrary to expectations, reintegrative shaming as a unit does not significantly reduce secondary offending. Using the same data set as Zhang and Zhang, McGivern[21] finds that reintegrative shaming significantly reduces secondary offending. The difference between the two studies can be explained partially by the fact that McGivern uses a different statistical method to create the reintegrative shaming variable, which appears to have better captured the sequential process.

The lack of consensus on the effectiveness of reintegrative shaming from the above empirical studies should not be completely discouraging. One of the main difficulties facing researchers who analyze reintegrative shaming is the lack of appropriate measures, or questions, within current survey instruments to fully capture the complex concept of reintegrative shaming. The subtle gestures of shame and reintegration are difficult to measure, and the two concepts often are measured separately and must be combined to produce the process of "reintegrative shaming." As the Zhang and Zhang and McGivern studies illustrate, even when using the same data set, a study's results can vary widely depending on how a researcher chooses to create the reintegrative shaming term.

The Canberra Reintegrative Shaming Experiments

One of the best examples of experimental research concerning reintegrative shaming and its effects on recidivism is The Reintegrative Shaming Experiments (RISE) project. The experiments took place in Canberra, Australia, for approximately five years, beginning in 1995, during which

time nearly 1,300 offenders were randomly assigned to make a traditional court appearance or to attend a reintegrative shaming conference. Known as the ''gold standard'' in science, randomized experiments effectively remove the possibility of any factors beyond the ''treatment'' itself from influencing the results. Offenders charged with four different offense types were included in the experiment: drunk driving, juvenile property offenses, juvenile shoplifting offenses, and youth violent offenses.

Results of the RISE study appear mixed. Sherman, Strang, and Woods[22] report that both victims and offenders found the conferences to be procedurally more fair than traditional court procedures and that victims were more satisfied with conferences than traditional court procedures. Results also indicate that offending rates decreased for all offenders who were charged with a violent offense, regardless of whether they attended a conference or appeared in court. In support of Braithwaite's theory, however, results show that offenders who attended a conference had a 38 percent *lower* offending rate than those who appeared in court for a violent offense.

The study finds that the offenders charged with drunk driving who attended a conference had a small increase in offenses. Harris[23] examined this finding further to determine whether stigmatization may be the motivating factor behind the secondary delinquency of convicted drunk drivers. Findings from interviews with 720 drunk-driving offenders indicate that, although there is no difference in the degree to how stigmatized offenders felt during the two proceedings, offenders who attended the conferences found those involved to show more disapproval and reintegration than did the offenders who attended a traditional court system proceeding. Harris concludes that stigmatization does not appear to be the motivating factor in this case. Instead, he points to emerging literature in sociology and psychology[24] that argues what really matters is not how much shame the offender feels, but rather how the offenders manage their shame (i.e., whether they feel guilt for the action or blame it upon others).

In addition to the discouraging results found with the drunk-driving offenders, the RISE study indicates that offenders charged with property and shoplifting offenses experienced no difference in offending rates after the conference. In sum, the RISE study does not demonstrate an overwhelming success for reintegrative shaming theory. The findings do show, however, that reintegrative shaming conferences generally appear to be a promising alternative to the traditional court appearance, both in the case of victim satisfaction and for the reduction of juvenile violent offenses.

An Empirical Study of Bullying

Bullying is another specific youth predatory offense to which reintegrative shaming theory has been applied and has showed promising results through empirical tests. From the perspective of the theory, the act of bullying becomes a reoccurring problem when the bully is not shamed for his or her behavior and then sequentially is forgiven for his or her action. To

reduce school bullying, then, the theory would posit that bullies must be confronted for their behavior, disciplined, and then reintegrated into the school so that they do not become stigmatized by their status of being a "bully." If a youth is treated in this manner and shows *shame acknowledgment* (responsibility and shame) for the behavior, the theory predicts that his or her conscience will be reaffirmed against bullying and future offending will be reduced greatly. If the bully is left alone without invoking any shame acknowledgment for the behavior, however, the theory predicts that the offender will instead blame others for his or her action, and the master status of "bully" will overtake the youth's identity, compelling him or her to continue to bully others.

To empirically test the effects of reintegrative shaming on the reduction of school bullying, Ahmed and Braithwaite[25] surveyed 1,875 males and females in the 7th through 10th grades in the nonwestern country of Bangladesh. They investigated the role of three general aspects of reintegrative shaming theory in the reduction of school bullying: shaming, forgiveness, and shame acknowledgment.

Results from the study show support for the role that reintegrative shaming plays in the reduction of school bullying. Findings indicate that both reintegrative shaming and forgiveness at home reduce children's frequency of self-initiated bullying at school. In addition, children who report using a restorative shame acknowledgment approach (feel shame, accept responsibility, and make amends for committing a hypothetical bullying act) are less likely to report self-initiated bullying. Conversely, a child who reports *shame displacement* (placing blame and anger on others) is more likely to report self-initiated bullying behavior at school.

Ahmed and Braithwaite note that forgiveness seems to play a much greater role in the reduction of school bullying than previously presumed; in fact, it has a greater effect on bullying than either reintegrative shaming or stigmatization. These findings emphasize the powerful role that reintegrative shaming can play in the reduction of bullying, as well as the need for further exploration of the role that forgiveness plays within the reintegrative shaming process.

LEGAL APPLICATIONS OF REINTEGRATIVE SHAMING THEORY

The main principles of reintegrative shaming are common within the formal legal system of several countries in the form of family conferences. The section below highlights specific examples of these programs as they exist today in China, England and Wales, and Singapore. Each case study reflects the main principles of shaming and forgiveness, either through a direct and intentional application of Braithwaite's theory, or as applied through an inadvertent theoretical intersection.

The first family conference model to have originated from Braithwaite's reintegrative shaming theory, and perhaps the prototypical example, is commonly referred to as the Wagga Wagga Model. Developed in

New South Wales, Australia, in 1989,[26] this model of restorative justice conference has been exported not only to other locations in Australia, such as Canberra and Sydney, but also to other countries, including the United States, the United Kingdom, Canada, and Northern Ireland. The Wagga Wagga Model may be considered police-based because the program originally relied on the police to determine whether an offender would be recommended for attendance at a conference. In some cases, such as in New South Wales, this responsibility has been transferred to the Office of Juvenile Justice to develop a greater sense of independence from government authority. In most cases, the proceedings are purposely well scripted to ensure that both shaming and forgiveness processes take place, even when facilitated by untrained mediators.

Bang Jiao in China

Years before the Wagga Wagga Model of family conferencing was developed from Braithwaite's formal theory of reintegrative shaming, the main components of the theory were being practiced as *bang jiao* in China's formal and informal justice systems. This phrase embodies the Chinese practice of preventing crime through the shaming and reintegration of offenders, and has been broken apart and translated by Lu to mean "help" and "education and admonition," respectively.[27] In general, bang jiao refers to the alliance of families, neighbors, communities, and state officials who work to harmoniously reinstate offenders into society. There are six main types of bang jiao, which vary from one another in three different aspects: the degree to which they are run by government or private organizations; their objective; and, their strategies.

The bang jiao process begins with shaming, which can occur through informal gossip networks in the family and neighborhood, as well as through a formal process such as a neighborhood bang jiao conference. Lu describes a young boy in Shanghai who was caught shoplifting and had to attend a bang jiao; his parents, neighbors, a teacher, and a police officer were among those who attended the conference. The communitarian nature of Chinese society places the family in a delicate situation at a bang jiao. Lu argues that although the offender's family must condemn the behavior and side with their community, they, too, are an object of shame because the offender's behavior reflects poorly on them as a family unit. In the case of the boy who shoplifted, this difficult situation was demonstrated by the mother who blamed herself for his behavior and apologized to the community.

After the offender has expressed genuine regret for his or her action at the bang jiao, the reintegration process begins. A contract is produced in the form of a "bang jiao responsibility agreement," which is signed by the offender and the conference leaders and affirms that the bang jiao team will help the offender successfully assimilate back into society. This process can include performing decertification ceremonies that will remove the offender's deviant status, finding the offender a job or enrolling him or

her in school, or engaging the offender in community service acts that will increase his or her worth in other citizens' eyes.

Consistent with Braithwaite's theoretical position, Lu argues that juvenile offenders are the group most likely to experience bang jiao, but that the process is not well-suited for habitual offenders or those who have few communal ties. Bang jiao seems to work, at least according to Lu's research on selected neighborhoods in Shanghai, China. In the first of two Shanghai neighborhoods that Lu studied, he found that only two individuals who were on the bang jiao list reoffended (broke a criminal law) in the following three years. In the second of the two neighborhoods, no individuals had reoffended during that same time frame. Although this study is promising, Chinese culture is much more communitarian than most societies in the Western hemisphere. Lu points out that Chinese urban communities like Shanghai are designed to facilitate interaction and ties among residents. In the United States, the closest situation to this may be the simulated village-living developments springing up in many urban areas, which group shops, restaurants, and housing into one condensed subdivision.

Youth Offender Programs in England and Wales

The Youth Offender Panel in England and Wales provides a second example of a successful family conference program based on the principles of reintegrative shaming. Almost a decade ago, the juvenile justice system in England and Wales experienced major reforms following the election of Tony Blair to the position of Prime Minister in 1998. Running on a "get-tough-on-crime" platform, Blair's New Labour government rejected many of the policies that had been in place during the previous decade and a half. Under the preceding Conservative government, the juvenile justice system had been characterized by a cautioning policy that was largely driven at the local level. Rather than arrest juvenile offenders, police officers had issued cautions in an attempt to reduce future offending. The election came on the heels of the publication of a major report entitled *Misspent Youth*, which found that the cautions became less effective over time with repeat offenders, and that the juvenile justice system as a whole was inefficient and expensive. After gaining office, the Labour Party introduced sweeping reforms to the juvenile justice system, as evidenced by the Crime and Disorder Act 1998 and the Youth Justice and Criminal Evidence Act 1999. Together, the new legislation was meant to invoke three main principles of restorative justice: (1) reparation on the part of the offender for their misdeed, (2) reintegration of the offender into the law-abiding community, and (3) creation of a sense of responsibility in the offender and the parent to prevent future offending.[28]

Under the Youth Justice and Criminal Evidence Act 1999, almost all youth offenders who pled guilty were mandated to participate in a Youth Offender Panel (YOP). Designed in part from the experiences of the Scottish Children's Hearings system and victim-offender mediations in

England and Wales, the YOP borrowed heavily from Braithwaite's theory of reintegrative shaming and the family group counseling that it inspired in Australia and New Zealand.[29] In keeping with Braithwaite's emphasis on community participation, the panel includes at least two members from the community, who undergo a minimum of 84 hours of introductory, preservice, and support training, and at least one Youth Offending Team member. If the offender is 15 years of age or younger, at least one parent or guardian is required to attend the meeting, which must be held within 15 days of the court hearing. In addition, the victim or a supporter of the victim, a supporter of the offender, and any significant figure in the offender's life who has a positive influence may also attend the meetings.

The offender's reintegration into the law-abiding community begins formally with the drawing up of a contract that outlines specific reparations that must be made for the offense. In addition, any actions that will be taken to address the root cause of the offender's behavior are included in the contract. Both the offender and a panel member sign the contract; the victim does not.

Crawford[30] outlines several potential difficulties that may be experienced in the implementation of the YOP. For example, every offender referred to a YOP averages between three and four meetings, which results in an increased, and potentially, burdensome caseload for all members involved, as well as increased court costs. There is some concern that offenders may plead guilty to ensure referral to a YOP in the anticipation that it will result in a lesser punishment. Conversely, the potential is just as great that other offenders may not plead guilty to avoid referral to a panel meeting. The victim's lack of signature on the contract greatly reduces their participation in the process, which may potentially undermine their interests. These criticisms aside, however, pilot evaluations of the 2000 YOP released in a 2002 report show that, "the pilots successfully accomplished the implementation of referral orders and youth offender panels."[31] In addition,

> Though initially slightly unsure of what to expect, the vast majority of offenders and their parents say that they feel they are treated with respect at youth offender panels and that the panel members treat them fairly. The panel process and outcomes are viewed as satisfying significant levels of procedural, restorative and substantive justice.[32]

Although there may be some criticisms of the program, it appears to have launched successfully with the application of Braithwaite's reintegrative shaming principles.

Family Conferences in Singapore

The juvenile court in Singapore provides a third and excellent example of the formal application of the principles of reintegrative shaming. Within their legal system, juvenile court is responsible for offenders who are at least 7 years old but no older than 15 years of age.[33] Once the child or

young person has been found guilty within this courtroom, they are individually assessed to determine their personal needs and any future risk they may pose to society, as well as their potential for rehabilitation. A final report compiling information from the offender's background, family life, school records, employment history, and psychological evaluations, as well as the severity of the offense, is used by the court to determine the juvenile's sentence. In addition to a variety of possible sentences, a juvenile may also be ordered to attend a Family Conference, which is based on Braithwaite's reintegrative shaming principles.

Established in 1996 in the Singapore juvenile court system, Family Conferences provide an excellent forum for an in-depth analysis of issues that the formal court hearing does not have the time to explore. For example, the Family Conference can provide a forum for the exploration of the juvenile's rehabilitative potential, a proceeding that would cost an overloaded court system too much time and too many resources. Set in a meeting room adjacent to the juvenile court, the Family Conference is facilitated by a trained counselor or psychologist from the Family and Juvenile Justice Center. It is mandatory that the offender and his or her family and friends, as well as any other significant figures in his or her life, attend the Family Conference. Although not required, the victim and the victim's parents often choose to attend the proceedings as well.

In accordance with the main principles of Braithwaite's reintegrative shaming, the facilitator guides the proceedings through a sequence of shame and forgiveness. First, each person in attendance shares their view of the offense and its impact on their life. These types of admissions are meant to create awareness in the offender of the harm he or she has caused his or her victim, friends, family, and community, and to elicit feelings of shame and guilt for the offending behavior. The facilitator may directly reprimand the offender for his or her actions and formally caution him or her not to commit the offense again. This shaming process is meant to lead the offender toward making an honest apology for his or her actions, showing remorse for his or her behavior, and to create the desire for the offender to make true reconciliation with everyone involved, including family and friends. In addition, this process is meant to help transform the offender into a law-abiding citizen by strengthening his or her own conscience against delinquency. To further encourage true reconciliation and positive involvement between the offender and his or her victim and the community, the offender may be sentenced to issue a formal apology to the victim, pay the victim any financial debt incurred by the offense, or perform community service.

At this time, the Family Conference in Singapore appears to be a success. Of the 298 offenders who participated in Family Conferences between July 1994 and December 2002, only 11 individuals (4 percent) have committed another offense.[34] The success of the Family Conference seems to lie in its flexible structure; although each conference follows a similar path of events, the content of the meeting is tailored to each individual case. This format gives the facilitator the leeway to explore comments, topics, and situations that may hold the key to understanding the

precipitants of the offender's behavior. Underlying family tensions and broken relationships that may go unnoticed in a formal court proceeding are often revealed and discussed during a Family Conference. Feigned indifference by the offender may be a strong facade built to hide sadness and anger. The facilitator of a Family Conference is in a unique position to delve into these issues and help transform the situations from where the behavior originated, hopefully reducing the likelihood that the juvenile will reoffend.

THE SINGULAR USE OF SHAME

The above sections highlight the degree to which reintegrative shaming has been embraced by the academic community and the legal systems of many countries since its inception in 1989. It is incorrect to assume, however, that every program or law that uses shame is a form of reintegrative shaming. As Braithwaite painstakingly emphasizes, shaming must be followed by forgiveness or reintegration to be a positive and useful form of social control. As labeling theorists have argued, shaming alone often results in stigmatization, humiliation, and further offending. Unfortunately, a multitude of examples from the past several years, particularly in the United States, highlight the use of shame alone.

The most familiar use of shame today in the American legal system is with "johns" who have been arrested or convicted for patronizing or soliciting prostitution. In Oakland, California, "Operation Shame" has launched 10- by 22-foot billboards showing blurred images of convicted offenders with the phrase "How Much Clearer Can We Make It?"[35] The Chicago Police Department posts photos of arrested and convicted johns on their Web site, as do the Metropolitan Nashville Police Department and the City and County of Denver. The city of Lakewood, Washington, is considering the use of billboards along Interstate 5, but it is concerned about the legalities involved with publicly humiliating unconvicted johns.[36]

Shame-driven programs have also developed rapidly around the problem of drunk driving. In 2003, Arizona lawmakers considered a bill that would force convicted DUI (driving under the influence) offenders to purchase an advertisement listing their name and offense in their local newspaper.[37] The same year, convicted drunk drivers in Florida were mandated to paste a bumper sticker on their vehicle that asks, "How is my driving?" followed by a toll-free number and the phrase, "The Judge wants to know!"[38] Beginning on January 1, 2006, first-time convicted DUI offenders in Tennessee face the new penalty of roadside cleanup while wearing orange vests decorated with the phrase, "I am a Drunk Driver."[39]

From the perspective of reintegrative shaming theory, several dangers are associated with the above forms of shaming. Primarily, no allowances are made to reintegrate the offender into society. The shaming ceremonies are obvious and long lasting in most cases, occurring with the placing of the bumper sticker on the back of the offender's car or the offender's

photo on a billboard. However, there are no ceremonies to remove the billboard or bumper sticker and renounce the offender's "deviant" status. If his or her penalty is noted by friends, family, colleagues, and neighbors, the risk of stigmatization is quite great. Conversely, if no one recognizes the offender from his blurred photograph or on the roadside wearing an orange vest, the shaming will only be accomplished by the impersonal and anonymous "state." Because the offender does not have a meaningful and personal relationship with the government, he or she most likely will not feel any of the intended shame, making the entire process null and void. Depending on the specific situation, then, these shaming programs risk changing the offender's master status into "deviant" or, at the least, wasting valuable taxpayer dollars.

THE FUTURE OF REINTEGRATIVE SHAMING

The search for meaningful alternatives to the incarceration of juvenile offenders is a growing trend in the United States and around the world. Reintegrative shaming theory provides the basis for a viable alternative that is appealing on many levels. It offers a community the opportunity to exhibit their great displeasure for the offender's behavior through shaming, while the reintegration process reassures the cessation of future criminal activity without imprisonment. Reintegrative shaming does appear to work successfully in some juvenile justice settings as well as in some empirical tests. This optimism, however, must be couched with caution until survey instruments are available that allow researchers to fully capture and measure the complexity of reintegrative shaming, including the important factors of interdependency and communitarianism. In the meantime, it is important to be aware of the danger posed by restorative justice programs that use only shame, and to educate others about the great healing possibility that reintegrative shaming theory offers.

NOTES

1. Braithwaite, 1989.
2. Braithwaite, 1997; Braithwaite & Mugford, 1994; Crawford, 2003; McCarney, 2003.
3. Braithwaite, 1989, p. 38.
4. Braithwaite, 1989, p. 56.
5. Braithwaite, 1989, p. 55.
6. Braithwaite, 1989, p. 58.
7. Braithwaite, 1989, p. 66.
8. Braithwaite, 1989, p. 100.
9. Braithwaite, 1989, p. 85.
10. Braithwaite, 1989, pp. 90–92.
11. Braithwaite, 1989, p. 90.
12. Walgrave & Aertsen, 1996.
13. Mika & Zehr, 2003.
14. Braithwaite & Strang, 2001.

15. Van Ness & Strong, 1997.
16. Makkai & Braithwaite, 1994.
17. Zhang, 1995.
18. Vagg, 1998.
19. Hay, 2001.
20. Zhang & Zhang, 2004.
21. McGivern, 2005
22. Sherman, Strang, & Woods, 2000.
23. Harris, 2006.
24. See Ahmed, 2001; Harris 2003.
25. Ahmed & Braithwaite, 2005.
26. McCarney, 2003.
27. Lu, 1999.
28. Crawford, 2003.
29. Crawford, 2003.
30. Crawford, 2003.
31. Newburn et al., 2002.
32. Newburn et al., 2002.
33. Mesenas & Min, 2003.
34. Ozawa, 2003.
35. Associated Press, June 4, 2005.
36. Voelpel, 2005.
37. Associated Press, October 10, 2003.
38. Associated Press, September 24, 2003.
39. Associated Press, December 31, 2005.

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CHAPTER 5

Making Sense of Community Supervision: Diversion and Probation in Postmodern Juvenile Justice

Gordon Bazemore and Leslie A. Leip

Changes in juvenile justice in the 1990s were by far more comprehensive than all previous reforms in the 100-year history of the juvenile court combined. A trend already being referred to early in that decade as the "new juvenile justice"[1] soon began an undeniable movement toward what were to become two fundamental transformations: (1) a new explicit emphasis on punishment in juvenile justice and (2) a dramatic shift toward a new formality and determinacy in juvenile justice decision making.[2] The former emphasis was apparent in the explicit changes in juvenile justice codes in many states that incorporated punishment as a legitimate goal, in place of or in addition to the focus on the "best interest" of the child. Formalization focused attention on the *offense* rather than the *offender* and was implemented first through determinate sentencing for juveniles in some states and was then followed up by opening court hearings and juvenile records to the public, passage of victim rights statutes in juvenile courts, enhanced security in youth correctional programs, and other related reforms.[3] By the end of the decade, these important changes were almost eclipsed by an even bigger transformation, best characterized by what Torbet and colleagues described as a dramatic loss in the jurisdiction of the juvenile court over more serious offenders.[4]

By making it possible for large categories of young offenders to be more easily transferred to the criminal court and criminal justice system, this loss not only reinforced the punishment and formalization emphasis, but also eroded or erased once-strong boundaries between criminal and

juvenile court, which brought even greater challenges to the rationale for a separate juvenile justice system. The new transfer policies, in particular, resulted in an appropriate response of alarm from youth advocates, policy makers, and researchers[5] that appropriately and necessarily focused national policy and research on the plight of youth and the need to preserve the jurisdiction of the court. This public response was motivated by an appropriate concern for youths who were vulnerable to receiving "adult time" in prison at a very young age. Neglected in this important emphasis on more serious offenders being transferred out of the system, however, have been the two primary components of community supervision: probation and diversion. These components seem to be most capable of preventing escalation to eligibility for incarceration in either juvenile or adult secure facilities.

Once viewed as highly informal, second-chance options, probation and diversion may play different roles in the new juvenile justice context of what generally has become a more formal, punishment-oriented system. In this chapter, we summarize selected findings from a recent formative evaluation of a Targeted Community Action Plan in an urban judicial circuit (i.e., Circuit 17 in Broward County, Florida). This plan provides an important case study of community supervision in the new juvenile justice system, which is managed in part by a state Department of Juvenile Justice. Local key decision makers (e.g., prosecutors) make use of formal legalistic criteria not only in the choice of whether to transfer youth to adult court, but also in the choice of diversion or court disposition (most often to probation). Our general concern is on the role and function of the essential community-based components of the juvenile justice system and the relationship between diversion and probation in the context of more formal, determinate, and punitive juvenile justice. Regarding this relationship, our primary focus is on the relative intensity of supervision and services provided by each component in the context of a "continuum" or progressive response to delinquency.

Following a discussion of diversion and probation and the idea of a continuum in juvenile justice, we present descriptive data from a formative study on diversion program failures. We review reasons for these failures, which suggest that this continuum may be out of alignment, and raise concerns about the intensity of diversion relative to probation and the implications of this for escalation of minor offenders in more restrictive placements. Given the ambiguity facing these community supervision functions in the new juvenile justice system nationally, we conclude with a community supervision research agenda focused on assessing the following: (1) the impact of diversion and probation on reoffending for similar low- to moderate-level offenders; (2) the role of intensity of services and supervision and of specific program models and components as key explanations for differences in impact; and (3) the perception of key practitioners and decision makers about the role of both probation and diversion and their adaptations to ambiguity in what continues to function as a "loosely coupled" juvenile justice system.[6]

DIVERSION AND PROBATION IN JUVENILE JUSTICE: COMMUNITY SUPERVISION PAST AND PRESENT

Diversion, as an informal method of response to youth delinquency that does not result in a formal court record, is widely viewed as the most common response to delinquent behavior in the United States. Although there is no systematic method for counting the number of arrested youth actually sent to diversion programs, conservative estimates provided by the National Center for Juvenile Justice suggest that about 42 percent of delinquency referrals to courts in 2002 were not petitioned. About 60 percent of these cases generally are handled informally, or essentially diverted,[7] and this estimate does not include those youth informally cautioned and released by police.

Probation, the most common formal response to youth crime in the country, has in recent years accounted for some 63 percent of all court dispositions for adjudicated cases nationally.[8] To fully understand the policy issues associated with diversion and probation, both need to be examined first in the national context.

Diversion in the National Context: Intervention Assumptions and Policy Issues

Diversion policy emerged in the late 1960s as a response to youth crime and trouble based on a strong critique of the juvenile court.[9] Throughout the 1970s, diversion policy and practice seemed to be informed by a theory that assumed that diversion would "work" not because it provided a new form of intervention that would rehabilitate offenders, but because it reduced the harm of exposure to the *criminogenic influences of the justice process* itself.[10] In contrast to this focus on diversion as a *process* for removing large groups of youth from the court's influence, by the late 1970s, diversion had become defined as a *program* aimed primarily at preventing minor delinquents and status offenders from reoffending.[11] Although many critics argued that failure to complete these programs and subsequent reoffending brought more youth into the system through a "net-widening" process,[12] others appeared to simply change the measure of success in diversion practice. That is, for those who viewed diversion as a kind of prevention or rehabilitation *program*, the new standard was no longer to determine the effectiveness of the process in protecting youth from the negative influence of the court, or reducing penetration into the juvenile justice system, but rather to ensure that programs were effective in identifying and addressing the perceived needs and risks of young people and in reducing rates of reoffending.[13]

Diversion was once welcomed as a new innovation in juvenile justice, then widely evaluated as a process to remove youth from the influence of the juvenile justice system, and finally criticized on the basis of that research for net-widening, stigmatization, and coercion.[14] In recent years,

its impact has been evaluated primarily at the program rather than system level,[15] and its role in community supervision as a true alternative to court processing has seldom been examined. The mission of diversion appears to have grown increasingly unclear, but today diversion programs appear to be a permanent, generally unquestioned, part of the urban juvenile justice landscape. As this has occurred, an interventionist, programmatic policy focus[16] has become institutionalized around a practice Potter and Kakar refer to as a "diversion to service"[17] rather than a process to reduce intervention. Although many practitioners seem to retain a real focus on helping youths avoid a formal court record,[18] there appears to be little, if any, of the original concern about possible negative effects of diversion itself. Indeed, proponents of "best practice" models seem generally unconcerned with the practice of displacing the use of courts or probation, as a primary goal, and instead have focused on preventing new offenses. Overall, in the context of more harmful and explicitly punitive developments in the new juvenile justice system (e.g., a dramatic increase in the number of youth transferred to the criminal justice system), an assumption of benevolence regarding the diversion option appears to have shielded it from the critical scrutiny it received in past decades.[19]

Probation in the National Context: Intervention Assumptions and Policy Issues

Now a formal court disposition, probation was originally intended as an informal second-chance alternative to more restrictive and punitive responses.[20] Today, as Torbet and his colleagues note, probation is clearly the "workhorse" of the juvenile justice system and is the most common formal response to delinquent behavior.[21] Nationally, probation is a low-cost disposition, especially when compared with incarceration. Although probation reoffense rates can be high, they are generally better than those observed in postincarceration recidivism studies.[22]

Probation, however, is also one of the most widely criticized components of juvenile justice practice. In the public mind, probation is often viewed as a "slap on the wrist." More realistically, despite innovation in specialized programs and the commitment and creativity of some probation officers in difficult situations,[23] the dominant probation model remains an essentially reactive, rule-driven, offender-monitoring approach that is focused on enforcing court orders and monitoring contact standards. As an intervention often lacking in an outcome focus,[24] probation is perceived by most of the public and many criminal justice professionals as deficient in its focus on accountability and responsibility for one's actions and grounded in passive requirements.[25]

As a result, best practice discussion often seems to completely bypass probation as an intervention. Rather, these discussions have focused on probation officer referrals to programs that might provide specialized treatment intervention and additional supervision at the community level.[26] Despite this focus, and the ongoing concern with institutionalizing risk and need assessments, individual casework and monitoring court-ordered

conditions of supervision remain the dominant intervention modalities guiding probation. However, philosophical shifts in the direction of more punitive law enforcement, rather than a social work orientation, have clearly had an impact on case management.[27] Little research has been conducted on the effectiveness of standard juvenile probation, and few if any studies have compared the impact of probation to diversion as a presumably less formal response.

Given these problems and controversies in diversion and probation, how might these community supervision options fit together? Questions remain about the role and function of each of these community supervision components, but conceptual models are available to link these components in a logical way.

A Continuum of Supervision and Services

One of the most influential strategies for reform during the decade of the 1990s emphasized the importance of developing a range of community-based sanctions and services. Notably, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) proposed a "comprehensive strategy" that sought to strengthen the traditional prevention and treatment focus of the court within an overall framework that also addressed concerns with enhancing public safety and accountability.[28] Advocates of this comprehensive strategy proposed to do so largely through a continuum of graduated supervision restrictions coupled with increasing intensity of services.

The continuum featured a primary focus on prevention that targeted all youth for positive support and developmental opportunities,[29] and a second level of prevention focused on at-risk youth. At the next level, "immediate interventions," various juvenile justice system responses to delinquent behavior generally include diversion or informal alternative-to-court programs.[30] This level is followed by a graduated progression to intermediate sanctions, such as probation and day treatment programs, that focus generally on community supervision. Juveniles involved in more serious and chronic offending may then move to a level of more intensive supervision in locked community-based facilities and eventually to training schools followed by aftercare.

Based on the premise that an adjustment is needed in the intensity of services and restrictions or sanctions as the chronicity and seriousness of delinquency increases, the strategy assumes that youth who escalate to the higher level of severity in offense patterns are at a greater risk of committing new or more serious violations and, therefore, should receive more restrictions and services. Such a graduated response is intuitively logical and appears to offer an important guide for administrators and policy makers who wish to ensure that resources are allocated in a rational way at various levels of intensity of intervention. The model also seems to promote fairness and justice objectives by giving logical priority to intervention at the community level and to the "least intrusive" services and sanctions needed in the context of public safety objectives.

Although we know of no direct empirical evidence that achieving the right mix and application of graduated responses will necessarily lead to reductions in offending or reoffending, graduated responses based on risk and need seem preferable—at *least* on grounds of justice and fairness—to the opposite state of affairs in which more serious or chronic offenders receive the least intensive levels of intervention. Moreover, one premise of the model that has been empirically validated is that decision makers should *reduce intervention* for those juveniles at the *lowest risk levels.*[31] Arguments in favor of a continuum of services and supervision or sanctions at the local level can be summarized as follows:

- Services and sanctions should be geared to risk and need.
- Overconsequencing and excessive supervision may lead to reoffending.
- Too little supervision or services may lead to reoffending.
- Fairness and justice values should place limits on restrictions.

Limitations in this conceptualization can be found in its translation to the real world of juvenile justice supervision and assessment in most communities. In this loosely coupled system context, there are multiple decision-making processes and multiple decision makers. These professionals may function autonomously in a highly professional manner, while at the same time working at cross-purposes informed by different professional priorities. For example, the desires to maximize speed in processing cases, to assess risk and need, and to ensure fairness and equity in decision making may compete with each other. By way of illustration, it is entirely possible, as we found in the current study, to have intake staff completing extensive need and risk assessments at a well-funded assessment center, while prosecutors made decisions about whether to file formal charges or recommend diversion—and make referrals to specific diversion programs—without using any of this information.[32] In addition to this lack of coordination and formal professional commitments, specific impediments to developing a useful continuum of services and supervision can be summarized as follows:

- Legal barriers to decision making based primarily on risk and need criteria
- Fairness and equity issues
- Lack of variation in program models and intensity sufficient to accommodate risk-based referral
- Practical referral considerations (e.g., location of diversion programs) and excessive focus on secure programs and deep-end intervention

Levels of Community Supervision

Where do probation and diversion fit into a rational progressive graduated continuum response as prescribed in the comprehensive strategy of supervision and services? Aside from the critical fact that probation

requires a formal conviction order and gives the probationer a formal conviction record, outside observers and many within juvenile justice systems may not recognize any fundamental difference in supervision or service intensity between formal probation and "informal" diversion.[33] Although the step from community-based intervention to secure facilities is straightforward, the more nuanced movement from less to more intensive nonresidential, community-based restrictions and services is more difficult to implement or even conceptualize. For purposes of the discussion of the continuum of community-based intervention, an apparent lack of understanding regarding the intensity and content of intervention provided by these two community-based options raises questions about the validity of decision-making criteria for referral to these options and the anticipated results. For example, should decision makers not expect more supervision, services, and punishment or restrictions for probation, and less for diversion? Is the decision to formally file charges on a case, rather than divert, in the hopes of ensuring a more restrictive sanction, misguided if probation is indeed *less* restrictive than diversion? From a risk-focused intervention perspective, the lack of variation in the intensity of services and supervision between diversion and probation similarly calls into question the value and meaning of both the formal and informal responses. From the most practical policy perspective, minor to moderate-level offenders commonly placed on probation could be effectively referred to diversion programs by examining a variety of outcomes for similar offenders receiving each type of response.

It seems likely that uninformed decision making based on a lack of understanding of diversion and probation, as well as the implied inappropriateness or weakness of the response to delinquent youth at these early stages, may create problems later in other parts of the system. For example, as we will illustrate in the following section, disproportionate minority confinement and a general overuse of secure confinement options[34] may be a result of high rates of failure for minority youth inappropriately placed on probation (versus diversion), or it simply may be a result of the decision maker's lack of confidence in either community-based option.

DIVERSION AND PROBATION IN SOUTH FLORIDA: A CASE STUDY

Florida is in many ways a "bell-weather state" for an examination of community supervision and the continuum of supervision and service in the new juvenile justice landscape. With an independent judiciary, a strong decision-making role for prosecutors (state attorneys), and a state-centered Department of Juvenile Justice (DJJ) responsible for operating probation, detention, and secure residential placements at several levels, the state in the past decade has been at the forefront of a national trend toward developing legislative mandates that have increasingly removed discretionary and informal decision-making authority from judges and probation.[35] Consistent with this and the expanded authority granted to prosecution in many states,[36] Florida's state attorneys have discretion over the decision to

remove a youth 14 years or older charged with delinquent acts from the juvenile court's jurisdiction to the adult system through direct file procedures. Prosecutors have ultimate responsibility for the decision to divert youth or proceed with a formal court filing that most often results in a probation disposition. The judiciary is the decision maker for determining formal court sanctions for probation dispositions via the court order, while probation supervision is a statewide DJJ responsibility.

Diversion in Florida

Florida has a long tradition of support for diversion practices and was a leader in the diversion movement and diversion programming in the 1980s.[37] Since the 1970s, Florida has been a national leader in implementing the OJJDP Act deinstitutionalizing status offenders and jail removal mandates, and more than many other states, it has resisted pressure to retain jurisdiction of status offenders.[38] Especially since the Florida Juvenile Justice Reform Act of 1990, Florida has been governed by the philosophy of the "least restrictive alternative" approach to juvenile court sanctions and has implemented preadjudicatory detention reform as a pilot project first in Broward County and later through statewide legislation.[39] In this sense, both the state and Circuit 17 have viewed formalization of the court as a way of limiting, rather than expanding, the court's jurisdiction over lower-level offenders.

In the late 1990s, the once well-conceptualized and generally well-funded diversion system in the state underwent several shocks. Most notably, reallocation of much state juvenile justice funding, formerly allocated to prevention and local diversion programs, was designated for an expansion of the state's secure-bed capacity, thus weakening the capacity of most local jurisdictions to support diversion programs. In the past five years, after several years of struggle to replace diversion programs, the Florida State's Attorney Office (SAO) responsible for juvenile cases and other system and community partners, with support from the local Broward Children's Services Council (CSC), was able to develop a variety of diversion programs and intervention models, including drug treatment, family and youth group counseling, restorative justice, and youth development and mentoring. In addition, it developed multiple treatment and service *components* of programs that have become prevalent among many diversion programs, including (1) community service, (2) restitution, (3) family sessions, (4) group sessions, (5) individual counseling, (6) restorative justice conferencing, and (7) academic components. As these findings and our fieldwork in the formative study suggest, although intensity of supervision and number and type of specific intervention components vary by program, diversion intervention as a whole seems highly structured regarding service and supervision requirements.

Diversion requirements do vary by specific program model, but several conditions of diversion supervision are standard across Broward County programs per SAO policy. These include a 45-day minimum period of supervision; standard community service hour requirements; restitution, if

applicable; and other individual conditions of supervision and service participation determined by the specific program with SAO approval. The SAO in Circuit 17 establishes and enforces rules of supervision, has oversight over violations of supervision, and approves diversion program completion. Little is known, however, about the extent to which diversion programs vary in intensity of services and supervision.

Probation in Florida

Consistent with national trends,[40] juvenile probation in Florida appears in recent decades to have passed through several reform phases that include a social work model, a law enforcement focus, and a more professional, administrative case management model grounded in a risk and need assessment–based focus. Today, juvenile probation officer (JPO) decision making seems to be more constrained by limited resources than in past years. For example, in the 1990s, the state supported a more comprehensive service–focused case management model as a result of the passage of the Juvenile Justice Reform Act of 1990.[41] The court order determines the specific conditions of probation supervision, and many of these conditions are standard requirements emphasizing rules and restrictions as well as reporting requirements, but DJJ probation intake officers may have substantial input into the case plan, elements of which may be included in the court order.

In recent years, however, the supervision and intake authority of the JPO is increasingly limited to a monitoring and enforcement function defined by caseload contact standards that prescribe three general levels of risk: *minimal* or *demand* (one face-to-face monthly contact), *general* (three face-to-face monthly contacts), and *intensive* (three weekly face-to-face contacts). Despite this limitation, some JPOs still find new ways to exercise creativity and to professionalize their work, often by working "under the radar" and giving less emphasis to the enforcement of what appear to be less sensible supervision rules.[42] Focus groups and informal interviews with JPOs in our formative study, however, suggest a widespread feeling of being trapped by impossible goals and time frames that often are dictated by time spent in court and completing paperwork.[43]

FLORIDA JUDICIAL CIRCUIT 17 FORMATIVE ASSESSMENT: SELECTED FINDINGS

Some youth advocates continue to view probation and diversion responses as viable second-chance options, but critics view diversion and probation as "soft" alternatives that fall short of needed incapacitation and punishment. In a climate in which punishment is now an official component of juvenile justice codes in most states and adult time is increasingly an option, probation increasingly may be understood as a punitive enforcement function. Moreover, with the continuing popularity of community-based informal programs that incorporate punitive and shock

components, such as boot camp and Scared Straight,[44] diversion programs clearly are not immune to developing a punitive focus. Although diversion staff in the loosely coupled juvenile justice organizational environment may continue to define their roles as nonpunitive helpers who promote rehabilitation (rather than accelerate punishment), both diversion and probation may play a primary role in moving youth more quickly into secure settings and expanding the reach of juvenile justice on the front end,[45] much as these programs did in the 1970s.[46]

Background and Impetus

Concerns about the nature of diversion and probation and the role of each response in the continuum were primary issues underlying a local initiative in Circuit 17. The authors conducted a critical empirical examination of the referral and intervention process in diversion programs and probation. A primary original impetus for the initiative and formative study grew out of a concern about the very high failure rates in diversion programs for youths involved in low- to moderate-level delinquency, and with the realization that formal probation was being overused relative to informal diversion. In addition, at various points over the past five years, apparent increases in the proportion of minority, relative to nonminority, youths placed on probation, along with declines in the proportion of minority youths diverted in the circuit, have been a source of concern. To address these needs, a working collaborative group of key juvenile justice decision makers developed a Targeted Community Action Plan for Circuit 17 that—along with training, technical assistance, and other services to local programs—supported a formative evaluation of diversion programs and probation in Broward County.

Overall, this formative assessment[47] provided an initial sense of the strengths and gaps in the continuum of services for delinquent youth in Broward County. It documented the range of interventions and program components being provided. Findings raised questions about the following: (1) whether the array of diversion programs offered a graduated range of intensity of service and supervision; (2) whether the intensity of probationary supervision differed from that provided by diversion programs; (3) how decisions were made regarding diversion versus probation orders; and (4) the reasons for these decisions. We focus briefly on the second issue, relative intensity of supervision intensity, in our case study below.

Intensity of Supervision and Services in the Continuum

The national issues in diversion and probation discussed above and our formative assessment of diversion and probation[48] raise a number of questions about community supervision. Despite important strengths of local practice (especially in diversion) and progressive, self-critical leadership among juvenile justice partner agencies responsible for decision making or implementation and monitoring, *weaknesses* in both diversion and probation and in the relationship between these options raise primary questions

about the strength of each community supervision component and the viability of a continuum of supervision and services. First, although a strength of Broward County's use of diversion is found in its impressive array of intervention models and components, a weakness is the lack of data regarding the relative success of programs in achieving basic outcomes. Second, although there are no national standards for gauging program completion in diversion, as a group, diversion programs in the county have what appear to be high rates of nonparticipation and failure of youths in these programs to complete requirements. Referred to by the SAO as "kickbacks," these failures to participate in or complete diversion in recent months have been as high as 40 percent of all referrals. This overall failure rate includes (1) referred youth who could not be located as well as those who fail to report to their assigned diversion programs (prewaiver failures); and (2) failures that occur for various reasons after the agreement to participate has been signed (postwaiver failures).[49] Although we know little about the relative intensity of diversion supervision and service in Circuit 17, the appropriateness of this level, or variations within and between programs in intensity and effectiveness, we do have questions about the meaning of this failure rate with regard to the relationship between probation *and* diversion, and the intensity and effectiveness of both.

Does probation represent a "step up" from diversion on the continuum of intensity of supervision, services, and sanctions from diversion as envisioned in the continuum of community supervision?[50] Is probation more or less effective than diversion in achieving positive outcomes for similar youth? Interestingly, findings from the formative study question the premise that probation is more demanding and suggest that diversion actually may be a more intensive and intrusive form of community supervision.

First, on average, diversion programs in the county typically require youths to participate at least weekly in one or more intervention activities and services (three weekly sessions are not uncommon), while the typical youth on probation may have but one face-to-face contact in a month. Second, as suggested in the high failure rate for diversion cases, evidence that intensity of supervision and services is greater on the diversion side is provided by the fact that 47 percent of the approximately 1,200 diversion kickbacks who returned to the SAO as program failures between July 1, 2005, and May 15, 2006, occurred during the prewaiver period as a result of parent and youth failure to agree to participate. Although 18 percent of the participants in this group were cases for which staff were simply unable to locate the family, the remainder apparently deliberately *resisted diversion*: about 13 percent (162 cases) of these cases were the result of parent refusal to allow their child to participate and 5 percent resulted from the juvenile's resistance. Another 7 percent of respondents reported that they wished to dispute the charge and reported that they preferred to "take their chances in court." In all, only 24 percent of prewaiver failures did not participate for reasons *other than* active or passive resistance (e.g., having moved or not been locatable).

Finally, the relative intensity of diversion is also suggested by the fact that, during the postwaiver period of actual diversion supervision, about

50 percent of the postwaiver program failures were due to inability or refusal to comply with program requirements or sanctions.[51] These descriptive data are preliminary and do not necessarily lead to the conclusion that diversion programming in Circuit 17 is indeed overly demanding (or that probation is too easy). They do raise concerns, however, about the relative intensity of diversion relative to the probation supervision option. In the worst case, one may consider the seldom-asked question of whether youth would be better off left alone than placed in a diversion program.[52]

Given the implications of the formal court record that accompanies the probation order for the future of young people—including a possible increase in the likelihood of secure confinement for subsequent offenses for supervision rule violations—several important policy questions should be asked about diversion programs and the diversion process. These questions include the following: (1) how effective are diversion programs, in contrast to probation, in addressing what many view as their now primary goal of reducing repeat offending while also achieving other objectives viewed as important to sustained resistance to delinquency and crime (e.g., building life skills, improving school performance); and (2) what accounts for the high rate of failure in these programs? Previous evaluations have addressed the impact of specific programs, but few if any recent efforts have been made to assess the impact of diversion at the system level, and almost no attempt has been made to examine reasons for success or failure.

A RESEARCH AGENDA FOR COMMUNITY SUPERVISION

Broader issues raised in the previous section about the relative effectiveness of diversion and probation for similar offenders, and reasons for differences in effectiveness, are directly related to concerns about how juvenile justice systems invest their resources. Answering these questions will require more rigorous impact analysis, as well as more intensive process evaluation. Both research agendas should attempt to answer questions about *reasons* for differences in effectiveness. It is important to understand how decision makers and practitioners understand and conceptualize the purpose and logic of diversion and probation in the new juvenile justice context. Two practical rationales for an intensive research focus on community supervision are based on (1) the dramatic policy implications of the diversion versus probation choice for the future of youth in trouble, and (2) the lack of understanding of current practitioner views of the logic, theory, and purpose of both responses to youth crime.

Policy Issues in the Choice of Community Supervision Options

Not much is known about the efficacy of placing low- to mid-level risk offenders in diversion programs rather than probation and whether or not such a placement will result in greater or less risk to the community. If diverted youth in fact have the same or lower reoffense rates both during

and after supervision, decision makers could spare them from the stigma of a formal court record. If probation is indeed viewed as the "last chance" before a secure placement, these decision makers might, by using the diversion option, add another alternative before using this option and thereby decrease the chance of such a placement. A lower rearrest rate for diverted youth would represent an enhancement in public safety as a result of the diversion choice. Conversely, if youths in the probation sample have lower recidivism rates than similar youths referred to diversion programs, one would then assume that moving to the formal court sanction of probation has crime reduction value, or that depending on the relative effectiveness of both, diversion simply provides a weak alternative for this group of young offenders. In the latter case, it is possible that diversion failure may prove to be a strike against youth in court who might be viewed as less deserving of probation and as posing a greater risk to the community.

Effectiveness and the Need for Intervention Theory

Addressing such policy questions in a meaningful way, however, requires a theory of intervention that has for the most part been missing from probation supervision and often only implicit in many diversion programs. Diversion practitioners may be unclear about the logic of their programs, although some may operate based on various theoretical assumptions about individual program components (e.g., a life skills component). Most important for replication and policy change, however, are answers to the question *why* a probation model or diversion program is more effective. Beyond programs, policy makers need to know whether diversion or probation as intervention systems work best for certain categories of offenders who are deemed appropriate for community supervision.

For researchers, the idea of an "intervention theory" in community supervision suggests that attention be focused on both immediate process results and intermediate outcomes that can link intervention practice with long-term results.[53] More specifically, the intermediate result, or "intervening variable" that some scholars argue may account for key differences between otherwise similar criminological theories,[54] should play a critical role in program evaluation. Although there is often little apparent "theory" in diversion and probation in the sense of scholarly logic that links involvement in crime to social and psychosocial causes or desistance to intervening processes in the case of intervention, it is important to be aware of some subtle theoretical underpinnings of diversion program and treatment or service components that are requirements of both forms of community supervision. In addition, implicit theories are related to the core idea of intensity itself that suggest, as noted earlier in our discussion of the "continuum" idea, that the services and supervision level must be appropriate to level of risk and need.[55] While it is important to assess the impact of specific program components, and completion of these components as intervening variables, it is also important to empirically examine what is often an unwritten assumption in modern diversion—that greater

intensity is better. Although we do not know in this case whether enhanced supervision will result in more or less reoffending, there are possible threats of greater consequences for violation of community supervision requirements.

A Systemic Agenda for Multimethod Research

There are many possible research priorities and agendas for community supervision, but our own current focus to expand on our formative study is one focused on diversion and probation in a systemic rather than programmatic way. In conjunction with a rigorous effort to address the impact questions discussed above, it is critical to examine the broader issue of the meaning of diversion and probation for professionals in the new juvenile justice climate. To address the policy decision and theoretical issues concerning program logic, we suggest—based on the formative findings of our previous assessment of the community supervision continuum in Broward County, Circuit 17—a research agenda that would have two components: (1) an exploratory investigation of how juvenile justice practitioners and decision makers "make sense" of the purpose, theory, effectiveness, and role of diversion and probation in the juvenile justice system; and (2) an impact study comparing outcomes for equivalent samples of delinquency cases assigned to probation and diversion, with an emphasis on variation in intensity and type of supervision and services provided by each community supervision option on program completion and impact on reoffending. A brief rationale for both agendas is presented below.

Research Agenda One: Making Sense of Community Supervision in the New Juvenile Justice Context

While new ideas and programs are often held up for critical scrutiny and may be subjected to evaluation, traditional criminal justice functions, such as sentencing, fact finding, and arrest, are seldom questioned in terms of their effectiveness. Because these common functions are seldom critically examined by system insiders, the idea of "effectiveness" may seem as irrelevant as asking whether the practices of arrest or the use of jail and detention are effective. If it is highly unlikely that any evaluation findings would be used to end the practices of arrest and jailing, the same may be true of diversion and probation. It is quite possible, however, that critiques of diversion and probation in the 1970s and 1980s are now viewed as virtually irrelevant in the new juvenile justice context, which seems to have moved in the direction of what has been called "managerial criminal justice."[56] This managerial approach is one no longer concerned with "success," and may eschew outcome measures in favor of a nonutilitarian focus on system and organizational maintenance. Incapacitation strategies in corrections,[57] for example, may have no long-term goal such as offender rehabilitation, reintegration, or even deterrence. They simply maintain order and the status quo, at least temporarily.

Similarly, diversion and probation may be in the process of becoming less about achieving outcomes for youth and more about providing "slots" to hold or incapacitate troublesome and delinquent youth whether or not improvements are made in their behavior and well-being. Like other criminal and juvenile justice functions, there are often very divergent expectations for long-standing practices such as diversion and probation. Different professional groups have a stake in the operation of both probation and diversion, and they may promote positive change or seek to hinder such change. Hope for improvement lies in the fact that, for cost reasons alone, community supervision is unlikely to go away.[58]

The concept of "sense-making" in criminal justice[59] seems to suggest that criminal justice professionals need to create meaning and purpose for various criminal justice functions that fit current system needs and their own needs—regardless of the original intent behind these functions. Because perceptions of what community supervision options should "be" and what they could achieve may differ within and between juvenile justice professionals, it is important to understand similarities and differences between the views of diversion staff, probation officers, judges, prosecutors, and other key system decision makers. If juvenile justice professionals are to develop outcomes that provide standards to measure improvement in community supervision options, it is important to know what professionals wish to accomplish, and how they want to accomplish it during the supervision and postsupervision periods. Answers to these questions may help to determine what "theories-in-use"[60] are being used to structure diversion and probation interventions. Such answers may help to understand competing justice philosophies behind interventions, views about which youths are appropriate for various options, and which interventions are perceived to be most effective. For example, now that it is viewed—for better or worse—more as a program than a process, diversion may be viewed by some as a way to provide treatment, that is, as a prevention program. Conversely, it may be viewed as a punishment or sanction that works because of the threat of harsher punishment and because it holds offenders accountable to their victims and the community.

The primary purpose of this research component would be to assess and compare juvenile justice system professional views about the purposes of diversion and probation, the effectiveness of diversion and probation, and the theory of the community supervision continuum. Research questions would address the following topics:

- How do juvenile justice professionals understand the role and function of diversion and probation?
- How do they view the relationship between the two?
- Which populations of offenders are viewed as appropriate for each approach?
- What is their "theory" of how and why diversion and probation "works" when it does?
- How could both be improved?

Most important, in the loosely coupled juvenile justice context, we may expect to see interesting patterns of professional adaptation within the overall context of formalization and the new emphasis on expanded punishment. Juvenile court judges, probation administrators and managers, probation officers, diversion program administrators and managers, diversion program staff, and prosecutors would be the population of interest for this research. The goals would be to document overall consensus, if any, around both "new" and "old" juvenile justice values regarding community supervision, and to determine differences in attitudes and beliefs within and between categories of juvenile justice professionals.

Many methodological approaches could be used to address these questions, but survey research, supplemented as needed by interviews and focus groups, would allow for comparison among various professional groups in a local or state system using professional role as a key independent variable and the abovementioned questions as dependent variables (e.g., views of purpose of diversion and probation; types of offenders appropriate for each; views of the theory behind diversion and probation). Independent or explanatory variables might include (1) the professional group affiliation (e.g., probation staff, diversion staff); (2) organizational climate and culture measures;[61] and (3) court work group influences and justice philosophy.

Research Agenda Two: A Probation-Diversion Impact Study

The primary purpose of this second component of our community supervision research agenda would be to determine the extent to which either a formal (court-ordered) period of probationary supervision or informal participation in a diversion program is more effective in preventing reoffending for similar offenders who are deemed eligible for community-based supervision. Such a probation-diversion impact study would compare equivalent samples of diversion and probation youths on reoffending and also would examine the impact of intervening processes and outcomes conceptualized as immediate and intermediate variables.

Research questions would first address the extent to which probation is more or less effective than diversion in reducing reoffending and achieving other outcomes for similar offenders. Second, we would wish to know the *reasons* for any difference observed between the two community-based supervision options. A primary expectation, or hypothesis, is that such observed differences might be due to variations in the intensity of service and supervision; variations in completion of obligations, sanctions, and program intervention components; or failure to comply with supervision rules and program requirements.

The preferred research design for this impact evaluation would be a randomized field experimental design (or appropriate quasi-experimental design) that could be used to compare outcomes for similar lower- to middle-range delinquency cases assigned to diversion or probation placement. A pool of moderate-level offenders fitting the profile of youths normally referred to probation could be identified for random assignment by

the juvenile justice professional responsible for making the decision to file formal charges or to divert (in Florida, the SAO). Random assignment procedures could then be used to create experimental and control groups to test the hypothesis that youths referred to diversion would have lower rates of reoffending than those assigned to probation.[62]

Because the stated policy objectives of both diversion and probation emphasize public safety and decreased reoffending as primary goals, the dependent variable for the impact evaluation is postsupervision reoffending, which is measured by (1) the number of rearrests during a period of at least one year of time postsupervision; and (2) changes in seriousness of offending as indicated by serious and frequency of pre- versus postsupervision charges, and time between program termination and arrest. The primary independent variable in the experimental study would be group assignment to a probation or diversion placement; however, underlying this group assignment are possible differences in intervention logic, in relative intensity of supervision and services provided in the experimental versus control groups, and rates of successful completion of the supervision alternative. Because intensity is different for those who do not complete the program and those who may participate in specific program components, the research should conceptualize three categories of *intervening variables*,[63] which may provide an underlying explanation for differences observed: (1) intensity of service and supervision; (2) program components and specific services provided for each case; and (3) program failure and individual component completion. Viewing the randomly assigned treatment as the independent variable, it is possible to view the intervention process (and the strength of this process as an intervening variable) by measuring supervision intensity to determine whether significant differences in supervision intensity may account for observed differences in group outcomes.

Several independent variable measures of intensity of youth participation in ancillary service programs that may be related to reoffending and prosocial outcomes will also be available for diversion and probation cases. For diversion cases, service intensity is based in part on referral to specific diversion program components (e.g., anger management, counseling, drug abuse treatment), as well as services provided by other agencies. Probation staff could provide the researchers with logs that do not include personal identifiers.

Although the other two intervening variable categories are focused on the intervention process, this category is outcome based and focused on intermediate results expected to be achieved at the conclusion of the period of supervision. Therefore, these outcomes are included in the concept of successful completion of supervision. On the negative side, outcomes also include reoffending while under the supervision of probation or the diversion program. As a dependent variable, ''in-program'' reoffending may be viewed as a primary component of an unsuccessful completion of diversion or probation (although a minor offense can occasionally result in a new referral to the same or alternative diversion program). As an independent variable, reoffending could be viewed as a

predictor of future reoffending. In-program reoffending will be measured by the number of rearrests during the period of time under supervision measured at program closure. Failure to complete diversion or probation obligations also will be measured at case closure. We will measure school attendance and grade appropriateness as positive, prosocial outcomes. School attendance is a mandatory requirement for youths on either probation or diversion status and is a prerequisite for achieving school-related, prosocial outcomes, which are demonstrated in the research literature of criminology and criminal justice[64] to be negatively related to delinquency and crime. School attendance will be measured by using truancy records (available from the Truancy Program at the county's Juvenile Assessment Center) to calculate an attendance-improvement score to measure pre- and postsupervision change. Grade appropriateness as an outcome will be measured by grade level per age category (e.g., 8th grade) at the time of arrest, which will be obtained from the DJJ fact sheet. We will then compute a grade-appropriateness change score for each case at the termination of supervision—for example, an 8th grader who is 14 has advanced to the 9th grade.

Although the randomization process is expected to create experimental and control samples roughly equal in risk and need profiles, we will also have access to the risk classification score for each case, which will be used as a control variable. Other control variables include demographic indicators such as age, ethnicity, gender, and types of people in the household. As noted, race and ethnicity have been strongly associated with diversion program failure in Circuit 17.[65] Hence, this variable along with other demographic measures listed in Component One will be used in this more-intensive multivariate analysis component. Specifically, we will seek to examine the extent to which disproportionate failure of minority youth as a dependent variable can be predicted by participation in specific programs and program components. In addition, other control variables may be suggested to mediate the impact of various program models and components. Specifically, our measures of intensity of supervision and service will be employed here as factors that may either weaken, or *increase*, the impact of program components. Finally, for some analyses, completion of program components will be viewed as control variables that may mediate the impact of independent variables on reoffending or positive postintervention outcomes. Basic measures of these demographic and family variables, as well as risk scores, which are included on the DJJ face sheets as prior arrest and charging information, are viewed as indicators or risk and prior propensity for delinquent behavior.

CONCLUSION

In the new, more formal and punishment-oriented juvenile justice system, the role of community supervision has received relatively little attention. Yet, despite the importance of loss of juvenile court jurisdiction over more serious offenders who are increasingly transferred to criminal court, the role of diversion and probation as part of a logical continuum of

community supervision may be more critical than ever. As the history of diversion and probation suggest, community supervision is not inherently benevolent.[66] Although diversion and probation offer the best opportunities for youth already caught up in the juvenile justice system to receive a second-chance alternative to reduce stigmatization and avoid the life-changing experience of incarceration, this opportunity is not guaranteed. Indeed, some have argued that an emerging "expansionist" juvenile justice system, having lost jurisdiction over more serious offenders, now appears to be taking on more responsibility for lower-level and status offenders in the context of zero tolerance, the proliferation of centralized assessment centers, expanded curfews, truancy intervention, and new specialized courts.[67] In doing so, it appears that juvenile courts are under increasing pressure to criminalize a range of problems once addressed by schools, families, extended families, and neighborhood organizations.

In this context, a strong alternative vision of the role of probation and diversion may be critical to the avoidance of casting community supervision professionals in a case-monitoring and law enforcement role that ultimately may accelerate the processing of young people deeper into the most restrictive components of the juvenile justice system. Whether based on expanding informal support and social control through community-building efforts grounded in restorative justice, positive youth development, or other reform agendas,[68] such a vision might encourage questions about the view that more juvenile justice supervision and services are necessarily better for the generally low- to moderate-level offenders now part of probation and diversion caseloads.

An action research agenda such as the one initiated by system and community leaders in Circuit 17 in South Florida may be helpful in encouraging a critical examination of assumptions about the role and effectiveness of diversion programs and probation—and the viability and value of the continuum of supervision and services at the community level. Generally, such research is needed to document and describe the current state of local juvenile justice systems that have undergone the often-traumatic transformations of the 1990s. Our research agenda to assess how juvenile justice professionals "make sense" of their roles in the new juvenile justice climate, and specifically how they understand the purpose of diversion and probation, seems critical to improving theoretical understanding of the organizational culture of the new juvenile justice landscape. More practical, such research should assist policy makers and juvenile justice administrators in improving their understanding of how staff view their roles and responsibilities. Finally, policy makers need concrete evidence about the cost-effectiveness of diversion versus probation for similar offenders as well as more information about differences in theories associated with various effective practices that can facilitate replication. Criminal justice researchers using rigorous research designs that compare samples of similar cases in diversion programs with those on probation, and examine the relative intensity of supervision and services in both, can contribute to policy-maker decisions, while advancing theory and research on the components of effective intervention in community supervision.

NOTES

1. Forst, 1995.
2. Feld, 1987, 1991; Sanborn & Salerno, 2005.
3. Feld, 1993; Torbet et al., 1996.
4. Torbet et al., 1996.
5. Bishop, Frazier, & Henretta, 1989; Butts & Mears, 2001; Feld, 1999.
6. Weick, 1995.
7. Puzzanchera, Stahl, Finnegan, Tierney, & Snyder, 2003; Whitehead & Lab, 2006.
8. See Puzzanchera et al., 2003.
9. Lemert, 1971; President's Commission on Law Enforcement and the Administration of Justice, 1967.
10. Potter & Kakar, 2002.
11. Binder & Geis, 1984.
12. Polk, 1987; Schur, 1973.
13. Binder & Geis, 1984; Whitehead & Lab, 1996.
14. E.g., Polk, 1987.
15. Whitehead & Lab, 1996.
16. Bazemore, 2001.
17. Potter & Kakar, 2002.
18. Bazemore & Leip, 2005; Minor, Hartmann, & Terry, 1997.
19. E.g., Polk, 1987; Rojek, 1982.
20. Whitehead & Lab, 2006.
21. Torbet et al., 1996.
22. E.g., Lipsey & Wilson, 1998.
23. Jacobs, 1990.
24. Bazemore & Day, 1995; Griffin & Thomas, 2004.
25. Maloney, Bazemore, & Hudson, 2001.
26. Lipsey & Wilson, 1998; Office of Juvenile Justice and Delinquency Prevention, hereafter OJJDP, 1995.
27. Whitehead & Lab, 2006.
28. OJJDP, 1995.
29. Hawkins & Catalano, 1990.
30. OJJDP, 1995.
31. Andrews & Bonta, 1994.
32. Bazemore & Leip, 2005.
33. See Frazier & Cochran, 1986; Potter & Kakar, 2002.
34. Lieber, 2003.
35. Feld, 1988; Sanborn & Salerno, 2005.
36. Torbet et al., 1996; Feld, 1999.
37. At one time several circuits in urban areas could make use of a continuum of intensity of services and supervision *within diversion programming* that included police cautioning and citation at the front end followed by various levels of programmatic intensity.
38. Shiraldi & Soler, 1998.
39. Bazemore, Dicker, & Nyhan, 1994.
40. Whitehead & Lab, 2001; 2004.
41. Bazemore & Day, 1995.
42. Jacobs, 1990.
43. Bazemore & Leip, 2005.
44. Finkenhauer & Gavin, 1999.

45. Bazemore, Stinchcomb, & Leip, 2004; Shiraldi & Soler, 1998.
46. Lemert, 1971; Polk, 1987.
47. Bazemore & Leip, 2005.
48. Bazemore & Leip, 2005.
49. "Waiver" refers to the waiver of speedy trial that must be signed by the offender and his/her parents to participate in diversion. Youths and parents in this category may include those who have moved or cannot be located, as well as those who actively resist diversion or refuse to sign the waiver of speedy trial that signifies a consent to bypass the adjudicatory hearing and be placed on diversion.
50. OJJDP, 1995.
51. Bazemore & Leip, 2005.
52. Schur, 1973.
53. Weiss, 1997.
54. Agnew, 1993; Unnever, Cullen, & Agnew, 2006.
55. Andrews & Bonta, 1994.
56. Feely & Simon, 1992.
57. Feely & Simon, 1992.
58. Although debate is likely to occur about who should be eligible for community supervision, few professionals are likely to oppose the idea of diversion and probation. Hope also lies in a growing commitment to research-based "best practice" models that achieve goals such as reductions in offending (e.g., Elliott, 1997). Although such models could be used in diversion, and could even be applied in probation, program replication in diverse contexts based on adherence to program guidelines alone has often been insufficient. In part because of expense, high expectations for staff, and a variety of practical problems (e.g., Mihalic & Irwin, 2003), implementation has failed due to an absence of understanding of intervention theory and principles and how these can be applied in diverse contexts. Indeed, such application appears to be a key aspect of what has been called the inability to "take programs to scale" in widespread implementation efforts (Schorr, 1988).
59. E.g., Maguire & Katz, 2002; Weick, 1995.
60. Argyris & Schon, 1974.
61. Griffin, 2001; Pritchard & Karasick, 1973.
62. As the "gold standard" for research designs aimed at providing data that allow for valid conclusions about program effectiveness in impact research (Boruch, Snyder, & DeMoya, 2000), random assignment should, in the current study, eliminate selection bias that might result in important differences between samples potentially related to intervention outcomes. Randomized field trials are appropriate in a study like this one because there is no evidence that either probation or diversion is more effective or an easier option (at least in Broward County), and there are not enough diversion program slots to refer all offenders who fit this profile to this option. Under such conditions, random assignment is a fair option for distributing a scarce resource (Boruch et al., 2000; Sherman, 2000).
63. Intervening variables are characteristics, events, situations, or features that come between a set of presumed cause and effect variables. Normally, they affect or mitigate the strength or direction of the causal mechanism.
64. E.g., Elliott, 1994; Hirschi, 1969.
65. Bazemore & Leip, 2005.
66. Cohen, 1985.
67. Bazemore et al., 2004; Stinchcomb, Bazemore, & Riestenberg, 2006.
68. E.g., Bazemore & Schiff, 2004; Brendtro & Long, 1995; Butts & Mears, 2001.

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CHAPTER 6

Mandatory Mental Health Treatment and Juveniles

Barbara Belbot

Five primary systems provide care to troubled children in the United States: (1) the health care system, (2) the mental health care system, (3) the child welfare system, (4) the juvenile justice system, and (5) the education system. Each of these systems is composed of various professionals, facilities, agencies, and organizations. Unfortunately, there is often little coordination among the five systems. Weithorn reports that troubled youths often are viewed through the different lenses of the mental health, child welfare, juvenile justice, and education systems and may end up in one system or another for reasons not always related to their needs. They may be rejected from one system because of financial considerations or an overburdened system may shift a child to another system. Perhaps authorities did not adequately assess a child's needs. Which system a youth enters determines the services they will receive, because each system is able to offer only a specific set of services. Once a youth enters a particular system, it can be difficult to change direction. It is also common, notes Weithorn, for a troubled youth to be involved in more than one system at any point in time, each with its own mission, service delivery requirements, and nomenclature. The youth's behavior may indicate family problems that need to be addressed by the child welfare system, while school performance and conduct is also affected. He or she may be diagnosed with mental health and emotional problems or involvement with substance abuse.[1]

The juvenile justice system is able to intervene in the lives of youth who violate the criminal law and are labeled delinquents. A wide range of dispositions are available to juvenile court judges who deal with youths

adjudicated as delinquents, including probation, suspended sentence, payment of fines and restitution, referral and commitment to a mental health or substance abuse facility, and commitment to a juvenile correctional facility. In certain circumstances, juvenile court judges can transfer juveniles who have been charged with serious crimes to adult criminal courts to be tried as adults. If convicted, these youths are sentenced as adult offenders and can be sentenced to adult correctional facilities. The juvenile court is also able to intervene in the lives of youths who have committed noncriminal status offenses, which include behavior that does not amount to a criminal violation but, when committed by juveniles, can lead to juvenile court intervention. Status offenses include such behavior as truancy, running away from home, or engaging in other types of broadly defined incorrigible, wayward, or stubborn conduct.

According to many researchers, a significant proportion of juvenile offenders and residents in juvenile correctional facilities have mental disorders.[2] A recent study of 1,829 youth in juvenile detention found that, excluding conduct disorders, 60.9 percent of the males and 70 percent of the females met diagnostic criteria for one or more psychiatric disorders. Other disorders that were common included anxiety disorders (21.3 percent of males; 30.8 percent of females); affective mood disorders such as depression (18.7 percent of males; 27.6 percent of females); and attention deficit disorder (16.6 percent of males; 21.4 percent of females). A study conducted by Wasserman that examined youths within several weeks of their admission into a juvenile justice facility found that 67.2 percent of the sample examined met the criteria of at least one mental disorder and 31.7 percent met the criteria of a conduct disorder.[3]

Other research has examined what proportion of youths receiving mental health care are also involved in the juvenile justice system. Vander Stoep and her colleagues conducted research in Seattle, Washington, and found that children receiving public mental health services were almost three times as likely to have had some contact with the juvenile justice system than a comparable group in the general population. The researchers compared youth receiving public mental health services who had contact with the juvenile justice system with those who had no such contact. The dual-system youth were more likely to have been expelled from school (62.1 percent versus 8.4 percent), had below-grade-level performance (51.2 percent versus 31.6 percent), and been identified as seriously behaviorally disturbed (58.1 percent versus 23.3 percent). The dual-system youth also had higher levels of abuse and neglect and foster care placement.[4] Finally, recent research has found that a significant number of all adolescents receiving mental health services in the general population have co-occurring substance abuse disorders.[5]

This chapter examines the mandatory mental health care treatment of adolescents. Youth under the jurisdiction of the juvenile justice system are subject to mandatory treatment in much the same way that some adults involved in the criminal justice system can be legally required to participate in treatment—that is, as part of their court disposition. Not only juveniles who are adjudicated delinquent can be placed into mandatory treatment.

Status offenders under the jurisdiction of the juvenile court also can be required to participate in mental health care treatment programs. In contrast to the adult criminal justice system, the rationale behind the mandatory treatment of juveniles is derived from the doctrine of *parens patriae* and the police power of the state. These same rationales support mandatory treatment of youth who are fortunate enough not to be under the jurisdiction of the juvenile justice system, even though many of them exhibit behavior that could, and might one day, bring them within the ambit of that system.

ADOLESCENTS AND THE LAW

The legal treatment of adolescence has been shaped in large part by the juvenile justice system, *parens patriae*, and jurisprudence that balances the interests of parents, state, and youth.[6] Before the twentieth century, adolescents had no rights and were considered the property of their parents. By the early part of the twentieth century, each state had enacted a version of Illinois's Juvenile Court Act, recognizing that the state may be justified in intervening in the lives of families to protect the health and well-being of children and adolescents. The goal of this paternalism is not to punish but to reform. Termed *parens patriae*, it seeks to promote well-being. The *parens patriae* doctrine had a powerful influence on the enactment of federal and state compulsory education and child labor legislation in the early part of the twentieth century. Courts at the turn of the century also began the difficult job of balancing the tenets of *parens patriae* while also preserving parental authority in the lives of children. The result has been the evolution of piecemeal, often conflicting, policy concerning the role of adolescents in society and their legal status in American law. In 1923, the U.S. Supreme Court in *Prince v. Massachusetts* upheld a Massachusetts child labor law that prohibited parents from authorizing minors to sell newspapers, magazines, or parcels in a public place. A Jehovah Witness, Sarah Prince, allowed her child to sell religious literature on street corners. The Supreme Court denied her claims that the law unconstitutionally restricted her parental authority, finding that *parens patriae* may restrict parental authority in matters affecting a child's welfare. Taking a very different view, in *Wisconsin v. Yoder*, the Supreme Court invalidated a Wisconsin statute that compelled school attendance beyond the 8th grade as it applied to an Amish community, deciding instead that the law interfered with parental religious freedom. In *Yoder*, the Court rejected the *parens patriae* claim.

In *Tinker v. Des Moines*, a group of parents opposed to the Vietnam War encouraged their children to wear black armbands to school in protest. School board officials learned of the plan in advance and announced that the activity was forbidden. The board suspended the students who disobeyed. The Supreme Court struck down the board's edict on the grounds that it violated the students' First Amendment right of free speech.

In *Kent v. United States*, the Supreme Court ruled that the Constitution requires that youths facing juvenile delinquency adjudication have the

right to the effective assistance of counsel. The Court noted that the power of *parens patriae* is limited by the rule of law. In *In re Gault*, the Court ruled that a juvenile facing detention must be informed of his or her Fifth Amendment right against self-incrimination, Sixth Amendment right to counsel and confrontation, and Fourteenth Amendment right to notice of the proceeding when facing a charge of juvenile delinquency that entails a loss of liberty. In essence, the Court declared that the Fourteenth Amendment and the Bill of Rights are not for adults alone. In *McKeiver v. Pennsylvania*, however, the Supreme Court held that youths involved in juvenile court proceedings are not constitutionally entitled to trial by jury. In explaining its decision to limit the rights of juveniles, the Court noted the juvenile justice system is different than the adult system and is based on a paternalism, concern, and sympathy that distinguish it from the criminal courts.

To date, the law has failed, either by statute or court decision, to establish a coherent jurisprudence concerning the legal status of adolescents in the United States. Supreme Court decisions recognize the state's authority to intervene in the lives of adolescents under the doctrine of *parens patriae* and its police powers, but it struggles to balance state intervention with the rights of parents to guide their children and decide what is in their best interest. To complicate the issue further, in the 1960s, the Supreme Court recognized that in certain circumstances adolescents enjoy the protections of the U.S. Constitution.

ADOLESCENT DECISIONAL CAPACITY AND MEDICAL CARE DECISIONS

No where else is it more evident that the United States lacks a cohesive and logical policy to define the legal status of adolescents than in matters relating to their right to make decisions about medical care. Decisional capability is the ability to perform a task and understand information, deliberate, and decide. Adults are presumed decisionally capable of making medical and mental health care decisions for themselves. Minors, however, are presumed by the law to be incapable. With respect to adolescents (ages 14 through 17), this legal presumption can be problematic, especially because some of our social norms treat adolescents as if they are decisionally capable.[7] A 16 year old can seek treatment for a sexually transmitted disease but may not decide treatment for a complication related to the STD. A 16 year old who is presumed incapable of deciding about a medical treatment for herself is presumed capable of determining treatment for her infant child and is able to consent to her child's adoption. A 14 year old can be tried in adult court but cannot give consent to basic medical treatment.[8]

Because minors are presumed incapable of medical decision making, the consent of a parent or a legal guardian is required. A doctor treating a child without parental consent can be liable for assault and battery, even if the child consented.[9] Most states reverse this presumption by statute in certain cases and permit adolescent decision making for certain types of

medical care, including emergencies in which care is required to save a child's life or well-being, sexually transmitted diseases, drug or alcohol dependency, mental health treatment, contraception, and pregnancy. These exceptions were developed to encourage youths to seek treatment without fear their parents would be contacted and to protect adolescents who might be victims of family abuse. Two other exceptions apply to minors: the emancipated minor and the mature minor doctrine. Emancipated minors are those who no longer live with their parents and are not financially dependent on them, or whose parents have surrendered parental duties. Mature minors are those deemed mature enough to make medical decisions for themselves.[10]

Unfortunately, there is little consensus in case law about what constitutes a mature minor, although court decisions have suggested that health care providers and judges involved in these decisions should consider such factors as the minor's age, experience, education, training, degree of mature judgment, nature of the treatment, risks, probable consequences, and ability to appreciate those risks and consequences. Louisiana's law provides that adolescent consent to treatment shall be binding and valid as if the minor had achieved the age of majority. Rhode Island recognizes the medical decision-making ability of 16-year-old adolescents for routine care, assigning physicians the task of distinguishing between routine and nonroutine care. Both Louisiana and Rhode Island recognize adolescent medical decision making to choose treatment but not to refuse it, which is common among mature minor statutes in other states.[11] Many states have not enacted mature minor statutes for adolescent medical decision making. Several state courts have rendered decisions concerning adolescent medical autonomy and have created mature minor doctrines that vary from state to state. These decisions emphasize that their rulings are not a general license to treat minors without parental consent and that the application of the mature minor doctrine depends on the facts of each case.[12] Importantly, these statutes and court decisions give mature minors the right to consent to treatment rather than the right to refuse it. Few state court cases have recognized the right of adolescents to refuse medical treatment.[13] Reported case law addressing adolescent medical decision making is sparse, and most of the relatively few reported cases have focused largely on end-of-life care.

ADOLESCENT AUTONOMY AND MENTAL HEALTH CARE DECISIONS

The exceptions that allow adolescents to seek mental health care without parental notification have evolved for several reasons. Escalating rates of adolescent suicide caused some state legislatures to improve access to mental health treatment through laws that allow adolescents of a certain age to consent to treatment without parent contact or consent. For example, California law permits minors 12 years of age or older to consent to mental health treatment, but it requires health care providers to determine whether the minor is mature enough to participate intelligently, would

endanger themselves or others, or is the alleged victim of incest or child abuse. Pennsylvania recognizes the consent of any person 14 years or older, requiring the health care provider to judge whether the adolescent believes he or she is in need of treatment and substantially understands the nature of voluntary treatment and to determine whether the adolescent is voluntarily deciding to submit to treatment. Virginia and Connecticut do not impose age restrictions for adolescent consent to mental health treatment. Connecticut, however, requires physicians to determine whether parental consent or notification would cause the minor not to obtain care, treatment is clinically indicated, failing to provide it would harm the adolescent, and the adolescent voluntarily seeks treatment and is mature enough to participate in treatment productively.[14]

State mental health legislation has been moving in the direction of restricting the time period for which an adolescent may consent to outpatient treatment without parental notification with limits that vary considerably from state to state. Michigan allows 12 sessions or four months of treatment before the clinician must end treatment or require parental notification and consent. Ohio permits an adolescent to consent to six sessions or one month, and Florida permits a mere one-week period or two sessions. At the point at which the legislation requires parental involvement to continue treatment, it directs providers to assess and document whether such notification and consent by parents would be detrimental to the minor and whether that treatment is necessary for the minor's best interest. Should the provider determine that continued treatment is necessary and authorized by the adolescent, these statutes eliminate parent or guardian liability for the costs of treatment.[15]

Interestingly, research suggests that adolescents are thoughtful and thorough in making health care decisions. Scherer found that the ability of older adolescents to make sound and reasonable medical decisions appears to be comparable to the abilities of young adults.[16] Studies have also found that allowing youth to determine their health care is therapeutic and improves their response to and active participation in treatment.[17]

MENTAL HEALTH COMMITMENT AND ADOLESCENTS

The difficulties associated with decisional autonomy and adolescents are magnified when dealing with mental health issues—whether the decision involves in- or outpatient treatment, or voluntary and involuntary civil commitment. Special considerations arise when the juvenile's liberty has been curtailed because of state action, whether incarceration or institutionalization. As with adults, commitment to a mental health facility should not render an adolescent incompetent who is otherwise decisionally capable. However, state statutes that establish civil commitment procedures do not always address or provide specific guidance for the commitment of adolescents.

The U.S. Supreme Court has addressed the situation. In *Parham v. J.R.*, a Georgia statute allowed an adolescent to be involuntarily civilly committed to a mental health institution with the consent of one parent

along with an evaluation of a mental health professional at the commitment facility. Given the gravity of the social stigma and loss of liberty resulting from institutionalization, the case went to the U.S. Supreme Court as a class action due process challenge. The Court upheld the Georgia statute as constitutional under the Fourteenth Amendment. The Court ruled that additional safeguards such as a hearing before an administrative judge with the evidentiary standards, which must be afforded adults in the identical situation, are not constitutionally required. The Court accepted the assumption that parents generally are motivated by a desire to protect the best interests of their children and that the public mental health system is efficient, competent, and deserving of the Court's deference. The Court did not consider empirical evidence about adolescent decisional ability.

In *Parham*, the Supreme Court concluded that the involuntary commitment of juveniles to state hospitals must facilitate parents' ability to obtain care for their mentally ill children, which is in keeping with the *parens patriae* tradition. Parental interest dominated the child's interests. Admission procedures were kept to a minimum, so parents would not be discouraged from seeking treatment by processes that were burdensome or contentious. The Court required evaluation by a neutral party, usually the admitting physician, to protect the child from risks of error without violating parental authority. The evaluation was not required to be a formal or quasi-formal hearing. The Court required periodic evaluation of the child's condition but provided no time period for reevaluation.

The *Parham* decision has been the subject of intense criticism by legal and mental health professionals. Many state legislatures, perhaps in response to that criticism, enacted additional protections for adolescents facing involuntary commitment in their jurisdictions. By 1985, fewer than half of the states authorized the voluntary commitment of minors solely on the application of a parent or guardian and the approval of the hospital.[18] *Parham* addressed admissions to state hospitals, but not admission to private institutions. This has allowed states to create additional admission criteria for private facilitates, and many have done so. Fourteen states have extended *Parham* procedures for admission to private faculties, and one of those states requires additional procedures in some cases. Fifteen other states have laws that cover both public and private psychiatric hospitals, requiring the minimal *Parham* procedures for commitment of younger children and providing older children with additional safeguards, such as consent requirements and evaluations before and after admission. Six states require the consent of older children, and two states require judicial review if a child of any age objects to commitment. One state prohibits parental commitment of children over 14 years old and requires consent of children under the age of 14. Four states prohibit parental commitment of children over 16. Three states prohibit third-party commitment of juveniles, instead requiring involuntary civil commitment proceedings like those required for adults. Postadmission review procedures have been enacted by 21 of the states that allow parental commitment, including allowing a minor to file an objection to treatment or a request

for discharge, automatic court hearings after admission, 3- to 15-day limits on inpatient treatment without judicial review, and independent clinical reviews. Most states have specific age requirements for triggering procedures.[19] Minors are appointed counsel in four states.[20]

The U.S. Supreme Court has held that the due process clause applies to the right of an individual to refuse unwanted medical treatment. Courts and legislatures recognize the right to refuse medication even if that decision may lead to harm. Competent people have a liberty interest under the due process clause to refuse unwanted medical treatment. The U.S. Constitution protects a person's right to privacy and self-determination, including the right to refuse lifesaving treatment. This protection extends to the mentally ill, even when the state thinks such measures are in their best interests. However, in disagreements over the medical treatment of a minor, only the minor's parents and the state have standing to go to court. Courts defer to parental choice in medical treatment cases out of respect for parental authority, however, judges may not always view the best interests of the child in the same way that parents do. The question then becomes whether the state has the child's best interest at heart. Most of the reported court decisions involving a state overriding parental authority entail allegations of parental neglect to consent for a minor's medical care on religious grounds and claims that a child was harmed following a surgical procedure to which a physician permitted the minor to consent.

State legislation affords a measure of decision-making autonomy to adolescents for medical treatment, but the legislation is piecemeal and there is no cohesive policy. Redding has canvassed state law and proposed a standard statutory scheme for civil commitment, outpatient psychopharmacological treatment, and outpatient psychotherapy that allows mature adolescents to exercise their decisional autonomy.[21] He proposed that maturity should be determined by an independent clinician as opposed to a judge. Melton and colleagues have proposed a Model Act for the Mental Health Treatment of Minors that acknowledges that most older minors are sufficiently competent to make informed decisions to seek or refuse mental health treatment and that people under the age of majority have a fundamental right to make those decisions.[22]

As discussed, despite the numerous rights accorded adolescents to seek treatment, the right to refuse treatment has not been granted. For example, adolescents can obtain psychiatric treatment without their parents' consent, but they cannot refuse treatment—even if adolescents sought the treatment themselves, including inpatient treatment that deprives them of civil liberties without the benefit of constitutionally mandated procedural safeguards afforded adults. During the 1980s, psychiatric inpatient treatment of adolescents more than quadrupled. Weithorn found that most of these admissions were for nonpsychotic, nonacute conditions—two-thirds were for conduct disorder, oppositional defiant disorder, personality disorders, adjustment disorders, mild depression, and nondependent drug and alcohol abuse. By comparison, approximately one-half to two-thirds of adults who receive inpatient care are admitted for psychosis, severe

depression, or organic disorder. Weithorn suggests that, in many cases, adolescents are admitted for behaviors typical of the age group rather than for genuine psychopathology and that these behaviors are developmentally limited to adolescents.[23]

PSYCHOTROPIC DRUGS AND ADOLESCENTS

Drugs used in managing psychiatric disorders are usually referred to as psychotropic drugs that act on the mind. Psychotropics are considered effective treatment for acute and chronic psychoses, particularly schizophrenia. There are three major categories: mood stabilizers (including antidepressants), antianxiety sedatives, and antipsychotics.

Antipsychotics have become the mainstay of treatment for inpatients and primarily are used to treat thought disorders. Unfortunately, antipsychotics have many unpleasant and sometimes dangerous side effects. They alter the chemical balance in the brain and change cognitive processes, sometimes deadening a patient's ability to think. Some side effects are temporary; others can be permanent. Side effects include muscle spasms, especially in the eyes, neck, face, and arms; irregular flexing, writhing, or grimacing movements; protrusion of the tongue and a mask-like face; drooling; muscle rigidity; shuffling gait; and tremors. Tardive dyskinesia is one of the most serious side effects caused by long-term use of these drugs and can produce a neurological disorder characterized by involuntary muscular movements.[24]

Antipsychotics can be administered voluntarily or involuntarily. The legal basis for forced administration of psychotropic drugs is rooted in both the police and *parens patriae* powers of the state. *Parens patriae* authority recognizes that there are circumstances in which the state has an interest in protecting the welfare of the mentally ill person. Police power authority relates to the state's responsibility to protect others from the potentially violent acts of a mentally ill person. Under both theories, forced administration of psychotropic drugs can be justified. In *Mills v. Rogers*, the U.S. Supreme Court ruled that an involuntarily committed mental patient had a constitutional right to refuse antipsychotic drugs, except where the state's police or *parens patriae* powers outweigh the patient's rights. Although committed patients have a liberty interest in refusing drugs, this interest can be superseded when outweighed by the state's interest. The Court held that the judicial determination of substituted judgment was required before the administration of drugs, but it did not clearly address how to determine the competence of a mental patient to make treatment decisions.[25]

The level of incompetence required for involuntary psychiatric hospitalization is based on the dangerousness of the patient to himself, herself, or others. This level of incompetence, however, is not the same as what is required for forced administration of psychotropic medications. A person can be considered incompetent to refuse psychiatric hospitalization but sufficiently competent to refuse psychotropic medications. Courts have recognized that mental illness often strikes only limited areas of functioning

and leaves other areas untouched. A person's mental illness and involuntary commitment raises questions about his or her ability to make informed treatment decisions, but they cannot justify the forced administration of psychotropic medications.[26]

If a mentally ill person is determined to be incompetent, informed consent laws require the individual who has authority to make treatment decisions for the incompetent person to assess the choices and the risks. Informed consent is a patient's choice about a medical treatment, which is made after a health care provider discloses all the information that a reasonably prudent provider would give a patient about the risks involved in the proposed treatment. It is generally required for all medical treatment. Under the best interest standard, treatment decisions on behalf of an incompetent person should advance their best interests, as opposed to the independent interests of parents or others. Under the substituted judgment standard, the decision maker must determine the incompetent person's interests and preferences and make the decision the incompetent person would have made if they were competent. The substituted judgment standard has never been applied to children because children, including adolescents (except in limited circumstances), are not considered competent under the law. Their parents' judgment is substituted instead.[27]

Although there are court cases addressing forced medication and a patient's competence, none directly address the issue of whether a child has a liberty interest that allows him or her to refuse psychotropic medication. Because the law considers the interests of the parents and children to be the same, courts presume parents will make medical decisions in their child's best interests. In certain limited circumstances, a state may use its *parens patriae* power to override a parental decision, and act *in loco parentis*, deciding that the parents are not acting in the best interests of the child.[28]

STATUS OFFENDERS AND THE ROAD TO MANDATORY TREATMENT

When the juvenile justice system was originally created in the first half of the twentieth century, no distinction was made between children who violated the criminal code and children who were incorrigible, wayward, or out of control. The juvenile court had jurisdiction over any child that it determined was in need of state intervention. The court's job was to determine the child's needs and supervise them in whatever way was deemed appropriate. There were no restrictions on what type of child could be sent to a secure juvenile facility. According to Costello, from the beginning, this broad jurisdiction over status offenders has proved problematic. Runaway children are often involved in difficult, sometimes abusive, family relationships. Some truants have learning disabilities. Other status offenders have serious mental health disorders that contribute to their incorrigible conduct. Conversely, status offender jurisdiction brings some children to the attention of juvenile authorities who really do not need formal state intervention.[29]

By the mid-twentieth century, Costello maintains that the juvenile justice system was bogged down with status offenders. For example, a status offender defies a judge's order to comply with his or her parents' demands, returns to court and is placed in a juvenile detention center for a short time, returns to court again and is given additional orders, defies those orders, returns to court yet again, and eventually ends up in a secure or semisecure juvenile facility. At that time, the juvenile court was not required to provide the same due process protections to juveniles that criminal courts were constitutionally required to extend to adults in the criminal justice system.

Beginning in the 1960s, the Supreme Court issued a series of decisions that gave juveniles who were charged with delinquent offenses or facing institutionalization many of the due process rights available in the adult criminal justice system. Attempts to deinstitutionalize status offenders began in the 1970s. In 1974, the federal government enacted the Juvenile Justice and Delinquency Prevention Act (JJDPA), requiring states that wanted federal funds to prohibit the confinement of status offenders in secure facilities and to submit annual reports to the federal government detailing the progress they made to comply with the law. Although juvenile authorities agreed that status offenders should be separated from juvenile delinquents and be placed in secure facilities only as a last resort, federal funding for alternate dispositions was insufficient, and by the late 1970s and early 1980s, public sentiment had shifted toward a more punitive approach to juveniles. Many states responded to the conflicting mandates by amending their laws to prohibit secure detention of status offenders. At the same time, they developed ways to sidestep the JJDPA by referring or committing increasing numbers of status offenders to mental health facilities, alleging juvenile delinquency jurisdiction instead of status offender jurisdiction, developing semisecure facilities that complied with the JJDPA, or using the juvenile court's contempt powers to bootstrap a status offender to a juvenile delinquent. Depending on state law, a status offender who, for example, is found to be truant and defies court orders to attend school regularly can be found in contempt of court and reclassified as a delinquent, giving the juvenile judge authority to place him or her in a secure facility, all of which is permitted under the 1980 amendments to the JJDPA.

The state of Washington provides an interesting example of the major changes taking place with status offenders in the juvenile justice system. Washington deinstitutionalized status offenders in 1977 with legislation emphasizing that state services should be available to these offenders on a voluntary basis as opposed to a mandatory basis. In 1995, however, Washington enacted the Becca Bill, named after a juvenile runaway girl, Rebecca Hedman, who was raped and murdered while she was living on the streets. Rebecca had a history of running away and had been placed in a group home. She ran from the home, and was later placed in foster care and eventually into a drug treatment center. She was murdered after she ran away from the treatment center. The Washington legislation that bears her name is aimed at giving police and parents greater control over

runaway children. Because running away from home was not a crime in Washington, Becca's parents had little authority to stop her. State law frustrated efforts of local police and the juvenile court to detain her for any length of time. The Becca Bill altered the rights of status offenders in Washington. It now authorizes police to take runaway youth to a secure facility for up to five days, revises court procedures to compel minors to receive needed services, and gives parents additional power to consent to treatment for their minor children. The bill also created multidisciplinary teams composed of parents, case workers, mental or substance abuse counselors, and other appropriate people with authority to evaluate a juvenile and his or her family to develop and assist in the implementation of a service plan. Most important, juvenile courts have the authority under the bill to approve a residential placement outside of the home when the court feels such a placement is appropriate. Juvenile judges are required to review all petitions filed by parents asserting that their child is at risk and in need of services. The bill gives parents the authority to place their children in chemical dependency or mental health treatment programs without the juvenile's consent.[30]

The ''reinstitutionalization'' of status offenders has particular importance in the controversy surrounding mandatory mental health treatment for juveniles. Legislation like that in Washington extends the *parens patriae* authority of the juvenile court, as does the practice of boot-strapping these offenders into delinquency status, and gives the court more power to order a status offender into mandatory treatment.

IS MANDATORY TREATMENT EFFECTIVE?

For many reasons, it is difficult to assess the effectiveness of mandatory treatment for adolescents with mental health disorders. In 2000, Cocozza and Skowyra reported that concern about the mental health care needs of youths in the juvenile justice system received more attention at the federal government level in 1998 and 1999, than in the previous three decades combined. This concern is in stark contrast to past neglect. Cocozza and Skowyra note that the neglect was not restricted to youths in the system; the mental health care needs of children in general had not been adequately addressed in policy, practice, or research. A significant amount of research remains to be done about the nature and extent of mental health disorders among America's youth. Enormous confusion still exists across the primary systems that serve youths in this country on both the policy and practice levels about who is responsible for serving youths with problems. Youth screening and assessment are inadequate. Training, staffing, and program development is lagging. Not surprisingly, funds are inadequate, too. Obvious attention must be paid to creating better and stronger cross-collaboration among the systems that currently serve troubled youth. More troubled youth should be diverted out of the juvenile justice system, more effective community-based alternative treatment programs should be created and used as often as possible to keep youth at home, and youth in juvenile correctional facilities should receive better

mental health care.[31] Many youth with mental health problems have co-occurring substance abuse disorders, making treatment even more challenging.[32] More research needs to be done to identify the overlap of mental health disorders with problem behaviors, including drug use, academic failure, truancy, running away from home, and delinquent conduct.

According to Kamradt, it is difficult to find effective treatment models for youths in the juvenile justice system who have serious mental health and emotional problems.[33] The traditional models are residential and day treatment centers, and they tend to follow a one-size-fits-all approach. Progress, however, is being made. New, innovative programs are coming online across the country, and research evaluating these programs is ongoing. An example of a successful community-based program is the Wraparound Milwaukee Program, which provides more individualized treatment and engages the youth's family when appropriate. Clear goals are established for the youth and his or her family that are measured and evaluated regularly. Since its inception, the use of residential treatment has decreased 60 percent, inpatient hospitalization for youth has dropped by 80 percent, clinical outcomes for the youth have improved significantly, and the recidivism rates of the participants have dropped for a variety of offenses.[34] Jainchill, Hawke, and Messina describe a successful residential therapeutic program in New York for delinquent youth with multiple behavior and mental disorders.[35]

This program, Recovery House, uses positive peer role models and educational interventions that focus on reducing antisocial activity. The principles of balanced and restorative justice, including the participation of victims and community members to stress accountability, are also employed. A five-year follow-up indicated decreases in conduct disorders and appeared to be even more effective with females than males.

CONCLUSION

Mandatory treatment of youth with mental health disorders is a complex legal issue, and the rights of youths, their parents, and the state vary considerably depending on the jurisdiction where the youth resides. Mental health professionals treating adolescents with mental disorders should be aware of the legal restrictions they face. In some states, depending on the age of the adolescent, treatment can be provided at the youth's request, without parental notification or permission. In other jurisdictions, at some point, parents must be notified and involved. Some states have mature minor statutes or case laws that allow older adolescents to seek treatment; many states do not. Inpatient hospitalization opens up entirely new issues for adolescents, health care professionals, and parents, as does the use of psychotropic medications, which are commonly prescribed to institutionalized patients. *Parens patriae* theory and the police power of the state remain the foundation for the development of the law as it relates to adolescents, even in the wake of growing empirical evidence that older adolescents are capable of making sound, reasoned, thoughtful medical and mental health care decisions.

Because youths are subject to the power of the juvenile court, those who are involved in the juvenile justice system have even fewer legal protections than troubled youth not in the system. Despite the movement toward a more punitive juvenile justice system and the granting of greater constitutional protections to youth involved in it, *parens patriae* gives the juvenile judge extensive authority to mandate a youth's treatment. As states like Washington enact legislation to strengthen the ability of juvenile judges to address certain status offenders, *parens patriae* will make it even more likely that some of these youth will be subjected to mandatory mental health treatment, even residential treatment. Juvenile judges in other states may rely on their contempt powers to bootstrap status offenders to delinquency status, giving the court authority to intervene more extensively in the juvenile's life.

Is mandatory treatment in the best interest of an adolescent with mental health disorders, regardless of his or her involvement or lack thereof in the juvenile justice system? There is no definitive answer. Without adequate treatment options, however, we may never know. Mandatory treatment in a community-based or residential program that is not suited to provide good care may be an expensive exercise in futility. Unfortunately, we know that not enough good treatment programs are available and that mental health treatment in juvenile correctional facilities is inadequate. There is little dispute that a court's or parents' power to initiate mandatory treatment should result in the provision of appropriate and adequate care. The other issue related to mandatory treatment is whether we are widening the net and bringing into treatment youth who do not suffer from mental health disorders, especially as we extend juvenile courts' power to address status offenders. As mentioned earlier, there's already evidence that this may be happening. Without adequate screening and assessment, the likelihood of those types of "mistakes" occurring is high. Although courts and legislatures are beginning to recognize that older adolescents possess the ability and right (although often restricted) under certain circumstances to request medical and mental health treatment, the right to refuse treatment has not been extended. What's not in doubt is that this is a controversial area of law and one that is continuing to evolve. Hopefully, the recent attention focused on youth with mental health disorders will trigger policy and program development, accompanied by research that creates an effective, cohesive, and comprehensive approach while protecting the autonomy rights of older adolescents.

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CHAPTER 7

Faith-based Juvenile Justice Initiatives

Edward J. Schauer, Elizabeth M. Wheaton, and Ila J. Schauer

INTRODUCTION AND DEFINITIONS

Faith-based initiatives are based on "charitable choice." Sider defines charitable choice as follows:

> The fundamental purpose of the Charitable Choice section of the Personal Responsibility and Work Opportunity Act of 1996 was to remove illegitimate restrictions of faith-based organizations so that when state and local governments using federal welfare block grant funds from the 1996 Welfare Bill chose to contract with non-governmental social service providers, all types of faith-based providers including very religious ones would experience a level playing field and enjoy full opportunity to compete with all other non-governmental providers on an equal basis.[1]

The concept of charitable choice has been broadened since 1996 to include most state and government grant funding.

Definitions of faith-based programs are critical to scientific understanding of the issues surrounding these programs. The literature is rife with information based on extremely broad definitions of the term "faith based." These definitions may include any programming relating in any way to any religious belief regardless of the centrality of the religious belief to the programming, and may be applied without regard to whether the programming is receiving state or federal funding or whether an application has been made for state or federal funding. This is to say, in a nutshell, that the definition of faith-based programming is extremely nebulous,

unclear, and imprecise, as presented in the literature. This imprecision makes scientific quantification and evaluation of faith-based programs almost impossible.

Conversely, for the purposes of this chapter, a narrow definition has been chosen. Faith-based initiatives are herein defined as juvenile justice programs or interventions sponsored or supervised by religious organizations that are funded totally or in part with state or federal government monies provided for their operation.

ARGUMENTS FOR AND AGAINST

Several arguments favor charitable choice and government funding of faith-based organizations. First, no governmental funds may be used for "sectarian worship, instruction or proselytization."[2] Second, charitable choice does not focus on the degree of an organization's religion or secularization, but only on the quality of services provided. Third, agencies have for many years received government funding—for example, religious foster care agencies, colleges, and hospitals have received government funding for decades. Those funded in times past, however, have tended to be more inclined toward service—service more or less as an end in itself—without the added goal of making religious converts.[3]

Fourth, proponents argue that often in inner-city environments, religious institutions are among the few functioning organizations that remain; and they appear to be succeeding when other institutions are failing.[4] Fifth, religious discrimination is reduced. Sider asks the rhetorical question, "Is it not blatant religious discrimination for government to fund only naturalistic and deistic providers and refuse to fund theistic programs?"[5] Thus, with a focus on outcomes, charitable choice offers equal funding opportunity to all providers, for all are to be judged on the basis of their effectiveness. Last, charitable choice is said to protect the religious integrity of providers, as well as the religious liberty of those served. Clients are free to demand secular providers and to opt out of religious activities.[6]

Four chief arguments are provided by those who oppose charitable choice. First, that charitable choice violates the establishment clause of the First Amendment of the U.S. Constitution in that it advances religion. Second, religious organizations use government monies to discriminate in hiring practices. Third, charitable choice endangers the religious freedom and choice of clients. And, fourth, through charitable choice, the vitality and autonomy of religious organizations is endangered.[7]

HISTORY OF FAITH-BASED INITIATIVES

Large faith-based organizations (FBOs) in the United States, such as Lutheran Services of America, Catholic Charities, United Jewish Communities, and the Salvation Army, have partnered with governments for more than 100 years in providing social welfare programming. These programs have received federal, state, and local government funding through

their nonprofit subsidiaries.[8] These early FBOs were allowed to receive government funding for programs carried out in secular settings; and these early funding arrangements allowed their parent organizations to maintain their religious identities without government interference.[9]

The passage of the Welfare Reform Act of 1996 allowed federal, state, and local governments to fund a larger range of religious organizations with relaxed restrictions governing religious practice and the settings of social service delivery. FBOs could contract with states on the same basis as other service providers, could offer social services in religious settings, would not have to organize as nonprofit providers, and were free to use religious criteria in hiring practices. Beneficiaries would not be forced to receive services in religious settings or from religious service providers, but they would be provided with secular alternatives, if desired. Government funds, however, could not be used to fund sectarian worship, sectarian instruction, or proselytization.[10]

The charitable choice provisions from the Welfare Reform Act of 1996 were incorporated into subsequent social welfare programs. Included were the Department of Labor's Welfare to Work Initiative in 1997, the Community Services Block Grant in 1998, and the Substance Abuse and Mental Health Services Administration in 2000.[11]

Since 2000, President George W. Bush has been the major promoter of government collaboration with FBOs in the provision of social welfare services, including criminal and juvenile justice initiatives. During the presidential race, George Bush declared, "In every instance where my administration sees a responsibility to help people, we will look first to faith-based organizations, charities and community groups that have shown their ability to save and change lives."[12]

President Bush brought with him to the White House his experiences of implementing charitable choice programming while governor of Texas. Under then-Governor George W. Bush, the Texas Governor's Office successfully overcame difficult funding regulations to direct more government monies directly to faith-based programs for the poor and encouraged legislation that resulted in greater government funding for faith-based programming for prison ministries, day care, and drug-treatment centers.[13]

While in Texas, Governor Bush was successful in encouraging legislation in support of faith-based initiatives; however, although U.S. senators and representatives showed much interest in faith-based initiatives, Congressional legislation was not passed in support of the President's commitment to meet America's social needs through faith-based funding. Thus, President Bush formulated, promoted, and implemented faith-based initiatives by issuing executive orders to that end.

Centers for faith-based initiatives were created in five cabinet departments by Executive Order (EO 13198), which President Bush issued in 2001.[14] These centers were to coordinate departmental efforts to eliminate programmatic obstacles that face FBOs in seeking federal social service monies.

Private charitable giving to FBOs was promoted by a second Executive Order issued by President Bush in 2001 (EO 13199).[15] EO 13199

established the White House Office of Faith-Based and Community Initiatives (OFBCI). The OFBCI was created to integrate presidential policy across federal government agenda—to ensure rapid development, expansion, and implementation of faith-based initiatives.

A third Executive Order (EO 13279) was issued by President Bush in December of 2002, in part to clarify the components of faith-based initiatives, and in part to speak to First Amendment concerns.[16] EO 13279 prohibits religious discrimination on the part of federal agencies when awarding social service monies; eliminates the need for FBOs to establish a nonprofit status; and requires FBOs to separate social services from religious activities. It also states that the involvement of social service beneficiaries in religious activities must be voluntary.

Thus, although legislation is lacking in the formulation and parameters of faith-based initiatives and programming, President Bush has crafted policy guidelines through the use of Executive Orders. Included in the concept of faith-based initiatives, therefore, is the urging of federal, state, and local governmental agencies by President Bush to, first, welcome grant applications from FBOs and, second, encourage FBOs to collaborate with the government in providing social welfare and juvenile justice interventions and services. Newlin concludes, "(T)he Bush administration propelled faith-based initiatives into the policy implementation phase by issuing an executive order (EO), thereby empowering faith-based initiatives with the force of law."[17]

RESEARCH ON THE MERITS OF FAITH-BASED SERVICES

At this time, it is extremely difficult to show empirical merit for faith-based juvenile justice or social welfare interventions. Walton, special editor for the *Research in Social Work Practice* journal, summarized the present state of evaluation research in the following words:

> I share your bewilderment with regard to the definition of "faith-based programs." When Bruce Thyer and I decided to do a special issue for RSWP, we were thinking more along the lines of government-funded programs. We wanted to capitalize on the Charitable Choice initiative. However, I'm afraid we were a bit premature. Most of those government-funded programs have not been running long enough to be evaluated.[18]

Studies do exist that purport to show effectiveness with faith-based programming. Many of these are invalid, however, in the sense that they show the results of involvement in communities of faith or in religious programming, but they do not consider the results of government-funded, faith-based juvenile justice and social welfare interventions.[19] In a very real sense, therefore, these studies are measuring the effects of religiosity or religious activity on the subjects' mental, emotional, or physical health or on the subjects' behaviors. But they are not measuring the effects of government-funded, faith-based interventions on juvenile (or adult) behaviors or health.

A third research consideration would be to measure the effectiveness of faith-based interventions against that of pervasively secular interventions or against that of government agency interventions. The preceding statement will elicit smiles from juvenile justice practitioners and academics, because they know that successes in interventions are measured by extremely small percentages, and sometimes these successes are not discernable.

If indeed the recently government-funded faith-based organizations have not been running long enough to be evaluated, as Walton believes, how well have the large traditional faith-based agencies done in effectiveness of interventions? Newlin states that before 2001, "[l]ong-time recipients of federal funding—such as Catholic Charities, United Jewish Communities, and Lutheran Services of America—had not measured the effectiveness of their work."[20] Thus, in supporting the concept of faith-based initiatives, yet lacking outcome data, the Republican majority in the U.S. House of Representatives instead used the existing research that showed the *successful implementation* of faith-based programs as well as research that indicated *public support* for faith-based and government collaborations.[21]

Although it is difficult to show success in significant proportions of social welfare or juvenile justice interventions, the authors have many years of experience in observing the faith-based community. Based on these two points, the authors posit that the programs of the traditional faith-based agencies were driven and directed more by the need to do what they believed to be *right*, than by the need to base program particulars on the small, incremental differences discovered through vigorous empirical testing. This concept was stated, in a nutshell, by Mother Teresa when she said, "It's not success that we're called to, it's faithfulness."[22] Thus, a philosophical goal differential exists between FBOs and government researchers. Additionally, many taxpayers simply support the more austere and low budget operating base of the FBOs, particularly in terms of overhead and staffing. The monies received by these FBOs appear to be largely spent directly on programs for, and service to, their beneficiaries.

EXAMPLES OF FAITH-BASED PROGRAMS

We review five programs below as examples of different approaches to faith-based initiatives in juvenile justice. Interested readers might want to compare their features for similarities and differences. It becomes clear that there is no one approach being embraced.

Ten-Point Coalitions

Ten-Point Coalitions are ecumenical groups of clergy and laity that focus on issues affecting black and Latino youth. This movement was born in 1992 as a direct reaction to escalating youth gang violence in Boston, which could no longer be ignored after a shooting that disrupted a funeral

service at the Morning Star Baptist Church. The Coalition's ten points are as follows: adopting youth gangs, sending mediators/mentors into juvenile facilities, placing youth workers on the streets, creating concrete and specific economic alternatives to the drug economy, linking churches to inner-city ministries, establishing neighborhood watches, partnering church and health care facilities, promoting brotherhood as a rational alternative to violence, supporting rape crisis and battered women centers, developing curriculum to increase literacy, and enhancing young people's relationship with their creator. Several cities have established Ten-Point Coalitions and are receiving government grants to support their programs, such as partnerships between the community and police, courts, and detention personnel.[23]

Straight Ahead

Straight Ahead is a Boston program oriented toward juvenile offenders. Straight Ahead ministries have as their goal to share faith in God with youth in jails and juvenile facilities. Volunteers work with these juveniles as mentors, tutors, and counselors. One program example is their Aftercare Home Ministry, a halfway house for youths coming out of detention. These youth are expected to go to school and work part time. They live in a home with a family atmosphere, and they participate in service projects and have the opportunity to attend a summer wilderness trip. Straight Ahead attempts to be a connection between facilities and the faith community. Funded by private donations and federal grants, Straight Ahead has clearly defined goals, philosophies, and training guidelines.[24]

Youth and Congregations in Partnership

Youth and Congregations in Partnership (YCP) is a prosecutor-created program in Brooklyn, New York. "Too often a youth gets into trouble just because he or she has no one to show them how to succeed," says Charles J. Hynes, Kings County District Attorney.[25] It was this thought that prompted the district attorney's office to reach out to the faith community for help. Youths who have become involved with the courts are offered the opportunity to work closely with a trained mentor on a weekly basis. This one-on-one life training offers the young person such help as tutoring, teamwork, anger management, and conflict resolution. A contract is drawn up, and it is by meeting the stipulations of the contract that the partners measure success. Jointly funded by federal grants and the Pinkerton Foundation, this program has been actively changing young people's lives since 1997.

Amachi

Amachi, which began in Philadelphia, seeks to link volunteers with children who have an incarcerated parent. There are approximately seven

million children in America with a parent in prison and as many as 70 percent of them are at risk of going to prison themselves. A unique partnership between the faith community and human services providers, Amachi seeks to connect these children to a local congregation in or near their neighborhood, build a strong relationship between them and their mentors, and provide professional case managers for support. Amachi is funded by federal grants and the Pew Charitable Trusts. The Amachi model has been adopted by more than 100 cities in 38 states. It calls for community impact directors to oversee two church volunteer coordinators, who in turn coordinate the efforts of their volunteers. In many cities, the Amachi program is operated under the auspices of Big Brothers Big Sisters.[26]

Faith and Action

Using a holistic approach to solving their social problems, the United Way of Massachusetts Bay (UWMB) took a close look at the offers to help that come from faith-based groups. Instead of viewing spirituality as a problem, they embraced it along with mentoring, tutoring, job training, and counseling as acceptable and desirable parts of a healthy youth program. They focused on three basic criteria: (1) a strong commitment to youth, (2) faith-based efforts to reach youth beyond the congregations, and (3) spirituality. Both the United Way board and donors saw the wisdom of this approach and accepted the policy. The United Way decided that they would not fund any religious services or permit proselytizing, but they would accept help with their troubled youth. With the support of the Annie E. Casey Foundation and President Bush's Faith Based Initiative, the volunteer programs of Massachusetts Bay have grown and flourished.[27]

PROGRAM TYPES

The Office of Juvenile Justice and Delinquency Prevention's (OJJDP) *Model Programs Guide* (MPG) lists the different program types involved in the various stages of juvenile justice stages.[28] These programs can be divided into four categories: voluntary prevention, intervention, diversion, and aftercare. Many faith-based programs that are receiving funding from the U.S. government through the Compassion Capital Fund are involved in these different categories.

Some aspects of programming span several of these program types with different emphasis. For instance, academic skills enhancement projects occur in voluntary prevention, diversion, and aftercare; conflict resolution and interpersonal skills projects are found in voluntary prevention, intervention, and diversion; and drug/alcohol therapy and education projects occur in voluntary prevention, intervention, and aftercare. Mentoring is a big part of all of the subcategories of delinquency prevention programs. These programs pair an older, caring adult with a young person who needs support and guidance.

The following information is organized by the program types and is based on the definitions listed in the MPG. Examples of faith-based programs involved in each subcategory are provided.

Voluntary Prevention

Programs in voluntary prevention focus on steering youth toward healthy life choices. Voluntary prevention programs include academic skills enhancement, after-school recreation, conflict resolution/interpersonal skills, drug/alcohol therapy and education, gang membership prevention, leadership and development, mentoring, and truancy prevention.

The Leon de Juda congregation's Higher Education Resource Center in Boston, Massachusetts, predominantly serves Hispanic inner-city high school students to help them prepare for college. The church matches urban teens with Christian college student mentors. In addition, the program helps students with their college applications and the financial aid process.

Gang membership prevention programs seek to deter youth from joining gangs and gang-related activities. Open Door Youth Gang Alternatives Program of Denver, Colorado, offers counseling and support groups to youth who are being pressured to join gangs and to youth who wish to leave a gang.

Leadership and youth development programs promote activities that challenge youth to build new skills and develop their own strengths. Petersburg Urban Ministries' YouthBuild in Petersburg, Virginia, works with youth who are unemployed, low-income, and possibly homeless. Among the benefits to youth in this program are learning leadership and life skills, getting job training, and receiving mentoring.

Voluntary prevention programs like Coopersville Reformed Church's Kids Hope program in Coopersville, Michigan, pairs adults with at-risk public elementary students for tutoring and mentoring. Youth learn the value of schoolwork as well as life lessons.

Regular school attendance is the goal of truancy prevention programs. Many faith-based programs that provide academic skills enhancement, youth development programs, and mentoring indirectly provide truancy prevention services. Catholic Charities' Teen Community Awareness Program (T-CAP) provides services to teens who are at risk of becoming high school dropouts and teens who have truancy problems. The program also serves runaways.

Intervention

Intervention programs are designed to lead youths away from delinquency. These programs include alternative schools, school/classroom environment, drug/alcohol therapy and education, conflict resolution and interpersonal skills, drug court, family therapy, gang intervention, gun court, mentoring, teen and youth courts, and wraparound programs.

Conflict resolution/interpersonal skills projects are again found in intervention. The Juvenile Interventional and Faith Based Follow-up (JIFF)

program in Memphis, Tennessee, provides tutoring, mentoring, and Bible study to youths who have been incarcerated. Programs related to gang prevention also take the form of gang intervention. At this stage, programs work with gang members to ease conflict situations. Hope Now for Youth of Fresno, California, serves youth who have been or currently are gang members. Among the program's services to gang members are job and life skills training, substance abuse treatment, and medical and legal services. Mentoring is a large part of gang intervention and other intervention programs.

Diversion

During diversion, nontraditional methods are used as alternatives to detention. Acceptance in these programs usually requires the agreement of the court, counselors, and parents. Programs in diversion include classroom curricula, cognitive behavioral treatment, day treatment, correctional facilities, group homes, home confinement, mentoring, residential treatment centers, and wilderness camps and challenge programs.

Mentoring plays a large role in diversion. Friends in Transition in Colorado pairs volunteers with youth who are in their last year of secure custody. The volunteers mentor the youth for several months as they transition back into the community.

Wilderness camps and challenge programs may be used for residential placement of juvenile offenders. These programs physically and mentally challenge youth toward personal growth. Love Demonstrated Ministries' Christian Boot Camp in San Antonio, Texas, challenges juvenile offenders with physical training and community service projects.

Aftercare

Aftercare may be defined in different ways depending on whether the practitioner considers aftercare to begin after an offender's release from detention or after sentencing. Here, aftercare is defined as programs that work with juveniles, who have spent time in out-of-home placement, to reintegrate them into the community. Programs within aftercare include academic skills enhancement, drug/alcohol therapy and education, classroom curricula, family therapy, mentoring, probation services, restorative justice, and vocational/job training.

Similar to voluntary prevention and diversion, aftercare includes academic skills enhancement, drug/alcohol therapy and education, classroom curricula, and family care. Catholic Charities' Teen Community Awareness Program provides substance abuse education, tutoring, mentoring, and cultural activities to youth.

Similar to intervention, family therapy and mentoring are a large part of aftercare. The absence of a parent from a family because of incarceration places the children at risk. Urban Ventures' Center of Fathering in Minneapolis, Minnesota, seeks to support and educate fathers and to mentor

their sons and other boys with no active fathers. Amachi in Philadelphia, Pennsylvania, serves the children of prisoners by providing them with adult mentors.

Restorative justice programs seek to repair harm caused by juvenile delinquency through acts such as mediation, restitution, and community service. Catholic Charities' Restorative Justice Programs work with juvenile offenders to teach them about the impact of their actions, how to become accountable, and how to make amends for past actions.

NOTES

1. Sider, 2002, p. 2.
2. Carlson-Thies, 2000, pp. 38–39.
3. Sider, 2002, p. 3.
4. DiIulio, 2002, p. 21.
5. DiIulio, 2002, p. 6.
6. Sider, 2002, p. 6.
7. Matsui & Chuman, 2001, pp. 31–33; Sider, 2002, p. 7.
8. Newlin, 2003, p. 2; Monsma, 1996.
9. Small, 2002.
10. Newlin, 2003, p. 3; Small, 2001.
11. Newlin, 2003, p. 4.
12. Bush, 1999.
13. Newlin, 2003, p. 7; Safire, 1999.
14. Executive Order No. 13198, 2001.
15. Executive Order No. 13199, 2001.
16. Executive Order No. 13279, 2001.
17. Newlin, 2003, p. 2.
18. Walton, 2006.
19. For example, Johnson, Tompkins, & Webb, 2002; Koenig, McCullough, & Larson, 2001.
20. Newlin, 2003, p. 10.
21. Newlin, 2003, p. 10; H. R. Report No. 107–138, 2001.
22. Austensen & Poag, 2002, p. 10.
23. National TenPoint Leadership Foundation Web site, 2006.
24. Straight Ahead Ministries Web site, 2007.
25. Kings County District Attorney's Office Web site, 2007
26. Amachi Mentoring Web site, 2007; Goode & Smith, 2005.
27. Anne E. Casey Foundation, n.d.
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CHAPTER 8

Resurrecting Radical Nonintervention: Stop the War on Kids

Randall G. Shelden

It has been 30 years since noted sociologist Schur published a book called *Radical Non-Intervention: Rethinking the Delinquency Problem.*[1] His approach, which was part of the "labeling" tradition in criminology and the sociology of deviance, seemed quite novel back then as he challenged a number of assumptions taken toward the problem of delinquency. Ironically, I believe that his approach has more relevance to what is happening today with the various "get-tough" approaches to delinquency, especially "zero-tolerance" policies.

GETTING TOUGH, ZERO TOLERANCE, AND NET WIDENING

In recent years "law and order" politicians have stoked the fears of the public with their rhetoric about the new "menace" of teen "superpredators."[2] Despite the fact that serious crime among juveniles has dropped in recent years, many politicians continue the "get-tough" talk. "Zero tolerance" is one of the new mantras. Variations of the "zero-tolerance" mentality within schools and elsewhere in the community have taken us back more than 100 years as far as juvenile justice policy is concerned. More important, it has "widened the net" of social control—increasingly, minor offenses (or no offenses at all) are now being processed formally by the police and the juvenile court.

Examples abound, including the following: (1) a five-year prison sentence is handed out to a 17-year-old Texas high school basketball player who "threw an elbow" to the head of an opposing player in a basketball

game; (2) two six-year-old children were suspended for three days for playing "cops and robbers" with their fingers (pretending their fingers were guns and going "bang, bang" toward other children); (3) a girl who gave a friend a Nuprin was suspended for "dealing drugs"; (4) some high school baseball players were suspended for possessing "dangerous weapons" on school grounds—a teacher who suspected them of having drugs searched for but found none, instead finding baseball bats in their cars; (5) a 14-year-old boy was charged by school police with a felony for throwing a deadly missile (which turned out to be a Halloween "trick or treat" of throwing an egg)—he was taken away in handcuffs and put in juvenile detention; (6) in Florida, a six-year-old was charged with trespassing when he took a shortcut through the schoolyard on his way home (how many of us did that as a kid?); (7) in Indianola, Mississippi, elementary school children have been arrested for talking during assemblies; (8) in Spokane, Washington, three boys were suspended for bringing two-inch-long "action figure toy guns" to school; (9) a 13-year-old girl in Massachusetts was expelled for having an empty lipstick tube in her purse—this was considered a "potential weapon"; and (10) in Texas, a "model student" was expelled when officials found a blunt-tipped bread knife in the back of his pickup, left there by his grandmother.[3]

One of the most recent incidents comes from Toledo, Ohio, where school officials have engaged in perhaps the most absurd forms of zero tolerance. According to a *New York Times* story,[4] on October 17, a 14-year-old girl was handcuffed by the police and hauled off to the local juvenile court. Her "crime" was the clothes she was wearing: a "low-cut midriff top under an unbuttoned sweater," which was a "clear violation of the dress code." The school offered to have her wear a bowling shirt, but she refused. Her mother came in and gave her an oversize T-shirt, which the girl also refused to wear, saying that it "was real ugly." According to the story, the girl is one of the more than two dozen arrested in school this past October for such "crimes" as being "loud and disruptive," "cursing at school officials," "shouting at classmates," and, of course, violating the dress code. Such "crimes" are violations of the city's "safe school ordinance." The juvenile court judge in this case remarked that this girl "didn't come across as a major problem at all. She just wanted to show off a certain image at school. Probably she just copped an attitude. I expect that from a lot of girls."[5] A new offense should be added to the ever-growing list of "zero-tolerance" offenses: "copping an attitude."

In schools all over the country, there has been a swelling of arrests by school police, mostly on minor charges, typically appearing within the "miscellaneous" category, which appear after serious assaults, property crimes, and drug offenses have been totaled in annual reports. One study found that between 1999 and 2001, there was a 300 percent increase in student arrests in the Miami-Dade public school system.[6] Where I live, in Las Vegas, Nevada, the school district police have reported increasing arrests for "crimes" placed in this miscellaneous category, going from about 80 percent of the total to more than 90 percent in the past 10 years. Such draconian measures have been put in place despite the facts that

schools are the safest places for children and that serious crime on school grounds began declining long before such policies went into effect.[7]

Schools have been described as "day prisons," because they often have had that drab look of a prison and have been surrounded by plenty of fences. These days, it has become even worse, as a growing number of reports have noted. One recent report noted that many high school students are complaining that we are "making schools like prisons." This perceptive account further notes that:

> Most U.S. high school students will have to walk by numerous hidden cameras, outdoors and indoors, and go through an institutional-size metal detector manned by guards just to get into school each morning. Once there, students are subject to random searches of their bodies and belongings. Lockers can be searched without warning with or without the student present, and in many places police will use drug-sniffing dogs during raids where they search lockers and even students' parked cars.[8]

A lawsuit filed in June 2001 by the American Civil Liberties Union (ACLU) addressed some of these concerns at Locke High School in Los Angeles. Among the complaints were unreasonable searches, in which students were frisked and had their personal belongings examined in front of their peers. One of the plaintiffs in the case said, "The searches are embarrassing. They're treating us like we're criminals. It's turning school into a prison." A former student told a reporter that "There are 27 cameras on the second floor alone and they are going to put up more cameras to supposedly make it a safer place, when really you feel more like a criminal."[9] At Oswego High School in upstate New York, one such search was done without warning when several police squads with their drug-sniffing dogs searched students' lockers upon the request of the principal. They found a small amount of pot and a marijuana pipe in one student's pocket.[10]

Perhaps the most infamous case occurred in a small town called Goose Creek, South Carolina. Videotape from surveillance cameras shows dozens of students, some of them handcuffed, sitting on a hallway floor against the wall as they are watched by police officers with guns drawn and as police dogs sniff the backpacks and bags strewn across the hall. A report in the *Los Angeles Times* noted that parents were outraged over the incident, saying that the police went overboard.[11] No drugs were found. The author saw portions of the videotape and it looked like the Gestapo with about 10 or 12 armed police roaming the halls yelling and making the students lie down on the floor.

Hundreds more such examples could be presented, which brings us to my point. In recent years, the juvenile justice system has been accused of being too lenient (actually adults often get treated more lightly for comparable crimes) and so a get-tough movement has taken over. One result is that minor indiscretions that once were handled informally or even ignored are now being formally processed, thus clogging the system so much that it barely has time to deal with the serious crimes and truly

problematic youth. Upon the passage of various get-tough laws, officials now look in vain to find the superpredators and, finding few, end up targeting minor offenders. I call this the "trickle-down" effect.

Contrary to the media and most politicians, the most serious juvenile offenders—the so-called chronic violent predator or superpredator—are rare. All across the nation, we search in vain for these kinds of youths and discover that they usually constitute less than 3 percent of all juvenile offenders (but they dominate the headlines, making us think they are the norm; after all, "if it bleeds, it leads"). Sometimes we are told that a certain percentage of youths referred to juvenile court are charged with "crimes against the person" or "violent crimes," when in fact the majority of these crimes are rather minor in nature—a fist fight between teenagers, a fight between children and their parents or between siblings, a mere threat, and so on. In short, the kinds of personal confrontations that people of my generation were involved in all the time when we were young, but no police showed up and no referrals were made to court. What happened? The community handled it on its own—the schools, neighbors, community groups, and even the kids themselves. Even the police—like those where I grew up—handled these infractions through a stern lecture and a warning (chances are they knew you or your parents).

But now we are driven by media images of the young predator, the rare killers on school campuses, or the so-called gang-bangers, and we are reacting as if this represents the typical youthful offender. I call these reactions "exception-based policies." Conservatives, and to a large extent liberals, have responded to worst-case scenarios by instituting policies as if the exceptional cases are the norm. The rare case in which a youth brings a gun on school grounds, the rare serious violent crime on school grounds, and other such incidents determine public policies.

We are obsessed with the need to identify the next superpredator, preferably at the earliest age possible. This means we crack down on minor offenses, or no offenses at all, as in cases in which we target so-called high-risk children. There is an assumption that minor offenses will inevitably lead to bigger crimes later in life and that there is an easy way to identify future criminals, both of which are not true.

Part of the problem is that America really loves its wars, as we always seem to want to solve a problem by declaring a "war" on it. As soon as we have declared a war, this immediately creates an "us versus them" situation and a siege mentality—as in the erroneous, but ever-popular belief that criminals, gangs, and drug dealers are taking over. In this case, we have launched, in effect, a "war on children." And as in any other war, the attitude tends to be that we may have innocent casualties or, continuing the war metaphor, that there will be "collateral damage," meaning that losses must be anticipated for the greater good of winning the war (suggesting that it is too bad that some innocent children are victimized or that minor offenses are criminalized). It is time we made some drastic changes in the way we handle crime and delinquency in this society. We don't need to "get tough" with these kids; we just need to "get smart" by changing our attitude toward minor juvenile transgressions. More

important, however, we adults need to look in the mirror and realize that we are part of the problem; guess what age group commits the most crime and the most horrible of crimes? And guess what age group uses the most drugs, drinks the most alcohol, and abuses (and even kills) the most kids? It's the adults. But we avoid our own problems by making juveniles our scapegoats.[12]

We need another approach to this problem, and we don't have to look very far to find a model to guide us, for it appeared 30 years ago in Schur's excellent book. The aim in this chapter is to first provide a brief summary of Schur's book and next outline a policy that can take advantage of his insights from some 30 years ago.

THE LABELING PERSPECTIVE: AN OVERVIEW

Schur's work was one of many during the 1960s and 1970s that endorsed the "labeling" perspective. The labeling perspective does not address in any direct way the causes of criminal or deviant behavior but rather focuses on three interrelated processes: (1) how and why certain behaviors are defined as criminal or deviant, (2) the response to crime or deviance on the part of authorities (e.g., the official processing of cases from arrest through sentencing), and (3) the effects of such definitions and official reactions on the person or people so labeled (e.g., how official responses to groups of youths may cause them to come closer together and begin to call themselves a gang).[13] The key to this perspective is reflected in a statement by Becker more than 40 years ago, who wrote, "Social groups create deviance by making the rules whose infraction constitutes deviance, and by applying those rules to particular people and labeling them as outsiders."[14]

One key aspect of the labeling perspective is that the juvenile and criminal justice system (including the legislation that creates laws and hence defines crime and criminals) helps to perpetuate crime and deviance. Definitions of "delinquency" and "crime" stem from differences in power and status in the larger society, and those without power are the most likely to have their behaviors labeled as "delinquency." Delinquency may be generated, and especially perpetuated, through negative labeling by significant others and by the judicial system; one may associate with others who are similarly labeled, such as gangs. One of the most significant perspectives on crime and criminal behavior to emerge from the labeling tradition was Quinney's theory of the "social reality of crime." Among other things, Quinney argued that "criminal definitions describe behaviors that conflict with the interests of the segments of society that have the power to shape public policy" and that such definitions "are applied by the segments of society that have the power to shape the enforcement and administration of criminal law." Moreover, he explained, "behavior patterns are structured in segmentally organized society in relation to criminal definitions, and within this context, persons engage in actions that have relative probabilities of being defined as criminal."[15]

One of the key concepts for Quinney is *power*, which is an elementary force in our society. Power, says Quinney, "is the ability of persons and groups to determine the conduct of other persons and groups. It is utilized not for its own sake, but is the vehicle for the enforcement of scarce values in society, whether the values are material, moral, or otherwise." Power is important if we are to understand public policy. Public policy, including crime-control policy, is shaped by groups with special interests. In a class society, some groups have more power than others and therefore are able to have their interests represented in policy decisions, often at the expense of less powerful groups. Thus, for example, white upper-class males have more power and their interests are more likely to be represented than those of working- or lower-class minorities and women. Another way of putting it would be to say that *the imposition of a deviant (or delinquent) label is an exercise in power.* Thus, those with the most power and resources at their disposal are able to resist being so labeled.

Two types of offenses perhaps best illustrate this problem: status offenses and drugs. In each case, the laws are directed against powerless groups: juveniles and lower-class racial minorities. Historical studies have documented the biases built into the very definitions of both of these types of offenses.[16] For juveniles, however, the very existence of "status offenses" demonstrates the power that the adult world has over kids. Offenses like behavior that is labeled "incorrigible," "unmanageable," and "beyond control" are so vague as to defy precise definitions. Similarly, running away from home is often responded to differently depending on gender. For instance, girls, who are about as equally as likely as boys to run away, are far more likely to be arrested, sent to juvenile court, detained, and even institutionalized.[17]

In *Radical Non-Intervention*, Schur takes a key feature of the labeling perspective, namely that it allows us to question traditional responses to delinquency and proceeds to outline a totally different, radical approach. The radical nonintervention approach begins with the premise that we should "leave kids alone wherever possible."[18] Schur's book is divided into three major sections, each corresponding to three typologies used to address the problem: (1) treating the individual, (2) reforming society, and (3) radical nonintervention. Each of these typologies will be briefly reviewed.

TREATING THE INDIVIDUAL

One of the most popular explanations of delinquency is that it is a "symptom" of some "underlying problem" within the individual delinquent. Although the "child-savers" who helped create the first juvenile court in Chicago in 1899 could be described as "social reformers," the basic approach has always been to focus on the individual delinquent, with perhaps some lip service given to the social causes of crime and delinquency. As Schur notes, there is an "assumption of basic differentness" in that delinquent behavior is "attributed primarily to the special characteristics of individual delinquents." Therefore, the appropriate treatment

response is to determine that "we have delinquency because we have delinquents; we must do something *to* or *for* them if we are to rid ourselves of the problem."[19] The favored method of treatment is the clinical model, which seeks to first identify youths who are "predelinquent" (or the modern equivalent, "at risk") and subject them to some form of intervention. At the same time, this model seeks to intervene clinically after these individuals have been formally defined as "delinquents" by the juvenile justice system. One of the main criticisms of this approach is that such predictions always tend to *overpredict* and therefore creates a lot of "false positives" (in which a juvenile is predicted to become a delinquent and they do not). Schur cites the famous Glueck studies that spawned the Cambridge-Sommerville Youth Study in which less than one-third of those identified as predelinquent actually got into trouble and most of these youths, then and now, only commit minor offenses and do not continue into a life of serious crime.

Some of the techniques used by those adhering to this approach have had extremely negative results, such as various "behavior modification" procedures, especially those that endorse the use of drugs. Such techniques have had a sinister history, beginning with the "eugenics" movement during the late-nineteenth and early twentieth centuries. This movement occurred in the context of widespread fear and nativism. The aim of this movement was to eliminate, or at least physically remove, so-called bad seeds from an otherwise healthy American soil. This movement was based on the theory of eugenics, which holds that certain problem behaviors are inherited and can be reduced and perhaps eliminated altogether by preventing the carriers of these bad seeds from reproducing. This theory was based in part on the idea that there are certain groups—especially racial groups—that are inherently "defective" (it was during this same period of time that the term "defective delinquent" was popular), somewhat less than human, and naturally inferior.[20]

Although Schur was warning us about the possible negative effects of behavior modification, mentioning specifically the use of drugs, he never could have predicted what would transpire within the next 30 years. One of the most recent ventures into this subject area can be found in the work of Dr. Gail Wasserman, a professor of Child Psychiatry at Columbia University, who is in charge of one of the most recent in a long line of attempts to get to the so-called root causes of violent crime. What are these root causes? They supposedly are found in the genes of certain kinds of children. What kinds of children? Let Dr. Wasserman tell you: "It is proper to focus on blacks and other minorities as they are over represented in the courts and not well studied." So she and her colleagues decided to "study" these "predisposed to violence" youth—all males, all minorities, all ages 6 to 10—by giving them doses of a dangerous drug called fenfluramine (the main ingredient in the diet drug "fen phen"). These children, who had no criminal record but were considered to be at "high risk" (code word for poor urban minorities) for future violence, were given a dose of this drug to examine the effects of "environmental stressors" on their levels of serotonin. Fenfluramine, by the way, was withdrawn just a

few months after this research was completed (late 1997) because, among other things, it causes potentially fatal heart valve impairments in many patients, as well as brain cell death in others.[21]

In 1989, the Department of Health and Human Services and the Public Health Service issued a report calling for strategies of intervention in "minority homicide and violence." The report cited as causes of violence factors like poverty, unemployment, homelessness, the availability of guns, and the glorification of violence within American culture. Yet its recommendation for prevention focused on identifying *individuals* and *modifying* their behavior—mostly, as it turned out, with medication. The report flatly stated that "[t]argeting individuals with a predisposition to, but no history of, violence would be considered primary as in programs to screen for violent behavior." This would require "tools to facilitate screening out high-risk individuals for early intervention." Such screening would target hospital emergency rooms, health centers, jails, and schools "at the lowest levels" where "acting out" behavior can be identified and dealt with. Perhaps more important, the program would conduct research "on the biomedical, molecular, and genetic underpinnings of interpersonal violence, suicidal behavior, and related mental and behavioral disorders."[22]

More alarming is the fact that infants would be a central focus, with many studies starting at birth. After all, so the logic goes, biological factors must be present at that age, which would predict future violent behavior. It does not take much of an imagination to deduce which children would be the target of such interventions. In fact, subsequent developments of these various violence initiatives specifically stated that the children of the poor and racial minorities would be the target, as suggested by Wasserman's quote. Consider the findings of a paper delivered at a 1989 conference of the American Association for the Advancement of Science, which claimed that research shows that whites and Asians are superior to African Americans who, the paper claimed, are "smaller brained, slower to mature, less sexually restrained and more aggressive." This is not occurring the nineteenth century, nor even the 1930s and 1940s, when such racist beliefs were generally accepted. It's occurring in the twenty-first century when we are supposedly more enlightened.

The Department of Justice soon got into the action with its "Program on Human Development and Criminal Behavior." Illustrating the "scientific" basis of this program and the role of academics in legitimating such movements, it should be noted that both the director and codirector of this project were, respectively, Felton Earls, professor of Child Psychiatry at Harvard Medical School, and Albert J. Reiss, professor of Sociology at Yale's Institute for Social and Police Studies. (The search for the "genetic" source of criminal behavior has always been led by noted academics. The early eugenics movement was at least indirectly supported by academic criminologists, sociologists, and anthropologists from Harvard University, among others. Such support is crucial for the continuation of such programs.) This program would screen and identify children as "potential offenders" who are "in need of preventive treatment or control." Specifically, the research would target nine age groups starting in infancy and

continuing at ages 3, 6, 9, 12, 15, 18, 21, and 24. The key question to be answered would be, according to the directors of the research, "What biological, biomedical, and psychological characteristics, some of them present from the beginning of life, put children at risk for delinquency and criminal behavior?"

Led by psychiatrists and funded by some of the largest pharmaceutical companies (such as Lilly, the maker of Prozac, Pfizer, Upjohn, Hoffman-La Roche, Abbott Laboratories, and many more), a program of "research" called the Violence Initiative Project is now under way and has received additional funding from the National Institute of Mental Health. The "crime-control industry" has expanded to include what may be called the "drug-control industry" because all sorts of alleged "problem behaviors" exhibited by children are viewed as biological in nature and in some cases genetic. As Breggin and Breggin write,

> Children's disorders and disruptive or violent behavior in particular remain growth markets. Powerful vested interests, including giant pharmaceutical firms, stand to profit mightily from proposed applications of biological research. Biomedical researchers and their labs and institutes will not readily fold or refrain and retool for wholly different kinds of research.[23]

I am certain Schur would agree that these approaches to delinquency should be rejected outright, because they violate some of the most elementary principles of social justice and individual liberty. But the approaches persist mainly because it is the adults who are in charge who have the most power over children.

Schur continues his analysis of individual approaches by focusing on such techniques as counseling, probation services, and various kinds of community treatment. His review of the literature on these approaches found little to be enthusiastic about 30 years ago; more recent updates continue to find few success stories. For the most part, typical probation and parole approaches continue to use individualized techniques and, in fact, often accomplish little more than surveillance. This approach is symbolized perfectly by a sign Jerome Miller, juvenile justice reformer and former head of the Massachusetts Department of Youth Services, saw on the office wall of a California probation officer, which read "trail 'em, surveil 'em, nail 'em and jail 'em."[24]

Institutional treatment has come under constant criticism for many of the same reasons, namely that the method continues to focus on the individual delinquent. Schur's analysis 30 years ago noted this inevitable conflict between treatment and custody, with the latter almost invariably winning. More recent reviews of institutional treatment are no more promising.[25]

REFORMING SOCIETY

Traditional sociological theories stress the importance of the surrounding social structure and culture as the most important causes of crime and

delinquency. These theories shift the focus away from the *individual* characteristics and toward the *social* characteristics that cause people to become delinquents. As Schur pointed out, however, with these theories, delinquents are still to be distinguished from nondelinquents. The only change is that under sociological theories it is the *social conditions* that differentiate them rather than *personal attributes.* Therefore, the goal should be to change the surrounding social conditions rather than changing individuals.

Although he reviews most of the standard sociological theories (e.g., strain, cultural deviance), Schur challenges the assumption that delinquency is strictly a lower-class phenomenon, noting that self-report studies demonstrate that virtually every juvenile commits some form of delinquent act. Over the years, many have taken these research findings and concluded that class and race don't matter when it comes to causes of delinquency. So, for instance, we see that Hirschi's control theory stipulates that it is the lack of bonding that causes delinquency, regardless of race or class.[26] A great body of research now demonstrates that social inequality and racism are indeed major causes of crime and delinquency. As Schur and many others have pointed out, however, these are causes of certain kinds of criminal behavior, but certainly not all criminal behavior. When we consider the fact that white-collar and corporate crime costs society between $500 billion and $1 trillion per year, the relatively petty crimes of the lower class pale in comparison.[27] Nevertheless, the criminal and juvenile justice system focus almost exclusively on the behaviors of the lower and working classes.[28]

Efforts to reform society have hardly been pursued, for few programs have been established that challenge the basic foundations of our class society. Most of the efforts that can be described as having addressed the social causes of crime have consistently tried to change either individuals or groups. Schur cites the "detached worker" programs that have attempted to reduce gang activities. These and similar programs have not been very successful.[29] Indeed, after 30 or more years of "street work" with gangs, we have more gangs than ever before (although official estimates are usually exaggerated) and the major sources of gangs (especially social inequality) have worsened.[30]

One of the few attempts to seriously address social inequality was the "war on poverty," which began in the 1960s. One part of this program was the Mobilization for Youth program in New York City. These initiatives did not last long, however, because money that would have gone toward them was quickly siphoned off to continue the Vietnam War. It is ironic that within an often-cited publication on crime and justice, the President's Commission on Law Enforcement and Administration of Justice, we find these lines:

> The underlying problems are ones that the criminal justice system can do little about ... Unless society does take concerted action to change the general conditions and attitudes that are associated with crime, no improvement in law enforcement and administration of justice, the subjects this Commission was specifically asked to study, will be of much avail.[31]

Most of the people who read this and other reports from the Commission apparently ignored this simple truism and instead focused on making the existing system of justice more efficient or, more correctly, more efficient at processing mostly lower-class and minority offenders.[32]

More than 30 years have passed since the President's Commission wrote those words. Since that time, the crime rate is not much different, but expenditures on the criminal justice system have soared by more than 1,500 percent, the overall incarceration rate has increased by about 500 percent, and the overall "clearance rate" of "crimes known to the police" has remained virtually unchanged.[33] As an old saying goes, it is time to "think out of the box." And this "box" is our present criminal and juvenile justice system. It is also time to reconsider what Schur said 30 years ago about pursuing "radical nonintervention" as a unique approach.

THINKING OUTSIDE THE BOX: RECONSIDERING RADICAL NONINTERVENTION

Schur noted the general disenchantment with delinquency policies because they had generally failed (with some notable exceptions) to reduce delinquency. In a statement that is just as relevant today as ever, he observed that "[a] traditional response to this situation has been to assume that the system merely needs improvement. Hence the calls for more and better facilities, increasingly experimental studies and elaborate 'cost-benefit' and 'systems' analyses."[34] Whether or not the system has been noticeably "improved," it is certainly much larger and it is making more arrests than ever before, mostly stemming from the "war on drugs." On any given day, more than six million people are somewhere within the criminal justice system, with perhaps another million or so youths somewhere within the juvenile justice system. At the same time, the fear of crime among American citizens appears to be higher than ever.[35] Something different is needed and part of this something may be found in Schur's proposal.

In the final chapter of his book, Schur outlined in broad form, five general proposals. These proposals are as follows:[36]

- Proposal 1: "There is a need for a thorough reassessment of the dominant ways of thinking about youth 'problems'." Schur maintained that many, if not most, behaviors youth engage in (including many labeled as delinquent) are "part and parcel of our social and cultural system" and that "misconduct" among youth is inevitable within any form of social order. We pay a huge price, he charged, for criminalizing much of this behavior.
- Proposal 2: "Some of the most valuable policies for dealing with delinquency are not necessarily those designated as delinquency policies." Schur quotes a passage from the report of the American Friends Service Committee that "the construction of a just system of criminal justice in an unjust society is a contradiction in terms." Checking my own copy of this report (which we would all do well to read again), the first part of this

sentence says, "To the extent, then, that equal justice is correlated with equality of status, influence, and economic power. . . ."[37] Clearly this committee (John Irwin was one of the members) saw the need to go beyond the usual focus on isolation and punishment of individual offenders and seriously challenge the inequality of the larger society.

- Proposal 3: "We must take young people more seriously if we are to eradicate injustice to juveniles." Schur notes that so many young people lack a sound attachment to conventional society, to borrow one of Hirschi's "social bonds." Thus, while we address some of the inequalities noted in the second point above, it would behoove us to try and make the existing system more just in the sense that it respects young people. The lack of respect that Schur noted seems to be even greater today, as we continue the conflicting feelings of fear and admiration toward young people. Indeed, today we see the Bush proposal to "leave no child behind," while at the same time increasing the punishments for relatively minor offenses under zero-tolerance policies. We often embrace "diversity," yet at the same time punish differences, such as the heavy penalties levied for mere possession of marijuana and the continued targeting of racial minorities in the "war on drugs."
- Proposal 4: "The juvenile justice system should concern itself less with the problems of so-called 'delinquents', and more with dispensing justice." Schur was talking specifically about narrowing the jurisdiction of the juvenile court, specifically over "status offenses." Little did Schur realize the extent to which "net-widening" would occur in the intervening years. Although technically some "status offenders" have been "diverted" from the juvenile justice, many are returned under new "delinquency" charges stemming from "bootstrapping," whereby a second status offense is labeled a "violation of a court order" (e.g., probation violation) or even "contempt of court." This has been especially the case for girls.[38]
- Proposal 5: "As juvenile justice moves in new directions, a variety of approaches will continue to be useful." Schur specifically suggests such approaches as prevention programs that have a "collective or community focus," plus programs that are voluntary and noninstitutional in nature and programs that use "indigenous personnel," to name just a few. One of those new approaches has been the Detention Diversion Advocacy Project (DDAP), which began in San Francisco in the late 1980s and has spread to other parts of the country. The first evaluation found positive results from the program (see the discussion below).[39]

AN ASSESSMENT OF SCHUR'S IDEAS

As already indicated, much of what Schur articulated 30 years ago remains relevant in today's society, as does the labeling approach itself. Although people may disagree on some of his points, the central thrust remains true as ever, namely that the juvenile justice system extends far too broadly into the lives of children and adolescents. Males has made this

point perhaps more forcefully that most others when he accuses criminologists and public policy makers of blaming kids for most ills of society while ignoring the damage done by adults.[40] In a more recent study, Males compared the rhetoric of law enforcement officials and criminologists such as James Q. Wilson. He points out that in Los Angeles during the 1990s (and likewise in Oakland) two-thirds of the murder suspects were under 25, but in 2002 less than half were. He chastises both James Q. Wilson and James Alan Fox for erroneously claiming that more young people equal more crime. As Males correctly points out, in the years and in the states where there were a higher percentage of young males in the population, there were fewer violent crimes. Both James Alan Fox and John DiIulio predicted in 1995 that we were headed for a rise in the teenage population, which would result in a spike in the number of ''adolescent superpredators.'' Contrary to such dire predictions, there were 60,000 fewer juvenile arrests for violent index crimes in 2001 than in 1994.[41] Perhaps we would be more correct to stress the importance of greater intervention by the adult courts into the lives of ''adult superpredators'' instead of extending the reach of the juvenile court.

The overreach of the juvenile justice system is perhaps best demonstrated in referral statistics published by OJJDP. The most recent Juvenile Court Statistics note that between 1989 and 1998 the two offense categories that showed the largest percentage gains were drug law violations (up 148 percent) and simple assaults (up 128 percent), with obstruction of justice rising by 102 percent and disorderly conduct increasing by 100 percent.[42] Black youths consistently have higher rates of referrals to court for drug offenses, a pattern that reflects trends in the adult system.[43] The proportion of referrals to the juvenile court for relatively petty acts is staggering. Why criminalize what could be considered normal adolescent behavior like disturbing the peace and minor fighting? (One may reasonably ask, ''Whose peace is being disturbed?'')

As noted, one of the questions the labeling perspective poses is why certain acts are labeled ''criminal'' or ''delinquent'' and others are not. Another pertinent question this approach asks is how we account for differential rates of arrest, referral to court, detention, adjudication, and commitment based on race and class. These are not merely academic questions, for the lives of real people are being affected by recent get-tough policies. We continue to criminalize normal adolescent behavior or behavior that should be dealt with informally, outside of the formal juvenile justice system. Status offenses immediately come to mind, such as truancy and incorrigibility. Criminalizing truancy has always puzzled me. Why take formal police action because a child is not going to school? Certainly, kids should stay in school, for an education is a prerequisite for a decent life. But why use the immense power of the state to make these children stay in school? Likewise, children should obey the reasonable demands of their parents, but they also should be left alone to figure things out for themselves. There is no need to involve the state in private family matters, unless some direct physical or other obvious harms are being committed. How many times have we heard stories or read research reports about

runaways who have experienced incredible abuse or discovered that many children referred to juvenile court as "incorrigible" have been abused?[44]

A MODEL PROGRAM: DETENTION DIVERSION ADVOCACY PROJECT

Consistent with the ideas discussed here is a program with a great deal of promise. The DDAP was started in 1993 by the Center on Juvenile and Criminal Justice (CJCJ) in San Francisco, California. The program's major goal is to reduce the number of youth in court-ordered detention and provide them with culturally relevant community-based services and supervision. Youths selected are those who are likely to be detained pending their adjudication. DDAP provides an intensive level of community-based monitoring and advocacy that is not presently available. It is based in part on the concept of "disposition case advocacy."

Disposition case advocacy has been defined as "the efforts of lay persons or nonlegal experts acting on behalf of youthful offenders at disposition hearings."[45] It is based in part on the more general concept of "case management," which has been defined as a "client-level strategy for promoting the coordination of human services, opportunities, or benefits." Case management seeks to achieve two major outcomes: (1) "the integration of services across a cluster of organizations and (2) continuity of care."[46] The main focus of case management is to develop a network of human services that integrates the development of client skills and the involvement of different social networks and multiple service providers.[47]

Among the goals the program is designed to accomplish are the following: (1) to provide multilevel interventions to divert youth from secure detention facilities, (2) to demonstrate that community-based interventions are an effective alternative to secure custody and that the needs of both the youths and the community can be met at a cost savings to the public, and (3) to reduce disproportionate minority incarceration.[48]

The DDAP program involves two primary components:

- *Detention Advocacy.* This component involves identifying youth who are likely to be detained pending their adjudication. Once a potential client is identified, DDAP case managers present a release plan to the judge. The plan includes a list of appropriate community services that will be accessed on the youth's behalf. Additionally, the plan includes specified objectives as a means to evaluate the youth's progress while in the program. Emphasis is placed on maintaining the youth at home, and if the home is not a viable option, the project staff will identify and secure a suitable alternative. If the plan is deemed acceptable by a judge, the youth is released to DDAP's supervision.
- *Case Management.* The case management model provides frequent and consistent support and supervision to youth and their families. The purpose of case management is to link youths to community-based services and closely monitor their progress. Case management services are "field

oriented,'' requiring the case manager to have daily contact with the youth, his or her family, and significant others. Contact includes a minimum of three in-person meetings a week. Additional services are provided to the youth's family members, particularly parents and guardians, in areas such as securing employment, day care, drug treatment services, and income support.

Clients are identified primarily through referrals from the public defender's office, the probation department, community agencies, and parents. Admission to DDAP is restricted to youths currently held, or likely to be held, in secure detention. The youths selected are those theoretically deemed to be ''high risk'' in terms of their chance of engaging in subsequent criminal activity. The selection is based on a risk assessment instrument developed by the National Council on Crime and Delinquency. The target population consists of those whose risk assessment scores indicate that they ordinarily would be detained. This is what Miller has termed the ''deep-end'' approach.[49] This is quite important; by focusing on detained youth, the project ensures that it remains a true diversion alternative rather than a ''net-widening'' activity. Youths are screened by DDAP staff to determine whether they are likely to be detained and whether they present an acceptable risk to the community.

Client screening involves gathering background information from probation reports, psychological evaluations, police reports, school reports, and other pertinent documents. Interviews are conducted with youths, family members, and adult professionals to determine the types of services required. Once a potential client is evaluated, DDAP staff present a comprehensive community service plan at the detention hearing and request that the judge release the youth to DDAP custody.

Because the project deals only with youths who are awaiting adjudication or final disposition, their appropriateness for the project is based on whether they can reside in the community under supervision without unreasonable risk and on their likelihood of attending their court hearings. This is similar in principle to what often occurs in the adult system when someone is released on bail pending their court hearings (e.g., arraignments, trial).

The primary goal of the project is to design and implement individualized community service plans that address a wide range of personal and social needs. Services that address specific linguistic or medical needs are located by case managers. Along with the youth's participation, the quality and level of services are monitored by DDAP staff. The purpose of multiple collaboratives is to ensure that the project is able to represent and address the needs of the various communities within San Francisco in the most culturally appropriate manner. Because youth services in San Francisco historically have been fragmented by ethnicity, race, and community, a more unified approach is being tried with DDAP. It has become a neutral site within the city and is staffed by representatives from CJCJ and several other community-based service agencies (e.g., Horizon's Unlimited, Potrero Hill Neighborhood House, and Vietnamese Youth Development Center).

More specific goals include the following: (1) ensuring that a high proportion of the program clients are not rearrested while participating in the program, (2) achieving a high court reappearance rate, (3) reducing the population of the Youth Guidance Center, and (4) reducing the proportion of minority youths in detention. Currently, the Youth Guidance Center is the only place of detention in the city. It has a capacity of 137, but the daily population typically ranges between 140 and 150 youths. The average length of stay is around 11 to 12 days.

The evaluation compared a group of youths referred to DDAP with a similarly matched control group of youths who remained within the juvenile justice system.[50] The results showed that after a three-year follow-up, the recidivism rate for the DDAP group was 34 percent, compared with a 60 percent rate for the control group. Detailed comparisons holding several variables constant (e.g., prior record, race, age, gender) and examining several different measures of recidivism (e.g., subsequent commitments, referrals for violent offenses) showed that the DDAP youths still had a significantly lower recidivism rate.

DDAP has been expanded to additional sites, such Washington, D.C., and Philadelphia. Preliminary reports suggest continuing success, as measured by lower recidivism rates.[51] Presently, the concept has been further expanded to include a focus on juvenile offenders who have been committed to institutional settings in California. In other words, these are youths who are headed for such institutions as the California Youth Authority (CYA). The program, called New Options, operates on the same principle as DDAP, namely, going into the "deep end" of the juvenile justice system. This program has been in operation for about one year, yet some preliminary figures suggest that it will have the same kind of success as DDAP.[52] One example illustrates this program. A 16-year-old male had a long history of involvement in the juvenile justice system, including five failed out-of-home placements within the past four years. Instead of being sent to the CYA, he was placed in a private school called the Challenge to Learn Academy. Here, in addition to receiving an excellent education, he receives individual therapy, substance abuse treatment, and anger management counseling. The cost totals about $2,300 a month (paid for by grants from several local foundations). As of January, 2004, more than 50 youths have been placed in such alternatives during the past year.[53]

This is just one of many similar programs that owe their intellectual debt not only to Schur's work, but also to the labeling perspective. Such programs are derived by challenging taken-for-granted notions about those youth who are found in the "deep end" of the juvenile justice system and giving them a chance to succeed in friendlier environments.

CONCLUSION

Giroux,[54] a leading sociologist, recently observed the growing support in this country for the abandonment of young people, especially minorities, "to the dictates of a repressive penal state that increasingly addresses

social problems through the police, courts, and prison system.'' This has been accomplished while the state has been increasingly reduced to providing police functions, at the expense of serving as the ''guardian of public interests.'' The policies of social investment, continues Giroux, ''have given way to an emphasis on repression, surveillance, and control.'' One result is what he calls the ''criminalization of social policy'' or, perhaps more correctly, ''domestic warfare.''

A specific instance of this can be seen in New York City where, says Giroux, Rudy Giuliani essentially assigned the role of discipline within the schools to the police department. In effect, the school principal has assumed the role of ''warden,'' while many schools have taken on a new function of serving as a ''feeder system for the penal system.''[55]

The war on terror and the war on Iraq, along with the expansion of American military might all over the globe, which is little more than another form of empire building and imperialism,[56] is being matched by a growing crime-control industry on the home front. Zero-tolerance policies can be seen, therefore, as part of something much larger. Given the current political climate, instituting anything remotely like radical nonintervention will be an uphill battle. Such a hands-off policy toward youth does not fit in well to today's climate, particularly given the almost paranoid need to identify troublemakers, superpredators, and potential terrorists.

NOTES

1. Schur, 1973; see also his other noteworthy work on the labeling perspective (Schur, 1971).
2. An excellent treatment of the subject of ''superpredators'' is provided in Elikann, 1999. A good illustration of this conservative view is provided in Bennett, DiIulio, & Walters, 1996.
3. Juvenile Law Center, 2004; Shelden, 2000a; ''Zero tolerance,'' 2003, May 7.
4. Rimer, 2004.
5. Rimer, 2004.
6. Browne, 2003.
7. Shelden, 1998.
8. Lyderson, 2003.
9. Lyderson, 2003.
10. Lyderson, 2003.
11. ''Drug sweep,'' 2003, November 9.
12. Males, 1996.
13. This is outlined in more detail in Schur, 1971.
14. Becker, 1963, pp. 8–9.
15. Quinney, 1970, pp. 15–25.
16. Documentation that race and class bias exist with regard to drug laws and status offenders is provided in my book (Shelden, 2001); for juvenile court laws and their bias, see Platt, 1969; for the race bias in drug laws, see Helmer, 1975.
17. Chesney-Lind & Shelden, 2004.
18. Schur, 1973, p. 155.
19. Schur, 1973, p. 29.

20. The information about the eugenics movement and subsequent discussions is based in part on Shelden, 2000b. Another good source for this topic is Rafter, 1988.
21. Breggin & Breggin, 1998; Cohen, 2000.
22. Breggin & Breggin, 1998, p. 16.
23. Breggin & Breggin, 1998, p. 40.
24. Miller, 1996, p. 131.
25. Bortner & Williams, 1997; Dryfoos, 1990.
26. Hirschi, 1969.
27. Costs of white-collar and corporate crime are provided in Shelden and Brown (2003, chap. 2).
28. Shelden & Brown, 2003, chap. 2; this is also documented in studies too numerous to cite here. See, e.g., Chambliss, 1999, and especially Reiman, 2004.
29. Klein, 1995; Shelden, Tracy, & Brown, 2004.
30. For documentation of recent increases in inequality see Shelden et al. (2004, chap. 7) and Phillips (2002).
31. President's Commission on Law Enforcement and the Administration of Justice, 1967, p. 1, as quoted in Schur, 1973, p. 105.
32. A good critique of the Crime Commission and of criminal justice policy in general is found in Quinney (2002).
33. Shelden & Brown, 2003, chaps. 1–2.
34. Schur, 1973, p. 117.
35. Shelden & Brown, 2003.
36. Schur, 1973, pp. 166–170.
37. American Friends Service Committee, 1971, p. 16.
38. Chesney-Lind & Shelden, 2004.
39. Shelden, 1998.
40. Males, 1996, 1999.
41. Males, 2002.
42. Office of Juvenile Justice and Delinquency Prevention, 2003, p. 7.
43. Office of Juvenile Justice and Delinquency Prevention, 2003, p. 7. Numerous studies have documented the racist nature of the drug war. See Tonry, 1995, and Miller, 1996.
44. Chesney-Lind & Shelden, 2004.
45. Macallair, 1994, p. 84.
46. Moxley, 1989, p. 11.
47. Moxley, 1989, p. 21.
48. The ability of case advocacy and case management to promote detention alternatives was demonstrated by the National Center on Institutions and Alternatives (NCIA). Under contract with New York City's Spofford Detention Center, NCIA significantly augmented the efforts of that city's Department of Juvenile Justice to reduce the number of youth in detention and expand the range of alternative options (Krisberg & Austin, 1993, pp. 178–181). A similar case management system has been in use in Florida through the Associated Marine Institutes (Krisberg & Austin, 1993, pp. 178–181). The Key Program, Inc., also uses the case management approach, but in this instance the youth are closely supervised, meaning that they are monitored on a 24-hour basis and must conform to some strict rules concerning work, school, counseling, victim restitution, and so on (Krisberg & Austin, 1993, pp. 178–181). Additional evidence in support of the use of case advocacy comes from a study by the Rand Corporation (Greenwood & Turner, 1991). This study compared two groups of randomly selected youths, a control group that was recommended by their probation officers for incarceration, and an

experimental group that received disposition reports by case advocates. Of those who received case advocacy disposition reports, 72 percent were diverted from institutional care, compared with 49 percent of the control group. The Rand study found tremendous resistance from juvenile justice officials, especially probation officers, to alternative dispositions, especially those coming from case advocates. It appeared that the probation staff resented the intrusion into what had heretofore been considered their own "turf" (Greenwood & Turner, 1991, p. 92).

49. Miller, 1998.
50. For a complete overview of the evaluation, see Shelden, 1999.
51. Feldman & Kubrin, 2002.
52. Center on Juvenile and Criminal Justice, 2003.
53. Based on the author's interview with the director of New Options. A detailed evaluation, using control groups, is being proposed. For further details, see the Web site for the Center on Juvenile and Criminal Justice at www.cjcj.org.
54. Giroux, 2001.
55. Giroux, 2003, quoting Jesse Jackson.
56. Johnson, 2004.

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CHAPTER 9

Private versus Public Operation of Juvenile Correctional Facilities

Chad R. Trulson and Craig Hemmens

Although the government has traditionally been the owner and operator of correctional facilities, the private sector has always played a role in corrections. One of the earliest forms of corrections was transportation and this type of eighteenth-century punishment was largely privatized.[1] Transportation entailed shipping or transporting criminals to foreign lands to serve their sentences. Private merchants sometimes served as the transporters. They could pay the sheriff a price per convict, and then sell the convict as an indentured servant.[2] Another early form of privatization in corrections was the convict lease system, which was prevalent primarily in southern United States in the late 1800s and early 1900s, and involved the state leasing out convicts to private contractors.[3] These examples show that "penology for profit"[4] has its roots in the earliest correctional enterprises—it is certainly not a new concept.

Although privatization in corrections has occurred for hundreds of years, it is only in the last quarter century that private entities have made significant inroads into corrections. Private corporations concerned exclusively with correctional services have emerged. These private corporations have contracted out specific services such as meals and health care to state, county, and local correctional jurisdictions. At the most extreme, private correctional agencies have been charged with the wholesale design, construction, ownership, and operation of correctional institutions for both adults and juveniles.

The trend toward privatization in corrections is best evidenced by the growth in the number of private institutions and in the number of inmates held at these private institutions. In the 1990s alone, the capacity of

private adult correctional facilities increased almost 900 percent.[5] According to the Bureau of Justice Statistics, there was nearly a sixfold increase of the number of privately held adult prisoners from 1995 to 2000. At last official count, private correctional facilities held 7 percent of the adult incarcerated population and public facilities held roughly 93 percent of the adult incarcerated population.[6] Although private correctional facilities for adults make up only 15 percent of the total number of adult correctional facilities in the United States, and public facilities hold the vast majority of adult inmates, the dramatic increase in private correctional capacity and privately held prisoners in the 1990s suggests that privatization continues to spread among the adult correctional population.[7]

Unlike in the adult system, the number of private juvenile correctional facilities in the 1990s increased only slightly (9 percent). This does not mean, however, that privatization is less prevalent in the juvenile correctional system than in the adult correctional system. In reality, privatization in juvenile corrections began before the 1990s.[8]

Private facilities for juveniles account for roughly 60 percent of all custodial correctional facilities for juveniles, compared with 15 percent of all correctional facilities for adults. Moreover, private juvenile correctional facilities hold almost 30 percent of all incarcerated juveniles—well above the proportion of adults held in private correctional facilities.[9] Despite the fact that the actual number of incarcerated juveniles has declined by some 10,000 juveniles over the last several years, from 1997 to 2003, the proportion of incarcerated juveniles held in private facilities has increased.[10] The bottom line is that an increasing number of states are relying on the private sector to deal with the incarcerated population of juveniles—and have been doing so for several years.[11]

In this chapter, we compare the operation of public and private juvenile correctional facilities. To better inform the reader with the information necessary to determine whether one type is better than the other, we examine the characteristics, history and evolution, types, and legal issues associated with these juvenile correctional facilities.

DEFINING PUBLIC AND PRIVATE JUVENILE CORRECTIONAL FACILITIES

What Is a Public Juvenile Correctional Facility?

A public juvenile correctional facility is one that is owned, funded, and operated by the government. The ownership and operation of public juvenile facilities exist at the state, county, and local levels, and these facilities are primarily supported by tax revenues. Because they are owned and operated by the government, employees are considered public employees.

Public juvenile correctional agencies may be considered hybrids to some degree. The distinction lies within the concepts of ownership and operating authority.[12] In addition to being owned and operated by the government, public institutions for juveniles may be owned by the government and operated by private authorities or may be operated by public

authorities and owned by private agencies. Where a public juvenile correctional institution falls on this continuum of operation and ownership is determined primarily by state laws and contractual arrangements with private agencies. What this discussion suggests, however, is that whether a juvenile correctional facility is "public" or "private" depends on certain factors. In other words, one person's public facility may be another's private facility.

What Is a Private Juvenile Correctional Facility?

In general, private juvenile correctional facilities are those that are owned and operated by a private sector entity, are not directly supported by tax revenues, and have employees who are not considered public employees. Like the definition of public institutions, however, there are various forms of privatization involving juvenile institutional corrections. Using the ownership and operation continuum, private facilities may be owned and operated by a private agency, may be owned by a private agency and operated by the government, or may be owned by the government and operated by a private agency. Thus, like the definition of a public juvenile correctional facility, there is much variation regarding what is and is not a private facility. Whether an institution is considered public or private relates to the different ideas of ownership and operation. Perhaps the bottom line is that both public and private juvenile correctional institutions can be considered hybrids, for often the boundaries are blurred.

HOW PRIVATIZATION WORKS IN CORRECTIONS

Characteristics of Privatization in Corrections

Privatization in juvenile corrections comes in many different forms. One of the most common forms of privatization is the contracting out of services by the government to a private agency. Numerous states engage the services of private organizations, such as medical and mental health care, drug treatment, education, and various forms of counseling.[13] These services are contracted out to private agencies for a variety of reasons; one being that the expertise and experience with these types of issues may lie outside of the government agency. Another commonly cited reason is that these services may be provided at a lower cost or performed more efficiently than what could be offered by a governmental agency. McDonald and Patten outline the different ways that governments have contracted with private agencies for correctional needs based on these and other reasons:[14]

- Narrow contracts for select services such as food service, cafeteria operation, and various forms of health care (e.g., medical, dental)
- Contracts for beds in facilities operated by the private firms and owned by the private firm or by other private agencies that partner with the

private firm (in these circumstances, the "beds" may be available to a number of agencies, not exclusively a particular correctional system or governmental agency)
- Government contracts with a private firm to finance, construct, and operate a correctional facility for the exclusive use of one governmental agency (e.g., state juvenile correctional system) during a particular contract period
- Government-created private corporations that exist to serve the needs of the government. In this circumstance, the private corporation is responsible for financing and constructing a correctional facility; however, it is controlled by public officials via a board of directors, and is considered legally independent of the government (therefore, the facility can then be leased to the government)

The way in which private corporations exist in correctional arenas around the country varies considerably. For example, in the absence of a preconstruction contract, private agencies may actually design, finance, and construct a private facility and "shop it around" to correctional agencies within and outside the state. Although this is rare, it has occurred. The list above is not exhaustive but shows the typical forms of privatization in corrections.

Administration and Oversight of Public and Private Agencies

In a pure example, public facilities are owned and operated by the government, and private facilities are owned and operated by private entities. There are many more subtle and not so subtle differences between these two broad categories, and such differences undoubtedly affect how they are operated in juvenile correctional environments. Key differences are examined below to shed some light on how public and private juvenile correctional facilities are similar and different concerning their administration and oversight.

In broad terms, public agencies are created by laws and are justified by need—some government action must create them and a reason must explain their existence. Thus, those who govern public agencies must constantly justify their existence and demonstrate the "need" for their institution.[15] In reality, however, some public agencies are so ingrained in the fabric of public life that it is hard to believe that their existence must be constantly justified. Many juvenile correctional institutions are public agencies, but it is unlikely that these public institutions will simply be closed by state legislatures. It could happen that some juvenile institutions are transferred to the operation of the adult system or, perhaps more likely, modified for another correctional purpose when a certain level of "need" is not met. Thus, it is not a matter of institutions being needed or not, but rather the "degree" of need involving public juvenile correctional facilities.

Conversely, private agencies and their institutions are created by market demands and primarily are driven by profit—when market demands wane

and profits fall, private agencies are in jeopardy.[16] Therefore, administrators of both public and private facilities must justify their existence and need to some degree.

Public agencies receive oversight by the state legislature or some other governing body depending on the level of government. Juvenile correctional systems, for example, must answer to legislators, juvenile correctional system board members, public interest groups, legal organizations, and society at large. Private agencies must answer to a board of directors, but private agency administrators are also scrutinized by stockholders, employees, public interest groups, and regulatory agencies. On the latter point, many government-private contractual arrangements require that private correctional institutions meet all government standards (legal or otherwise) when it comes to operating a private correctional facility. Although the facility may be owned and operated by a private corrections corporation, state laws or contractual agreements with the government may still require the private facility to meet minimum operating standards as determined by the legislature or other public governing bodies. This can be a rigorous process for private juvenile correctional agencies that may be scrutinized by any number of agencies from the contracting government agency, to the Office of Inspector General, to the state's department of child protective services. Therefore, in many cases, even private agencies have to answer to the government. It simply is not the case today that private agencies can "run wild" without any constraints or regulations in corrections.[17]

There are other differences between public and private juvenile correctional facilities, but in terms of their administration and oversight, public and private juvenile correctional facilities have many similarities.

THE EVOLUTION OF JUVENILE CORRECTIONAL FACILITIES

Public Juvenile Correctional Facilities

Before the 1800s, separate institutions for juveniles did not exist. There simply was no organized juvenile justice system in operation and no institutions to deal with juvenile lawbreakers. When children were wayward or delinquent, it was the responsibility of the family to deal with the situation. When parents were absent or neglected their duties, the responsibility to deal with delinquents was left to the larger community of neighbors, townspeople, and the church.[18]

Life in colonial America was relatively simple and orderly before the 1800s. The population in the American colonies was approximately 1.5 million individuals. By the early to mid-1800s, however, the population of early America soared to nearly 25 million. Not surprisingly, the simpler rural life in the former colonies became more diverse and complex. Methods of informal social control were challenged, and social disorder emerged as a massive social problem. It was in the face of these massive social changes that institutions were adopted to supplement, and in some instances

supplant, informal social control systems. Institutions such as prisons and asylums, it was believed, could be fashioned to mimic the ideal puritan life of earlier times and stabilize an unstable society.[19]

The earliest institutions for juveniles actually were privately operated. Opened in the early 1800s, these institutions are best characterized as almshouses (e.g., poorhouses) or orphanages. Although not technically what might be considered a juvenile correctional institution today, these facilities functioned to some degree as centers for youth who had taken a wayward path. More important, they were the seeds to growth in juvenile institutionalization around the country. But they were not only for delinquents—these institutions held all youth who were in need of supervision or protection.

The first recognized institution designed primarily for juvenile lawbreakers was the House of Refuge. As with almshouses and orphanages, houses of refuge were private facilities. In 1825, the Society for the Prevention of Pauperism, a private society, established the first House of Refuge in New York City.[20] By 1828, two more cities followed New York's lead, and by the 1850s, houses of refuge were situated in every major city in the United States.[21] Although many houses of refuge around the country were privately managed, it was not unusual for these institutions to receive some resources from the state in which they were located. Thus, to some degree, the earliest juvenile institutions in America can be considered hybrid facilities that relied on public and private authorities.

Over time, houses of refuge deteriorated and came to resemble the disordered society that they were meant to replace. They became overcrowded and filthy, almost unmanageable in size, and the founding ideas of discipline, order, and care digressed into chaos, disorder, and recidivism.[22] Critics noted that they were akin to "schools of crime," for they admitted a range of youths from the abandoned to the delinquent.[23] Eventually, the promise of the houses of refuge waned in America and so did the stranglehold that these early forms of privately managed juvenile correctional institutions had on the not-yet-formalized juvenile court and justice system.

By the mid- to late-1800s, what were once houses of refuge became referred to as reformatories, reform schools, training schools, and industrial schools. This distinction was more semantics than substance, but one significant difference emerged—that is, these reform schools became primarily state-managed facilities as opposed to privately operated institutions. The first reform school in the United States was established in Westboro, Massachusetts, in 1847. Originally called the Massachusetts State Reform School in Westboro, the facility's name was changed in the 1860s to the Lyman School for Boys. Massachusetts opened the Massachusetts School for the "idiotic and feebleminded" in 1848 and the State Industrial School for Girls in 1856. In 1849, New York completed construction on an industrial school, and by the 1870s, several states such as Ohio, New Jersey, and Maryland had opened training schools for delinquents. By 1890, nearly every state operated a facility for delinquent youth.[24]

This brief history shows that private societies were the first entities to establish institutions for juveniles. Although many of these early private societies were nonprofit and thus different than many for-profit efforts in private juvenile institutional corrections today, private societies made their initial entrance into juvenile corrections more than 100 years ago. Privatization in juvenile corrections, however, was replaced in the mid- to late-1800s primarily by state-operated facilities. Variations exist, but for the most part, correctional institutions for juveniles, particularly those holding adjudicated delinquents, became a state function. Although this trend continues today, private programs, services, and institutions still play an important role in juvenile corrections.

The Emergence of Private Juvenile Correctional Facilities

The first juvenile institutions in America were privately operated. However, little is known about the evolution and emergence of privatization in juvenile corrections in more modern times. The best evidence suggests that private sector emergence in corrections began in the late 1970s and early 1980s with the federal government and focused exclusively on adult prisoners. According to McDonald, Fournier, Russell-Einhourn, and Crawford, the Immigration and Naturalization Service (INS) began contracting with private firms to house illegal immigrants either awaiting deportation hearings or finishing sentences in state or federal prisons. This action set the stage for specific private correctional corporations to emerge: Corrections Corporation of America (CCA); Wackenhut, which modified its private security service to corrections; and Correctional Services Corporation (CSC), currently the leader in institutional corrections for juveniles. In 1983, CCA opened its first detention center in Houston, Texas. Soon after, other private correctional corporations were contracted to design, construct, and operate facilities for the INS.[25]

Eventually, the private correctional industry became a major growth market, extending contracts to state-operated institutions for adults. Some attribute the emergence of privatization in juvenile justice to the success experienced in adult correctional enterprises.[26] Although most of the popularity in juvenile corrections has occurred in the last 30 years, it is inaccurate to say that private agencies simply emerged for juvenile delinquents in the 1980s as they did in the adult arena. Throughout its history, the juvenile justice system has engaged numerous private programs and services at every stage from before arrest to after release from a correctional institution. In many ways, the variety of private programs, services, and institutions employed in the juvenile justice system are almost foreign to the adult system.

Even if privatization in juvenile justice was limited only to secure institutionalization, private institutions for juveniles are not new, and they are much more prevalent than in the adult correctional system.[27] In the United States, there are approximately 260 privately operated facilities for adults, nearly 1,800 privately operated institutions for juveniles, and a number of other privately operated programs and services for delinquent

youth. These high numbers suggest that private facilities have had a significant place in juvenile corrections and will continue to in the future.

Types of Public and Private Juvenile Correctional Institutions

One of the main reasons that privatization is prevalent in juvenile corrections relates to the versatility required in the juvenile correctional system. The need for versatility in the juvenile justice system relates to the three distinct types of youths it serves, all of whom may be institutionalized for protection, rehabilitation, supervision, or punishment. Different than the adult system, the juvenile justice system deals with (1) delinquents; (2) those who commit nondelinquent acts indicating a need for assistance or supervision (e.g., status offenders); and (3) dependent (those whose parents want to care for them but cannot) and neglected (those whose parents can take care of them but choose not to) youth. This diverse range of clientele implicates the need for a vast array of correctional options from both the public and private sectors.

Youth Shelters

Youth shelters are considered short-term, nonsecure (unlocked) facilities typically used for status offenders, such as runaways, and dependent and neglected youth. Delinquents are rarely held in youth shelter facilities. Youth shelters are best considered a ''bus stop'' for youth who are waiting to be reunited with their family, placed with a relative, adopted, or placed in a foster home.

Before the 1970s, there were relatively few shelter care facilities in the United States. This is because before the 1974 Juvenile Justice and Delinquency Prevention Act (JJDPA), there were few restrictions on the institutionalization of status offenders and other nondelinquent youth in secure juvenile correctional facilities. Thus, it was common to find status offenders and dependent and neglected youths alongside delinquents in state schools. Per the mandates of the JJDPA, which required the removal of status offenders and other nondelinquents from secure confinement, the need arose for shelter care facilities. Although no accurate count exists, there are numerous shelter care facilities in the United States. They are primarily considered to be local- and county-level facilities, but many are operated by nonprofit and for-profit private agencies at these same government levels.[28]

Detention Centers

Detention centers are secure, short-term facilities. They primarily hold delinquent youth in three different circumstances: (1) delinquent youth awaiting an adjudication hearing; (2) youth accused of a probation or parole violations; and (3) adjudicated delinquents who require short-term transitional placements until they are moved to a public or privately operated juvenile correctional facility.

Detention centers might best be described as the workhorse of juvenile correctional institutions, and primarily they are operated privately or at the county level. There are more than 600,000 admissions to juvenile detention each year.[29] Although most youth will be released from these facilities after a short period of time, the massive number of youth who pass through these facilities in any given year means that bed space is severely limited in many jurisdictions. Because of this need for bed space, private detention centers are numerous and fill an important gap in public facility space. Detention centers are versatile, and it is not uncommon to find state correctional agencies contracting with detention centers for bed space or ''holds''—regardless whether the detention center is a public or private facility. It also is common for detention centers to receive juvenile parole violators. In these cases, parole violators may serve a short period of time in a state, county, or private detention center, instead of serving an additional term in a public or private state school.

Diagnostic and Reception Facilities

There are a number of other facilities for juvenile offenders, primarily used after their adjudication in juvenile court. Diagnostic and reception facilities are short-term secure institutions that assess state-committed delinquents to place them in the most appropriate juvenile correctional facility based on their particular needs. Usually these facilities are state operated, but this is not always the case and services can be contracted out to private entities (as is the case with the Federal Bureau of Prisons).

Stabilization Facilities

Stabilization facilities are another type of juvenile correctional facility. They are operated by public and private entities, and they are used primarily to house severely mentally ill or emotionally disturbed youth. These secure, short-term facilities typically are used for the stabilization of youth. Once stabilized, youth may be transferred to a ''regular'' state-operated or private juvenile correctional facility to complete their minimum commitment period. Because stabilization facilities provide specialized types of care, private agencies may operate these types of facilities, but they may be owned by the government. When states do not have an established stabilization facility for youth, inpatient hospitals usually fill the void unless a private agency with the requisite expertise is available. Indeed, most state juvenile correctional systems do not have specialized staff to deal with severely mentally ill or emotionally disturbed youth. In these situations, privately operated facilities may fill the gap.

Boot Camps

Boot camps also can be considered juvenile correctional institutions. Boot camps for juvenile offenders became a popular correctional option in

the late 1980s and early 1990s. Boot camps are guided by the simple philosophy that hard work and discipline can be effective means of accomplishing rehabilitation. Boot camps may be operated by county and state correctional agencies, and a number of private organizations operate boot camps as well. Boot camps are controversial in juvenile justice, particularly when private authorities operate the boot camp. Criticisms abound that privately operated boot camps lack the necessary oversight, and this lack of oversight leads to abusive conditions. Critics claim that privately operated boot camps lack appropriate numbers of qualified staff—that many boot camp "drill instructors" are former military men and women with little to no correctional experience or training.

There have been numerous instances of abuse reported in juvenile boot camps over the last several years—from private and government-operated boot camps. In 2006, a boy was allegedly beaten to death in the Bay County boot camp in Florida, a program operated through a county contract with the state. An adolescent boy died in a motel bathtub after being committed to the privately operated America's Buffalo Soldiers Re-Enactors Association boot camp in Buckeye, Arizona. This death was only the tip of the iceberg, however. Accounts from youth indicate that staff members forced "recruits" to eat mud during "mud treatments" and forced youth to lie on their backs in a "dead cockroach" position while having muddy water poured into their mouths. Others claimed that staff members tied a noose around recruits' necks, kicked recruits, subjected them to corporal punishment, and warned them not to report the abuse.[30]

Youth Ranches and Forestry Camps

A correlate to boot camps is youth ranches and forestry camps. Although these correctional programs are not institutions per se, they are equivalent to secure confinement. Ranches and forestry camps are found in the public and private sectors. One of the most popular ranch programs in the United States is the Florida Environmental Institute (FEI) Last Chance Ranch, which handles some of Florida's most serious and violent delinquents. Ranches and forestry camps receive roughly 10 to 15 percent of all youth in residential placement. The Last Chance Ranch is funded by the Florida Department of Juvenile Justice and Department of Education, the United Way, and private donations. This program is something of a hybrid public-private juvenile correctional program, but it is managed by private authorities.

Juvenile Correctional Facilities

At the far end of the juvenile correctional system spectrum are state schools—or, as they are more commonly known today, juvenile correctional facilities. There are thousands of public and private correctional facilities for juveniles in the United States. Although public facilities are less numerous than private juvenile correctional facilities, public facilities

hold roughly 70 percent of all committed delinquent offenders in the United States.[31] This suggests that public juvenile correctional facilities likely have larger populations of youth than privately operated correctional facilities. That said, the bottom line is that private facilities do hold a significant number of delinquents in residential placement.

The variety of youth involved in the juvenile justice system implicates numerous types of institutional placements. These institutional placements were described above as short or long term and secure or nonsecure. It is also the case that these placements are operated by public and private agencies. Although there is variation depending on the type of institutional placement and level of government involvement, both the public and private sectors have a part in juvenile institutionalization. Unlike the adult system, the juvenile justice system is significantly more diverse in the clientele it serves and must be more versatile.

YOUTH IN PUBLIC AND PRIVATE JUVENILE CORRECTIONAL FACILITIES

State Juvenile Justice

The most recent statistics indicate that there are roughly 1,200 public juvenile correctional facilities and nearly 1,800 private juvenile correctional facilities in the United States. In 2003, roughly 97,000 youth resided in juvenile correctional facilities—approximately 95 percent of these individuals were delinquents, as opposed to status offenders.[32]

Public juvenile correctional facilities held approximately 70 percent of all youth in residential placement and private facilities held roughly 30 percent of all youth residing in juvenile correctional facilities.[33] According to Office of Juvenile Justice and Delinquency Prevention (OJJDP), private facilities generally hold a different population of offenders than do public facilities. In general, private facilities hold a greater proportion of delinquents who have been committed to the facility by a court, as opposed to juveniles who are awaiting adjudication or disposition. Thus, public facilities appear to hold a more diverse range of youth than private juvenile correctional facilities, which appear to hold almost solely committed delinquents.

Private juvenile institutions tend to hold a smaller number of youth on average than do public facilities. Additionally, although most youth in residential placement are delinquents, the OJJDP revealed that, when status offenders are sent to a residential placement, most of them end up in a private, as opposed to a public, facility.[34] Thus, in some cases, private facilities may be receiving or able to choose a "better class" of juvenile offenders than public juvenile correctional facilities. Moreover, some research has revealed that status offenders often serve much longer sentences in private facilities than if they placed in public juvenile correctional facilities.[35] This is most likely the result of the deinstitutionalization mandates of the JJDPA of 1974, which have a lesser effect on private institutions than on public institutions for juveniles.

Federal Juvenile Justice

An oft-neglected aspect of juvenile corrections are those youth who violate federal laws and are adjudicated in federal court. Although rare, if a juvenile is charged with a federal law violation and is tried in federal court, the trial will take place in front of a U.S. District Court judge or a federal magistrate, as opposed to a juvenile court judge. If a juvenile is adjudicated in federal court, the juvenile may face many of the same sanctions that would apply at the state level, including institutionalization.

If a juvenile delinquent is institutionalized as a result of a federal offense, his or her placement would be in a state or private juvenile correctional facility contracted by the Federal Bureau of Prisons (FBOP). Because the federal government does not operate juvenile facilities, the FBOP enters into agreements with tribal, state, and local governments, and into contracts with private organizations, to provide secure and nonsecure services to juvenile offenders.

Facilities contracted by the FBOP are required to provide assessment and treatment services to committed delinquents in the same way they would to delinquents committed through nonfederal court cases. A listing of all tribal, state, local, and private juvenile facilities contracted by the FBOP in 2004 shows agreements and contracts with roughly 60 different types of secure and nonsecure facilities in all regions of the United States. According to the FBOP directory of contract juvenile facilities, roughly 21 of these facilities are privately operated.[36]

FBOP contract facilities do not hold a large number of federally convicted youth. As such, federally committed delinquents are almost always housed with state-committed delinquents. The most recent statistics indicate that the FBOP rarely holds more than 200 federally convicted juveniles at any one time across the country. Most juveniles held by the FBOP are convicted for violent offenses and most are Native American juveniles. Although minor crimes committed by Native American juveniles are handled by reservation tribal courts, serious crimes are tried in federal court, which accounts for the high number of confined Native American juveniles relative to other juveniles under federal confinement.[37]

Like other public and private facilities holding state-committed delinquents, those that hold federally convicted and committed juvenile are monitored by the FBOP. The FBOP conducts on-site visits for the purpose of evaluating the performance of the institution and adherence to service delivery.

CURRENT ISSUES IN JUVENILE CORRECTIONS

This section examines several issues and perspectives related to a discussion of public versus private operation of juvenile correctional facilities. It examines the cost issue, which may be one of the most commonly held beliefs as to why privatization is present in corrections. This section also examines other popular explanations for why privatization in corrections may be attractive. It then examines evidence on the quality of confinement

for juveniles in both public and private facilities, which may be one of the major complaints against privatization in juvenile corrections. This section ends with a discussion of perspectives concerning public versus private operation of juvenile correctional facilities.

Cost

Perhaps more than any other issue, cost is considered to be one of the main reasons why private industry continues to extend into adult and juvenile corrections. A major claim of privatization is that profits can be attained because private agencies can provide the same services as a public agency but more efficiently and at a lower cost. The experience in some states suggests this cost savings has been realized.[38] Whether private agencies can do the same things that government agencies are doing, at the same or higher caliber more efficiently and less costly, however, really are unanswered questions. One reason cost remains an unanswered question is that private agencies do not always do the "same things" as public agencies. For example, private agencies may accept lower-security inmates, which tends to reduce costs. Indeed, some private juvenile correctional facilities may only accept offenders with a short time left in their commitment period, or they may have a large population of status offenders. There is a major difference in operating costs between the public and private sector if a private facility houses only lower-security offenders or the "best risks."

It is also the case that private institutions for juveniles often have no public counterpart. This is another reason why governments contract with private firms, because they have expertise or institutions the government may not have. For example, private agencies may operate specialized treatment institutions that have no equivalent in the public juvenile correctional system. Because there is not comparison institution in the public sector, it is difficult to estimate the money saved by privatization, if any.

Private agencies may offer fewer educational, vocational, and treatment programs compared with public agencies. Although there is much variation within and between states and private agencies, such differences have led some to conclude that comparing the operating costs of private and public juvenile correctional agencies is like comparing apples to oranges. Unless public and private agencies do the same things, with the same types of youth, comparisons of cost are problematic at best.

Cost savings can come in a number of ways, but when cost savings are found, it usually is not because private agencies are somehow more efficient at fundamental correctional procedure than their public counterparts. Rather, if savings from privatization in juvenile corrections are found, it has more to do with the fact that private prison employees may have reduced training requirements, which saves money. Private prison agencies may also employ nonunion employees, which can result in significant savings in salary and benefits when compared with public correctional facility employees.[39] Although there is variation among states, these two areas may result in cost savings absent the belief that private agencies are simply "more efficient."

The bottom line is that many private juvenile correctional agencies are doing different things and have different requirements than public juvenile correctional facilities, which may result in perceptions of cost savings that are not entirely accurate. Comparing the cost of private institutions with public institutions simply is not a straightforward issue. Notwithstanding the problems described, even the best evaluations of cost show that fairly nominal (if any) reductions in cost come with privatization.[40]

Why Privatization Is Attractive

Aside from the cost argument, evidence suggests that one of the major reasons why privatization is attractive in corrections is that it may be a faster way to open institutional beds than by going through the normal government process. Indeed, approval for government appropriations to design, build, and operate correctional institutions may take years. Using a private agency can result in quickly acquired beds, even if the facility has yet to be designed and built.[41] There is a belief that contracting for services and beds through private agencies is preferable in some circumstances, because private firms "are not mired in the 'red tape' that encumbers public agencies, especially in procurement and labor relations."[42]

Overcrowding is certainly a concern in adult corrections, and overcrowded facilities are prevalent in juvenile corrections as well. One comprehensive government report revealed that nearly 35 percent of state training schools for juveniles across the country were overcrowded.[43] As mentioned, overcrowded conditions are sometimes hard to fix in a short period of time. Often, lawsuits and consent decrees require that correctional systems remedy conditions of overcrowding quickly, something that depends almost entirely on legislatures. In this way, contracting with a private correctional agency is attractive for correctional systems and can open up correctional beds more quickly than government agencies.

Certain conditions of confinement as a result of overcrowding or other factors can also be addressed with privatization. Although the problematic conditions of confinement that existed in juvenile correctional facilities in the 1970s and 1980s have largely been addressed, numerous facilities still are not in minimum compliance with established standards. As a result, turning to a private correctional corporation can result in compliance with many minimum standards, especially those related to physical plant concerns. Private correctional corporations rarely "take over" existing correctional facilities, thus private facilities are newer than many juvenile correctional facilities in operation today and they usually meet minimum established standards. Indeed, one comprehensive study of 48 public and private juvenile correctional facilities revealed that the average age of private juvenile correctional facilities was just over four years, whereas the average age of public juvenile correctional facilities was almost 30 years.[44] In this way, privatization can supplement existing public juvenile correctional facilities to remedy a number of conditions.

Comparative data do not exist for private juvenile corrections, but one survey of adult privatization revealed that the primary reason jurisdictions

contracted with private agencies was to reduce overcrowding in their system. Other commonly cited reasons included the ability to acquire additional beds quickly or to gain operational flexibility. Thus, although cost savings usually is cited as one of the main reasons for privatization, which is a popular belief among the general public, this survey revealed that saving money through operating costs or in construction were less frequently cited reasons for contracting with private correctional firms.[45] Again, comparative survey data concerning the ability to contract out for juvenile correctional services and facilities are not available. Whether the motivation to privative would change is unknown, but the indication is that reducing overcrowding, acquiring new beds, and remedying certain conditions of confinement are also important reasons for privatization in juvenile corrections. The findings that nearly 35 percent of state training schools are overcrowded, that public facilities on average are "older" than private institutions, and that private facilities hold nearly 30 percent of all committed juveniles explain why privatization has been attractive in juvenile corrections.[46]

Environmental Quality

Environmental quality refers to factors such as the meeting of basic needs, order and safety, programming, adherence to juveniles' rights, and numerous other dimensions.[47] This is certainly a concern for adult inmates, but many believe that environmental quality is even more important for juveniles, because they may be less able to withstand lower-quality environments than adults.

There are two schools of thought on the issue of environmental quality between public and private juvenile correctional facilities. One school of thought suggests that environmental quality in public juvenile correctional facilities will be lower than in private facilities because public facilities do not have competition. The other school of thought suggests that private juvenile correctional facilities will have lower levels of environmental quality than public juvenile facilities because private facilities operate based on profit—thus they will shortcut services and cut corners to make more money.[48]

One study examined perceptions of environmental quality as reported by more than 4,000 juvenile residents who were housed in 48 public and private juvenile correctional facilities in 19 states. The authors examined numerous indicators of environmental quality, including the following: control in the facility, activities, care, quality of life, structure, justice, therapeutic programming, and preparation for release. In addition to youth and facility characteristics, the researchers asked juvenile respondents to comment on levels of danger from staff and residents, environmental danger, risks to residents, and freedom in the facility.

The results of this survey revealed few meaningful differences in the levels of environmental quality between public and private juvenile correctional facilities. Private facilities, however, were scored more positively by juvenile residents on almost all areas of environmental quality.[49] Although

the authors attribute some of these findings to the fact that private institutions for juveniles in their study were newer and held far fewer juveniles (perhaps indicators of quality), the overall finding is that private juvenile facilities do not differ in quality compared with public sector counterparts.[50]

This study suggests that quality does not necessarily have to suffer in either type of facility. The evidence concerning environmental quality is that public and private facilities may be doing similar jobs when it comes to offering a quality environment to house delinquent offenders, but the age and higher populations of public juvenile correctional facilities may have a slight impact on environmental quality.[51]

Overall Perspectives

The previous discussion suggests that there may be advantages to privatization, especially for those juvenile correctional systems confronted with the need to reduce overcrowding, acquire additional beds, meet minimum standards for facility operation, and save money. Opponents to privatization, however, argue that the profit motive of private agencies may result in corners being cut—as with inexperienced and unqualified staff, lower numbers of staff, and lower-quality services than in public agencies.[52] Although the evidence presented above suggests this may not be entirely accurate, it is a major claim against privatization.

Critics also believe that lower levels of oversight in some jurisdictions may contribute to situations of potential abuse directed toward prisoners. This criticism may have merit. In June 2004, the Louisiana Department of Corrections entered into a contract with Trans-American Development Associates (TADA) to construct, finance, and operate the Swanson Correctional Center for Youth (better known as Tallulah Juvenile Facility). Because of claims of abuse, violence, and excessive punishment, the Louisiana Department of Corrections took over operations of the facility in 1999, but TADA continued to own the facility. Experts noted that Tallulah was "a juvenile prison so rife with brutality, cronyism and neglect that . . . it is the worst in the nation."[53] Eventually, the Tallulah juvenile facility was closed and converted into an adult prison.[54]

Outside of these more tangible concerns, critics of privatization argue that it is the state's responsibility to deal with its delinquents on a moral level.[55] Critics argue that rehabilitation should not be a moneymaking enterprise, given its historical focus on rehabilitation above all else. The fact that full facilities means greater profits for private agencies has led critics to conclude that private agencies actually want to keep juveniles locked up—and that this is no way to operate a system based on rehabilitation. They also argue that because cost savings rarely results from innovative programs for juveniles, rehabilitation may be lost with privatization because private facilities have no incentive to support prevention programs or other programs that would prevent the juvenile from recidivating.[56]

Despite these and other criticisms, private agencies do have something to contribute to the correctional system. At the same time, however, there

are worthy arguments against privatization. Whether the extension of private agencies into a traditionally public domain is good or bad, useful or not, is not necessarily the issue at hand. The fact remains that privatization is occurring and has been for several years—and at particularly high levels in the juvenile correctional system. An understanding of why privatization has occurred in corrections, and the advantages and disadvantages associated with privatization, is important in a discussion of the public and private operation of juvenile correctional facilities.

LEGAL ISSUES AND LIABILITIES

A variety of legal issues are associated with correctional facilities, be they adult or juvenile. These issues include determining what rights, if any, incarcerated individuals retain and identifying what conditions of confinement violate the constitutional prohibition on cruel and unusual punishment.

When privatization gained momentum in the 1980s and early 1990s, there was much discussion of the legal issues associated with privatization. It was initially unclear to what degree states could delegate the task of operating correctional services and facilities (either adult or juvenile) to private entities. It was also unclear what effect privatization would have on the state's liability for unsatisfactory conditions of confinement and mistreatment of those who were incarcerated. Courts moved quickly to address these questions. First, states have the authority, under the delegation doctrine, to delegate administrative tasks (such as the operation of prisons and juvenile facilities) to private agencies, as long as the state retains some oversight of the facility.[57] Second, those housed in private facilities have the same constitutional rights they would have in a state-operated facility. This is particularly noteworthy because it means that courts do not distinguish between public and private juvenile correctional facilities when it comes to determining whether any constitutional rights have been violated. Third, and perhaps most significant for the operators of private facilities, private prison employees do not enjoy the benefit of the "qualified immunity" defense that is available to public employees.[58] This means that employees of private juvenile correctional facilities who are sued for negligent or reckless conduct cannot use this defense to escape civil liability for their misconduct.

Constitutional Rights

Cruel and Unusual Punishment

Following several U.S. Supreme Court decisions clarifying and expanding the rights of juveniles in the court system, juvenile justice reformers turned their attention to the rights of institutionalized juveniles.[59] The Eighth Amendment prohibits "cruel and unusual" punishment. Precisely what constitutes cruel and unusual punishment is the subject of much

debate. For purposes of this chapter, it is sufficient to say that the ban on cruel and unusual punishment bars the use of inappropriate procedures, polices, and practices by juvenile facility personnel.

Reformers in the 1970s discovered abuses in several state juvenile systems. In Arkansas, investigators discovered that juveniles were routinely beaten and forced to engage in a variety of unsafe and humiliating activities, including eating feces and being made to oink like a pig.[60] Similar practices were uncovered in a number of other states.

Perhaps the most disturbing and horrific pattern of abuse took place in the Texas juvenile justice system. These abuses were documented in *Morales v. Turman*. The federal district court found that a number of policies and practices of the Texas Youth Council violated the Eighth Amendment prohibition on cruel and unusual punishment. The Texas system was woefully overcrowded and understaffed, and staff were poorly trained. The results were widespread abuse of juveniles in the system, overcrowded facilities that made it impossible to provide adequate security, and a lack of access to treatment programs. During the 1970s, courts found evidence of constitutional violations in several other state systems, including Rhode Island, New York, and Mississippi.[61]

Although the U.S. Supreme Court has never determined precisely what constitutes cruel and unusual punishment in a juvenile facility, it is clear that juveniles have the right to be free of cruel and unusual punishment at least to the same degree as adult inmates. State and lower federal courts that have examined the conditions of confinement in juvenile facilities have barred a variety of practices, including the use of solitary confinement, tranquilizers, and corporal punishment. Courts have imposed restrictions on the amount of force that can be used and the types of restraint devices that can be employed.

Despite the greater attention now paid to juvenile facilities by the courts, the evidence is clear that instances of abuse are still occurring. Recent investigations have found patterns of abuse in several states, including Arkansas, California, Colorado, Georgia, and Louisiana.[62] Both the U.S. Department of Justice and Human Rights Watch (an international organization) have conducted investigations of abuse in public and private juvenile facilities.

Access to Courts

The U.S. Supreme Court has never determined whether confined juveniles have a constitutional right of access to the courts, similar to the right of access enjoyed by adult inmates. Nonetheless, every state provides juveniles with a statutory right of access to the courts. The parameters of this right are not uniform, however. Some commentators have argued that because the juvenile justice system has as its primary goal rehabilitation rather than punishment, there is no need for the same access to the courts—in other words, because the juvenile justice system exists to help those in its care, those in its care won't need to go to court for protection. The lower federal courts that have considered this argument have not

been convinced, in large part because decisions such as *In re Gault* (1967) made it clear that abuses could and did take place in the juvenile justice system despite its ostensible focus on rehabilitation.

Right to Treatment

The U.S. Supreme Court has held that an incarcerated adult has a right to some degree of medical care.[63] This right is not to the best medical care available. Rather, it is a right to a basic, minimal degree of medical care. The Supreme Court has never addressed the right to treatment for juveniles, but several lower courts have done so. Most of these courts have held that juveniles are entitled to a higher standard of care and treatment than adults, because treatment is more closely related to rehabilitation. Precisely what services are required is subject to some debate. For instance, in *Morales v. Turman*, the federal district court required the Texas Youth Council to meet national standards for the assessment and treatment of juveniles.

Conditions of Confinement

A comprehensive national survey of juvenile correctional facilities conducted in the 1990s identified a number of areas of concern involving the conditions of confinement. Juvenile facilities suffered from overcrowding, inadequate security, inadequate suicide prevention, and inadequate medical and mental health services.[64] Although the U.S. Supreme Court has never expressly held that juveniles have a constitutional right to particular conditions of confinement, the Court has so held in regards to adult institutions. It seems highly likely that the Court would require for juveniles at least the same minimal conditions of confinement that adult inmates receive.

Overcrowding

A report by Parent and colleagues found that approximately 35 percent of state juvenile institutions were overcrowded. Overcrowding in a facility is not unconstitutional per se. The U.S. Supreme Court held, in *Rhodes v. Chapman*, that overcrowding in an adult institution was not, in and of itself, violative of the Constitution. Rather, there must be evidence that the overcrowding negatively affects the delivery of other institutional services, such as sanitation, food service, or medical care. It is possible, however, that a court may determine that overcrowding is more damaging to juveniles than to adults, and hold that overcrowding alone is sufficient to find a constitutional violation. To date, however, no court has done so.

Suicide

Public health research indicates that juveniles are more likely to attempt suicide than adults and that institutionalized juveniles are four times more

likely than juveniles in the general population to attempt suicide.[65] The latest data indicate that there are at least 17,000 instances of suicidal behavior or suicide attempts in juvenile facilities each year. Juvenile facility staff frequently lack the training necessary to accurately detect suicidal behavior, and they are often so overworked that they cannot pay close attention to early warning signs. In addition to the tragic consequences of a suicide are the related liability issues. Correctional staff and administrators who fail to prevent a suicide attempt that they should have detected may be held civilly liable for their misconduct.

CONCLUSION

For the most part, public institutions dominate the juvenile correctional system. That said, private correctional facilities are playing an increasingly important role in juvenile corrections. Critics suggest that a moneymaking enterprise should have no place in a system whose goals have been traditionally rehabilitation. History shows, however, that privatization has always had a place in the juvenile correctional system, and the larger juvenile justice system, to some degree.

Over the last several years, juvenile corrections have been characterized as a mix between public and private justice. Today, nearly 30 percent of all institutionalized juveniles are held in private facilities—a number that grows slightly each year—thus the lines between public and private justice in the juvenile justice system have been blurred. The numerous needs and diverse clientele in the juvenile justice system suggest that privatization is needed. Indeed, the juvenile justice system engages private agencies to provide a number of services, programs, and institutions that might never be realized in their absence. It is simply the case that private correctional agencies sometimes can offer something that the government cannot.

The belief that private correctional facilities can do what they want when they want is a common misperception about privatization. Although public and private juvenile correctional agencies may differ in areas, the reality is that private juvenile correctional facilities are probably not any better or worse than government-operated correctional facilities. It is simply not the case that administrators of private facilities can "run wild." Rather, private juvenile correctional facilities, depending on state laws and contractual arrangements, perhaps receive more oversight than do government agencies, and they are certainly more open to liability, given the absence of the qualified immunity defense.

There is no clear-cut answer as to whether private facilities cost more or less than government facilities. This is one of the main claims of privatization, but determining cost is a difficult if not impossible venture. Rather, there are a number of other reasons why privatization may be attractive in juvenile corrections—opening bed space, reducing overcrowding, providing more modern conditions. If private agencies are able to accomplish these tasks for governments, then they are providing an important service to juveniles who find themselves incarcerated.

The bottom line to the debate between public and private operation of juvenile correctional facilities is that each has something to contribute to the juvenile correctional process. A tremendous variation exists both within and between states as to the operation of either facility, but in many ways, their operation is similar. The mere presence of privatization in juvenile corrections suggests that it serves an important function. As a result, it is unlikely that privatization will simply go away in the near future. Consistent with its historical precedent in juvenile justice, privatization will continue to supplement the public juvenile correctional system, and in the end, it may lead to a more appropriate environment for the rehabilitation of delinquents who have reached the deepest ends of the correctional system.

NOTES

1. Clear, Cole, & Reisig, 2006.
2. Beattie, 1986.
3. Taylor, 1993; Walker, 1988.
4. Walker, 1998.
5. Armstrong & MacKenzie, 2003.
6. Stephan & Karberg, 2003.
7. Stephan & Karberg, 2003.
8. Armstrong & MacKenzie, 2003.
9. Sickmund, 2004.
10. Sickmund, Sladky, & Kang, 2005.
11. Armstrong & MacKenzie, 2003; Sickmund, 2004.
12. McDonald, 1992.
13. Joel, 1988.
14. McDonald & Patten, 2004, pp. 11–12.
15. Fritsch, Caeti, & Hemmens, 1996.
16. Marion & Oliver, 2006; Wilson, 1989.
17. DiIulio, 1988.
18. Rothman, 1971.
19. del Carmen & Trulson, 2006; Fritsch & Hemmens, 1995.
20. Fritsch & Hemmens, 1995.
21. Steiner & Hemmens, 2003.
22. Rothman, 1971, 1980.
23. Bartollas & Miller, 2001.
24. Bartollas & Miller, 2001.
25. McDonald, Fournier, Russell-Einhourn, & Crawford, 1998.
26. Building Blocks for Youth, 2006.
27. Sickmund, 2004.
28. del Carmen & Trulson, 2006.
29. Parent et al., 1994; Sickmund, 2004.
30. del Carmen & Trulson, 2006.
31. Sickmund et al., 2005.
32. Sickmund et al., 2005.
33. Sickmund et al., 2005.
34. Sickmund, 2004.
35. Shichor & Bartollas, 1990.

36. Federal Bureau of Prisons, 2004.
37. Scalia, 1997.
38. McDonald et al., 1998.
39. Marion & Oliver, 2006.
40. McDonald et al., 1998; McDonald & Patten, 2004; Pratt & Maahs, 1999.
41. McDonald et al., 1998.
42. DiIulio, 1988; McDonald et al., 1998.
43. Parent et al., 1994.
44. Armstrong & MacKenzie, 2003.
45. McDonald et al., 1998.
46. Parent et al., 1994; Sickmund, 2004; Sickmund et al., 2005.
47. Armstrong & MacKenzie, 2003.
48. Armstrong & MacKenzie, 2003; Logan, 1992.
49. Armstrong & MacKenzie, 2003.
50. See, however, Logan, 1992.
51. Shichor & Bartollas, 1990.
52. Marion & Oliver, 2006; Shichor & Bartollas, 1990.
53. Building Blocks for Youth, 2006, p. 1.
54. del Carmen & Trulson, 2006.
55. Marion & Oliver, 2006.
56. Shichor & Bartollas, 1990.
57. McDonald et al., 1998.
58. *Richardson v. McKnight*, 1997.
59. *Kent v. United States*, 1966; *In re Gault*, 1967.
60. del Carmen & Trulson, 2006.
61. Rhode Island (*Inmates of Boys' Training School v. Affleck*, 1972); New York (*Pena v. New York State Division of Youth*, 1976); Mississippi (*Morgan v. Sproat*, 1977).
62. del Carmen & Trulson, 2006.
63. *Estelle v. Gamble*, 1976.
64. Parent et al., 1994.
65. del Carmen & Trulson, 2006.

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CHAPTER 10

The Future of Delinquency Prevention and Treatment

Ronald Burns

Client RC-183 please step forward. Please place your body into the scanner and look into the screen. Thank you. Now, observe the consequences of your actions as they appear on the screen. Pay particular attention to the impact you've had on the victim and their family. Your physiological responses to the victims' reactions are being measured and appropriate treatment will be rendered. Now, please step away from the scanner and proceed to Floor 29 where Dr. Elms will administer your treatment in the form of electromagnetic radiation and implant adjustment. Thank you.

The above scenario may seem far-fetched, but just consider the societal changes we have experienced in the past 20 years, particularly with regard to our responses to crime, delinquency, and justice. Computers in police cars, electronic monitoring devices, and computer simulations used as evidence in courtrooms may have seemed far-fetched to earlier generations, however, they are now ingrained in our juvenile and criminal justice systems.

To comment on the future of delinquency prevention and treatment requires diligent consideration of numerous issues, not the least of which is the methods by which we forecast the future.[1] In looking toward the future, researchers often use quantitative and qualitative research methods, as well as the Delphi technique and the creation of scenarios. A brief version of the latter approach introduces this chapter. Greater confidence is attained by using multiple approaches, similar to the manner in which criminologists have greater confidence in discussing crime trends using data from the Uniform Crime Reports and National Crime Victimization Surveys.

Forecasting the future requires consideration of temporal and spatial issues. Futurists may comment on issues expected to occur 5, 10, 50, or even 100 years from now. To be sure, there are no restrictions on how far into the future one can look, but the confidence level generally decreases as one looks further into the future. For instance, we have greater confidence in the weather forecast for tomorrow than we do in the forecast for five days from now. Spatial issues concern, among other issues, the scope of the issue under observation. For instance, one could comment on future events and developments at the international, national, state, county, local, neighborhood, or individual levels. Put simply, forecasting the future is a vital, although challenging, task.

Contributing largely to the challenges of forecasting the future is the uncertainty of human behavior. Although futurists apply scientific approaches, one can never be certain how, why, or when particular behaviors affect society. Consider the impacts of the terrorist attacks against the United States on September 11, 2001. Now, consider how futurists have had to revise their earlier projections in light of those events. Although some may have projected the vulnerability of the United States to such attacks, it is unlikely that many forecasted such drastic changes, for instance, with regard to homeland security, particularly as it relates to air travel and the restructuring of our federal law enforcement agencies.

This chapter addresses the future of delinquency prevention and treatment. Disbursed throughout are quantitative analyses that look to the future of delinquency prevention and treatment, and comments by leading forecasters who seemingly have their fingers on the pulse of what we can expect with regard to these issues. These comments are offered in light of qualitative changes that have occurred and those that are taking place.

CONTEXTUALIZING DELINQUENCY PREVENTION AND TREATMENT

Examination of the future of delinquency treatment and prevention requires at least some consideration of what constitutes delinquency prevention and treatment, and a review of historical developments and current trends within juvenile justice and delinquency.

Delinquency Prevention

Prevention has been, and continues to be a vital component of most efforts to confront delinquency. The long-standing belief that young people are more impressionable than adults has resulted in greater prevention efforts being directed toward youths than toward adults. It is felt by many that preventing involvement in delinquency is more effective than ''correcting'' or ''fixing'' misguided youths. The belief that ''you can't teach an old dog new tricks'' provides the impetus for many delinquency prevention programs and strategies.

Jackson and Knepper identify five delinquency prevention strategies, including specific and general deterrence (e.g., Scared Straight programs);

diversion from formal processing; intervention (e.g., education campaigns such as D.A.R.E. and McGruff); the public policy approach (e.g., curfews, restrictions on firearm purchases); and the public health model, which targets preventing youth from engaging in negative behavior and encourages positive behavior.[2] Each of these strategies promotes various programs and methods to proactively approach delinquency, to stop it before it occurs or becomes (increasingly) problematic. Jackson and Knepper note that "[d]elinquency prevention is not about finding a miracle cure for youth misbehavior," adding that "[d]espite about 25 years of federal prevention efforts, no single prevention program has been found to inoculate young people from breaking the law."[3]

Delinquency Treatment

Delinquency treatment is concerned with rehabilitating young offenders—that is, identifying the underlying causes of delinquency and implementing appropriate methods of correction. Treatment programs are typically based on "the assumption that delinquent behavior is a manifestation or symptom of some other deeper problem" in which symptoms are identified, diagnoses are made, and treatment is pursued.[4] Treatment programs typically follow psychiatric or psychological approaches, although the medical model is evident in some treatment programs, particularly those involving alcohol or drug abuse.[5] Treatment programs are found in both community and institutional settings, and can be used in conjunction with punitive approaches.

Historical Developments and Current Trends

Although the history of delinquency and responses to it are well documented,[6] a brief discussion is warranted to look toward the future. Bartollas highlights the historical periods regarding juvenile justice within the United States, beginning with the Colonial Era (1636–1823), and its emphasis on families being responsible for correcting the actions of their children.[7] The House of Refuge period (1824–98) emphasized the institutionalization of juveniles, while the Juvenile Court period (1899–1966) provided youthful offenders access to a court system designed to meet the specific needs of wayward juveniles. The Juvenile Rights period (1967–75) provided juveniles greater due process rights in the courts, while the Reform Agenda period of the mid- to late-1970s stressed diversion from the juvenile justice system for status offenders and nonserious delinquents. The 1980s brought increased social control over juveniles and experienced a move away from the reform efforts of the 1970s, a trend that continued through the 1990s and is evident today. Gang crime, crimes associated with crack cocaine, gun crime, and media sensationalism of juvenile crime contributed to the radical shift in philosophy when responding to delinquency.

This brief history helps sets the stage for an examination of the future of delinquency treatment and rehabilitation. To begin, a notable pattern

exists with regard to developments in juvenile justice and societal changes in general. The United States initially was an agrarian society, thus there were no programs or institutions for juveniles, because there was little government involvement in family life. Accordingly, families were expected to confront problem children internally. As industry evolved and large cities emerged, wayward juveniles became more visible in society, which ultimately encouraged government involvement in the form of institutionalization. From a futurist's perspective, one could have anticipated such changes given historical developments in society in general.

Other periods of juvenile justice developments reflect events that shaped society as a whole. For instance, the Juvenile Rights period occurred at a time in U.S. history when many groups were fighting for civil rights (e.g., Native Americans, prisoners, African Americans), while the Reform Agenda period occurred during a time when the adult criminal justice systems were promoting community corrections. The shift toward punitiveness and getting tough on juveniles that began in the 1980s and continues today is reflective of, among other things, a more conservative U.S. population, the enhanced use of incarceration for adult offenders, and greater emphasis on retribution and deterrence in the adult justice system.

FACTORS INFLUENCING DELINQUENCY TREATMENT AND PREVENTION

Futurists often observe particular social forces, or what are considered drivers of the future. Among the prominent drivers of futures research are demography, economics, crime factors, technology, and public opinion. Regarding delinquency treatment and prevention, demographic projections help justice officials and policy makers anticipate population growth (or decline) and the characteristics of those changes. In turn, we can speculate whether or not we have available treatment slots for the forecasted number of juveniles in need. From a prevention perspective, we can examine where the greatest changes are expected to ensure that proper prevention methods are available. Justice officials and policy makers must consider short- and long-term changes in demographics. Recent data from the U.S. Census indicate increased percentages of minority groups in society, thus the need to emphasize multiculturalism in all aspects of justice and to recognize and respond to the disproportionate percentage of minority youth involved in the juvenile justice system.

Economic factors play a significant role in crime and justice. Forecasters undoubtedly must keep an eye on economic trends to effectively anticipate future trends and changes. Put simply, a strong economy typically decreases the likelihood of crime and delinquency. A weak economy has the opposite effect. Economic trends could be used to anticipate an increased presence of juveniles in the justice system, in turn commanding an increased need for rehabilitation opportunities and prevention efforts if, indeed, they are part of society's plan of attack. Poverty is a strong predictor of involvement in our justice systems, and involvement in our justice systems is a strong predictor of further involvement in our justice systems.

These factors alone provide ample guidance for any futurist concerned with delinquency prevention and rehabilitation. Understanding that most crime is financially motivated provides guidance for treatment and prevention efforts, as evidenced by the number of programs offering opportunities for education, job skills, and financial management. Economic factors affect delinquency and criminal behavior, and perhaps equally important, funding for juvenile justice, in general, which could result in fewer or greater opportunities for prevention and rehabilitation efforts.

An often-overlooked component of researching crime and delinquency in society is the generalization often given with regard to the terms "crime" and "delinquency." For instance, stealing a bicycle and unlawfully killing someone are distinct behaviors, yet they can be lumped together under the term "crime." In other words, the qualitative nature of illegal behaviors is notably important in the discussion of the future of delinquency prevention and treatment. Accordingly, crime factors certainly influence projections of the future. Understanding what to expect with regard to the qualitative nature of delinquency inherently affects the quantity and quality of treatment and prevention opportunities needed and provided. One merely needs to observe recent, punitive societal reactions to gang crime, gun crime, and drug-related crimes to understand how the nature of these crimes affects societal response. Particularly, concern for juvenile violence has led to greater emphasis on punitive responses to juveniles in general.

With an eye to the future, one must consider the increased presence of international and electronic opportunities for crime and delinquency and the need for prevention and treatment responses. Although it may be premature to direct our prevention and treatment efforts toward preventing international forms of delinquency, we would be foolish to believe that traditional forms of delinquency (i.e., street crimes) will remain our only concern in the future. In other words, the technology age is upon us and with it comes increased opportunities for delinquency and corresponding treatment and prevention needs. Young children and young adults alike are growing up in a society that relies heavily on technology and automation. As society changes, so, too, do forms of crime and delinquency. Furthermore, as crime and delinquency change, so does the need for innovative forms of prevention and treatment. As suggested in the opening scenario, technology is expected to become increasingly ingrained in responses to crime and delinquency. Electronic monitoring is but one example of how technology has been implemented in our justice systems.

Shifts in public opinion undoubtedly influence future events. Societal concern about crime and justice beginning in the 1980s largely contributed to more punitive responses to crime and delinquency. Public concern for juvenile violence led to policy shifts directed away from the historical rehabilitative ideals of juvenile justice toward a more punitive approach. Juvenile boot camps as a form of punishment and rehabilitation became increasingly popular with politicians and the public alike beginning in the 1980s. Boot camp programs seemed to be ideal options because they offered a noticeably obvious form of punishment (e.g., the drill

instruction) tempered with rehabilitation (e.g., instilling discipline). They provided an apt transition from a time when we focused on juvenile rehabilitation to a period when we focused on punishment. Similarly, the series of school shootings beginning in 1997 led to enhanced social control directed toward elementary and high school students, as the public and politicians voiced their concern for seemingly unsafe schools,[8] and recent responses to the threat of terrorist attacks have resulted in greater concern for public safety and increased social control.

Several prominent researchers offered their views of what lies ahead for tomorrow's youth. Stephens, a futurist, noted a series of issues currently affecting attempts to properly guide at-risk youth, including the increasing gap between the wealthy and the poor, a growing number of single-parent households, reduced accountability for children as more families require both parents to work, an expanding gun culture, and increased negative attitudes about today's youth evidenced by the increased number of children being processed in adult courts. These obstacles provide direction for potential efforts to redirect wayward youth.[9]

Toward the end of the twentieth century, Ohlin identified several challenges associated with the future of juvenile justice policy and research. Particularly, he cited needed efforts to confront the alienation of youth; build community resources; allocate greater and more effective use of federal, state, and local government resources; provide enhanced employment and education opportunities for youth; temper society's seemingly distorted fear of juvenile crime; and create cooperation among research centers that would provide more effective guidance with regard to policy-making efforts.[10] It could be argued that an increasing concern for getting tougher on delinquents has resulted in few accomplishments with regard to Ohlin's noted areas of concern. Perhaps the future will bring about greater consideration of the suggestions made by Stephens and Ohlin. Perhaps it won't. I prefer to remain optimistic.

THE FUTURE OF DELINQUENCY TREATMENT AND PREVENTION

So, what lies ahead for delinquency prevention and treatment? Among the many challenges in looking to the future is timing. Many forecasts identify impending changes with regard to various social phenomena, although the timing of those changes are, in many cases, difficult to determine. In light of such factors as economics, changes and proposed changes in the juvenile and adult justice systems, demographics, crime trends, technology, and public opinion, the following discussion is organized into short-, mid-, and long-term projections of the future of delinquency treatment and prevention. Because of the notable impacts associated with the possible elimination of juvenile courts, an examination of the future of the juvenile court system sets the stage for this discussion. Although refraining from specifics, this account of what we can expect in the future guides us with regard to policy making, technology, and the expected roles of the general public in delinquency treatment and prevention.

The Future of Juvenile Courts

The future of delinquency prevention and treatment is undoubtedly influenced by numerous factors, not the least of which is the future of the juvenile court system. In light of the recent shift away from the rehabilitative ideals on which the courts were founded and toward a more punitive approach, it is suggested by some that a juvenile court system distinct from the (adult) criminal court system is unnecessary. Thus, there would be one justice system that processes all cases involving adults and juveniles.

Abolitionists argue that elimination of juvenile courts would result in resource savings, reduced financial costs of justice, and greater continuity of services.[11] Eliminating juvenile courts, it is argued, would provide juveniles greater due process rights and address concerns that interpretations of terms such as "delinquency" and "adolescence" are outdated.[12] Feld believes that the juvenile court system is fundamentally flawed in that it attempts to incorporate social services in a judicial setting, adding that social welfare should not be an overriding concern of the legal system. In turn, he argues, juvenile courts should be eliminated and youthfulness should be a mitigating factor as juveniles are processed in what is currently the adult court system.[13]

Arguments against the abolition of juvenile courts include historical beliefs that children are less responsible than adults for their behavior, and they maintain a greater likelihood of rehabilitation than adults.[14] Preservationists believe failures in the juvenile courts are attributed to problems associated with implementation, not the structure of the courts. Furthermore, they argue that the court works for most juveniles who enter, and criminal courts would not be more effective.[15]

Eliminating the juvenile court system would likely encourage a more punitive response to delinquency and a more limited concern for prevention and treatment. The limited focus of concern on prevention and treatment, and the emphasis on incapacitation, deterrence, and retribution, currently recognized in the adult system would likely become the general practice with regard to juveniles who enter the courts. This projection is based on the increasing percentage and number of juvenile waivers to adult court. In itself, eliminating the juvenile court system is a statement that juveniles should be processed in a manner similar to adults. Suggesting that juvenile courts will merge with adult courts is, however, a bit premature. To undo the accomplishments of more than 100 years of development in the juvenile courts seems too radical a change in the short term, particularly in light of the bureaucratic staying power of existing (and large) government institutions.

Jackson and Knepper offer alternatives for the abolition of juvenile courts, including an enhanced version of the current family courts; family bankruptcy courts to facilitate government intervention when families recognize imminent problems with their children; and increased multicourt youth justice that replaces the traditional juvenile court system with specialized court systems (e.g., teen courts, community courts, gun courts, drug courts, etc.).[16] Incorporation of these alternatives seem more likely

to occur than does the abolition of a distinct juvenile court system, especially when one considers the investments made in the juvenile courts and the long-standing belief that juvenile offenders are distinct from adult offenders.

To be sure, the future of delinquency prevention and treatment will be influenced by changes in the structure and processes of the existing juvenile court system. Of course, other factors will also play a role in shaping where and how we proceed in the future. Benekos and Merlo state, "In the early decades of the twenty-first century, the juvenile justice system will devote increasing attention to at least five issues: gangs, disproportionate minority representation, comparative juvenile justice, the death penalty, and juveniles incarcerated in adult institutions."[17] They add that "competing ideologies and politicized public policies"[18] will guide the future of juvenile justice, because no particular approach will displace the others. Specifically, they argue that we can expect a continued combination of prevention, education, and treatment; balanced and restorative justice; and punishment, retribution, and adultification. The following chronologically based sets of expectations provide more general outlooks of what we can expect with regard to delinquency prevention and treatment.

Short-Term Expectations

What can we expect in the next 5 to 10 years of delinquency prevention and treatment? Recent trends indicate enhanced punitiveness directed toward delinquents with a corresponding decrease in rehabilitation and prevention. The recent increase in the rate of violent offenses, which occurred after a relatively consistent decrease in crime beginning in the mid-1990s, has been attributed to increased juvenile delinquency.[19] It has been noted that (1) a declining economy; (2) an increasing number of offenders returning from prison and seeking the services of juveniles who are less deterred by the justice system; and (3) society's continued concern for terrorism (which requires substantial resources, thus leaving limited funding for delinquency treatment and prevention) have contributed to increased juvenile involvement in violent crime.[20]

The risk factors associated with a declining economy, limited treatment and prevention funding, and increased numbers of "uncorrected" former inmates are apparent. Society's existing efforts to crack down on crime, particularly juvenile violence, are evident in the increasing frequency with which juveniles are transferred to the adult court. Thus, in the short term, one could expect greater efforts to punish unruly youth. Crime and delinquency are cyclical, meaning that the decreases we have recently experienced will likely be countered by increases. If increased punition was the *modus operandi* during periods characterized by decreasing crime rates, it is expected that efforts to get even tougher on crime and delinquency will be imminent during periods of increasing crime.

Getting tough on crime and delinquency brings a corresponding lack of funding for prevention and treatment. Similar to major corporations, municipalities must work within the confines of financial budgets, and

more generally, with limited resources. Getting tough is expensive, but it conjures perceptions among the public that something is being done. Treatment and prevention are uncertainties, meaning that we cannot be certain that the funding directed toward the prevention of youth violence and attempts to "correct" unruly youths is being put to good use. Getting tough also generates uncertainties. In light of decreasing budgets, largely in response to an overriding concern for homeland security, government officials are tasked with determining where resources will be allocated. Treatment and rehabilitation are often seen as being soft on crime. In a time of perceived crises, it is not the American way to be soft. Thus, it is anticipated that increased funding will be directed toward punishing juveniles at the expense of treatment and prevention. We should not expect, however, the funding discrepancy to be as drastic as it is at the adult level.

We will continue to recognize juveniles as "correctable" and impressionable in the sense that we can prevent their involvement in crime and "fix" those who have ventured down the wrong paths. In discussing the future of juvenile justice, Jackson and Knepper note, "[d]espite the overall emphasis on accountability, prevention will continue to be a theme"[21] in years to come. They also identify community involvement as a "pervasive theme" in future juvenile court practices. Their statement is echoed by Benekos and Merlo who state, "[e]ven though 'get-tough' political rhetoric and adultification legislation has characterized juvenile justice in the last 15 years, the juvenile justice system will continue with its mission to help youthful offenders and reduce delinquency."[22]

Mid-Term Expectations

Following a period of continued and likely enhanced crackdown on juveniles, we can expect enhanced community involvement with the treatment and prevention of youth crime, assisted by technological developments. This projection is offered in light of the somewhat apparent pattern of practices in the adult criminal and juvenile justice systems. Specifically, it seems that practices in the juvenile justice system reflect what happens in the adult system; however, there is a delay in developments in the juvenile system. In other words, juvenile justice practices seemingly shadow those in the adult system, although there is a time lag. For instance, consider the delay between the establishment of a juvenile court system. Consider the delay in providing due process for troubled youth. Furthermore, consider the delay in getting tough on juvenile offenders. We have been getting tough on adult offenders for more than two decades, but the punitive approach toward juveniles has occurred more recently. This apparent congruence between the two systems provides support for the aforementioned projected short-term goal of getting tougher on juveniles and for the notion that increased community support to address delinquency treatment and prevention are anticipated after a period of increased punitiveness.

Similar to the manner in which many police departments have adopted a community-oriented philosophy that relies heavily on police interaction with the community, particularly with regard to crime prevention, it is expected that communities will become increasingly active in confronting delinquency and its prevention. Many communities are currently active in issues related to delinquency; however, the anticipated short-term shift toward increasingly getting tough on delinquents will leave limited resources for prevention and treatment programs. Thus, the community, after some time, will recognize the need for its input and efforts.

Society is slowly coming to grips with the fact that our justice systems are primarily reactive and provide limited crime prevention. That is, we generally believe that responding to crime is the primary means to stop crime. As more individuals recognize the limitations of our justice system to respond to criminal behavior (many crimes go unreported, many reported crimes go unsolved, recidivism rates are discouraging), it is anticipated that notable grassroots efforts will be made in support of community delinquency prevention and rehabilitation. Dawson aptly notes that "[a]n integral part of any juvenile justice system is a network of private, charitable, or religious institutions, facilities, and programs."[23] Hahn echoes this statement in suggesting that "[c]ommunities can do a great deal to provide front-line prevention of juvenile violence and delinquency."[24]

Stephens emphasizes the need for greater community involvement to prevent and respond to delinquency. Encouraging mentoring for all children, establishing community-school partnerships to offer before- and after-school tutoring, setting up peer counseling hotlines, and developing community-oriented proactive policing programs that stress prevention are among the elements of Stephens's comprehensive plan to address youth at risk. His refreshing suggestions demonstrate the feasibility and importance of using resources that are available outside of formal, justice-based institutions.[25]

Aside from the powerful effects of the various means of informal social control, the community has much to offer with regard to delinquency prevention and treatment. Among the options available to respond to delinquency include diversion from the system, probation, intensive supervision, restorative justice efforts, restitution, community service, work programs, family group conferencing, teen court, and electronic monitoring. This is not a comprehensive list of available options to confront delinquency, and innovative approaches are certainly in the works and will emerge in the future. Of particular importance, this list of options includes only one example of technology-based assistance for at-risk or troubled youth (i.e., electronic monitoring). The future undoubtedly will bring about a series of technology-based alternatives.

This projection involving greater community involvement may seem outlandish given recent claims that people today are more socially isolated than in years past.[26] However, no magic bullet is being overlooked in making this projection. In other words, historically, we have relied on our justice systems and the public to confront crime and delinquency. The limited accomplishments of our justice systems demonstrate that support

from the public is vital. Developments in the area of community policing, community justice, and restorative justice provide optimism for claims of greater community involvement in the future of delinquency prevention and treatment.

One of the more positive contributions of community policing efforts is the involvement of the police in current and anticipated crime and delinquency prevention efforts. Efforts to prevent delinquency are apparent in various community policing programs, for example, in the U.S. Department of Justice's Youth-Focused Community Policing initiative, which focuses on establishing and strengthening police-community relationships to address delinquency prevention, intervention, and enforcement. In his insightful book, *Police for the Future*, Bayley highlights the need for greater police crime prevention and offers a blueprint for police practices to become more proactive,[27] while Hahn more generally addresses the need for a more proactive response to crime and delinquency in the entire justice system.[28] In light of the inherent limitations of our justice systems, we can expect greater community policing efforts to proactively confront delinquency.

We can also expect greater community involvement in the treatment of troubled youth. For instance, Clear and Cadora discuss community justice as an alternative approach to addressing crime and delinquency. Following this approach, areas with a high concentration of crime are targeted for attempts to strengthen informal systems of social control. They cite the emphasis on informal social control, proactive approaches to crime and delinquency, problem-solving, and partnership development with residents, businesses, and various social services as key components of community justice.[29] According to Bilchik, restorative justice, with its "focus on crime as harm, and justice as repairing the harm, offers a vision that elevates the role of crime victim, yet views victim, offender, and community as equal customers of juvenile justice services and as important, active coparticipants in responding to juvenile crime."[30] Both community justice and restorative justice require substantial input and accountability from the general public. Efforts to involve the community in delinquency prevention and treatment do exist today. It is projected, however, that we can expect greater community involvement in delinquency prevention and treatment.

Long-Term Expectations

As mentioned, the confidence levels in forecasts of the future diminish as one projects further into the future. Nevertheless, a conservative forecast of the future suggests that in 25 to 50 years technology will play an increasingly significant role in delinquency treatment and prevention. Again, it is difficult to forecast long-term changes with great levels of confidence; however, recent technological developments point toward automated prevention efforts and therapeutic responses. One could dismiss as science fiction the opening scenario of this chapter, which involves, in part, a technological application of behavior modification with a dose of

technology-based reality therapy. But today's science fiction could be tomorrow's reality. One merely needs to compare today's world with society as it existed 25 years ago to appreciate the forcefulness of technological advances. We would be foolish to believe that we have "maxed out" with regard to technological development. Recall the earliest computers, or the early, text-based version of the Internet. Now, consider the evolution of both the computer and the Internet. We should remain optimistic that similar, major developments will occur as technology continues to evolve and we direct our efforts to such issues as delinquency prevention and treatment.

The long-term future may include the use of a variety of behavior-regulating implants as an accepted practice in delinquency prevention and treatment. Stephens notes that such controversial implants could be applied as a form of birth control, to control behavior, to monitor one's health, to ensure proper functioning of one's brain, and even to assist individuals with learning deficiencies.[31] Although the development of implants continues, society must come to terms with the ethical considerations inherently associated with their use.

Technology offers optimism for delinquency prevention and treatment. In light of the entrepreneurship and creativity apparent in society's recent technological transformation, it is projected that the energies and resources that thus far have been put into developing marketable, recreational goods and services will eventually be recognized for their potential application to delinquency prevention and treatment. In other words, society will increasingly seek, and develop, technology-based programs, simulators, virtual realities, assessment centers, correctional facilities, and the like to reduce the burden on human efforts to prevent and confront delinquency and to provide more effective responses to wayward youth.

Researchers continually stress the need to identify particular programs to meet needs of particular youths. It is possible that, in the future, full-body scans and measured physiological and mental responses could facilitate the identification of appropriate technology-based prevention programs or rehabilitative efforts. Or, perhaps, technological advances could be used to address some of the social issues that contribute to delinquency, such as poverty or broken homes. The success of future efforts to prevent or treat delinquency depends largely on our level of optimism. Successful visionaries look at how they can make things happen, not why they can't. We must remain vigilant to incorporate technological advances into our efforts to address delinquency. And it is anticipated that we will.

CONCLUSION

I find forecasting the future to be an extremely worthwhile and enjoyable practice, and I make all efforts to share forecasting techniques with my students. The utility of forecasting the future is evidenced in this discussion of anticipated changes with regard to delinquency prevention and treatment. The enjoyment stems from the inherent lack of pressure in being correct. Although not to dismiss the practice of forecasting the

future as a pseudo-science (as it certainly is not), one merely needs to watch the local weather forecast on the evening news to understand the difficulties of understanding and forecasting what will happen from one day to the next. Weather forecasters spend many hours looking at weather models within local regions to give us the "five-day forecast." Consider how many times you have wondered why meteorologists can't get it right. Well, it's simple. It is difficult to understand what is going to occur in the future, even despite the availability of advanced scientific tools. The temporal and spatial variables influencing forecasts of the future, as well as noted drivers of the future, become increasingly prominent when we discuss such macrolevel issues as crime, national security, and delinquency treatment and prevention.

Another utility of futurist research involves the opportunity for optimism. In their look toward the future of juvenile justice, Benekos and Merlo offer optimism in light of decreasing crime rates, which results in, among other things, issues other than crime attracting and receiving public and political attention. This optimism is generated by increasing evidence of effective intervention strategies and prevention programs, public support for delinquency prevention and treatment programs, and the development of alternative forms of juvenile justice.[32]

We can look at increasing crime trends (should they occur) and forecast gloom and doom for the coming years. Such information, however, can be used more productively by spurring us toward thoughtful creativity and consideration of alternative approaches to crime and delinquency prevention and treatment. Forecasters create scenarios of what the future may look like, which should stimulate strategically designed plans that could enable our world to resemble a fictitious society.[33] In other words, we could diagram the ideal society in, say, 20 years from now and work backward. How do we get there from here? One merely needs to observe the evolution of computers and the Internet to understand the importance of having a vision and remaining optimistic.

Stojkovic and Klofas note that futurists must confront three substantial issues in looking to the future. First, they must give due consideration to the past and the present. Second, they must scientifically project from the past toward the future. Third, futurists must question their "own role in creating (the) future rather than passively accepting it."[34] The impetus is not only on futurists to shape the future, but also on all of us to play a role. Among other things, remaining optimistic and recognizing that the future is not predetermined should encourage us to assume a more proactive role in efforts directed toward the future of delinquency prevention and treatment.

NOTES

1. Cole, 1995.
2. Jackson & Knepper, 2003, pp. 316–324.
3. Jackson & Knepper, 2003, p. 337.
4. Bynum & Thompson, 2005, p. 440.

5. Bynum & Thompson, 2005.
6. Rosenheim, Zimring, Tanenhaus, & Dohrn, 2002; Wolcott, 2001.
7. Bartollas, 2003, pp. 16–20.
8. E.g., Burns & Crawford, 1999.
9. Stephens, 1997.
10. Ohlin, 1998.
11. Dawson, 1990.
12. E.g., Jackson & Knepper, 2003.
13. Feld, 1997.
14. Dawson, 1990.
15. Jackson & Knepper, 2003.
16. Jackson & Knepper, 2003.
17. Benekos & Merlo, 2005, p. 31.
18. Benekos & Merlo, 2005, p. 36.
19. E.g., Johnson, 2006.
20. Johnson, 2006.
21. Jackson & Knepper, 2003, p. 387.
22. Benekos & Merlo, 2005, p. 37.
23. Dawson, 1990, p. 148.
24. Hahn, 1998, p. 59.
25. Stephens, 1997.
26. McPherson, Smith-Lovin, & Brashears, 2006; Putnam, 2000.
27. Bayley, 1994.
28. Hahn, 1998.
29. Clear & Cadora, 2003.
30. Bilchik, 1997, p. ii.
31. Stephens, 1997.
32. Benekos & Merlo, 2005, pp. 21–22.
33. Burns, 1998; Clear, 1995; Cole, 1995.
34. Stojkovic & Klofas, 1995, pp. 282–284.

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CHAPTER 11

Projecting Juvenile Populations: A Forecasting Model

Pablo E. Martinez

Although there is great public consensus about the need to punish offenders, prevent crime and protect citizens, there is great variation in thoughts about just which offenders should be locked up and for how long. A limited number of beds are available at any given time and officials are under pressure to save detention space for the most dangerous offenders and those who are most likely to recidivate. Because those most likely to commit offenses at a greater rate are not always those who are violent, we often engage in difficult choices about sentencing and the release of offenders into the community.

Officials often rely on forecasters to help them in the decision process. As facilities become overcrowded, there are only three basic solutions. Political as well as economic consequences must be weighed to decide whether (1) to build more detention space, (2) to release more offenders earlier on parole, or (3) to take fewer new youth into the confinement system, reserving beds for only those who are highest risk. Before building or engaging in any long-term strategy, it is important to determine what the population might look like down the road and what the implications or consequences of any path chosen right now might be.

For example, researchers in California used forecasting to determine the impact that the new three strikes law, and its lengthy sentences, would have on the prison population. Information about the number of two-strike offenders currently in the system as well as the number of one-strike offenders, all of whom could potentially become three-strike cases, had to be analyzed to determine not only the rate at which existing offenders might become eligible for three strikes, but also the rate at which new offenders would enter the system and gain strikes.

The business of forecasting is a difficult task and perhaps more so in the criminal justice field. Projection numbers are used for several purposes. The first is to inform the public about the upcoming problems of the system. Rather than being anecdotal, media accounts of individual cases, these projections must be developed from accurate interpretations of valid and reliable indicators. Otherwise, people can become unnecessarily alarmed or fearful, as when political columnist DiIulio predicted inaccurately that a wave or juvenile superpredators would be seen in the system.

The second purpose of forecasting is to project costs and appropriations for operations and capital investment (building new facilities). Finally, forecasting is used to analyze the impact of proposed legislative changes.

Depending on the purpose, more sophisticated tools may be required to arrive at projections. When projections are needed to make a statement to the public, interest groups, or the press regarding the future number of youthful offenders under the control of the justice system, a statistical line-fitting technique may be sufficient. When projections are needed for budgets and appropriations, more information is necessary. Typically, this will require accurate information regarding the number of offenders coming into the system, and the number of offenders leaving the system, as well as the time they remain under the jurisdiction of the system.

If the projected numbers are used in a legislative impact analysis, the model needs to be able to break down the populations more clearly, for example, into different groups by offense type, length of sentence, or criminal record.

FACTORS AFFECTING FUTURE JUVENILE OFFENDER POPULATION

The future size of the juvenile offender population is affected by at least three major factors:

- Variables that affect crime, such as the state's population in specific age groups
- Socioeconomic indicators such as employment and income
- Changes in policy (sentencing), for example, more tough or lenient punishments

The size of the population can be obtained by using projections of the population for the state, which are produced by the Bureau of Census or a local affiliate such as a population research center at the state level. Relatively valid and reliable socioeconomic indicators (such as unemployment rates) are much harder to obtain. Long-term forecasting of unemployment is not reliable. Policy changes are difficult to quantify. Most frequently, the researcher assumes a status quo scenario, which means that policy will remain constant, something that never happens. Despite these difficulties in obtaining the elements necessary to forecast accurately, the more detail the model provides, the more useful the projection will be. If elements are

quantified, they can be monitored, and such information is useful to explain why projections might turn out to be either too high or too low. Unfortunately, this is information that can be provided only after the fact.

Forecasting in the criminal justice field is not an exact science, but rather a combination of science and art. As a science, the forecaster uses statistical techniques to analyze historical trends and identify predictors. As an art, the forecaster uses his or her best professional judgment to make adjustments to the results of statistical analysis. In some instances, forecasters must use their best judgment and forecasting knowledge to provide all the necessary elements in the model. For instance, a forecaster must make an assumption about sentencing practices in the use of average sentences for projection models. Actual sentencing practices may turn out to be higher or lower than the forecasters' best estimate.

Forecasting Teams and the Role of Assumptions

Projections are the result of statistical analysis to determine trends and relationships. In this process, decisions must be made about what direction to take when the data indicators are not clear. These decisions are known as "assumptions of the model," and they represent basic assumptions that the model uses to project numbers. Although the forecaster can make such decisions, the best approach is to create an assumptions team to ensure that many different views and ideas are incorporated. This team model is being used in many locations. In Colorado, for instance, it is known as the Juvenile Corrections Population Forecasting Advisory Committee, established by Executive Order in 1998.[1] This type of team is composed of individuals who have an interest in the projection, such as the directors or representatives of agencies that are affected by the projection, members of the Legislative Budget Board, legislative aides to the members of the Criminal Justice committees in the House and in the Senate, and staff from the governor's office. In Oregon, the governor appoints the members, but in other states they may be part of the forecasting working group.

The forecasting working group determines those issues that are not clear-cut, for example, should the average length of stay (ALS) that is used to project the population under supervision be the same as the most recent year, or should it be the average for the last couple of years? Additionally, agency officials are encouraged to indicate whether there are any recently implemented policy changes that would change how long offenders remain confined or that would affect the failure rate of probationers. These procedures not only insulate the forecaster, but also give interested parties a sense of ownership over the results. This may help people obtain needed information for future projections. Additionally, people are more likely to use forecasts when they participated in the process. The most effective system is one in which the same set of numbers are used by all policy makers and interested parties. Whatever level of sophistication, the most credible systems are those for which one set of numbers is used for all levels of forecasting.

In this chapter, a methodology is presented that can produce projections (or forecasts) of juvenile correctional client populations. This model can be used to request budget allocations, to answer questions, and to explain policy implications. A model based on this methodology was developed by the author of this chapter for Texas and has been used by the Criminal Justice Policy Council for more than a decade to forecast juvenile correctional population for the state.[2] Mears evaluated the model and published a report as part of the Assessment of Space Needs Project and concluded that—

> The Texas forecasting process is grounded in (the) notion of credibility and the importance of the interactive processes. Forecasts are empirically based, but they also are informed by a multidimensional process for generating continuously updated projections of future correctional populations.[3]

The chapter concludes with a discussion of how to produce the best policy scenario while protecting the forecaster and creating an environment of credibility for the projection. It is a total system model. In other words, the model considers the group of the population at risk and uses probabilities to determine the flow of juveniles through the different decision points of the criminal justice system.

A Disaggregated, Macrosimulation Model

The model presented in this chapter simulates the way juvenile offenders are processed by the system. It uses probabilities to determine how many offenders advance to the next stage of the system and, once confined in a correctional facility, uses survival rates to calculate remaining populations.

To produce a model that is useful for policy analysis, detailed information is needed. A flow chart of the total system is useful to visualize data needs. Figure 11.1 illustrates a flow chart of the juvenile justice system. The major purpose of the flow chart is to visualize how the system works and to identify the type of data that are needed to produce a projection.

REFERRALS AND PROBATION SUPERVISION

Projecting Juvenile Referrals

Inputs into the system come from two sources: (1) new referrals to the Juvenile Probation system (newly convicted offenders); and (2) violators of court orders (probation or parole). These two numbers need to be projected.

Projecting New Referrals

Who is referred to the juvenile probation system? To answer this question an examination of Figure 11.2 is extremely useful. Although Texas law

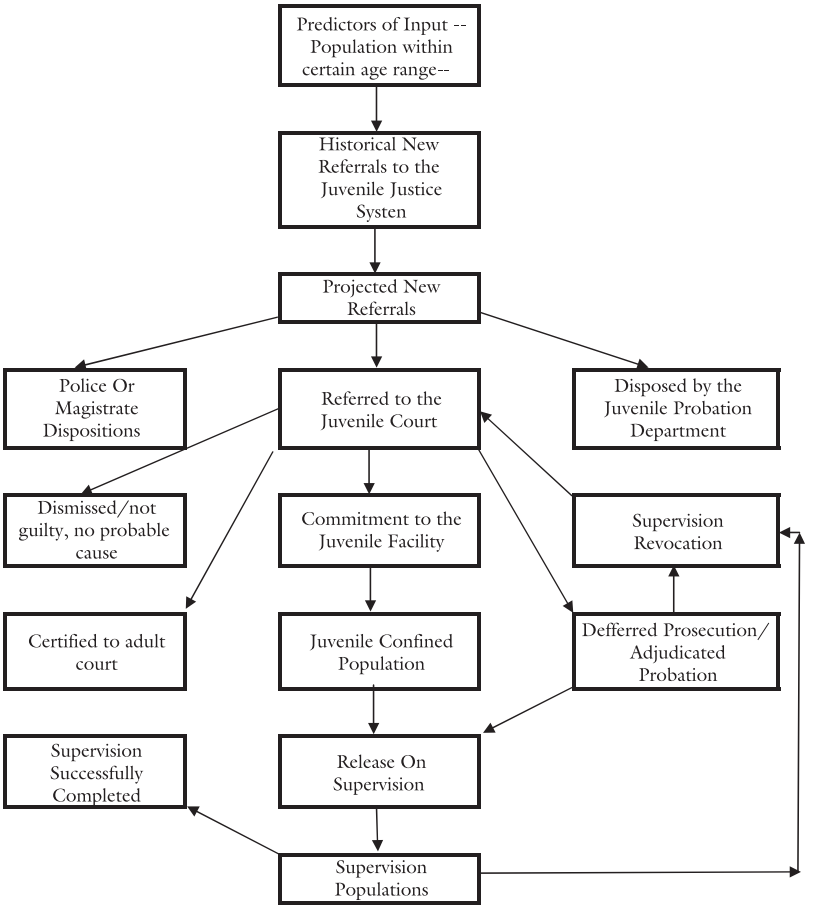

Figure 11.1. The Flow of the Juvenile Justice System

is used as an example, experts have pointed out that legislation regulating juvenile procedures in this country are fairly consistent.[4] Jurisdictional differences across the country regarding who is considered a juvenile would affect these numbers. In Texas, a juvenile is considered anyone less than 17 years of age. In other words, if someone is 16 years, 11 months, and 29 days old and commits a criminal offense, he or she is under the jurisdiction of the juvenile system unless certified as an adult. If the criminal offense were committed on or after the offender's 17th birthday, then he or she is under the jurisdiction of the adult system and prosecuted in the adult court. Normally, children referred to the juvenile system are not younger than 10 and, in most states, no older than 16 years of age. Figure 11.2 shows the arrest rates per 100,000 people by age for the years 1995 and 2004 for Texas.[5]

Figure 11.2 also illustrates what is known in the criminal justice field as the crime curve in the disproportional contributions to crime by the various age groups.[6] The figure shows that, when comparing 1995 to 2004,

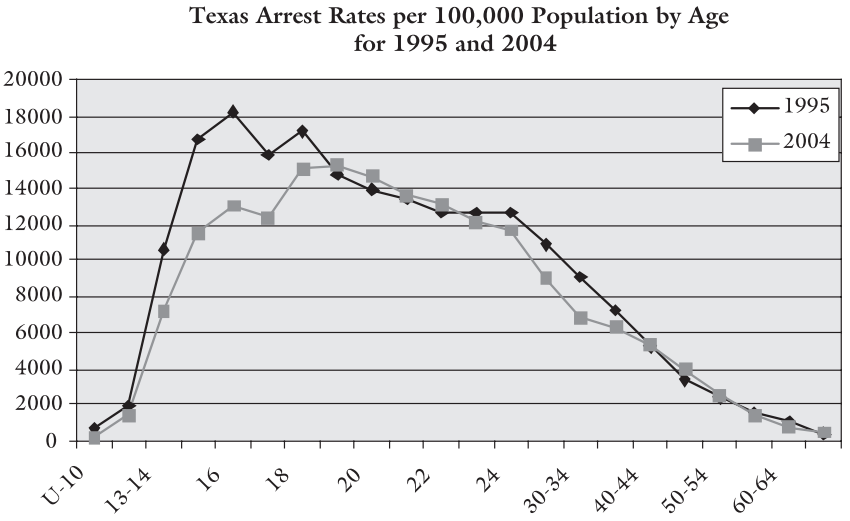

Figure 11.2. Texas Arrest Rates

there has been a decrease in the arrest rate of individuals between the ages of 13 and 16. It is this decline in the arrest rate that creates difficulty in producing projections. It is difficult to project when there is no "stability" in the system (that is, stability in the arrest rate for the ages in question). As a matter of fact, efforts constantly are made to curb crime, and if successful, rates should reflect the success of programs. But crime is not the only reason why offenders end up in the juvenile justice system. Children end up in the system for status offenses when their parents can not properly supervise them; these children are known as "children in need of supervision" (or CINS). Because status offenders are not formally arrested, projections of the juvenile system must use "new juvenile referrals," instead of arrests, to determine the number of referrals into the system. Figure 11.3 presents the number of Texas juvenile referrals by type from 1997 to 2003 (the latest year for which numbers are available).[7]

The data show that both types of referrals (new arrests and status offender referrals) have been declining. Conversely, violations of probation (court orders) have increased. As mentioned earlier, the number of new entries into the juvenile justice system is the first to be projected. This number includes delinquent and CINS referrals.

A statistical analysis can be used to determine the relationship between population and referrals. This methodology consists of finding the best-fitting straight line for a set of data. The best-fitting line is the one that comes closest, on average, to all of the data points. Although this can be done manually, a statistical tool known as linear regression is available in many statistical packages, including Excel, and it produces the best-fitting line. That statistical tool was used to analyze the Texas population between the ages of 10 and 16, including all referrals, delinquents only, and delinquents plus CINS (but not probation violators).

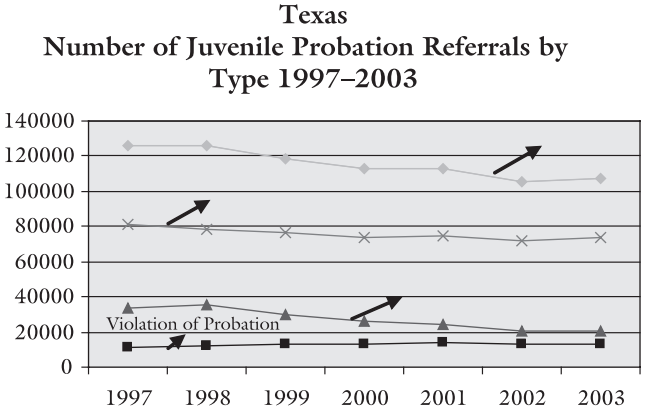

Figure 11.3. Texas Juvenile Referrals

The summaries of the three models are presented in Table 11.1. The data show that if total referrals were to be used, an adjusted *R*-square value of 0.9061 or 90.61 percent of the variances in the total referrals can be attributed to changes in the population of 10 to 16 year olds. When only referrals for delinquent acts are entered, the value drops significantly, and we can account for only 73.73 percent of the variance in referrals using the same age cohort. Conversely, when delinquent behavior and CINS were added together, about 90.62 percent of the changes in the referrals can be explained by the changes in the age cohort between 10 and 16. The results also show that the relationship between the population cohort and delinquent/CINS referrals is negative. During the most recent past, although the population of that age cohort has increased, referrals have declined. Although this may not seem to make sense, it is likely to occur during periods following major legislative changes.

The question is whether this equation should be used to predict the future. The answer might be that the forecaster should use it as long as he or she carefully monitors the population and adjusts the forecast accordingly. For instance, note from Figure 11.3 that in 2003 the number of

Table 11.1.
Model Summaries

Model summaries				
Dependent Variable	**R**	**R Square**	**Adjusted R Square**	**Std. Error of the Estimate**
All Referrals (a)	0.9600	0.9217	0.9061	2491.447
Delinquent Only (b)	0.8837	0.7810	0.7373	1606.172
Delinquent and CINS (c)	0.9601	0.9219	0.9062	2758.565
Independent variable: population ages 10 to 16				

Table 11.2.
Coefficients for Regression Equation

		Coefficients[a]				
		Unstandardized Coefficients		Standardized Coefficients		
Model		B	Std. Error	Beta	t	Sig.
1	(Constant)	235260.8	17239.717		13.646	.000
	Pop 10 to 16	−.052	.007	−.960	−7.683	.001

[a] Dependent Variable: Delinquent and CINS

referrals increased. If, after carefully monitoring over the next six months, it appears referrals are going to increase, the forecaster can take out the years before the decline (negative relationship) and rerun the regression. Frequently what happens is that legislative changes affect the input (referrals) for a short period of time, but once the full impact of the law has taken place, the trend returns to the direction it had been going before the legislative change. In other words, the impact of changes in law frequently has a delayed impact on what may happen anyway.

Another issue to consider is the fact that this model is based on seven data points (seven years). This is a good way to start if no other data are available. The *projection*, however, should not be longer than the number of years or months for which historical data are available. In the case of this example, a projection of up to seven years is acceptable.

To project future new referrals, we use the state's projected population for individuals between 10 and 16 years old. The data are obtained from the population research center, and the values of slope (−0.052) and the constant (235260.8) are derived from the regression equation, which are found in the Statistical Package for the Social Sciences (SPSS)[8] output for this type of analysis (Table 11.2). The projected numbers of referrals that result by using this methodology are presented in Table 11.3. The data show the projected population of 10 to 16 year olds and the projective juvenile referrals (delinquent and CINS combined).

Table 11.3.
Projected Number of Referrals

Projected Texa Juvenile Referrals (Delinquent and CINS) 2004 to 2006		
Year	Projected Population 10–16	Projected Juvenile Referrals
2004	2795613	90925
2005	2845041	88373
2006	2887637	86173

Projecting Court Order Violations

The premise used to forecast revocations is based on empirical findings that not all offenders who are placed on juvenile probation successfully complete the probationary period. Many of these offenders do not comply with the conditions of supervision or commit a new offense. As a consequence, they reappear in front of a judge and end up as referrals. This section deals only with offenders who have to appear in court as a consequence of not abiding by the rules of probation, including committing a new criminal offense.

The model uses survival techniques to determine how many court order violations (COVs) return to court. The projection can be made by year or by month, depending on the level of aggregate data available. It is advisable to use monthly data if possible. If the data are reported yearly, the resulting projection can be disaggregated by month. The data needed include (1) number of new juvenile referrals (delinquent and CINS), and (2) the number of offenders referred for COV by month or by year. Using yearly data, Table 11.4 presents the projection for COVs. Microsoft® Excel or a comparable electronic sheet is needed to determine COVs.

To better understand the contents of Table 11.4, a good understanding of the columns and rows headings is necessary:

- Column A, Row 7: Year for which the actual number of delinquent and CINS referrals are available.
- Column B, Row 7: Actual number of delinquent and CINS referrals. Notice that numbers in bold type for years 2004 to 2006 are projections derived in the previous section of this report.
- Row 1, Columns A and B: The heading YEAR indicates labels for which year the values in the rows below apply.
- Row 2, Columns A and B: Actual COV. In this row, the actual number of COVs are entered for the respective year (Columns C to I), the most recent year for which there are actual data (in this case 2003).
- Row 3, Columns A to E: The heading is Projected COV. Columns F to M contain the projected number of COV for each year of the projection. The values in each of these cells are the summation of the values found under each column from Rows 9 to 18. Bolded numbers indicated that they are projections (Columns J to M).
- Row 4, Columns A to E: The heading is Difference–Actual vs. Projected. This row calculates the deviation of the projections from the actual numbers. A negative sign indicates the model is overprojecting.
- Row 5, Column B: The Heading is Adjusted Failure Rate. This row gives the actual failure rate for a particular year after an adjustment is made. Column A gives the amount of adjustment that is applied to the three years of the follow-up period.
- Row 5, Columns C to E: These columns give the actual failure rate for each of the three years. Column F gives the total for the three years (in this case, it is 0.1383 or 13.83 percent). This failure rate changes from

Table 11.4.
Projection for COVs

Projection of Juvenile Referrals for Court Order Violations (C.O.V.)													
	A	B	C	D	E	F	G	H	I	J	K	L	M
1		**Year**	1997	1998	1999	2000	2001	2002	2003	**2004**	**2005**	**2006**	**2007**
2		**Actual C.O.V.**	10821	11964	12635	13111	13664	13397	13273				
3		**Projected C.O.V.**				15238	14463	13980	13269	**13112**	**12737**	**12482**	**12138**
4		Difference—Actual vs. Projected				−2127	−799	−583	4				
5	**0.728**	**Adjusted Failure Rate**	0.0728	0.0364	0.0291	**0.1383**							
6		**Initial Failure Rate**	0.1	0.05	0.04	**0.19**							
7	Year	Delinquent & CINS Referrals											
8	1997	115311		8395	4197	3358							
9	1998	113644			8273	4137	3309						
10	1999	106361				7743	3872	3097					
11	2000	100035					7283	3641	2913				
12	2001	99470						7241	3621	2897			
13	2002	92513							6735	3367	2694		
14	2003	94065								6848	3424	2739	
15	**2004**	**90925**									**6619**	**3310**	**2648**
16	**2005**	**88373**										**6434**	**3217**
17	**2006**	**86173**											**6273**
18													

one year to another. In Table 11.4, the number appearing for 2003 is the result of using the failure rate of 13.83 percent.

- Row 6, Columns A and B: The heading is Initial Failure Rate. This row contains the failure rate that was used when the model was initiated. The values in Columns C to E are the failure rates to start the model. These are based on previous analyses of this type of data that indicated that, after three years, a violation order would be filed for about 19 percent of the cases placed on probation. Information from any jurisdiction can be used, even if it is from a different state. It will not affect the model results because adjustments are made to those numbers to reflect the reality of a particular jurisdiction. Also, a three-year follow-up is used because a more prolonged period would require following adult offenders, and it would add error to the calculation. Column E contains the total failure rate for the three years (in this case, 19 percent).

When the simulation is done for each year, the failure rate is adjusted until it is equal or close to the actual number. The adjustment is made by changing the value in cell 5A. For the year 2003, the value in that cell is 0.728, which can be translated to indicate that, in 2003, the failure rate was 72.8 percent of the value that was used when the model was initiated.

Changing the adjustment factor for each year until it matches the actual number provides a quick and clean way to calculate failure rates of a program and tells us whether the failure rate is changing. Table 11.5 was constructed using that information, and it tells us that, since 2000, the failure rate of juvenile probationers has been increasing continuously. This validates what was observed under referrals (refer to Figure 11.3) for court order violations, which showed that COV referrals were increasing while delinquent and CINS referrals were decreasing. If the delinquent and CINS referrals have decreased, but the COV has increased, then it follows that the failure rate of juvenile probationers must be increasing. The

Table 11.5.
Failure Rate

Juvenile Probation Failure Rate by Years Under Supervision for 2000 to 2003				
	Year 1	**Year 2**	**Year 3**	**Total**
2000	6.25	3.13	2.5	11.88
2001	6.88	3.44	2.75	13.07
2002	6.98	3.49	2.79	13.26
2003	7.28	3.64	2.91	13.83
2004	**7.28**	**3.64**	**2.91**	**13.83**
2005	**7.28**	**3.64**	**2.91**	**13.83**
2006	**7.28**	**3.64**	**2.91**	**13.83**

results of the simulation show that, indeed, the failure rate has been increasing. Returning to the discussion of rows and columns in Table 11.4, we continue with failure estimates for each cohort.

- Row 8 to Row 17, Columns D to M: These provide the expected number of failures of a given cohort for each of the three years that are being followed. The number is derived by multiplying the number of placements that correspond to that particular row (for 1997, the placements were 115,311) by the failure rate of the first year (0.0728) (Row 5, Column C).

To facilitate this calculation, a one-year lag is given. In other words, those placed in 1997 began failing in 1998, which is the main reason for suggesting monthly data. A one-month lag controls better for the error introduced when yearly data are used. The number resulting from the calculation is 8,395 (found in Row 8, Column D). Row 1, Column D indicates it is the year 1998. This indicates that, out of the 115,311 juvenile offenders referred to probation in 1997, a total of 8,395 received COV orders during the first year after referral (1998). For the second year, the same procedure is followed except that now it is multiplied by the failure rate for year two (0.0364) and the number 4,197. Out of the total 1997 referrals, 4,197 violations were filed during the second year after referral. This procedure is followed for each year. The total number of projected COV referrals is calculated by adding the numbers in each column and that number should correspond to the appropriate year found in Row 3.

To have a complete projection, three numbers must appear in the column. Column E, Rows 8 and 9, has two numbers. Therefore, the projected number for 1999 is incomplete, which also explains why Rows 3 and 4, Column E, are empty. When all the actual numbers of referrals have been used in the model, and the failure rate for each year calculated, then the projection can be made.

The main question is what failure rate should be used to project the future. The information from Table 11.5 is useful for that decision. Table 11.5 shows that the failure rate has been increasing since 2000, the first data point for this model. The researcher can take three avenues:

- Use the most recent failure rate for the period of the projection
- Analyze the change over time and use a continuous increase
- Increase the failure rate for one or two years more and then use the last year's projected failure as a constant for the rest of the projection (no change)

Any of the three scenarios can be equally useful as long as it is specified which scenario is chosen. In the example given, the most recent actual failure rate from Table 11.4 was used, which produces a 13.83 percent failure rate after three years.

Projecting Total Referrals

As indicated earlier, the total referrals are composed of delinquents and CINS, plus those who come in front of court for COVs. Using the information provided in Tables 11.3 and 11.4, the total projected referrals can be calculated. This is presented in Table 11.6.

Notice that there are two numbers. One represents the referrals that will go through referral to juvenile probation, with some of them going to court; the other includes all referrals, including those disposed by police or magistrate. The forecaster may want to make an adjustment up or down, based on his or her expertise with the system, because the regression equation indicates that only 90 percent of the variance is explained by the relationship between the population cohort and the new referrals. For this example, an adjustment was not made to the projection.

PARTITIONING THE NUMBER OF REFERRALS

Not all the referrals end up being processed through the system. Historical information on the percentage of cases falling under each category is used to determine how the projected numbers of referrals filter down into the system. This is provided in Table 11.7 using information for years 2000 to 2003.

The information in Table 11.7 provides the means to determine how many of the referrals will end up in actual supervision placement, which is needed to calculate the number of juveniles under community supervision. It also shows the categories of disposition and the percentage for each type during the four-year period. What is most interesting from the forecaster's view is the little variance in those percentages. The percentage of cases that are dealt with by the magistrate or police officer, which means that they were "warned and released, handled in justice or municipal courts," ranges between 32.25 percent in 2000 and 36.29 percent in 2003. This type of disposition is also known as "informal" disposition. The number dismissed, consolidated, or withdrawn has ranged between 17.87 and 19.16 percent. The percentage for commitments to the Texas Youth

Table 11.6.
Total Referrals

Texas Projected Juvenilel Referrals by Type 2004–2006				
Year	Delinquent and CINS	COV	Total Referred to Juvenile Probation	Total Referrals*
2004	90925	13112	104037	148624
2005	88373	12737	101110	144443
2006	86173	12482	98656	140937

*Includes police or magistrate dispositions

Table 11.7.
Filtered Referrals

	Year			
Disposition Type	**2000**	**2001**	**2002**	**2003**
Total Referrals	100	100	100	100
Police or Magistrate Disposition	32.87%	32.25%	35.72%	36.29%
Remaining for Further Disposition	67.13%	67.75%	64.28%	63.71%
Dismissed, not guilty no probable cause, transferred or consolidated	19.16%	19.04%	17.75%	17.87%
Supervisory Caution	16.80%	17.21%	15.63%	15.01%
Deferred prosecution by prosecutor or court	12.35%	13.57%	13.56%	13.85%
Adjudicated probation	16.71%	16.14%	16.66%	15.68%
Committed to Texas Youth Commission	1.57%	1.50%	1.59%	1.50%
Certified as adult	0.12%	0.08%	0.13%	0.08%
Total Disposed	66.71%	67.54%	65.31%	64.00%

Commission (TYC) has ranged between 1.5 and 1.57 percent during the four-year period.[9] Therefore, this shows that there is certain stability in these percentages. If the forecaster distributes the projected referrals using the most recent distribution of cases, the results are not going to greatly deviate from the actual numbers. The projected total referrals for 2004 to 2006, by disposition type, are presented in Table 11.8.

Projecting Juvenile Probation Population under Supervision

The methodology used to produce the projected supervision population is basic. It does not disaggregate but requires the calculation of the historical turnover rate of the population, which also may be known as the ALS of the cohorts who are place under community supervision. This methodology is not policy sensitive, but it does produce a projection. It is a useful methodology given that detailed data from the Juvenile Probation Department regarding the population under supervision are not accessible. Table 11.9 was constructed using the Excel program to produce the population projection. The data needed to produce the projection are historical population under supervision and number of probation placements. As mentioned earlier, monthly data are better than yearly data, but in this example, yearly data are used.

Following is a summary of Table 11.9:

- Row 1: The year for the variable is being projected.
- Row 2: Population under Supervision. Historical data of juveniles under supervision at the end of the year are indicated in Row 1.

Table 11.8.
Projected Total Referrals by Disposition Type

Projected Total Referrals by Disposition Type				
	Actual	Projected		
Disposition Type	**2003**	**2004**	**2005**	**2006**
Total Referrals	100	148624	144443	140937
Police or Magistrate Disposition	0.3629	53936	52418	51146
Remaining for Further Disposition	0.6371	34362	33396	32585
Dismissed, not guilty no probable cause, transferred or consolidated	0.1787	26565	25818	25191
Supervisory Caution	0.1501	22310	21683	21157
Deferred prosecution by prosecutor or court	0.1395	20729	20146	19657
Adjudicated probation	0.1468	21823	21209	20694
Probation Supervision Total	**0.2954**	**43897**	**42662**	**41626**
Committed to Texas Youth Commission	**0.0180**	**2675**	**2600**	**2537**
Certified as adult	0.0008	123	119	116
Total Disposed	0.6400	95117	92441	90197

- Row 3: Projected Population under Supervision. There are the only data for years 2004 to 2006.
- Row 4: Difference. In this table, that row is blank but when actual data are reported, it is entered in Row 2, under the appropriate year, and the difference between the actual and the projected rate is calculated to assist the forecaster in monitoring the model's results.
- Row 5 (Column A): Year refers to the years for which there are historical (Column B, Rows 6 to 11) or projected placements (Column B, Rows 12 to 14) to juvenile supervision. The placements used here are not the same as referrals. The placements refer to dispositions that ordered supervision (deferred or adjudicated probation).
- Row 5 (Column C): The heading for the ALS under supervision. This is given for each year starting with Rows 6 to 10. The values presented in Rows 11 to 14 are projected. In reality, this value measures the turnover rate of the population under supervision.

The ALS is calculated based on the previous year placements and supervision. If the population were the same as the previous year's placements, then the ALS would be 12 months. Given that the juvenile population under supervision (Row 2) in Texas is less than the previous year's supervision placements (Column B), the ALS is less than a year. To calculate the historical ALS, it is necessary to take the population under supervision for a given

Table 11.9.
Projected Texas Juvenile Population under Supervision, 2004–2007

	A	B	C	D	E	F	G	H	I	J	K	L	N
1	**Year** ---------->			1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
2	Population Under Supervision --->			39718	39249	39145	39490	38558	38999				
3	Projected Population Under Supervision---------->									38974	37250	36202	35323
4	Difference												
5	**Year**	**No of Placements**	**ALS**								Projected		
6	1998	50925	9.2487		39249								
7	1999	48524	9.6806			39145							
8	2000	48998	9.6714				39490						
9	2001	49616	9.3255					38558					
10	2002	49793	9.3987						38999		Projected		
11	2003	49761	9.3987							38974			
12	2004	47560	9.3987	**Projected ALS**							37250		
13	2005	46222	9.3987									36202	
14	2006	45100	9.3987										35323
15													

year, divide that number by the previous year's number of supervision placements, and then multiply it by 12. Once the historical data are exhausted, then the forecaster uses the projected supervision placements (see Table 11.8) and makes a decision about which ALS to use.

Examining the result of Table 11.9, note that the actual ALS has remained relatively constant during the past two years. In this situation, it is advisable to use the most recent month for the projection period. The population under supervision appears in Table 11.9 as a diagonal line, beginning at the top left and moving to the bottom right. For the year 2004 and beyond, that number must be projected. To project the population under supervision, the number of supervision placements for the previous year is divided by 12 (because the projected number is for a full year) and multiplied by the projected ALS (Column C, Rows 11 to 14). The projected numbers are then logged in Row 3, Columns J to N.

Projecting the Confined Population

The natural flow of this projection model is the ability to produce a disaggregated projection model for confined population, in this case for the TYC. It is disaggregated by offenses that affect length of stay. That is, the facility classifies offenders based on the type of offense for which they were adjudicated and that classification determines the minimum and maximum time they spent in the facility. The following data elements are needed to complete this part of the model:

- Projected commitments (this was calculated in the previous section of this chapter): A breakdown of the commitments to the facility from the previous year by offender types
- The distribution of time served for juveniles released the previous year by offender types
- The population of the institution (in this case TYC) at the end of the most recent year
- The distribution of time served by offender type for those children at the institution at the end of the most recent year

In the first section of this chapter, we explained how to obtain the projected commitments (see Table 11.8). The other data elements can be obtained from the institution. For this example, actual data will be used when available; however, in some instances (e.g., distribution of time served), the data are created.

Projecting the Population from Commitments

Offender Type

The offender type categories are related to the severity of the offense and each group differs in the amount of time served in custody. Sentenced offenders are a special category. They are sentenced with a determinate

Table 11.10.
Projections by Offender Type

Projected TYC Commitments by Offender Type				
Offender Type	**2003**	**2004**	**2005**	**2006**
Total Commitments	**2511**	**2675**	**2600**	**2537**
Sentenced	7.00%	187	182	178
Type A Violent	6.00%	161	156	152
Type B Violent	24.00%	642	624	609
Chronic-Serious	2.00%	54	52	51
Controlled substance dealer	1.00%	27	26	25
Firearms	3.00%	80	78	76
General	57.00%	1525	1482	1446

sentence given by the judge. When the offender reaches a certain age, they are transferred to an adult prison and, when released, they will be subject to adult parole. All the other offender types have an indeterminate sentence. The judge commits the offender to the TYC and, once there, they are classified according to their offense type, which directs the amount of time they will serve in the facility. The general offender category is the least serious, and it includes offenders who do not fall into the other categories.

Data from the TYC show the commitments by offender type. This information is transformed into ratios. Then, using the projections of commitments to the TYC previously presented, projections by offender type are made using the most recent ratios. This information is presented in Table 11.10.

Deriving Survival Rates

To project population and releases, it is necessary to calculate how long offenders remain in custody. The number of releases (using case data) is needed to calculate the survival rate of the offender in the institution. For illustration, the general offender who serves the least amount of time in a facility is used. If in the most recent year 1,500 general offenders were released from the TYC, and the time served is as depicted in Table 11.11, then that information can be used to calculate survival rates, which also is done in Table 11.11. The number of offenders released by month is calculated using a frequency distribution of time served in months for the general offender. The frequency tables provide the percentage and the cumulative percentage. The calculated survival rate is 100 minus the cumulative percentage, and it represents the percentage of offenders who are still confined after a specific number of months served. Looking at Table 11.11, it can be said that 50 percent of offenders who come to the TYC on any given date are still in confinement after the sixth month. Tables like this are constructed for each offender type and can be used to determine release

Table 11.11.
Time Served

Time Served of General Offenders Released from TYC and Calculated Survival Rate

Time Served (months)	No. of Offenders	Percentage	Cummulative Percentage	Survival Rate
1	0	0.00%	0.00%	100.00%
2	150	10.00%	10.00%	90.00%
3	0	0.00%	10.00%	90.00%
4	225	15.00%	25.00%	75.00%
5	0	0.00%	25.00%	75.00%
6	375	25.00%	50.00%	50.00%
7	0	0.00%	50.00%	50.00%
8	375	25.00%	75.00%	25.00%
9	0	0.00%	75.00%	25.00%
10	0	0.00%	75.00%	25.00%
11	225	15.00%	90.00%	10.00%
12	150	10.00%	100.00%	0.00%

dates for offenders who come to the TYC at a specific time, as presented in Table 11.12.

The model produces monthly projections. Because projected commitments are produced yearly, it is necessary to separate them by month and by type of offender using the information provided in Table 11.10. General offenders account for about 57 percent of all commitments. For the year 2004, that is estimated to be about 1,500 offenders. The variation of monthly commitments to juvenile facilities is the result of the number of working days in a month as well as vacation and holiday time. The best way to divide the yearly projection into months is to examine the previous year's placements by month and apply that proportion to each month of the projection. Table 11.12 presents the projected population from intakes for general offenders. This table refers to offenders who came into the system after the projection began.

Table 11.12 shows that the projection begins on September 2003.

- Row 1 contains the label indicating the month and year of the projection
- Row 2 contains the survival ratios for the general offender group obtained from Table 11.11
- Row 3 stores the projected population

For the first month of the projection, the projected population is 123, the same as the number of general offenders received during that month (Column C, Row 7). In other words, no one is released during the first

Table 11.12.
Projected Release Dates

Projected Population from General Offenders' Commitments to TYC

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q
1		Month		Sep-03	Oct-03	Nov-03	Dec-03	Jan-04	Feb-04	Mar-04	Apr-04	May-04	Jun-04	Jul-04	Aug-04	Sep-04	Oct-04
2		Survival		1	0.9	0.9	0.75	0.75	0.5	0.5	0.25	0.25	0.25	0.1	0	0	
3		Projected Population		123	238	344	428	520	582	649	684	722	754	777	793	790	790
4		Actual Population															
5	Projected Releases			0	12	13	30	31	61	61	92	92	92	109	114	124	126
6	Month	Monthly Percentage	Monthly Commitments														
7	Sep-03	0.082	123	123	111	111	92	92	62	62	31	31	31	12	12	0	
8	Oct-03	0.085	128		128	115	115	96	96	64	64	32	32	32	13	13	0
9	Nov-03	0.079	119			119	107	107	89	89	59	59	30	30	30	12	12
10	Dec-03	0.076	114				114	103	103	86	86	57	57	29	29	29	11
11	Jan-04	0.082	123					123	111	111	92	92	62	62	31	31	31
12	Feb-04	0.082	123						123	111	111	92	92	62	62	31	31
13	Mar-04	0.085	128							128	115	115	96	96	64	64	32
14	Apr-04	0.085	128								128	115	115	96	96	64	64
15	May-04	0.086	129									129	116	116	97	97	65
16	Jun-04	0.083	125										125	112	112	93	93
17	Jul-04	0.088	132											132	119	119	99
18	Aug-04	0.087	131												131	117	117
19	Sep-04	0.082	122													122	109
20	Oct-04	0.085	126														126
21	Nov-04	0.079	117														
22	Dec-04	0.076	113														
23	Jan-05	0.082	122														

month. By September 2004 (Row 3, Column P), the projected population is 790. Row 4 is included to enter the actual population when it becomes available, which helps the forecaster monitor the model's results. This feature allows the forecaster to identify the components of the model that need correction in future updates. Row 5 contains the Projected Releases. This is calculated by taking the previous month's population, subtracting the population of the month for which releases are being projected, and adding the most recent intakes (commitments).

Column A, starting with Row 7, contains the months for which projected placements are available. In this case, projections are available through 2006, but the table ends in January 2005. Column B, starting with Row 7, contains the percentage of a yearly commitment to the juvenile facility, which comes during the indicated month (Row A). In Column C, starting with Row 7, the projected number of monthly general offender commitments is indicated. Columns D to Q, staring with Row 7, show what happens to each monthly cohort who comes into the system. The monthly placement (Column D) is multiplied by the survival ratio (Row 2, starting with Columns D to O). When the survival ratio is 1.0, the releases from that group are 0, which is the ratio for each month during which the cohort first arrives to the facility. As the survival ratio decreases, the number of releases increases. When the survival ratio reaches zero, no one from that cohort remains in the institution.

This procedure is completed for each offender group committed to the institution. At the end, the resulting population from each offender group is added to produce the total population resulting from new commitments to the system. Likewise, a release from each offender group is added to produce total releases.

Calculating Remaining Population

When a projection begins, the population of the facility is composed of offenders who have just come into the institution and have served little time, while others have served enough time to be released shortly. This section of the model shows how to project the releases of those offenders who were already confined in a facility at the beginning of the projection. As in the previous section, the general offender group is used to illustrate the process. This is presented in Table 11.13. Because most of the headings in this table are the same as in Table 11.12, only those headings that are different are explained.

In Column C, Row 6, Number of Offenders refers to the general offenders who were confined at the end of August 2003 by the amount of time they had been confined in the facility. A total of 126 offenders were in the facility who had served one month (Column B, Row 7) and 12 offenders had served 12 months (Column B, Row 18). A total of 750 general offenders were confined at the end of August 2003 (Column D, Row 3). The cohort of 126 offenders who had served one month was the only intact cohort (i.e., it included 100 percent of those who came in). All other cohorts had lost some offenders because of releases.

Table 11.13.
Projected Offender Releases

Projected Population from General Offenders Already Confined in TYC as of 8-31-2003 (Beginning of Projection)

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q
1		Month		Aug-03	Sep-03	Oct-03	Nov-03	Dec-03	Jan-04	Feb-04	Mar-04	Apr-04	May-04	Jun-04	Jul-04	Aug-04	Sep-04
2		Survival		1	0.9	0.9	0.75	0.75	0.5	0.5	0.25	0.25	0.25	0.1	0.1	0	0
3		Projected Population		750	629	526	425	336	246	184	120	88	57	25	13	0	0
4		Actual Population															
5	Projected Releases			0	121	103	101	89	90	62	64	32	31	32	12	13	0
6	Original Cohort	Time Already Served (Months)	Number of offenders														
7	126	1	126	126													
8	121	2	109	109	113												
9	130	3	117	117	109	113											
10	132	4	99	99	98	91	95										
11	124	5	93	93	99	98	91	95									
12	130	6	65	65	62	66	65	61	63								
13	128	7	64	64	65	62	66	65	61	63							
14	64	8	16	16	32	33	31	33	33	30	32						
15	64	9	16	16	16	32	33	31	33	33	30	32					
16	92	10	23	23	16	16	32	33	31	33	33	30	32				
17	100	11	10	10	9	6	6	13	13	12	13	13	12	13			
18	120	12	12	12	10	9	6	6	13	13	12	13	13	12	13		
19	0	13	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
20	0	14	0		0	0	0	0	0	0	0	0	0	0	0	0	
21	0	15	0			0	0	0	0	0	0	0	0	0	0	0	
22	0	16	0				0	0	0	0	0	0	0	0	0	0	
23	0	17	0					0	0	0	0	0	0	0	0	0	

To properly use the survival ratios (Row 2), the original cohort in each group has to be restored. This is calculated by dividing the number confined on each month served by the survival ratio for the number of months that the cohort has been confined. For instance, Column C, Row 12, shows that on August 31, 2003, there were 65 juvenile offenders confined who had served a total of six months. The corresponding survival ratio for a six-month period is 0.5 (Column I, Row 7). Dividing 65 by 0.5 equals 130, which is the estimated total number of offenders who came to the TYC when the 65 still confined arrived. It indicates that 65 of that cohort have been released. To produce the remaining population, the original cohort is multiplied by the corresponding survival ratio. Thus, for September 2003, the original cohort of 126 (Column A, Row 7) is multiplied by 0.9 (Column E, Row 2) and that produces the remaining population of 113, which is now logged in Column E, Row 8. This indicates that 113 offenders have served two months (Column E, Row 8). To calculate the remaining population, the values found within each column, staring on Row 7, are added. In the case of September 2003, the total population in Column E equals 629. Therefore, 629 offenders remain from the 750 that were confined at the end of August 2003, and, therefore, 121 offenders were released during that month (Column E, Row 5). This procedure is repeated for each offender group and each offender group occupies a separate worksheet of the workbook.

Projecting Total Population and Total Releases

The procedure to calculate the total projected population consists of completing the different worksheets for the intakes and producing a projected population from intakes. The next step is to complete all worksheets related to the population that was already confined when the projection produces a total population for the confined population. The third step is to add these two totals together to produce the total projected population. This is calculated in Table 11.14 for the general offender, and a space is provided to enter the numbers for the other offender types. The population from intake should increase, while the population from the confined group should decrease.

The same procedure indicated above for total population applies when determining the projected total releases. This is presented in Table 11.15. The releases from the confined group should be high at the beginning of the projection, while releases from the intake group start low and gradually increase in number.

CONCLUSION

Forecasting is an attempt to create estimates of future data for decision makers. In that process, there are three critical components: (1) making reasonable assumptions, (2) making decision makers understand the region of error in the forecast estimates, and (3) being careful not to focus on

Table 11.14.
Total Populations and Total Releases

Projected Population of TYC 2004 to 2006 by Offender Type													
Month and year	**Sep-03**	**Oct-03**	**Nov-03**	**Dec-03**	**Jan-04**	**Feb-04**	**Mar-04**	**Apr-04**	**May-04**	**Jun-04**	**Jul-04**	**Aug-04**	**Sep-04**
From Confined Population													
Sentenced													
Type A Violent													
Type B Violent													
Chronic-Serious													
Controlled Substance Dealer													
Firearms													
General	629	526	425	336	246	184	120	88	57	25	13	0	0
Total	629	526	425	336	246	184	120	88	57	25	13	0	0
From Intakes													
Sentenced													
Type A Violent													
Type B Violent													
Chronic-Serious													
Controlled Substance Dealer													
Firearms													
General	123	238	344	428	520	582	649	684	722	754	777	793	790
Total	123	238	344	428	520	582	649	684	722	754	777	793	790

(continued)

Table 11.14. (*continued*)

Projected Population of TYC 2004 to 2006 by Offender Type													
Month and year	**Sep-03**	**Oct-03**	**Nov-03**	**Dec-03**	**Jan-04**	**Feb-04**	**Mar-04**	**Apr-04**	**May-04**	**Jun-04**	**Jul-04**	**Aug-04**	**Sep-04**
Total Population													
Sentenced													
Type A Violent													
Type B Violent													
Chronic-Serious													
Controlled Substance Dealer													
Firearms													
General	752	764	769	763	766	766	768	772	778	779	789	793	790
Total	875	1002	1113	1191	1286	1349	1417	1457	1500	1533	1566	1586	1580

Table 11.15.
Projected Total Releases

Projected Releases of TYC 2004 to 2006 by Offender Type													
Month and year	**Sep-03**	**Oct-03**	**Nov-03**	**Dec-03**	**Jan-04**	**Feb-04**	**Mar-04**	**Apr-04**	**May-04**	**Jun-04**	**Jul-04**	**Aug-04**	**Sep-04**
From Confined Population													
Sentenced													
Type A Violent													
Type B Violent													
Chronic-Serious													
Controlled Substance Dealer													
Firearms													
General	121	103	101	89	90	62	64	32	31	32	12	13	0
Total	121	103	101	89	90	62	64	32	31	32	12	13	0
From Intakes													
Sentenced													
Type A Violent													
Type B Violent													
Chronic-Serious													
Controlled Substance Dealer													
Firearms													
General	0	12	13	30	31	61	61	92	92	92	109	114	124
Total	0	12	13	30	31	61	61	92	92	92	109	114	124

(continued)

Table 11.15. (*continued*)

Projected Releases of TYC 2004 to 2006 by Offender Type													
Month and year	**Sep-03**	**Oct-03**	**Nov-03**	**Dec-03**	**Jan-04**	**Feb-04**	**Mar-04**	**Apr-04**	**May-04**	**Jun-04**	**Jul-04**	**Aug-04**	**Sep-04**
Total Releases													
Sentenced													
Type A Violent													
Type B Violent													
Chronic-Serious													
Controlled Substance Dealer													
Firearms													
General	121	116	114	119	120	123	126	123	123	124	121	127	124
Total	121	128	127	149	151	183	187	215	215	217	231	241	249

sensational implications of the estimates. The first component requires a reasonable view and understanding of the system processes involved in the outcomes to be predicted. The second component is necessary because of a tendency to fixate on the numbers, and the third component is necessary because of the nature of sensationalism, which can overshadow the major part of a forecast while smaller subestimates have greater error. The model and techniques presented in this chapter are an effort to achieve these three components in a reasonable way, with reasonable assumptions.

We need to forecast system inputs and outputs in a systematic and objective way. Otherwise, the juvenile system's traditional swings based on public and political reactions to relatively rare events will continue to rule decision making. The problem with such decision making is that the system is continually required to respond and adjust to events that actually have little impact on system processes or outputs. Meanwhile, the very adjustments themselves tend to affect both, frequently in a negative way. Objective forecasting can give us a better approach to estimating what effects changes on the system will have and a way to deflect gut-level decision making.

NOTES

1. Executive Order No. 98–06.
2. Criminal Justice Policy Council, 2002.
3. Mears, 2002, p. 14.
4. Zimring, 1998.
5. Based on data from the Texas Department of Public Safety, 1995, 2004.
6. Blumstein, 1995.
7. Data are from the Texas Juvenile Probation Commission, 1997 to 2003.
8. The SPSS is a widely used computer program, particularly in government agencies and academic institutions.
9. Texas Youth Commission, 2005.

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About the Editors and Contributors

Marilyn D. McShane is a trustee-at-large member of the executive board to the Academy of Criminal Justice Sciences. She and Frank Williams have recently published the textbook *Step By Step Through the Thesis Process: A Resource Guide*. Their *Criminological Theory* book is in its fourth edition with the same publisher.

Frank P. Williams III is professor emeritus at California State University. He is author of *Imagining Criminology* and coauthor of four editions of *Criminological Theory*. He is also coauthor of the soon-to-be-released textbook *Step by Step Through the Thesis Process: A Resource Guide*.

Gordon Bazemore is professor of criminology and criminal justice and director of the Community Justice Institute at Florida Atlantic University. His recent publications appear in *Justice Quarterly, Youth and Society, Crime and Delinquency, The Annals of the American Academy of Political and Social Sciences, The Justice System Journal*, and the *International Journal of Victimology*. Dr. Bazemore has completed two books, *Restorative Juvenile Justice: Repairing the Harm of Youth Crime* (coedited with Lode Walgrave) and *Restorative and Community Justice: Cultivating Common Ground for Victims, Communities and Offenders* (coedited with Mara Schiff). He is currently principal investigator of two national projects: a study of restorative justice conferencing funded by the National Institute of Justice and the Robert Wood Johnson Foundation, and a national action research project funded by the Office of Juvenile Justice and

Delinquency Prevention to pilot restorative justice reform in several juvenile court jurisdictions.

Barbara Belbot is an associate professor of criminal justice at the University of Houston Downtown. She has a doctorate in criminal justice and a Juris Doctor. She writes extensively in the area of prisoners' rights and is currently studying prison reform movement organizations.

Ronald Burns is coauthor of *Environmental Crime: A Sourcebook* along with Michael Lynch and has recently published the textbook *The Criminal Justice System*. He is the Southwest Region representative to the executive board of the Academy of Criminal Justice Sciences and recently completed his term as president of the Southwestern Association of Criminal Justice.

Julie Kiernan Coon is an assistant professor of criminal justice at Central Connecticut State University. She earned a doctor of philosophy in criminal justice from the University of Cincinnati in 2005. She served as a project director on a National Institute of Justice–funded research project examining the role of law enforcement in schools. She is also in the process of writing a book about the use of security technology in U.S. public schools.

Craig Hemmens holds a Juris Doctor from North Carolina Central University School of Law and a doctorate in criminal justice from Sam Houston State University. He is a professor in the Department of Criminal Justice at Boise State University. He has published nine books and more than 100 articles on a variety of criminal justice-related topics. His publications have appeared in *Justice Quarterly*, the *Journal of Criminal Justice, Crime and Delinquency*, the *Criminal Law Bulletin*, and the *Prison Journal*.

Leslie A. Leip is an associate professor of public administration at Florida Atlantic University. Her research has focused on evaluations of public and nonprofit programs, specifically programs for juveniles. Dr. Leip's most recent publications appear in *Notre Dame Journal of Law, Ethics and Public Policy, Justice Quarterly, Public Administration Review, Western Criminology Review, The Journal for Juvenile Justice and Detention Services,* and *Criminal Justice Policy Review.*

Pablo E. Martinez is assistant professor of criminal justice at Texas State University–San Marcos. He has close to 30 years of experience in the development of forecasting simulation models for adult offenders. He developed models for Texas, Kentucky, and Colorado, and was a consultant for the states of Oklahoma and Hawaii. In the juvenile forecasting area, he developed a model for the state of Texas. His forecasting methodology will be published by the *Prison Journal* in a forthcoming issue. He is the author of numerous technical reports published by the Texas Department of Criminal Justice and the Texas Criminal Justice Policy Council.

Jennifer L. McGivern is a doctoral student in sociology at the University of Washington, with a specialization in criminology. She plans to explore the role of social networks in restorative justice for her dissertation.

Edward J. Schauer was instrumental in the recent development of the Texas Juvenile Crime Prevention Center, the College of Juvenile Justice and Psychology, and the first doctoral program in juvenile justice, all at Prairie View A&M University. His research interests include black male success, women's issues in criminal justice, and sex trafficking and prostitution. He has taught critical thinking in the Academy for Collegiate Excellence and Student Success (ACCESS)—an award-winning summer academic enrichment program. He has been continually involved with University College, a residential learning community for freshmen. He received his doctorate from Sam Houston State University.

Ila J. Schauer is an academic advisor with University College, the residential learning community for freshmen at Prairie View A&M University. For the past six years, she has mainly advised African American males—most of whom have become academically successful. She has experience in social work, having worked for several years in children's protective services in Louisiana. In addition to her professional advisor duties, she also serves as training coordinator for the Advisement Center at PVAMU, and chairs the First Generation College Student Interest Group for the National Academic Advising Association. She earned her master of education degree in counselor education from Sam Houston State University.

Pamela J. Schram is associate professor in the Department of Criminal Justice at California State University, San Bernardino. Her major research interests include corrections and juvenile justice with an emphasis on gender and race/ethnicity. Her research and scholarship have included evaluating drug treatment and life skills programs in correctional settings, multijurisdictional drug task forces, and an intervention program for juveniles.

Randall G. Shelden is a professor of criminal justice at the University of Nevada-Las Vegas, where he has been a faculty member since 1977. He is the author or coauthor of 10 books, including *Criminal Justice in America: A Sociological Approach*; *Girls, Delinquency and Juvenile Justice* (coauthored with Meda Chesney-Lind), which received the *Hindelang Award* for outstanding contribution to Criminology in 1992 and currently in its 3rd edition); *Youth Gangs in American Society* (coauthored with Sharon Tracy and William B. Brown, in its third edition); *Controlling the Dangerous Classes: A Critical Introduction to the History of Criminal Justice*; and *Criminal Justice in America: A Critical View*. His most recent book is *Delinquency and Juvenile Justice in American Society*. He is also the author of more than 50 articles in academic journals and book chapters on the subject of crime and justice.

Beau Snell received his master's degree in social work from Carroll College in Helena, Montana. He is currently director of Montana Youth Homes, a private nonprofit organization serving troubled youth in western Montana.

Clete Snell is graduate coordinator at the University of Houston-Downtown. He is author of *Peddling Poison: The Tobacco Industry and Kids* and of *Neighborhood Structure, Crime, and Fear of Crime*.

Lawrence F. Travis III is a professor of criminal justice at the University of Cincinnati. He has directed a number of local, state, and national research projects, including a national study of the role of law enforcement in public schools. He has published five books and monographs and more than 70 articles and book chapters on a range of criminal justice topics.

Chad R. Trulson is an assistant professor in the department of criminal justice at the University of North Texas. He has published articles in numerous professional journals and recently coauthored *Juvenile Justice: The System, Process, and Law with Rolando v. del Carmen*. His current research examines racial desegregation in prisons, and recidivism and institutional misconduct among state-committed delinquents.

Elizabeth M. Wheaton holds a master's degree in international business and trade from Grambling State University and a master's degree in economics from Temple University. She plans to complete her doctorate in economics at Temple University in December of 2006. Her research interests include child labor and the worldwide marginalization of children.