



Bureau of Justice Statistics

National Conference on Juvenile Justice Records: Appropriate Criminal and Noncriminal Justice Uses

Proceedings of a BJS/SEARCH conference

Papers presented by

Dr. Francis J. Carney Jr.

Dr. Charles M. Friel

Kent Markus

Dr. Jan M. Chaiken

Dr. Michael R. Gottfredson

Shay Bilchik

Demery R. Bishop

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Criminal Justice Information Policy



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May 1997, NCJ-164269

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U.S. Department of Justice
Office of Justice Programs
Bureau of Justice Statistics

Jan M. Chaiken, Ph.D.
Director

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Foreword

In response to several years of rapidly rising crime rates among juveniles, especially homicide rates, many States have been opening access to juvenile records and court proceedings, and blurring the line between how the criminal justice system treats juveniles and adults. The problem of juvenile crime, however, cannot be fully understood by knowing about rising graphs and nightly news headlines. Large numbers of adolescents who get in trouble with the law are our sons and daughters who may never go on to commit any serious crime, much less become chronic violent offenders.

While opening access to the juvenile record is a policy based on legitimate public safety concerns, it threatens to reverse nearly 100 years of juvenile justice policy that stresses rehabilitation, treatment, and individual privacy. How to balance the use of juvenile justice records in today's climate presents unique challenges to juvenile justice administrators, public policymakers, and others in the criminal justice arena involved in aspects of collecting, maintaining, using, or disseminating juvenile justice record information.

To provide a variety of perspectives and seek solutions on this issue, the Bureau of Justice Statistics, along with SEARCH, The National Consortium for Justice Information and Statistics, cosponsored the National Conference on Juvenile Justice Records: Appropriate Uses in Criminal and Noncriminal Justice Proceedings in Washington, D.C., on May 22-23, 1996. This publication presents the proceedings of that two-day conference.

The conference focused on the appropriate uses of juvenile justice records in juvenile and adult/criminal court and other criminal justice proceedings, as well as for noncriminal justice purposes, such as background employment checks and licensing. For those who were not present at the conference, these proceedings provide a perspective for understanding the juvenile crime problem in this context, an appreciation for the variety of public policy issues involved in greater access to juvenile justice records and court proceedings, and new insights into the operational, management and technical implications of such recordkeeping changes.

I hope that these proceedings serve as a basis for continuing debate and study on this topic. Juvenile justice recordkeeping policies are changing rapidly, and our knowledge of the impacts of these policy changes must be constantly brought up to date, not only the effects on juvenile offenders and juvenile crime but also the costs and other practical implications for justice agencies.

Jan M. Chaiken, Ph.D.
Director

Introduction

The purported increase in violent crime committed by juveniles has resulted in a public-driven backlash: more and more State and local jurisdictions are prosecuting juveniles as adults, and opening access to juvenile records and juvenile criminal proceedings that for decades have been protected by strict confidentiality laws compatible with the rehabilitative mission of juvenile justice. These rapid changes in the juvenile justice system and juvenile recordkeeping practices raise a multitude of highly sensitive legal, policy and implementation issues that confront criminal justice professionals. Justice officials warn that greater public access to juvenile justice records and proceedings in the United States is a fundamental shift that threatens to undermine the foundations of the juvenile justice system as it has existed for nearly 100 years. Others say that opening access and treating juvenile and adult records the same is the only effective means to stem the tide of juvenile crime, and that a balance can be struck between open access and protection of juveniles. As the millennium approaches, legislators, policymakers and justice practitioners at all levels of government continue to grapple with the important issues resulting from this nationwide shift.

As part of its effort to spur debate and seek solutions on this issue, the Bureau of Justice Statistics, U.S. Department of Justice, and SEARCH cosponsored the *National Conference on Juvenile Justice Records: Appropriate Uses in Criminal and Noncriminal Justice Proceedings* on May 22-23, 1996, in Washington, D.C. The focus of the conference was the appropriate uses of juvenile justice records in juvenile and adult/criminal court and

other criminal justice proceedings, as well as for noncriminal justice purposes, such as background employment checks and licensing. The conference brought together Federal agency directors and officials; academics; members of the State and local judicial, legislative, court and criminal justice communities; directors of State criminal history repositories; officials from national criminal justice organizations; and juvenile justice administrators, all of whom are involved in some aspect of juvenile justice recordkeeping policy, collection, maintenance, use or dissemination. This document presents the proceedings of that conference.

Day One of the conference provided background information on the current status of the juvenile justice system and a discussion of the public policy considerations regarding the use of the juvenile record. On Day Two, speakers examined the operational and management issues involved in accessing juvenile justice information.

In Part I of the conference, "Overview," Dr. Francis J. Carney Jr., Executive Director, Massachusetts Sentencing Commission, who at the time of the conference was SEARCH Chairman, and Dr. Charles M. Friel, Professor, College of Criminal Justice, Sam Houston State University, provide "Welcoming remarks." Dr. Carney says the appropriate use of juvenile records is a timely topic for justice agencies nationwide, and mentions an example from his Massachusetts Sentencing Commission, which recently struggled with the question of whether to include the juvenile record as a factor for sentencing

guidelines purposes. The Commission's juvenile record debate, he reports, went on at several levels — philosophical, practical and policy — and reflects the same emerging issues that he expects the conference speakers to address. Dr. Friel, who served as conference moderator, predicts that justice professionals nationwide will have to address many policy and legal issues as they band together to deal with the problem of violent youth crime through the use of juvenile justice information. The issue, he says, brings competing perspectives to the question of how to use, when to use, and who can use juvenile records.

In his "Keynote Address," Mr. Kent Markus, Counselor to the Attorney General for Youth Violence, U.S. Department of Justice, reports that societal changes are forcing justice administrators, policymakers and legislators to rethink the underlying policy assumptions of the rehabilitative mission of the juvenile justice system; as a consequence, many State legislatures nationwide are amending their laws to permit greater access to juvenile records and criminal proceedings. He says the public hype about juvenile crime may overplay the magnitude of the problem, and so he sets a framework of the juvenile violence and crime problem — citing five specific causal links — that is useful to a discussion about the appropriate uses of juvenile records. He asserts the Federal government can play an important role in addressing juvenile violence by gathering, modeling and redistributing information, and in providing leadership to bring government entities together to fight the problem. Rethinking the underlying assumptions of juvenile justice and juvenile records is recognized as necessary, he says,

adding that he hopes this rethinking can be done in the context of the causes of juvenile crime so that any decisions that are made can substantially impact the problem. He says we need to ask how we can better use and share information to effectively deal with each causal link to juvenile crime and violence.

In Part II of the conference, “Setting the stage: Current status of juvenile justice records,” the next five speakers bring a variety of perspectives to a discussion of the current status of juvenile justice records on a national level.

In his “Opening address,” Dr. Jan M. Chaiken, Director, Bureau of Justice Statistics (BJS), U.S. Department of Justice, discusses how changing laws and policies governing juvenile justice records are altering the balance between confidentiality and public access, and thus are increasing the importance that the information contained in juvenile records is accurate. Dr. Chaiken says that in laws and policies which transfer juvenile offenders to the adult system, in sentencing guidelines which take into account an offender’s previous activity, and in laws which require that background checks include consideration of juvenile records, the offender’s record — and its immediate availability, accuracy and completeness — is the basis for the key decisions which impact treatment of the individual. Issues related to juvenile record accuracy and completeness present difficult challenges to justice practitioners and policymakers, he notes. Over 25 years of effort and millions of dollars have been expended to improve adult criminal history records, while work on improving juvenile records has only begun. Policies regarding the release and use of adult records have been resolved over the past two decades,

while newly enacted juvenile record policies have yet to be evaluated, and represent a reversal of the underlying goals of the juvenile system.

In “Background: Examining the foundation of juvenile justice record policies,” Dr. Michael R. Gottfredson, Vice Provost for Undergraduate Education, University of Arizona, provides a criminological evaluation of the historical justifications for a distinct system of juvenile justice using three simplifying principles of age, stability and versatility that he says have many implications for the questions that confront the justice community. As he explains, the age effect shows that the offending rate for crime and delinquency peaks in late adolescence and then declines throughout life. The versatility effect shows that there is enormous variability in the kinds of offending in the criminal population, with little specialization or sense of direction, as well as variability in the “problem behaviors” of youths, such as school misconduct and drug and alcohol abuse. The stability effect suggests that, once identified, individual differences in rates of offending or problem behaviors remain relatively stable over long periods of time. Prof. Gottfredson suggests that if we are interested in preventing crime among juveniles, we should focus on the supervision and socialization of children in the first 10 years of life. In terms of the many justifications for the separation of the two systems, he further suggests that the two justifications that are most relevant have to do with leniency and with separation of children from adults. He also states that of overwhelming importance in the juvenile record issue is not whether an individual has engaged in a misconduct that is recorded in the juvenile justice system but, rather, the frequency and the recency of such behavior.

The next two speakers discuss “Federal policies and perspectives: The relationship of juvenile justice information to national criminal justice goals.” The first speaker is Mr. Shay Bilchik, Administrator, Office of Juvenile Justice and Delinquency Prevention (OJJDP), U.S. Department of Justice. In his address, Mr. Bilchik focuses on what he terms the critical relationship between juvenile justice system recordkeeping and information sharing. He also outlines the attempts of the OJJDP to reach some of the nation’s most urgent national juvenile justice goals. Mr. Bilchik asserts that we must put a system in place that will have the capacity to use an information system that serves as an interdisciplinary database so that we can make informed decisions about each child. He says such a system must act with full knowledge of each individual case and child — and with full information about local and national trends that tell us what is really happening in juvenile justice in this country. In terms of addressing the need to prosecute violent and chronic juvenile offenders in criminal court, he advocates a system of transfer that retains the ability of prosecutors and judges to make case-by-case decisions. Such a system, he says, requires good recordkeeping and effective practices to reduce violent juvenile crime. Without an effective information sharing scheme, the various agencies in a jurisdiction each have only a small piece of the juvenile justice puzzle, he asserts. Practitioners and policymakers are beginning to realize this, which is helping the juvenile justice community to more fully reflect the multiple systems that interact with juveniles and to form a more complete picture of the needs of a particular juvenile and family.

Mr. Demery R. Bishop, Section Chief, Criminal Justice Information Services (CJIS) Division, Federal Bureau of Investigation, provides an overview of the division's policies and procedures with regard to juvenile criminal history records. He reports that since March 1, 1993, the FBI accepts, maintains and disseminates all arrest fingerprint cards from States for juveniles who have been tried or adjudicated in juvenile proceedings or who were adjudicated as adults. The CJIS Division is also involved in collecting and maintaining juvenile records contained in the Missing Persons File of the National Crime Information Center, and in collecting and analyzing statistics on juvenile crime. He also discusses new initiatives that will help to create a system of information on juveniles for criminal justice and law enforcement agencies nationwide.

Mr. Neal Miller, Principal Associate, Institute for Law and Justice (ILJ), in his presentation, "State laws on prosecutors' and judges' use of juvenile justice records," discusses a national review and assessment of criminal court use of defendants' juvenile adjudication records that ILJ undertook for the National Institute of Justice, U.S. Department of Justice. In the project, which covers laws and practices through 1995, ILJ surveyed prosecutors, criminal justice record centers and State sentencing guideline commissions; reviewed State laws that affect and specify prosecutorial and judicial use of the juvenile adjudication record; and performed field work in two jurisdictions. Mr. Miller reports that the study found that a significant proportion of all convicted persons have juvenile adjudication records, and that consideration of the juvenile record at sentencing can have a strong impact on incapacitation of

offenders under a presumptive sentencing system. The study found, however, that numerous problems exist in most States having to do with poor record quality and differences in the substantive meaning of sentences handed down in juvenile and adult courts.

Part III of the conference focused on "Public policy perspectives: Privacy and confidentiality considerations of juvenile record issues." The first speaker, Mr. Robert R. Belair, SEARCH General Counsel, Mullenholz, Brimsek & Belair, addresses the topic of " 'The need to know' versus privacy." In his presentation, he reviews the contents of a draft report SEARCH completed with funding from BJS that was distributed at the conference. The report, *Privacy and Juvenile Justice Records: A Mid-Decade Status Report*,¹ discusses the nature and severity of juvenile crime; the history and development of the juvenile justice system; the relationship between adult and juvenile courts; disclosure and confidentiality of juvenile records, including sealing and purging practices, illustrative State laws, and recent legislative and judicial activity; and juvenile justice trends and the status of the juvenile justice recordkeeping system as of the mid-1990s. Mr. Belair says that the report finds that there has been a dramatic increase in the extent to which juvenile record information is available to criminal justice agencies, to noncriminal justice entities, and to the public. This challenge to juvenile record confidentiality and privacy is being accomplished by treating juveniles as adults, by relaxing confidentiality provisions in existing juvenile record laws, and by the advances in centralized State criminal history

¹ Now also published and available from the Bureau of Justice Statistics (NCJ-161255).

record systems and repositories. The report, however, offers cautionary notes against abandoning almost 100 years of confidentiality protections of juvenile records and proceedings.

"Practitioners' perspectives: Using the juvenile record" is the subject of a panel discussion of the next four speakers, who represent local prosecutors, State law enforcement, State courts administrators and local public defenders.

The first panelist, Ms. Jan Scully, District Attorney of Sacramento County, California, addresses "Juvenile justice issues and the role of juvenile records in decisionmaking: A prosecutor's viewpoint." In her remarks, she discusses California laws, such as "three strikes," which affect the prosecution of juveniles as adults. She says the trend in California, as well as the nation, is to change the focus of juvenile justice from strictly rehabilitation to include punishment and public safety, and that doing so has underscored the value of deterrence in the juvenile system, which she believes is important and proves that the message of "getting tough" on juvenile offenders is being heard. She says decisionmaking in her office is greatly influenced by the prior adjudications of a juvenile; this includes decisions as to whether to remand a juvenile to be tried as an adult and what dispositions and bail to seek. She asserts that how the juvenile justice system treats juvenile records impacts the public's and youthful offender's perception of the system. If the system offers protection and deterrence, if prosecutors act as the "hammer," then the public will have more confidence in the system, and juveniles will think more about the consequences of their actions, she says. However, she adds that those efforts should go hand-in-hand with intervention and prevention

programs, and that in California and elsewhere, juvenile justice should focus on rehabilitation balanced with public safety interests.

Ms. Donna M. Uzzell, Special Agent in Charge, Investigative Support Bureau, Florida Department of Law Enforcement, discusses “Florida’s Serious Habitual Offender Comprehensive Action Program: Collecting and using juvenile offender information to target detention, intervention and prevention efforts.” Ms. Uzzell explains that SHOCAP is an interagency case management system that enables the juvenile justice system and human services agencies to make more informed decisions regarding the small number of juveniles who commit a large percentage of serious crimes. The program objectives for SHOCAP are interagency cooperation, creation of an operational model, improved information collected on serious habitual offenders, and suppression and control of the criminal activity committed by these offenders. She reports that the benefits of the program have been more complete profiles of these habitual offenders, improved and more efficient information sharing, and a more efficient use of resources. She says it will be the responsibility of the justice system to be good stewards of juvenile justice information, to use it productively and efficiently, and to protect our citizens while protecting the rights of others.

Mr. Michael L. Curtis, Juvenile and Family Court Specialist, Washington Office of the Administrator for the Courts, discusses “Juvenile justice records management in Washington State,” in which he provides a two-decade chronology of events which impact the management of juvenile justice records in his State. He says he hopes this information helps inform

other States which are struggling with the public policy issues involved in such activities as juvenile recordhandling procedures, juvenile court proceedings and statewide court automation.

Providing another perspective, Ms. Jo-Ann Wallace, Director, Public Defender Service, District of Columbia, gave a presentation on “Striking a proper balance between legitimate uses of juvenile records and individual privacy: The District of Columbia experience.” She believes that statutes such as the one in the District of Columbia which requires consent of an individual or a court order for juvenile record information to be released strikes a proper balance between appropriate law enforcement goals and privacy. She says many of the trends driving juvenile justice policy today — such as the drive to remand more juveniles to the adult system — are motivated by fear and misinformation, and are affecting the bedrock principles of the juvenile system: rehabilitation and treatment. She warns that increased sharing and openness of juvenile records or court proceedings will have devastating effects on juveniles but will not increase confidence in the system or deter juveniles from committing crimes. She advocates undertaking collaborative initiatives in which the different segments of the system figure out how to share information while promoting common and mutual crime reduction goals and protecting the confidentiality of juveniles, which is critical to their treatment.

Wrapping up Day One of the conference was Mr. David Gavin, Assistant Chief of Administration, Texas Department of Public Safety (DPS), who discussed “Collection, maintenance and use of juvenile fingerprints,” specifically focusing on the issues and practices involved in implementing the statewide

juvenile criminal history repository in Texas that came on-line on January 1, 1996. In creating the repository, Texas officials decided to make it fingerprint-based; to make it a day-one forward system; to collect Class B misdemeanors and above; and to integrate it and make it compatible with the adult system. They grappled with such issues as sealing and purging procedures, dissemination criteria, the type of information to collect, and training. Mr. Gavin reports that some key factors to the success of the Texas juvenile repository were compatibility with the adult system; support provided to local agencies by field staff; and political support given the effort by local police chiefs and sheriffs. Finally, he says that DPS believes that electronic reporting is the only possible way to run a juvenile repository of this size, so State criminal justice agencies are working to help local agencies automate their arrest and disposition reporting.

Part IV of the conference on Day Two addressed “Operational and management perspectives.” Leading off was Dr. Alfred Blumstein, who provided the “Day two opening address.” Dr. Blumstein, J. Erik Jonsson Professor of Urban Systems and Operations Research, School of Urban and Public Affairs, Carnegie Mellon University, addresses the topic of “Using juvenile records to predict criminal behavior.” In his presentation, he discusses the tension between the usefulness of juvenile justice records to policymaking and practice, and the benefits we obtain from protecting those records. He also discusses and puts into context research findings on juvenile crime; says that it is difficult to identify and predict which juvenile offenders are going to persist in crime into adulthood and which are going to terminate, and that better predictive models need to be developed in order to

provide this information; discusses expected increases in the crime rate attributable to a large population group moving into the peak crime ages; the use of incarceration as the single dominant strategy of criminal justice policy in the past two decades; and the use of waiver procedures to send more children into adult court, where the presumption is that the punishment is tougher. Although he advocates a mixed strategy of prevention to deal with at-risk youngsters, he says that when people do come into contact with the juvenile and adult systems, we ought to be able to have the records available for identifying serious offenders when the time comes to respond to them.

The next speaker was the Honorable Gordon A. Martin Jr., Associate Justice, Massachusetts Trial Court, District Court Department, who spoke on “The role of the juvenile record in judicial decisionmaking.” In his presentation, he decries the wholesale dumping of children into adult court, saying the juvenile justice system, which is trained to deal with juveniles, ought to be able to do its job and continue to attempt to rehabilitate juveniles through such measures as intensive parole supervision. He supports opening up delinquency proceedings and records so that the public can see the work being done in the juvenile arena. He asserts that judicial access to all available information about a child is critical to the juvenile court process and to preserving the juvenile justice system, and that it is the responsibility of judges and legislators to help public agencies share all pertinent information about a child they are trying to help, even if it means waiving confidentiality rules that impede information sharing. He also defends the practice of judicial waiver, saying it should not become an automatic action based on age or offense. Crucial to judicial waiver, however, is the

availability of records that track each youth’s involvement in the juvenile justice and social welfare systems, he says.

“Statewide juvenile systems” was the focus of a presentation by Mr. Michael R. Phillips, Deputy Administrator, Utah Juvenile Court, Administrative Office of the Courts, who discusses the automated index system that provides law enforcement agencies in Utah with statewide access to juvenile court records, and Utah’s practice of open juvenile court proceedings. Mr. Phillips asserts that many juvenile courtrooms and records are now open to some level of public inspection, despite popular belief. For the past 15 years, he relates, Utah has authorized any law enforcement agency in the State to access the juvenile records maintained at the State level as part of an arrest process or official investigation, and to create referral records in this system; probation and parole agencies may also access the records for purposes of presentence reports. Recent changes in the law have provided the media and public with greater access to certain juvenile records, he notes; the State purposefully formatted these released records in an easy-to-understand format so that the rap sheet is not misinterpreted. Mr. Phillips also addresses Utah laws that require the courts to notify schools when a student is convicted of certain felonies or placed on probations; create new categories of serious youthful offenders that require new court processing procedures; and sentencing guidelines for juveniles. Finally, he says that he does not believe that opening access to juvenile court records and hearings will destroy the juvenile justice system, since the economics of media coverage usually prohibit extensive involvement in juvenile courts.

Mr. Steve Galeria’s presentation, “Juvenile records as a basis for firearm prohibitions,” discusses California’s approach to using juvenile records in firearms checks. Mr. Galeria, Manager, Statistical Data Center, California Department of Justice, provides a rundown of California’s gun regulation history, which dates back to 1909; discusses purchase procedures and categories of persons prohibited in the State from purchasing handguns, rifles, shotguns and ammunition; the impact of regulations and legislation on guns sales; and future activity in this area.

The final two speakers address “Exchanging juvenile records between the juvenile justice system and schools.” The presentation of Mr. Ronald C. Laney, Director, Missing and Exploited Children’s Program, OJJDP, is on “Information sharing critical to process of protecting children,” in which he says that all components of the juvenile justice system must share information about children at an early stage of their involvement in the system. This is because children typically come into contact in the system as a victim or an at-risk child before committing serious delinquency acts. The OJJDP, he says, has undertaken efforts to develop protocols for sharing information within the juvenile justice system, most recently an effort with the U.S. Department of Education to provide instruction to educators and juvenile justice administrators as to what information can be shared. In most cases, he says, OJJDP and the Department of Education found that laws do not necessary restrict agencies from sharing information; rather, it is an existing policy or procedure or tradition passed down from generation to generation in an office that prevents information sharing.

Mr. Laney then introduces Dr. Bernard James, Professor, School of Law, Pepperdine University, who addresses “Issues and implications of school-juvenile justice information sharing.” Dr. James suggests that interagency communication is the essential link for a successful reform movement in any local juvenile justice system because decisions being made are dependent on timely, accurate information, and information from schools will help provide a complete behavioral picture of a youth. Schools, meanwhile, need status information about juveniles who are constantly being placed on campus as conditions of probation. He says there is clear mutual reliance and interdependence between schools and juvenile justice that requires two-way communication. However, schools are often left in the dark in terms of justice information, and the juvenile justice system is usually shut out of the educational system. Fortunately, he notes, emerging models are expanding the concept of the juvenile justice system to include schools, and interagency information sharing agreements are being authorized or required in more and more States. He says that educators should examine their local policies to determine whether they can take advantage of new State and Federal laws which encourage a legitimate exchange of information among agencies.

Finally, mention and thanks are given here to Dr. Charles M. Friel, who ably served as the conference moderator. Dr. Friel is Professor of the College of Criminal Justice, Sam Houston State University, Huntsville, Texas, and is a member of the SEARCH Board of Directors.

I. Overview

Welcoming remarks

SEARCH welcome
Dr. Francis J. Carney Jr.

Conference moderator's welcome
Dr. Charles M. Friel

Keynote address
Kent Markus

SEARCH welcome

DR. FRANCIS J. CARNEY JR.
Executive Director
Massachusetts Sentencing Commission

On behalf of SEARCH, I would like to welcome all of you to this national conference on the appropriate uses of juvenile justice records in criminal and noncriminal justice proceedings, and to extend our appreciation to the Bureau of Justice Statistics (BJS) and to BJS Director Dr. Jan Chaiken for their sponsorship of and participation in this conference. To me, this conference is very timely.

I would like to give you a quick example of the types of issues we are dealing with, using my recent experience in Massachusetts. The Massachusetts Sentencing Commission submitted a new approach to sentencing offenders in our State, an approach involving sentencing guidelines. One of the most important dimensions in the sentencing guidelines is the criminal history of the offender, and one of the hottest issues in the debate surrounding the criminal history or the formulation of the criminal history was whether or not to include the juvenile record as a factor in the criminal history for sentencing guidelines purposes.

That debate went on at different levels. It went at the philosophical level, such as what is the role of the juvenile justice system? What is the meaning of adjudication of delinquency versus conviction of a crime?

At the policy level, if you do include the juvenile record, should it be limited to certain crimes? Should it only be limited to serious crimes? Should there be constraints on the age of the juveniles? Some offenders are 12 years old versus 16 years old. Should the juvenile record lapse? That is, over time, is there a difference between the 18-year-old gang member who is appearing in an adult court for the first time versus the 30-year-old offender who is appearing in adult court for the first time and who has not been arrested since a 16-year-old arrest for stealing a car?

The debate continued at the practical level as to whether the juvenile record is reliable enough to be used for sentencing purposes. Is it accurate enough? Is it uniform enough to be incorporated into a criminal history classification?

Those are some of the issues that emerged in that context vis-à-vis the juvenile record. I will be interested to listen to the discussions at this conference to learn about the ramifications of these issues in general.

Now, as SEARCH Chair,¹ I am called upon from time to time to introduce speakers at meetings and conferences. Rarely have I had the opportunity to introduce a criminal justice expert of the stature, of the knowledge, of the experience, of our moderator for this conference, Dr. Charles M. Friel.

Dr. Friel is a professor and former dean of the College of Criminal Justice at Sam Houston State University in Huntsville, Texas. He has lectured extensively, both nationally and internationally, on matters regarding criminal justice. He is an At-large Member and a Board Member of SEARCH, and is a recipient of SEARCH's highest award, the *O. J. Hawkins Award for Innovative Leadership and Outstanding Contributions in Criminal Justice Information Systems, Policy and Statistics in the United States*. Dr. Friel is also the 1992 recipient of the *Justice Charles W. Barrow Award* for distinguished service to the Texas judiciary.

We are most fortunate to have Dr. Friel as our moderator. He has keen insights into the issues at hand. He has an uncanny ability to get to the heart of the matter, and he is one of the nicest people you will ever meet.

¹ At the time of the conference, Dr. Carney was Chair of the SEARCH Membership Group.

Conference moderator's welcome

DR. CHARLES M. FRIEL
Professor
College of Criminal Justice
Sam Houston State University

Frank, I appreciate those kind words. My mother would have enjoyed hearing them, and my wife would not believe them.

I would like to join SEARCH in welcoming you all to our nation's capital and to this conference sponsored by the Bureau of Justice Statistics and SEARCH concerned with the use of juvenile records and the development and use of juvenile justice systems. I hope you all arrived here in Washington at the same time as your luggage.

If you have had a chance to look through the agenda for this conference, I think you will be impressed with the work that SEARCH staff has done in trying to identify a series of issues that should be very germane to those of you who work in the area of juvenile justice as we begin to initiate a very strong reaction, I suppose nationally, to the problem of violent youth crime. Critical to that is the use of information about juveniles. There are a lot of sensitive policy and legal issues that we are going to have to address over the next few years as we band together to deal with the problem of violent youth crime to determine how we are going to use juvenile justice information, and incorporate that into the broader panoply of the information systems we have for adults.

The conference speakers that staff has brought together are truly excellent, experienced people who will be sharing with you a variety of perspectives about the use of juvenile records. Unfortunately, this is not an easy issue. If it were, you could have one person come up here and tell you what you need to do. The issue brings many competing perspectives to the question of how and when and who uses juvenile records. Through the course of this conference, we hope to bring to you the experience and knowledge of practitioners, theoreticians, lawyers, public policymakers and political experts so that when you leave here, you will have a sensitivity to the variety of perspectives raised by this issue.

It is my hope that when y'all leave here, that every one of you goes away with at least one good idea. Maybe it is a new insight or maybe it is some creative new way to use an existing technology, or perhaps it is a new grasp of how to better use policy or administrative practice or change of law to effectively improve the quality of juvenile justice in your jurisdiction, your State or your community.

I would also hope that each of you leave with at least one good contact. There are attendees here from all over the country who work in all aspects of the juvenile justice system or in fields of information science as applied to criminal justice. Be generous with each other. Do not be shy. Just reach out there and say, "I'm Charlie" or "I'm Mary." And find that somebody else

here whose job responsibilities are comparable to yours, who is fighting the same kinds of problems and issues, but who may be a year or 6 months ahead of you. That person already has made the mistake you are about to make. Introduce yourselves and exchange business cards. So go away with two things: one good idea (which is worth a lot of money, when you think about it) and one good contact.

My responsibilities today and tomorrow will be to present to you the speakers and panelists that we have brought together, and to keep my eye on the clock, which may be the hardest part of my task because we have some people up here who like to talk a lot.

Keynote address

KENT MARKUS

*Counselor to the Attorney General for Youth Violence
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I am starting to get used to introductions in which people deal with their confusion about the many different jobs I have held at the Justice Department by saying things like, “Well, he’s a doer.” I was in Massachusetts recently and Don Stern, the United States Attorney there, introduced me and said, “I’ve never really been able to figure out what Kent does, but he’s the guy I call when I need to get something done.” I take that as a compliment and I think in some ways that is a good approach to things: that no matter what the specific title or role we may have at any specific time, hopefully we can be helpful to others needing to penetrate the bureaucracy. I also think it helps me deal with the perspective that my wife has on the situation, which is that I simply cannot hold a job.

In the range of capacities that I have had in the time I have been at the Justice Department dealing with Brady Law and Crime Bill implementation and with a number of other criminal justice initiatives that we have been involved in, there is one pervasive underlying theme that comes back again and again: the importance of information as it relates to our criminal justice efforts, particularly the importance of criminal history records and how they are used and deployed in the criminal justice context. Because of societal changes, we are being faced, in the world of juvenile records, with some rethinking that we all must undertake together.

To some extent, we have lost our innocence with respect to juvenile crime, and it is forcing us to rethink some of the underlying assumptions

that have been almost sacrosanct with respect to the juvenile justice system. Certainly, the fundamental underlying policy view of the juvenile justice system was that this system was exclusively oriented toward rehabilitative efforts, and that punishment had no role and should not be contemplated in the context of juvenile justice activity. We have to reconsider that policy view and question whether that is still the appropriate paradigm for what we are seeing in society today.

Along with the expectation that the juvenile justice system was oriented exclusively toward rehabilitative efforts were some pretty strong assumptions that were built into the system through law and policy that dealt with information about juveniles. These assumptions insisted that, if in fact we had a rehabilitative-oriented system, notions of privacy and access to information about juveniles were at a premium, in terms of keeping that information confidential so that the rehabilitative mission could be maximized. Thus, the notions of allowing a child to be branded as a criminal was something we wanted to avoid because that interfered with the rehabilitative mission.

What we are seeing, of course, is that as we are rethinking these assumptions, so are a lot of policymakers, and all kinds of changes are being made quite rapidly in these areas, both from a policy perspective and a legislative perspective. Right and left, State legislatures are amending their laws, not only to permit greater access to juvenile records, but also greater

access to juvenile criminal proceedings overall. This is a fundamental shift: proceedings themselves were previously kept closed in order to maintain that privacy associated with the rehabilitative mission of juvenile justice.

As we begin 2 days of discussion about the appropriate roles and uses of juvenile justice records, and when records should be shared and for what purpose, I thought it might be helpful if I set a somewhat broader context with respect to what we are seeing in this country with respect to youth violence. I want to do this so that we can think about some of these issues that we are having to face in the context of the problem we are trying to deal with and solve.

When I was asked by the Attorney General to take on this effort, to think about how the Justice Department might more effectively deal with the problem of youth violence, I did not have the awareness I do today of both the magnitude of the problem we are facing or the public hype surrounding it. I happily also did not know that it would not be long before the *Richmond Times-Dispatch* would characterize my job as “America’s New Thug Czar.”

To give an example of the hype that we are facing in this area right now, I thought it would be interesting to outline a day I had recently. When I got up in the morning, I went to work and the first thing that I was faced with was final preparations for the Attorney General’s weekly press availability. Every Thursday morning, she makes herself available to all credentialed

press for any questions they wish to ask on any subject, and of course we try to make sure that she feels adequately prepared through efforts on Wednesday evening and then again on Thursday morning. The story had broken about a case in Richmond, California, the tragic incident involving the two 8-year-olds and the 6-year-old who had beaten the little baby. We knew that the Attorney General was going to be asked questions about that case and her views about it, and so the first thing we dealt with that morning was some discussion internally about what kind of responses she might give to that matter.

When we left the press availability that morning, where they did, of course, raise that question, I went to a speech she was giving to the International Association of Chiefs of Police, which was having a summit on the subject of — youth violence. From the police chiefs meeting on youth violence, I headed over to the CNN studios, where I had been asked to appear on their television show, “Burden of Proof.” It involves current legal issues, and they wanted to talk that day about — youth violence. From the CNN studios, I headed over to Jefferson Junior High School in southwest Washington, where the Vice President was meeting with students, with members of the Washington Bullets basketball team and with the United States Attorney for the district, Eric Holder, on the subject of — youth violence.

Upon leaving the school, I flew to Boston to give a speech at a statewide meeting of law enforcement officials where they had convened a summit about — youth violence. The next morning, I got up, took a plane back to Washington, and landed just in time to get to a meeting at the White House convened by the First Lady on the subject of — youth violence.

At the end of this crazy and exhaustive 24-hour period, I had to step back and ask, “What is going on here?” Why is there this degree of intense attention to this subject, where the Vice President and the First Lady and the entire Chiefs of Police Association and the television programs and the press and everybody are all focusing this much time and attention and energy on this subject?

That, I think, is a question we *have* to think about because there is, perhaps, a risk that we can make too much of the problem we are facing. It is important to remember as we are talking about this issue that less than one-half of 1 percent of the juveniles in the United States are arrested for a violent offense each year. That gives you some sense of the magnitude of the problem. Juveniles are responsible for one in five violent crimes. That is a lot, but certainly nowhere near the majority of them. In fact, one of the interesting things we see is that most juveniles who appear once in juvenile court, never return. So the perception being created in part by some of these media commentators of an incredible, insurmountable, unstoppable tidal wave of violent criminal activity, I think, overplays the problem.

Trends in juvenile crime

At the same time, there *is* a serious problem, and the thing that causes us to recognize that problem is the trend data that we are seeing. I have learned a valuable lesson about trend data from Bureau of Justice Statistics Director Jan Chaiken, whom I now quote when I speak all over the country. He has taught me the lesson that the reason we gather statistical information and make projections is to try and figure out which things we want to prove to be *untrue*. And I think that is a very important concept to keep in mind: that gathering this information, studying it, and thinking about what

is likely to happen in the future gives us the ability to make decisions about where we should focus our resources and attention to try to deal with problems and try to determine that those trends are not what they might be if we left them alone. Let me speak briefly about what those trends are.

In the last 5 years, while the general crime rate in the United States has been down about two points, juvenile crime has been up 21 percent. And we see the same kind of divergence, and perhaps even more extremely, when we look at violent crime. Again over the last 5 years, while the murder rate in the United States is down about 9 percent, the juvenile murder rate during that same period is up 15 percent. Happily, in the last year, the data show a small downturn. But that set of trend lines — which shows the country going one way with adults and completely the opposite direction with our young people — is certainly disturbing.

It is even more disturbing when you combine that crime rate effect demographically with what is happening in the country. Current projections by demographers suggest that over the next 25 years, there will be a 31 percent increase in the number of juveniles in the United States. We not only expect to have a substantially slanting upward line with respect to the violent juvenile crime rate, but we also have a substantially slanting upward line with respect to the number of juveniles. Of course, if those two effects are combined, the suggestion is that we will have that same substantially slanting upward line with respect to the amount of crime, especially violent crime, that is being committed by our juveniles. It is that projection that we want to work to try to ensure does not come true.

In trying to set a framework that I think is helpful and useful to all of us as we are thinking about the

appropriate use of records, I thought it would be helpful to talk about what we see as some of the very clear causal links to the trend data. I do not intend to suggest that these are exhaustive or comprehensive; however, I think that the five points that I am going to make are a very substantial part of the explanation for this trend activity.

Causal links to juvenile crime

First, and one that will come as no surprise to anyone, is the problem of drug abuse. Some interesting data that I have seen suggest that one-third of all juveniles who are arrested were stoned at the time of their arrest, and that 43 percent of juvenile murderers were high at the time they took another person's life. An interesting number that I just learned from our drug czar, retired Gen. Barry McCaffrey, is that drug-addicted persons commit, on the average, 170 crimes per year to support their habits. That certainly tells us that there is — as there is in so many parts of criminal activity — a small group of people committing a majority of the crimes, and that a lot of violent crime stems from that drug abuse and drug-addicted behavior. Gen. McCaffrey says that if you do not like higher taxes to pay for even more prisons and you do not like your neighbors being victimized by crime, invest in drug treatment programs. Of course, that suggestion, all too often, is characterized as coddling criminals. I would suggest, instead, that drug treatment is about changing the behavior of those persons who are committing those hundreds of crimes a year to support their habit. It is about *preventing* violent crime. We have to keep kids away from drugs and we have to treat those who are addicted.

Second, the easy access to guns by children. Recent statistics reveal that eight of 10 juveniles who killed, used a gun. That is up from 5 of 10

just 15 years ago. In the last 10 years, the number of juveniles who killed with a gun quadrupled. One study of high school students found, and I found this just fascinating, that 28 percent of those surveyed believed that it was “okay to shoot someone who hurts or insults you.” Ten percent believed it was “okay to shoot a person if that is what it takes to get something you want.” There is an attitude we have to deal with here, but if a gun is available, the attitude reveals that it is all too likely that the gun is going to be used. We have to reduce the easy flow and access of guns to our young people.

Third, a phenomenon that I describe as “developmental neglect.” The Carnegie Foundation has done a very nice job of demonstrating rather definitively that our children are spending less and less time, not only with their parents, but with adults overall. We are seeing higher rates of divorce, of course, increases in families with both parents working, growth in single-parent families, the erosion of extended families, neighborhood networks, and associated support systems. If a child is not going to get guidance from a parent, they have to get it from an older brother, a sister, a neighbor, a teacher, a clergyman, someone who is going to intervene in the life of that child to suggest what is right, what is wrong, what the lines are, what the barriers are, how far they can go, what they will be in trouble for and what they will not. Instead, the sources that are teaching those lessons right now — with less time spent, again, not only with parents, but with adults overall — are peers and television. These are not particularly effective sources to teach young people lessons about what is right and wrong, what the barriers and burdens are that people can undertake.

Fourth, domestic violence, both observed and received. Studies clearly show that those who are

abused learn that violence is normal. They are substantially more likely to be criminally violent than those who are not abused. The American Psychological Association released a study recently that shows that those who witness violence at home are substantially more likely to commit violent acts themselves later on.

On the good side, we expect that home is the best classroom for our children to learn things, and that when we want to teach them values and ethics to take through their lives, parents are the best people to teach those things. Then why does it not make sense to us that home is also, unfortunately, the best classroom for violent behavior? Why wouldn't those who experience violence at home learn that violent behavior is appropriate and acceptable, and is behavior in which they should engage? The fact is, that those who witness violence, those who are subjected to violence, and indeed, interestingly enough, those who are subjected to physical neglect, are desensitized to violence, believe that violence is societally acceptable, and learn that it is okay to engage in violence themselves. We *have* to break the cycle of domestic violence.

Fifth, media violence, as depicted, for example, on television and in movies. An interesting study paid for by the cable television industry, called the Media Scope Survey, showed that 73 percent of violent acts on television go unpunished. Eighty-six percent of violent acts failed to show any long-term damage, either physical or psychological, to the victim. Four percent of programs with violence emphasized nonviolent problem-solving alternatives. *Four percent*. Can we blame all of this on the media? Of course not. But what is happening through the media's depiction of violence without consequences, without punishment, is that violence is glamorous, and

kids are being desensitized to the effects.

Federal role

In thinking about these five causal links, my obligation at the Justice Department is to then consider “What is it that we as the Federal government are supposed to be doing about any of this?” I generally break our role down into four areas:

One, we have the ability to seek and, through the legislative branch of the Federal government, attain legislative changes. That may be helpful a little bit. There may be some things here and there that tinkering with and changing and altering are productive; indeed, just about a week and a half ago, the President announced new proposed legislation to deal with violent crime among our young people. It has about a dozen provisions that I think are constructive and, if adopted, would help. But Federal legislation is not going to solve this problem, which is fundamentally a State and local problem.

Two, the Federal government has the authority to bring prosecutions. Again, while there may be some import to prosecuting the most violent juveniles — those who are involved in gangs or drug-dealing — through the Federal system, and we will do so when it is appropriate, we are not going to solve the problem through Federal prosecutions. The number of juveniles who are incarcerated under Federal jurisdiction, either tried as juveniles or juveniles who were tried as adults, is 185. This is not a substantial level of activity within the Federal government, and I do not think that is likely to change in any serious way in the near future. The prosecution activity is going to have to take place primarily at the State and local level.

Three, a very critical Federal role is information gathering, information modeling and

information redistribution. This is what we do, through the various bureaus and offices in the Office of Justice Programs: we gather statistical and programmatic information. We provide funding to try modeling and then we evaluate those models and when they work, we redistribute information about what works and what does not. That, I think, is a critical Federal role, and one that is useful, productive and essential because I think it is highly unlikely that much of that modeling and information redistribution activity would ever take place if not done by the Federal government.

Role number four is providing leadership, and that comes in a couple of forms. It comes in the forms of highlighting problems that need attention and encouraging attention to them. But sometimes it also comes in a more concrete form, and that is in being the entity that centralizes certain activity. An example that is useful in this context is something like the Interstate Identification Index, where the Federal government plays the leadership role in bringing about one national pointer system that essentially links all of the individual, decentralized State databases of criminal history information.¹

¹ Editor’s note: The Interstate Identification Index (III) is an “index-pointer” system for the interstate exchange of criminal history records. Under III, the FBI maintains an identification index to persons arrested for felonies or serious misdemeanors under State or Federal law. The index includes identification information, FBI Numbers and State Identification Numbers (SIDs) from each State holding information about an individual. Search inquiries from criminal justice agencies are transmitted automatically via State telecommunications networks and the FBI’s National Crime Information Center telecommunications lines. If a hit is made against the Index, record requests are made using SIDs or FBI Numbers and data are automatically retrieved from each repository holding

Again, I think that is a useful and constructive role for the Federal government to play so that it can provide information and bring entities and governmental units together.

I think that with respect to the problem of youth violence generally and juvenile records specifically, the areas in which I expect the Federal government will play some substantial role is in the latter two, information and leadership. We may legislate a little bit, and there is actually one provision in the President’s bill that deals with gathering juvenile record information at the Federal level. And we may, in some of our prosecutions, use juvenile record information.

However, I think that the likely place that the Federal government is going to play substantially with respect to juvenile record discussions is in this information gathering, modeling and information redistribution effort, and in the leadership effort. I think everybody who is involved in this area recognizes that we have to do this rethinking process and I hope we can do it while considering these issues in the context of some of these causal links that I have discussed. We need to think about how the effective use of criminal record information may assist us in dealing with drug abuse and drug-addicted young people, how that information can be strategically used to break up the flow of gun traffic, and how information can be used to break that cycle of violence. We need to take each one of the causal

records on the individual and forwarded to the requesting agency. For more information, see U.S. Department of Justice, Bureau of Justice Statistics, *Use and Management of Criminal History Record Information: A Comprehensive Report*, Criminal Justice Information Policy series, by SEARCH Group, Inc. (Washington, D.C.: Government Printing Office, November 1993).

links to the problem, and ask how can we better use information and share information to deal with those causal links to try to destroy them.

Importance of records

We know that criminal records provide relevant information about the predictive nature of criminality that stems from earlier behavior. We know that the records are relevant to officer safety, we know that the records are relevant to adult sentencing, we know the records may be relevant to subsequent juvenile sentencing. So, as the discussion goes on over the course of the next day and a half, I hope that we will link into the conversations about how records should be used by judges and schools; how privacy and rehabilitative considerations weigh against law enforcement goals and how we reconcile those distinctions; whether records should be kept centrally or decentralized or some combination thereof; what information should be retained by law enforcement agencies and what should not; and what access there should be to information from social service agencies or schools, as well as information that is actually retained by courts and other law enforcement organizations. I encourage you to think about all of those questions we are facing in a manner that links with the causal issues so that we can really examine the question as to whether the record policy decisions that we are making are likely to substantially impact the problem we are trying to deal with.

From my perspective, the most important message that I can leave you with is that, as you are thinking about those issues and as you are considering what role the Federal government ought to play, I hope that we will partner with you in that discussion; that you can assist us in any coordination efforts we are making by telling us what we are doing right and what we are doing wrong. I hope that you can help us in defining and seeing and then in disseminating effective strategies that are being adopted and that we can work cooperatively with you in order to be as effective as possible about this rethinking process in hopes of dealing with what is, I think we all agree, a tremendously important problem. Thanks very much.

II. Setting the stage: Current status of juvenile justice records

Opening address

Changing laws and policies governing juvenile justice records
radically alter balance between confidentiality and public access,
and increase importance of record accuracy

Dr. Jan M. Chaiken

Background: Examining the foundation of juvenile justice record policies

An evaluation of the historical justifications for a distinct system
of juvenile justice: The age, versatility and stability effects

Dr. Michael R. Gottfredson

Federal policies and perspectives: The relationship of juvenile justice information to national criminal justice goals

The importance of improving and sharing information
to furthering national juvenile justice reform

Shay Bilchik

Juvenile recordhandling policies and practices
of the Federal Bureau of Investigation

Demery R. Bishop

State laws on prosecutors' and judges' use of juvenile justice records

National assessment of criminal court use of
defendants' juvenile adjudication records

Neal Miller

Changing laws and policies governing juvenile justice records radically alter balance between confidentiality and public access, and increase importance of record accuracy

DR. JAN M. CHAIKEN
Director
Bureau of Justice Statistics
U.S. Department of Justice

My thanks to SEARCH staff for coming up with a conference on such a current, critical and complex issue: juvenile justice policies and, specifically, decisions concerning the establishment, compilation, exchange and use of juvenile records.

The policies surrounding these decisions focus on some of the most basic concerns of most Americans:

- Our children — and our desire to ensure that every child is given every opportunity to develop into a law-abiding and productive citizen;
- The public safety — and our desire to protect all citizens against violence and other crimes in their home, at work, on public transportation, and in the streets of our cities and towns;
- Financial constraints — measured not only in terms of criminal justice costs but also in terms of the financial and emotional costs to the victims of crime, their families, and those whose lives are changed by the fear of potential criminal attacks; and
- The justice system — designed ideally to interface between these concerns and to protect society in a fair and just manner which is most likely to produce long-term safety.

We all know that the juvenile justice system is undergoing major review and changes at this time. Almost every State has taken official steps designed to bring the treatment

of juveniles closer to the criminal justice treatment accorded adults. The *New York Times*, which addressed this issue in a recent Page 1 lead article and an editorial, stated that “almost all 50 States have overhauled their laws in the past 2 years ... and the thrust of the new laws is to get more juveniles into the adult criminal justice system where they will presumably serve longer sentences under more punitive conditions.” Such trends include, for example:

- laws which require that jurisdiction over juveniles who are over a set age or who have had three juvenile offense “strikes” be automatically transferred to the adult system;
- laws and policies encouraging prosecutorial discretion and judicial waiver of juveniles to the adult criminal justice system;
- sentencing guidelines which take into account an offender’s previous activity even if not charged in the adult system; and
- laws which require that background checks include consideration of juvenile records.

In all of these areas, the offender’s record — its immediate availability, its accuracy and its completeness — represent the fulcrum on which key decisions impacting the treatment of the individual are balanced.

In a parallel move, as addressed in numerous publications, the laws and policies governing juvenile recordkeeping have also changed radically. Initially formulated to

implement the mandate to provide confidentiality to juveniles in order to support the rehabilitation efforts on which the juvenile system was founded, current trends in legislative and court actions have increasingly:

- opened juvenile proceedings and the records about them to the public, or at least to specific segments of the public with particular needs to know;
- required that categories of juveniles (generally those convicted of an offense which in the adult system would be a felony) be fingerprinted; and
- required that records of juvenile offenders be included in State criminal record systems in the same manner as would be followed for adult offenders convicted of the similar criminal acts.

These laws, coupled with the rapid advances in technology which make automated access to records available at minimal cost, can be expected to radically alter the balance between juvenile confidentiality and public access and to increase the importance of ensuring record accuracy.

These legislative changes reflect public concern over statistics which show that in a time of declining overall violent crime, according to both Uniform Crime Reports and victimization surveys, the number of adolescents being arrested for serious crimes continues to increase. Further, the size of the population in the crime-prone ages 14-17 reached

a low point 2 years ago and is projected to continue to increase for the indefinite future. By the year 2005, the number of teens aged 14-17 will be 20 percent above its 1994 level. These projections are not too tricky, since everybody who will be 14 to 17 in 2005 has already been born.

A very rapid increase in the rates of homicide committed by teenagers began in 1985 and continued until 1994, when it leveled off. At least some of the legislative changes must reflect frustration over procedures which allowed record checks of adults to overlook these records of violent acts committed by young people whose records were not accessible through the adult system.

As most of you know, the Bureau of Justice Statistics is charged with responsibility for implementing the grant provisions of the Brady Act, the Child Protection Act of 1993, and the domestic violence and stalker reduction provisions of the Violence Against Women Act, which is part of the Crime Control Act of 1994. The program to accomplish this is the National Criminal History Improvement Program, or NCHIP. About 18 months ago, at a conference to launch the start of that program, which is designed to improve the quality of criminal history records, I made a presentation addressing the importance of record quality. At that time, I stated that improving criminal records, and by this I meant adult records, was not about moving electrons or increasing numbers of bits and bytes. Rather, criminal record improvement was about helping the police to catch child abusers, and rapists, and other social predators; that it was about helping judges make decisions on sentencing and pretrial release; and, increasingly, that it was about helping people make decisions about employment, national security and, of course, purchasing firearms and holding positions of trust involving

children, the elderly and the disabled.

The issues we faced at that time were simple in comparison to the issues presented today with regard to juvenile records. By the start of the NCHIP program, over 25 years of effort at the Federal, State and local level involving millions of dollars had been expended to establish, network and develop adult record systems. Our studies showed that as of 1994, however, only about one-quarter of the nation's adult criminal records were both complete with dispositions and available in response to a national inquiry.

In the juvenile justice community, the work has just begun. Under the NCHIP program, substantial funds are being used for Automated Fingerprint Identification Systems (AFIS), and States are allowing juveniles to be fingerprinted. States are also using NCHIP funds to establish enhanced interfaces between police, courts and the repository. In the juvenile justice community, transfer of records between law enforcement components is a newly emerging goal, with extensive interagency negotiation and technical development to follow.

Most importantly, the underlying policies regarding the release and use of adult records have been debated and largely resolved over the past 20 years. Newly enacted policies applicable to juvenile records have largely emerged within the past few years — with their full impact yet to be evaluated. As you partake of this conference, this factor is important to remember, since the newly emerging juvenile recordkeeping policies to a large extent reflect a reversal of the underlying goals of the juvenile system as it has existed since its inception.

Over the next 2 days, a large number of speakers will address this conference who represent the academic, legislative, governmental

and juvenile justice communities. Presentations will be made concerning legislative and policy trends and requirements, technical advances and operational procedures designed to implement State and local policies and laws.

As you listen to the speakers, I would ask that you give continuing thought to several general points which impact on the issues that will be addressed here.

First, focus on the huge impact which policies adopted to govern juvenile justice operations, particularly juvenile records, have on current society. The Philadelphia cohort studies by Wolfgang and his associates showed that among boys born in 1945, 35 percent had a police contact but only 6 percent were chronic delinquents. So, over one-third of all these boys would have had an arrest record. As I am sure you can imagine, some of these boys went on to occupations that require background checks, such as police officers and directors of statistics agencies. So the nation would have suffered quite a bit if ordinary background checks had prevented these boys from moving forward in their chosen careers. Well, you might say, that is just in major cities. But the National Youth Survey, which interviewed a nationally representative group of boys and girls who were age 11 to 17 in 1957, recently collected all of their arrest records and found that 15 percent of boys on a nationwide basis had an arrest record for other than a minor traffic offense. Of these, less than half could be considered as serious juvenile delinquents. So just remember that it is your nieces and nephews that we are talking about here.

It is also important to recall that the prevalence of arrest is much higher for some racial and ethnic groups than for others, most studies showing that the percentage of black males who have a police contact by age 18 is at least twice as high as for

white males. So apparently race-neutral policy changes can have disproportionate effects on minority groups.

Taken together, these statistics suggest that although the high percent of teenagers who have violated the law justifies tighter policies on juvenile offenders, care should be taken to ensure that punitive policies, particularly those which may impact on future development of the child, do not have negative and potentially harmful effects on young people who will not become major recidivists. Policies such as record sealing and limiting disclosure to situations following a subsequent offense appear to follow this line of reasoning.

Second, consider the weakness of our knowledge about the effects of policy changes even on the very targets of the policy changes. What is the impact of transfer to the adult system and incarceration on juveniles who, by all indications, *would* become chronic violent recidivists? Will these policies change the amount of crime committed by these youngsters? And, if so, to *more* crime or to *less* crime? Such research as we have suggests that incarcerating juveniles in adult facilities may increase the amount and seriousness of crime they commit over their entire criminal career.

Third, consider during these discussions the practical impact of these trends on the demand for, and use of, juvenile records — that is, the importance of ensuring that records which are used for greater purposes be accurate and include positive identification. Consider also the recordkeeping implications associated with the trend toward transfer of juveniles for adult prosecution — that is, the fact that increasing numbers of records formerly considered and protected as juvenile records will, in the future, be adult records and directly governed by the policies governing use and exchange of adult records.

It is an unusual limelight to be in for those of us who work in computer rooms and concern ourselves with layouts, formats, codes, security of computer systems, communications networks and fingerprint technology. But this year, everybody is watching us.

An evaluation of the historical justifications for a distinct system of juvenile justice: The age, versatility and stability effects

DR. MICHAEL R. GOTTFREDSON
Vice Provost for Undergraduate Education
University of Arizona

I would like to share some thoughts with you about the rationale for a distinct system of juvenile justice, a very problematic, important question that faces all of us. I would like to draw on some work and ideas from Travis Hirschi, a colleague with whom I have worked over the last 20 years or so, and credit him with many of these.

It is a most perplexing problem, the creation of separate systems for juvenile and adult offenders. First, I would like to review briefly some of the historical justifications for that separation, which are common and well known. Second, I would like to raise the question of how we might put these justifications in the context of what we know about crime, criminality and juvenile delinquency. Finally, I would like to attempt to evaluate some of those justifications in light of those facts.

Justifications for separate systems

Many justifications have been offered for the historical separation of the two systems, of treating juveniles differently from adults. We do have a tendency to ebb and flow in our faithfulness to these justifications over time. Ours is not the only historical period in which we have questioned this distinction, this separation, and wondered what to do about it. In thinking and reading about the history and justifications for juvenile justice, I have come up with perhaps a half-dozen principles that we have used at one point or another in our history to justify this different treatment of

adults from juveniles. Let me review those quickly, although there may be others you have in mind. I think that most of them, however, could be evaluated or tested against the facts that I am going to discuss.

One of the principal justifications for keeping the adult and juvenile criminal justice processes separate certainly has to do with our notions of criminal intent and diminished responsibility, in which we believe that there is a fundamental difference in terms of the ability to be responsible for one's actions that distinguishes children from adults — or even children from adolescents from adults.

Another justification is that we have believed from time to time (it is questionable whether we do now) that there is some differential treatment amenability, or rehabilitative potential, between young people and older people. There have been several different versions of that idea. Some believe, or have believed at one point or another, that young people are still somehow more malleable than older people, that there is still a possibility to change the direction or scope of their behavior or their life progress, and the earlier the better. Oftentimes, we refer to that malleability in terms of the “sequencing of acts” or the “life course progression,” such that it seems to be desirable or perhaps efficient to intervene before there is some escalation in the conduct of the young person to the point where it becomes irreversible or more difficult to reverse. So there have

been notions about escalation or progress through a career. A subcategory of treatment amenability has to do with the question of the potentially adverse consequences of the justice system itself on the subsequent life course of people as they move through the system, such that we are quite concerned about not unduly jeopardizing the subsequent life chances of individuals as a consequence of their interaction with the juvenile justice system.

We have also believed from time to time that it is important to keep juveniles separate — physically separate — from adult offenders. This stems from the notion that if juveniles do become too closely associated with adults, particularly in correctional associations, that that will have an adverse effect on the juveniles, such that they will become more hardened criminals or more likely to offend subsequent to that association; therefore, we should do what we can to minimize that and keep kids away from adult offenders.

Justification has also been offered for the separate systems that simply relies on a notion that better conditions should be associated with the treatment of juveniles than the treatment of adults, particularly since we are putting money, resources, time and effort into the conditions of the juvenile justice process and the conditions of confinement. That justification is related to, but I think somewhat distinct from, yet another justification, which simply offers the

point of view that we should be more lenient toward children than we are toward adults. There are a lot of rationales that we might use to come to that attitude, but it surely characterizes much of our thinking historically about juvenile justice and juvenile corrections. Youth, perhaps, allows us to excuse more, to understand more, or to be more sympathetic to the idea of offending, and that should be translated then into an attitude that we have toward juvenile offenders of leniency; it is an attitude that we would not necessarily extend to the adult offender or the adult system.

Finally, there is this conflation of problem behaviors or events that happen to children that we have used as a justification for the juvenile justice system. It is more of a social welfare attitude, rather than a criminal justice attitude, but it has to do with society's responsibility for taking care of children who are in some jeopardy, who are in some peril, because they come from an abusive home or they come from no home in the ordinary meaning of that term. Because their conduct is suggestive of a social welfare intervention, many so-called "status offenses" have historically fallen into this category.

All of these and more, as I am sure you have other justifications that have arisen over time, are clearly questioned today. There is no doubt about it, they have been questioned since their invention, but never, perhaps, so much as today, when we are concerned with the very high crime rate and the problem of youth violence such that enormous changes are being suggested for nearly every facet of the juvenile justice system.

Changes are being suggested in the age of adult and juvenile jurisdictions; enhancement of transfer provisions; mandatory transfer positions; shifting the discretion about who makes the transfer decision from the juvenile

court to the prosecutor; and the lengthening of sentences. The very notion of the juvenile court, per se, and all of its manifestations are being questioned, such as an emphasis on the nature of behavior, rather than specific offenses; a concern about delinquency and conduct, rather than specific acts; an attitude and frame of mind that characterizes much of what goes on in juvenile court in terms of its lack of an adversarial character; and the kinds of information — and the very language — used in the juvenile court system. Clearly, all of those issues are under a great deal of stress today.

Facts about crime and delinquency

The justifications for the separation of the adult and juvenile justice processes are very complex and invite different kinds of considerations. Faced with complexity of this order of magnitude, I am always eager to ignore the complexity — by pulling the academic stunt of ignoring all of this variability, all of this complexity — and seek some simplifying principles.

I would like to take a look at all of these issues from the point of view of criminology, from the point of view of the causes of crime and delinquency, and seek some clarification. I would like to remind you of three facts about crime and delinquency that I think have enormous significance for all of these issues about the separation and treatment of juveniles from adults, and that even go directly to the question of what kinds of information we can collect on people that is useful for the juvenile criminal justice system.¹ I cannot

¹ Before launching into these three facts, I would add as a footnote that much of the separation in our treatment of juveniles from adults does rest on one very powerful set of assumptions about

spend a lot of time convincing you that these are facts, so I will stipulate it. Just agree with me, tentatively if you like, that these are facts, and then wander with me through the implications that these facts have for the historical foundations of the distinction between the juvenile and adult systems of justice.

The three facts that I would like to remind you of are: First, the age effect on crime, the relationship between age and crime. Second, what criminologists are increasingly referring to as the "versatility effect." And, third, what is increasingly referred to as the "stability effect." Age, versatility and stability.

— Age effect on crime

The first fact is the relationship between age and crime. It is in some ways a controversial topic, but the basic outlines of the fact about age and crime are really not in serious dispute.

The relationship between age and crime is well characterized by the graph in Figure 1, which is the rate of arrests for robbery standardized to age. This general distribution fits the distribution for nearly all forms of crime and delinquency. It has several features that are of enormous

human conduct: Something about crime and delinquency changes with age. It seems to me an obvious underlying assumption; there is something about the *meaning* of crime or delinquency to the offender that changes with age, and we should therefore think about it differently as a function of age. Something about its purposefulness, something about the gain or the loss to be achieved to the individual, or something about the consequences to others, changes with age. One or the other, or both of those, seems to me to be fundamentally involved in much of these decisions. But it seems to me that those are seriously doubtful assumptions; there may be nothing about crime that meaningfully changes with age.

significance to discussions such as those we are having here. It is easy to characterize, and it is nearly impossible to explain. It is nearly invariant, it is a ubiquitous relationship.

The offending rate for crime and delinquency rises suddenly, very dramatically, in the preadolescent years. It peaks in late adolescence or early adulthood, around 17 or 18, for most forms of crime, and then, just as suddenly, not quite as dramatically, it begins to decline. It declines rapidly, and it declines consistently, monotonically throughout life. The rate of offending declines to about half its peak value by about age 22 or 25, and it then continues to decline throughout life. I like to use robbery as an example to show the underlying form of the age/crime relationship because it is a prototypical street crime: it is one we are all concerned about, and it has elements of potential violence and theft. I think it fairly well characterizes the age/crime relationship.

There are many things that are instructive about the relationship between age and crime, but foremost among them is its stubbornness to vary. That is to say, this basic relationship characterizes many forms of crime and many forms of delinquency, and criminologists and researchers have looked long and hard for variability in this underlying relationship. In my opinion, they have been quite frustrated in finding it.

Age and crime is a ubiquitous relationship; it has great implications for many of the questions that confront us. It suggests that for all offenders, for all individuals, the basic underlying relationship will be similar; that individuals will vary, in terms of the level of this basic underlying relationship, but it will have its effect no matter what we do. The fact is, the teenage years will be the

years of maximum offending for everyone, and then the crime rate will decline as a person ages. It will decline inevitably and dramatically despite whatever we do to, for or with individuals.

That is a lot to swallow, but let me ask you to stipulate that this relationship between age and crime does characterize all people; it characterizes all forms of offending that we are most concerned about; and it will happen virtually no matter what we do.

— *Versatility effect*

The second fact that I want to impress upon you has to do with what we now refer to as the “versatility effect,” which is the opposite of the notion of specialization. There is, in the records of juveniles and adults, whether they be official or self-report, and no matter how we collect or tabulate our information, enormous variability in terms of the kinds of offending in the offending population. Once again, we have looked hard and long for evidence of specialization; that is, specific forms of offending that are overwhelmingly preferred by specific individual offenders. We can discover some specialization in the records of offenders, I would not dispute that. But it is, I would argue, quite at the margin. What really characterizes crime and delinquency is versatility, not specialization. It is wrong, therefore, to think of offenders as solely burglars, drug abusers, robbers, rapists, auto thieves or the like. It is more correct to think of higher or lower rates of offending that are characterized by offending in a wide variety of acts, rather than in a limited scope.

Specialization *can* be discovered in the records of offenders. However, it tends to be opportunity-driven; that is, not driven as much by the individual proclivities of the people involved but rather by the opportunities to offend. An

individual who lives in a large housing unit has the opportunity to be a burglar that individuals who live in single-family dwellings do not have. Individuals who have access to cars have a greater opportunity to be auto thieves. Individuals who have great proximity to drugs, and those who are selling them, have a greater opportunity to be drug offenders. But holding apart those opportunistic notions, what characterizes the records, again whether they be self-reported or official, is versatility.

The versatility of which I speak is not limited or constrained by violations of juvenile or criminal law. The versatility that is everywhere in evidence in youth or adult records goes well beyond violations of the law, and encompasses most of what we think of as problem behaviors. So the versatility effect encompasses school misconduct, for example, such as truancy, disobedience and disorderly conduct, and all drug and alcohol use, including both licit and illicit drugs, or those which are illegal at some ages and not others, such as tobacco. Eight-year-olds who use tobacco are part of the versatility effect. The versatility effect also includes things such as accidents, self-injury and all forms of injury to others.

A good example of these patterns is provided by the classic study by Sheldon and Eleanor Gluck in which they looked at delinquents and nondelinquents in a sample as they aged. One of the things they took measures of was whether or not the young people involved in their sample had been involved in accidents and, for example, whether they had been hit by a moving vehicle. They found that the rates are two to three times higher among the delinquents than the nondelinquents.

This is just an example of the scope of conduct or behavior that I

am including in the versatility effect. As mentioned, it includes school behaviors, all drug and alcohol use, and injury to self and others. It is very broadly construed: measures of visits to the emergency room of a hospital are included, as well as shoplifting. As a matter of fact, for my money, a visit to a hospital emergency room is as good a predictor of delinquency as is an incidence of shoplifting.

Another example is provided by data recently published by Marianne Junger. She looked at all of the studies in Europe and the United States that included measures of accidents and delinquency. She looked at the correlates of the two and she discovered that, empirically, accidents could not be distinguished from delinquency. That is to say, in terms of its antecedents or correlates, they are virtually the same. The predictors that you would develop in any kind of predictive study of delinquency would do as well to predict accidents, given a base rate adjustment. So with predictors such as the mother's education or age, marital tensions, socialization, supervision or self-worth, the correlates of accidents and the correlates of delinquency are the same.

Because there is such versatility in criminal behavior, there is in the records of juveniles and adults very little evidence of direction in any sense of progression or nature. For example, criminal activity does not seem to escalate in terms of seriousness or become more consistently directed toward particular offenses over time. It tends to be versatile throughout the record. Those are very important empirical findings. Again, if we roll up our sleeves, and we crank up the computers and we have a sufficiently large number of cases, we can discover statistically significant evidence of specialization. But for my money, we have not discovered much

substantively interesting evidence of specialization, or of escalation, or of increasing or decreasing seriousness, or of patterning in any form.

Thus, the age effect coupled with the versatility effect help call into question, in my opinion, some of the assumptions we have made about the partitioning of juveniles from adult offenders that are based on notions of developmental sequence, or some projection or trajectory that is a function of age. Again, the versatility effect characterizes all offending, not just juvenile offending.

The versatility effect has been useful to me in helping to understand something about the nature of crime; that is, why is it that these things go together? Why is it that school difficulties, automobile accidents, shoplifting, assaultive behavior and smoking cigarettes at age eight tend to go together? Why do we find such a clustering of problem behaviors? Why do they seem to hang together, in sample after sample, in study after study?

The conclusion that Travis Hirschi and I have come to is this: these behaviors mean very much the same thing to the individual involved with them. They do not mean a whole lot, that is one principle. They are not highly motivated behavior. They do not suggest forces beyond which individuals have no control. What they do seem to suggest, however, is a lack of foresight, a lack of attention to the long-term. While it is easier to get somewhere if you drive more rapidly than if you drive more slowly, you are more likely to get in an accident. It is easier to get what you want by putting it in your pocket and walking out of the store. It is easier to end an argument by hitting someone with a blunt object than not. All of these behaviors suggest, to me at least, that they are focused on short-term solutions and immediate gratification. And they all share the same phenomena of

having negative or potentially negative long-term consequences. In other words, they characterize individuals who have less self control than others. In other parts of our work, we describe where self control comes from: it is the impact of parenting on the first 10 years of life.

— *Stability effect*

The third fact of crime and delinquency is the stability effect. Stability is readily described, easy to confuse. The stability finding suggests that, once identified, individual differences in rates of offending or problem behaviors remain relatively stable over long periods of time. Let me state it again: individual differences in problem behaviors remain relatively stable over long periods of time. That is to say, individuals who can be identified at age 10 or 12 or 15 as being relatively high in problem behaviors (such as frequent offenders or those involved in accidents or school difficulties) tend to be relatively high in problem behaviors at a later age as well.

The stability effect does not say that "once a crook, always a crook" or "once a delinquent, always a delinquent." As a matter of fact, we know that is not true. We know that is not true by the first fact we talked about, the age effect, which suggests that for everyone, whether they are a relatively frequent or infrequent offender, the rate of offending declines with age, and declines dramatically with age over time. But what the stability effect *does* say is that there are identifiable, relatively reliable, individual differences in the rate of offending that, once identified, help characterize individual careers over time.

My colleagues John Laub and Robert Sampson recently completed a reanalysis of the Glucks' work. They found a strong relationship between delinquency and antisocial behavior at a relatively young age,

and its correlation to later involvement in the criminal justice system. They partitioned their sample into those who had an official record of delinquency before age 14, and those who had no record; they then followed up on these individuals to about age 35. They took a look at the relationship between those early characteristics, those early definitions, and subsequent ones. They found that official delinquency is very strongly related to later outcomes. It is related to the percent of the sample who were first arrested at age 17 to 25, and to the percent first arrested between 25 and 32. Official delinquency is also related to those who used drugs or alcohol excessively later in life.

Interestingly enough, these associations do not depend on the method of measurement for early antisocial or problem behavior. The Glucks took another measure (which Laub and Sampson collapsed into a single measure) in which they asked teachers to identify the individuals who were most problematic. They asked the students themselves to identify those who were most problematic, and they asked parents to do the same. They then classified people in the sample by those ratings, and those ratings themselves are reasonably predictive of later adult misconduct. Another measurement made, which was extremely crude, psychometrically inappropriate and indefensible, was to ask each mother whether her child had a lot of tantrums when the child was young. What kind of question is that? It is a very poor question psychometrically. Yet that measure, as crude as it is, is a reasonably strong predictor of all kinds of difficulty throughout life.

If the stability effect were graphically depicted, the distribution could show an underlying offending rate for two different groups of people: a high-rate group and a low-rate group. The stability effect

would say that two things are going to happen. First, there will be differences over a long period of time between individuals who have a fairly high level of problem behaviors at one point versus those who have a low level. Those differences will characterize these samples throughout life. Second, both groups will decline in their offending as a function of age, pretty much despite whatever it is that we do. If you drew a hypothetical line through that graph, you would find an underlying offense rate. You could say this line might be something like the probability of coming to the attention of the authorities is .8 under the assumption that frequency alone drives that probability (which I think is not an unreasonable assumption). Then you could say that both groups will come to the attention of the authorities when they are adolescents, but some will come to the attention of the authorities at a much greater degree. The criminal activity of both groups, however, will decline as a function of age.

Evaluating the justifications

Let me apply these three facts to the questions that confront us now, and that is the justifications for a separate juvenile justice system. I think these justifications are loaded with implications; they are very difficult to wrestle with, and I certainly have not been able to wrestle with them to a sufficient degree to come to any firm conclusions.

Together, the facts tell us that we should not forget that, over time, post-adolescence offending will decrease for all offenders. They tell us that early measures will predict later measures. That is to say, early measures of self-control will predict later measures. Early school difficulties and early drug and alcohol use will predict later crime, not because they are causally related, but because they are both

manifestations of an underlying characteristic. Unruliness will predict crime. Excessive television watching will predict crime, not because of the content of the television, but simply as a measure of lack of supervision or a lack of involvement in other activities. Crime will predict employment instability. Delinquency will predict marital instability and difficulties in having and fashioning interpersonal relations of all sorts and vice versa.

In my view, the genesis of these problem behaviors does take place in the first 10 years of life. These differences are profound and are developed by what goes on, or what does not go on, in the supervision and the socialization of very young children. The facts tell us that if we are interested in the prevention of crime, that the juvenile and criminal justice systems are at best at the margin in that interest, and what we should be fundamentally interested in is the raising of children and the inadequate circumstances that an increasingly large number of children find themselves in.

In terms of the justifications for the separation of the two systems, let me suggest that, in my opinion, the two that survive have to do with leniency and with separation of children from adults. The idea that crime means something differently based on one's age is problematic to me. Crime means the same to older offenders as it does younger offenders: it means that they are not paying attention to the long-term consequences of their behavior, that they have relatively low self control. Neither one of them is acting particularly responsibly, if that is what we mean by adult conduct. Responsibility means to take ownership of your actions, think about its consequences to others and to yourself. The lack of responsibility characterizes adult offenders as well as juvenile offenders. Our tendency today is to treat juveniles as adults. My guess

is, from the research, it is very much the other way around. We ought to think much more of adult offenders in the same way that we think of juvenile offenders: pay less attention to specific acts and more to an underlying delinquency kind of status.

Let me just make one last point: I think it is very difficult to establish a prejudicial effect on offending, either as a function of the juvenile justice system or the criminal justice system, over and above what the stability effect indicates to us. That is to say, I do not believe I need to make adjustments in that age distribution of crime, dependent on involvement in the juvenile and criminal justice systems. I know that is a provocative thing to say and it is full of implications, but I do not believe I need to make that adjustment for the effect of juvenile and criminal justice on an individual crime rate. That means a lot of things, about the rehabilitative potential, the effect of incapacitation, the effect of deterrence and the like, most of which I believe are quite at the margin, as you can tell by now. But what it does also suggest is that it is difficult to establish a prejudicial effect for our use of records on individuals.

Based on the literature I have read, it is apparent to me that of overwhelming importance in the juvenile record issue is not whether an individual has engaged in an antisocial misconduct that we have recorded in the juvenile justice system but, rather, the frequency and the recency of such behavior. The frequency and the recency, however, are as useful in the adult as in the juvenile arena.

It seems to me that one policy we might want to contemplate is something of a tradeoff for a more liberal use of juvenile records to make dispositions and sentencing decisions, with an enhanced policy about the expungement of records. If records have a negative connotation for juveniles, they do so for adults as well. If there has been a period in which there is no involvement, or no recorded involvement, of that individual in the justice system, we can be greatly assured that the individual is on the lower curve of offending. After some relatively brief period of time, I might suggest 3 years, where there is no evidence of conduct in the history of either the juvenile or the adult, their record should be expunged.

Electronic Editor's Note: This page is not available electronically.

The importance of improving and sharing information to furthering national juvenile justice reform

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I am thankful to the Bureau of Justice Statistics and SEARCH for providing me with an opportunity to be with you today. I will focus my comments on the critical relationship between juvenile justice system recordkeeping and information sharing and the attempts of the Office of Juvenile Justice and Delinquency Prevention (OJJDP) to reach some of our most urgent national juvenile justice goals.

Information drives reform

I am convinced that information sharing in the juvenile justice system — and I define that term broadly to include the formal system and related systems as well — is one of the most essential elements for furthering national juvenile justice reform. All of us know the statistics about the increases we are experiencing in violent juvenile delinquency — and many of us know first-hand the weaknesses we find in all too many of our juvenile justice systems. I am certain that improving those systems and reducing the level of violence will become a reality only if we at the same time create and improve our information systems.

My first two most significant contacts with OJJDP before joining the Justice Department were with the Restitution project — RESTTA — and with the Statistics and Systems Development (SSD) project, working with Howard Snyder, Melissa Sickmund and Barbara Allen-Hagen. The experience with the SSD project

taught me a lot — about the frustrations of trying to develop that perfect information system and the difficulty of sharing and finding information within our juvenile justice systems.

My first-hand experience as a prosecutor for 16 years in Miami, Florida, also taught me a lot about the imperfections of our recordkeeping and information sharing systems. I saw juveniles traveling from county to county, committing “first offense” after “first offense.” I saw “high tech” identification systems in which intake workers asked other intake workers if they recognized a defendant who was adept at changing names and dates of birth. We were not concerned about national information — we simply longed for the basic information needed to run a credible system.

We have come a long way, both in Miami and as a nation, toward improving those systems, but we still have a lot of work to do: work in recording and maintaining the information we need, in developing systems that provide easy access to the information, and in developing the protocols we agree to follow across disciplines to use the information appropriately in carrying out our responsibilities.

So how does this relate to our national juvenile justice goals? Recently our attention was drawn to a horrible situation in California involving a 6-year-old who is alleged to have attacked and badly beaten a 1-month-old baby. Once

again, the media focused on the crisis of increasing juvenile violence. Now, the truth of the matter is that while it is much too soon to be analyzing the facts of this case, tragic incidents such as this one — and the recent case in Chicago involving a 10- and 11-year-old who were charged with dropping a 5-year-old from a 14th-floor balcony — may indeed reflect the broader problems that we face related to rising juvenile crime. And those problems are our failure as a society to address the needs of our most troubled youth and to form a protective net around all of our children, while at the same time providing for the public safety.

Addressing these problems will require the development in our communities of a continuum of interventions, from the earliest of prevention activities to a variety of juvenile justice system interventions, including the possible transfer of the most serious, violent and chronic offenders for criminal prosecution.

The common denominator in this work is information.

Objectives for improving juvenile justice services

The recently released *National Juvenile Justice Action Plan*, a work product of the Coordinating Council on Juvenile Justice and Delinquency Prevention, defines the task that we face and recognizes that we will be successful only if we use a comprehensive approach, one that is grounded in research and that

reflects the entire continuum of activity to which I just referred.¹ In this regard, it uses the core principles of prevention, intervention and treatment as laid out in OJJDP's *Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders* and its *Guide for Implementation*.²

The *Action Plan* has eight objectives that we must work toward to reduce youth violence and save the lives of our children. I will discuss a couple of these objectives and illustrate how information sharing is essential to the objectives of the *Action Plan* and OJJDP's overall goals.

— *Intervention, sanctions, treatment*

First, the *Action Plan* calls for us to provide immediate intervention and appropriate sanctions and treatment for delinquent juveniles. To do this we must advocate for a strengthened juvenile justice system, one that has adequate capacity and resources to get the job done. We have to be able to make risk and needs assessments of all children coming into the system in order to recommend appropriate, case-

specific actions and placements that both provide for the public safety and meet the children's rehabilitative needs. We must develop a range of interventions and sanctions appropriate for the child, and we must provide adequate resources for staff to do their jobs.

Children like those I mentioned earlier generally do not come to the system's or the community's attention for the first time when a tragic incident occurs. There are usually red flags: school failure, truancy, aggressive behavior, a record of minor delinquency, or family and parenting problems that may include domestic violence, and abuse or neglect. These are warning signs that we *must* have the capacity to address adequately, but in all too many jurisdictions we do not have that capacity and we do not have the information systems in place to retrieve the information we need. We do not have the ability to cut across systems so that the schools, courts, law enforcement, and social service and mental health agencies can appropriately share what they know about the children and families in their respective systems. That must change.

— *Collaboration*

The *Action Plan* recognizes that we must work collaboratively on the issues of intervention, sanctions and treatment. OJJDP plays an important role in assisting State and local jurisdictions in coming to grips with the need to include a juvenile record-sharing scheme in the juvenile justice system.

OJJDP's perspective on this issue is fairly simple: each State and local jurisdiction should be using an approach that reflects what I think many practitioners have realized for years: that we must work collaboratively, both from the top down and the bottom up. We must move forward together — judges, prosecutors, defense attorneys, probation and parole officers;

police; youth service workers and other juvenile justice practitioners; legislators and policymakers; Federal, State and county leaders; and school officials, mental health providers and community members, including youth — with our collective knowledge about what works and what does not, in attempting to turn the tide of youth violence. And in order to do this work most effectively, we must be able to share information with each other.

When I think about all of these players working together, it reminds me of a chapter of Robert Fulghum's book, *All I Really Need To Know I Learned in Kindergarten*, in which he writes about his childhood recollections of playing hide-and-seek. He recalls the kid in the neighborhood who hid so well no one could find him.

Fulghum writes about how, after a while, the other kids would stop yelling "olly-olly-outs-in-free" and would go off and leave the kid all by himself. The kid hiding too well would get mad and the other kids would get mad back. He would argue that they should have kept looking for him, and they would say that he was not playing the game the way it should be played and that he should have come out from his hiding place.

The operation of the criminal, juvenile justice and human services systems is much the same. The multiple layers of government and various disciplines — all involved with our children and their families — have been hiding from each other for all too many years without being found, each side pointing fingers and blaming the other: a kind of "hide-and-seek," grown-up style.

What Fulghum suggests next in this story parallels where we need to be going in our work on juvenile crime and violence. He describes the game of Sardines, in which the person who is "It" hides and everybody goes looking for him.

1 U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, *Combating Violence and Delinquency: The National Juvenile Justice Action Plan, Summary*, by the Coordinating Council on Juvenile Justice and Delinquency Prevention (Washington, D.C.: Government Printing Office, March 1996).

2 U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, *Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders*, Program Summary, by J.J. Wilson and J.C. Howell (Washington, D.C.: Government Printing Office, 1993), and *Guide for Implementing the Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders*, J.C. Howell, ed. (Washington, D.C.: Government Printing Office, May 1995).

When you find the person who is “It,” you get in and hide with him. Pretty soon everybody is hiding, but instead of apart from one another, the players are together and on common ground. That is how I view what we need to do in relation to all of these systems: come together to work as a team in our efforts, perhaps as a “virtual team,” brought together by the linking of information systems. Right now, the juvenile justice system and juvenile violence in this game of Sardines is “It.”

— *Adequately serving each child*

The *Action Plan* recognizes that our juvenile delinquency system operates under the constraints of limited resources and is unable to provide full attention to every case, every child, every family. It argues that a delinquency system that works will be able to serve a child’s and a community’s needs adequately through an entire range of interventions. However, with the increases in caseloads and demands on the system caused by the increases in delinquency reports, we have been putting a disproportionate share of our resources into the back end of the system. As a result, too many jurisdictions are doing paper intake on their cases. They are not meeting the juveniles or their families before making case-handling recommendations, and they are not focused on communicating with other systems to find out more about the child who has surfaced in the juvenile justice system, perhaps for the first time, but who may have surfaced in another system at an earlier point in time. As a result, we may lose the best chance we might have for success in turning back a developing delinquent career.

We must put a system in place that will have the capacity to use an information system that serves as an interdisciplinary database so that we can make informed decisions about each child. We need, in short, a

system that provides its workers both the time and the information needed to successfully determine an appropriate course of action for each individual case at the point of entry into the system.

We must build a system that provides complete and adequate disposition recommendations to the court, a product of reasonable caseloads for probation and other youth service workers who bear the responsibility for fully exploring the child’s background. This includes the history of the family, the child’s health, mental health, school records, prior arrests and treatment efforts, as well as current opportunities for effective intervention and appropriate aftercare.

This strengthened juvenile justice system will also have programs and interventions that can be matched with the assessment of each child’s needs so that we can truly help our troubled and delinquent youth. Warehoused, or kept in detention or at home waiting for placement, these children remain the product of the broken pieces in their lives.

The system that works is not slot-driven. It is based instead on need and risk assessments that benefit the child and provide for the safety of the community, while at the same time not unnecessarily overcrowding facilities and straining the capacity of the system. This system has sufficient detention and residential facilities, as well as alternatives to detention and secure care, such as day treatment and electronic monitoring, and a full range of aftercare programming.

But perhaps foremost, it is a system that will act with full knowledge of each individual case and child — and with full information about local and national trends that tell us what is happening, what is *really* happening in juvenile justice in this country. I think OJJDP made tremendous strides in this area with the release of our

national report on juvenile offenders and victims in 1995 and an update to that report this year.³ I assure you that OJJDP will continue to be there as a partner in these efforts, through the sharing of information and the provision of technical assistance and training, ongoing research and evaluation efforts, and formula and discretionary funding.

— *Dealing with chronic offenders*

The second objective of the *Action Plan* that I will mention today addresses the need to prosecute certain serious, violent and chronic juvenile offenders in criminal court. We must recognize, however, that with the push toward prosecuting more and more youth in the criminal courts through lowering the age of criminal responsibility and automatic transfer, we are losing our ability to make case-by-case transfer decisions. To preserve that ability, we must instead advocate for a system of transfer that retains our sense of individualized justice.

The *Action Plan* calls for criteria and guidelines to be used for both judicial and prosecutorial transfer decisions and points to the use of blended sentencing and extended jurisdiction as examples of creative ways of dealing with these serious, violent and chronic offenders. It also calls for further examination of the impact of transfer provisions to ensure that we are transferring the right juveniles and that they are indeed being incapacitated in the criminal justice system.

³ U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, *Juvenile Offenders and Victims: A National Report*, by H. Snyder and M. Sickmund (Washington, D.C.: Government Printing Office, 1995); and *Juvenile Offenders and Victims: 1996 Update on Violence*, by H. Snyder, M. Sickmund and E. Poe-Yamagata (Washington, D.C.: Government Printing Office, February 1996).

Every part of this objective requires good recordkeeping and information sharing, both to make good initial case and sentencing decisions and to learn, on a national level, about the most effective practices we can implement to reduce violent juvenile crime both in the short- and long-term.

Combining efforts, leadership

OJJDP is dedicated to strengthening this country's juvenile justice systems and its delinquency prevention efforts. But without an effective information sharing scheme, the various agencies in a jurisdiction each have only a small piece of the juvenile justice puzzle. Practitioners and policymakers are realizing this more and more often and, as a result, the very concept of "juvenile justice community" has begun to evolve to include agencies outside the court or law enforcement communities, to more fully reflect the multiple systems that interact with them and to form a more complete picture of the needs of a particular juvenile and family.

I would be remiss if I did not also mention a project OJJDP has been working on over the past year with the U.S. Department of Education. We are developing an instruction guidebook and a fact sheet around the Family Educational Rights and Privacy Act (FERPA) to clarify the limitations on information sharing practices between schools and the juvenile justice system and other "need-to-know" organizations.

When the brother of the 5-year-old saw him being dropped from the balcony in Chicago, he raced down 14 flights of stairs. He explained later that he did so in order to try to catch his brother. I got tears in my eyes when I first read those words, and it pains me to this very moment to think that in so many communities in this country we are not doing much more than racing hopelessly down a flight of stairs, too late to save a child, in our work on behalf of our children.

I am convinced that together, by working through a variety of issues, including those we will address at this conference, we can have a real impact on the lives of our most troubled children and the problems of youth delinquency and violence. So let us work together in taking on this task. Only through our combined efforts and leadership — and ultimately, this all comes down to leadership — will we be successful or, in Fulghum's words, by playing Sardines, not hide-and-seek. So I say to all of you — "olly-olly-outs-in-free" — let us come together, on common ground and fully informed, to address these problems.

Thank you.

Juvenile recordhandling policies and practices of the Federal Bureau of Investigation

DEMERY R. BISHOP

Section Chief

*Criminal Justice Information Services Division
Federal Bureau of Investigation*

From the FBI's Criminal Justice Information Services (CJIS) Division's perspective, juvenile justice is an expanding arena.

As I was preparing my remarks, I read an article in the *Washington Post* that I wanted to share with you this morning. It referenced a local student who was gunned down near his home this past weekend. He was characterized in the article as a talented football fullback from one of the local high schools, a 17-year-old sophomore who was simply walking down his neighborhood street, with his brother and his cousin, when an older model burgundy car occupied by three teenagers passed them, made a U-turn, pulled up beside them and stopped. An individual in that vehicle, another youth, got out from the front passenger seat, according to the article, and said simply to the victim, "What's up?" A contemporary greeting, as you well know. The victim, in turn, replied, "What's up?" At that point, the assailant, to quote the article, "... pulled the gun from the back of his pants. The victim and his two companions ran, but the suspect fired at least one shot, hitting the victim in the back and killing him instantly. The two other youths escaped unharmed."

The shooting occurred not at 4 a.m., or at a time that you might think a crime of this nature would occur, but at 4:45 in the afternoon, on a weekend. The question here, which has stumped investigators, is the fact that no one knew the

assailants. There was no known reason whatsoever for the crime, no motive at all! The victim was described as an individual who was an outgoing student-athlete with an "infectious smile and a promising future."

That is what I am sure confronts each and every one of you daily regardless of what function you perform in the juvenile justice process: the question of why? What caused the untimely death of this bright and promising individual? This question is one which you are here to discuss and learn more about during this conference.

Juvenile fingerprint card policy

My role today is to give you an overview of the CJIS Division's policies and procedures in terms of juvenile criminal history records. It is really quite simple. In 1993, the FBI implemented an updated policy after the U.S. Department of Justice conducted research and received comments as to what the FBI should be doing with juvenile fingerprints. Prior to March 1, 1993, we did not accept juvenile fingerprint cards unless the juvenile offenders were specifically denoted as being "Adjudicated As Adults." Subsequent to March 1, 1993, those regulations were changed in the Code of Federal Regulations,¹ and now the FBI will accept, maintain, and disseminate arrest fingerprint

cards for juveniles who have been tried or otherwise adjudicated in juvenile proceedings.

Once a juvenile fingerprint card is submitted to the FBI, it is handled like any other criminal record submission. We accept the card on an arrest as well as an adjudication. It boils down to the fact that once a fingerprint card is submitted by a State and is in our domain, it becomes ours. If an inquiry is received as to whether a particular juvenile has a record, we will advise the requester that a record exists. We do not place any caveats on those State submissions. They, the State submissions, have created a record in our index and that information is provided to qualified requesters. We will disseminate the juvenile records whenever a legitimate request is received, whether it is a criminal justice check or an application for employment, license or bond, etc., that comes to our attention. I point out that each State has the responsibility to determine whether its own laws permit submission of juvenile prints to the FBI; if we receive juvenile arrest cards from a State, we *will* disseminate these records to all legitimate inquiries. That is our current fingerprint/dissemination policy.

¹ Title 28, Code of Federal Regulations, § 20.32.

Missing juveniles file

Our other involvement with juvenile records is the Missing Persons File within the National Crime Information Center (NCIC). This morning, I had the opportunity to attend an awards banquet sponsored by the National Center for Missing and Exploited Children to recognize law enforcement officers for their outstanding and stellar work in the missing children arena. There are several categories within the system of records in NCIC that allow juvenile records to be entered into NCIC. One category, "Missing Juveniles," allows for the entry of a juvenile record where the individual(s) is not endangered or missing involuntarily. For instance, a runaway would, of course, be entered into that category, and that information is available to all law enforcement and criminal justice agencies nationwide.

The awards ceremony was just a small indicia of how the NCIC system works, and how law enforcement in general has become so acutely aware of the problems of missing children, in conjunction with juvenile problems and crimes, nationwide. Providing information on missing juveniles, along with the identification process, are two of the main areas that the FBI and the CJIS Division are involved with our law enforcement and criminal justice partners.

Juvenile crime statistics

The third area that I want to mention is that we collect and analyze statistics on juvenile crimes. We collect information that is submitted from law enforcement agencies nationwide through our Uniform Crime Reports (UCR) program, which is currently being broadened and improved through the National Incident-Based Reporting System (NIBRS).

Our UCR report in 1994 indicated that there was an increase of approximately 11 percent over the

previous year in arrests of persons under 18 years of age.

We are currently working through the 1995 statistics. Those numbers are not yet available but, as you may recall, there was an article in the *Washington Post* recently which referenced juvenile crimes and the fact that juvenile crime was continuing to rise, even though the overall crime index was down. This is something that you, as criminal justice practitioners, are intricately involved with.

We have seen a major increase in our overall use of the NCIC system and of the Missing Persons File, particularly the records for unemancipated minors, that is, under the age of 18, who are endangered or possibly missing involuntarily. We have seen how those records are being used and the need for instantaneous reporting of that type of information to the system. This issue is one in which we are currently working very closely with the National Center for Missing and Exploited Children.

New initiatives

The CJIS Advisory Policy Board, which reviews issues and provides recommendations to FBI Director Louis Freeh on criminal justice information services, at its June 1996 meeting in St. Louis, Missouri, will consider a proposal to expand the criteria in the Missing Persons File to allow the flagging of juvenile records, where the circumstances surrounding the "missing incident" are considered to be an extremely aggravated or endangered type of situation.

Additionally, we now have Safe Streets and Violent Crime Task Forces which work in conjunction with other law enforcement agencies throughout the United States, such as the Drug Enforcement Administration, the Bureau of Alcohol, Tobacco and Firearms, and local/State law enforcement agencies. We are seeing more and

more juvenile offenders involved in drugs and gangs. We just recently created a gang file within the NCIC that will be of investigative benefit to law enforcement nationwide in identifying individuals who have participated in gangs or gang activity.

There are a number of initiatives we have under way which may not impact you so much on a day-to-day basis but will, as Shay was saying, create a system of information. We are definitely part of that, and we are making information available to all criminal justice and law enforcement entities nationwide. That, in a nutshell, is what the CJIS Division and the FBI is in the process of doing.

Providing criminal justice information is a role in which the CJIS Division plays a vital part. I think it is a very important role and one which our Advisory Policy Board certainly has endorsed. CJIS and the criminal justice community both recognize the value of sharing information concerning missing persons, specifically missing children, and of being able to provide that information to law enforcement and agencies such as the National Center for Missing and Exploited Children, as well as others. I want to thank you for allowing me to be here and present this succinct overview of these CJIS initiatives and programs.

National assessment of criminal court use of defendants' juvenile adjudication records

NEAL MILLER

Principal Associate

Institute for Law and Justice

Increases in youth crime contribute a disproportionate share of the national crime problem. One legislative response to youth crime is to authorize, and even mandate, prosecutors and judges to consider the youth's juvenile adjudication record in case decisions. Under a National Institute of Justice (NIJ) grant, the Institute for Law and Justice (ILJ) undertook a national review and assessment of laws and practices relating to the use of defendants' juvenile adjudication records in the criminal courts. ILJ's study included (1) surveys of prosecutors, criminal justice record centers and State sentencing guideline commissions; (2) review of State laws; and (3) field work in two jurisdictions: Wichita, Kansas, and Montgomery County, Maryland.

State legislation

The ILJ study first looked at the gamut of laws affecting and specifying prosecutor and judge use of the juvenile adjudication record. A few highlights from that report, which covers State legislation as of January 1995, include:

- Fingerprint requirements or authorizations: 40 States explicitly authorize, while only 2 States forbid fingerprinting arrested juveniles.
- Central holding and dissemination of juvenile records: 27 States authorize, while only 5 States forbid this.
- Prosecutor and judge access to the juvenile record: all 50 States authorize judge access, while 24

States explicitly authorize prosecutor access.

- Sentencing laws dictate adjudication record use in 24 States, including 14 States with sentencing guidelines, 2 States with presumptive sentencing laws for sentence range, and 7 States for probation/prison decisions. California and Louisiana include the juvenile record in their "three strikes" laws.
- Limits on juvenile court jurisdiction and the resultant juvenile record creation that include jurisdiction with lower ages for adult court handling, waiver laws and concurrent jurisdiction laws. (ILJ is presently working on a study of juvenile waiver that includes an update on these laws.¹)

The full legislative study findings were published by the NIJ as part of its Research in Brief series.² Exhibit

¹ "Judicial Waiver and its Alternatives: A Legal Fact Sheet," report submitted by ILJ to the Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, November 1996.

² U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, *State Laws on Prosecutors' and Judges' Use of Juvenile Records*, Research in Brief Series, by Neal Miller (Washington, D.C.: Government Printing Office, November 1995). The information in the Research in Brief was developed from a larger project undertaken by ILJ that examines how adult criminal courts use defendants' juvenile records. When completed, the full report of this research will be

3 from the report details which criminal court figures are statutorily authorized to have access to juvenile adjudication records.³ Exhibit 4 from that report classifies by State the differing types of State sentencing laws that mandate juvenile record consideration.⁴

— Legislative update

In 1995, a nonsystematic and incomplete review of new State laws found new laws enacted in Connecticut (prosecutor access), Florida (expanded fingerprinting and juvenile justice information system amendments), Hawaii (expanded fingerprint authority), New Hampshire (prosecutor access), Ohio (three strikes law variation), Oregon (fingerprinting and record holding), and Texas (juvenile justice information system). The forthcoming ILJ report on juvenile waiver will provide more updated information.

Practitioner surveys

There is a reality out there independent of State legislation. For example, as of 1994-1995, five States had not implemented central recordkeeping statutory authority for

available from the National Criminal Justice Reference Service. Neal Miller and Tom McEwen, "Prosecutor and Criminal Court Use of Juvenile Court Records: A National Study," report submitted by ILJ to NIJ, August 1996.

³ Exhibit 3 is included in this presentation as Figure 1.

⁴ Exhibit 4 is included in this presentation as Figure 2.

lack of authorized funding. Conversely, law enforcement officials fingerprint arrested juveniles in several of the States without explicit statutory authority for this.

The most glaring discrepancy between State laws and the laws' implementation was with prosecutor access to and use of the juvenile record. A survey of nearly 100 prosecutors in large jurisdictions was undertaken. These prosecutors reported that in 22 States they either never, rarely or only occasionally saw juvenile record information. This includes information from presentencing reports, suggesting that they were not looking very hard. In another 22 States, prosecutors routinely obtain juvenile record information. In six other States, prosecutors in some large jurisdictions gain this information; in other jurisdictions in these States, they do not. Looked at from another angle, in 19 States where the State sentencing law mandates juvenile record consideration, prosecutors in only 12 of those States used this information.

Where juvenile record information is available, it typically comes from the prosecutor's own files. This information source may be supplemented (or replaced) by the juvenile court. In only six States is central record information routinely available to prosecutors (and useful if available). The most common use made by prosecutors of this information is for sentencing recommendations (16 States). Although prosecutors in 17 States had juvenile record information available at case intake, prosecutors in only 8 States routinely use it at that point. Surprisingly enough, prosecutors in only eight States routinely use juvenile record information to inform their plea offers. Exhibit 8 from the study final report details prosecutor survey

reports on their access to and use of juvenile adjudication records.⁵

We also found that prosecutors do not routinely make use of juvenile record information available to them from the State central record repository. Of 26 States with such centers, prosecutors in only 8 States report using it as a major source of record information.

Incidence of juvenile records

One might suspect then that the incidence of juvenile records among adult offenders is too low to warrant consideration or concern. A review of State sentencing commission data in five States found that the incidence of juvenile records among offenders ranged from less than 6 percent to 16 percent. This is a significantly lower figure than that reported by other research of cohorts of youth and inmates that provides much higher estimates, up to 45 percent in some instances.

ILJ's field work in Wichita, Kansas, suggests that this discrepancy may be simply the result of poor recordkeeping. There, we found that 43 percent of defendants arrested for violent felonies or drug dealing *and under the age of 26* had juvenile records, while only 5 percent of older defendants charged with the same crimes were found to have such records.⁶ The reason for this difference was that until 1989, when the present prosecutor was first elected, the office records of juvenile cases were purged when the youth reached age 21.

A similar pattern was found in Montgomery County, Maryland, where officials with the State juvenile justice information system reported that they purge their computerized information system

when the record subject turns 21. Thus, whatever the real incidence rate of juvenile adjudications may be for older defendants, it is not easily determinable from official records. (For comparison purposes, see Exhibit 13 from the final report; it details the incidence of adult criminal records among the Wichita cohort.)⁷

Impact of use

The 1989 change in office policy in Wichita was most fortuitous since sentencing guideline legislation enacted in 1993 provides that juvenile adjudication records (for felony-level offenses) are to be scored in the same way as adult records are for the purpose of setting sentence.

This provision in the new sentencing guidelines resulted in an increase in the sentence imposed in 59 percent of the cases where the defendant had a juvenile record. In the remainder of the cases the juvenile record was inconsequential or the defendant had such an extensive adult record that the juvenile record was superfluous. But where the juvenile record was relevant, the additional penalty imposed was as high as 4 years prison time.⁸

More recent Kansas legislation doubled the effect of prior records in serious violent crime cases so that a juvenile record may now add as much as 25 years to the sentence imposed.

Implications

The two most important study findings are:

- A significant proportion (at least 33 percent) of all convicted persons have juvenile adjudication records, and

⁵ Exhibit 8 is included in this presentation as Figure 3.

⁶ See Exhibit 15 from the study final report, included in this presentation as Figure 4.

⁷ Exhibit 13 is included in this presentation as Figure 5.

⁸ See Exhibit 17 from the final report, included in this presentation as Figure 6.

- Consideration of the juvenile record at sentencing can have a strong impact on incapacitation of offenders under a presumptive sentence system.

Numerous problems exist, however, in most States, including record quality deficiencies from both nonadherence to record reporting requirements and record destruction policies. Indeed, the problem of poor record quality may be so great that users (for example, prosecutors) have little incentive to press for improvement, since the records are not used anyway (because of poor quality). A somewhat circular problem, but real nonetheless.

Other problems have not even been noted by policymakers, much less resolved. For example, sentencing laws that mandate juvenile record use assume that there is some substantive meaning to a juvenile adjudication for a particular offense (for example, a violent felony-level incident). Because the juvenile justice system is often treatment-oriented, there is no necessary relationship between the adjudicated offense and the “sentence” imposed by the court. A plea to a violent felony offense carries no greater penalty than a plea to a lesser misdemeanor where the disposition is to an indefinite term of treatment. This means that a defense counsel decision to recommend a plea to avoid being tried and sent to a youth center may now be the basis of a claim of inadequate representation for failure to consider how the adjudication record might be used in the future.

The result is that the juvenile court is likely to move toward either greater adversarial procedures (including jury trials) or toward becoming marginalized by increasing resort to the criminal court. Indeed, in States where a three strikes law exists, the juvenile defendant might be well advised to accept or even (where possible) move for transfer of jurisdiction to the criminal court. There, the defendant will have a right to jury trial, potentially more favorable evidentiary rule, and a sentencing environment where serious offenses are the norm, not the exception.

Figure 1 (Exhibit 3): Statutory Authority for Criminal Court Access to Juvenile Records by State, 1994

STATE	PROSECUTOR	PROBATION OFFICER	JUDGE	CENTRAL REPOSITORY HOLDS JUV. RECORDS	SENTENCING LAW
Alabama	NA	Can see	NA	NA	
Alaska	NA	PSI report	NA	Authorized to hold	Record is factor
Arizona	NA	NA	NA	NA	Record is factor
Arkansas	Can see	NA	Can see	Authorized to hold	
California	Can see	NA	NA	Authorized to hold	Record is factor
Colorado	Can see	NA	NA	NA	
Connecticut	Can see some	Can see	Can see	NA	
Delaware	NA	NA	NA	Authorized to hold	
Florida	Can see	NA	Can see	NA	Record is factor
Georgia	NA	PSI report	NA	NA	
Hawaii	NA	NA	Can see	NA	Record is factor
Idaho	Can see	NA	NA	NA	Record is factor
Illinois	Can see	Can see	Can see	Authorized to hold	Record is factor
Indiana	Can see	Can see	Can see	Authorized to hold	Record is factor
Iowa	NA	PSI report	Can see	NA	
Kansas	Can see	PSI report	Can see	Authorized to hold	Record is factor
Kentucky	Can see	PSI report	NA	Authorized to hold	
Louisiana	Can see	Can see	Can see	NA	Record is factor
Maine	NA	PSI report	Can see	Authorized to hold	
Maryland	NA	PSI report	NA	NA	Record is factor
Massachusetts	NA	PSI report	NA	Authorized to hold	
Michigan	NA	PSI report	NA	Authorized to hold	Record is factor
Minnesota	Can see some	PSI report	NA	Authorized to hold	Record is factor
Mississippi	Can see	Can see	Can see	NA	
Missouri	NA	PSI report	NA	NA	
Montana	Can see	Can see	Can see	NA	Record is factor
Nebraska	NA	Can see	Can see	NA	
Nevada	NA	Can see	NA	NA	
New Hampshire	NA	PSI report	NA	NA	
New Jersey	Can see	PSI report	NA	NA	Record is factor
New Mexico	Can see	PSI report	NA	NA	
New York	NA	PSI report	NA	Authorized to hold	
North Carolina	Can see	NA	NA	NA	Record is factor
North Dakota	NA	Can see	Can see	NA	
Ohio	NA	NA	NA	NA	Record is factor
Oklahoma	NA	PSI report	NA	Authorized to hold	
Oregon	NA	PSI report	Can see	NA	Record is factor
Pennsylvania	NA	PSI report	NA	Authorized to hold	Record is factor
Rhode Island	Can see	PSI report	NA	Authorized to hold	Record is factor
South Carolina	Can see some	PSI report	NA	Authorized to hold	
South Dakota	Can see	Can see	Can see	NA	
Tennessee	NA	Can see	Can see	Authorized to hold	
Texas	Can see	NA	NA	NA	
Utah	NA	PSI report	NA	Authorized to hold	Record is factor
Vermont	Can see	NA	Can see	NA	
Virginia	NA	Can see	NA	Authorized to hold	
Washington	Can see	NA	NA	Authorized to hold	Record is factor
West Virginia	NA	PSI report	NA	NA	Record is factor
Wisconsin	NA	PSI report	NA	Authorized to hold	
Wyoming	NA	PSI report	NA	Authorized to hold	
NA = Not Authorized					

Figure 2 (Exhibit 4): State Criminal Sentencing Laws Authorizing Use of Juvenile Records by Type of Sentencing Law (24 states), 1994

Type of Sentencing Law

STATE	SENTENCING GUIDELINES	PRESUMPTIVE SENTENCING LAW	PROBATION FACTOR
Alaska		Prior juv. disp. affects	
Arkansas	Prior juv. disp. used		Prior juv. disp. weighed
California		Prior juv. disp. affects and counts for three strike law	
Florida	Prior juv. disp. used		
Hawaii			Prior juv. disp. weighed
Idaho			Prior juv. disp. weighed
Illinois			Prior juv. disp. weighed
Indiana			Prior juv. disp. weighed
Kansas	Prior juv. disp. used		
Louisiana	Prior juv. disp. used	Habitual offender law	
Maryland	Prior juv. disp. used		
Michigan	Prior juv. disp. used		
Minnesota	Prior juv. disp. used		
Montana			Prior juv. disp. weighed
New Jersey		Prior juv. disp. affects	Prior juv. disp. weighed
North Carolina	Prior juv. disp. used		
North Dakota			Prior juv. disp. weighed
Ohio			Prior juv. disp. weighed
Oregon	Prior juv. disp. used		
Pennsylvania	Prior juv. disp. used		
Rhode Island	Prior juv. disp. used		
Utah	Prior juv. disp. used		
Washington	Prior juv. disp. used		
Wisconsin	Prior juv. disp. used		

Figure 3 (Exhibit 8): Prosecutor Juvenile Record Access: State, Frequency, Sources, Use

STATE	FREQ. OF RECORD USE	FROM OFFICE FILES	FROM JUV. COURT	FROM PSI REPORT	FROM POLICE	FROM REC. REPOS.	FROM OTHER SOURCE	PRIMARY USE
Alabama	Occasional	Yes		Yes (2)				Charging
Alaska	Occasional		Yes	Yes				Sentence
Arizona	Routine	Yes						Charging
Arkansas	Routine		Yes					Plea negot.
California	Routine	Yes	Yes (2)	Yes	Yes	Yes (2)		Charging
Colorado	Occasional	Yes (2)		Yes	Yes (2)			Sentence
Connecticut	Never	Other agency						NA
Delaware	Routine		Yes (2)	Yes		Yes (2)		Sentence
Florida	Routine	Yes	Yes (2)	Yes		Yes (2)	Yes (2)	Charg./sent.
Georgia	Varies			Yes	Yes			Sentence
Hawaii	Routine	Yes				Yes		Investigate
Idaho	Routine	Yes (2)		Yes				Sentence
Illinois	Varies	Yes	Yes					Charg./sent.
Indiana	Routine			Yes	Yes (2)			Sentence
Iowa	Occasional	Yes	Yes					Plea negot.
Kansas	Routine		Yes			Yes		Plea negot.
Kentucky	Routine	Other agency		Yes				Sentence
Louisiana	Varies	Yes	Yes (2)		Yes			Screen/sent.
Maine	Occasional	Yes						Charging
Maryland	Occasional	Yes (2)		Yes				Sentence
Massachusetts	Varies		Yes			Yes		Charging
Michigan	Routine	Yes			Yes (2)		Yes (2)	Charging
Minnesota	Occasional	Yes						Sentence
Mississippi	Never	Other agency						NA
Missouri	Never	Other agency						NA
Montana	Routine	Yes	Yes (2)	Yes (2)			Yes (2)	Sentence
Nebraska	Routine	Yes		Yes (2)	Yes			Charging
Nevada	Routine			Yes				Sentence
New Hampshire	Rarely	Other agency	Yes					NA
New Jersey	Routine	Yes		Yes	Yes (2)			Charg./sent.
New Mexico	Occasional	Yes						Plea negot.
New York	Occasional	Other agency	Yes					Grand jury
North Carolina	Occasional	Yes	Yes					Plea negot.
North Dakota	Rare	Yes (2)		Yes				Sentence
Ohio	Varies	Yes	Yes					Charg./sent.
Oklahoma	Occasional	Yes					Yes (2)	Plea negot.
Oregon	Occasional		Yes					Plea negot.
Pennsylvania	Varies	Yes	Yes	Yes	Yes (2)			Plea/sentence
Rhode Island	Routine		Yes					Plea negot.
South Carolina	Routine	Yes (2)					Yes	Grand jury
South Dakota	Routine	Yes			Yes (2)			Charging
Tennessee	Occasional		Yes				Yes	Charging
Texas	Occasional	Yes (2)	Yes					Sentence
Utah	Occasional	Yes		Yes (2)				Plea negot.
Vermont	Rare	Yes (2)		Yes				NA
Virginia	Occasional	Yes (2)	Yes (2)		Yes			Sentence
Washington	Routine					Yes		Charging
West Virginia	Occasional	Yes						Sentence
Wisconsin	Routine	Yes			Yes (2)	Yes		Charg./plea
Wyoming	Routine	Yes						Charging

Yes = major source; Yes (2) = secondary or lesser source

Exhibit 15: Juvenile Record Prevalence-Wichita

	<u>Number of Defendants</u>	<u>Juvenile Record</u>	<u>Percent</u>
All Defendants	592	136	23
Under age 26	279	120	43
Age 26 and Older	313	16	5

Figure 4

Exhibit 13: Number of Defendants with Adult Convictions by Highest Charge-Wichita

<u>Highest Charge</u>	<u>Total Number of Defendants</u>	<u>Number with Adult Record</u>	<u>Percent with Adult Record</u>
Murder	26	18	69
Attempted Murder	7	2	29
Rape	18	9	50
Kidnapping	22	16	73
Robbery	63	47	75
Aggravated Assault	97	62	64
Other Sex Crime	15	4	27
Burglary	175	113	65
Drug Trafficking	105	64	61
Weapons Violation	60	42	70
Other Serious Felonies	4	2	50
Total	592	379	64

Figure 5

Exhibit 17: Sentence Impact from Juvenile Adjudication Inclusion in Guidelines Calculation-Wichita

<u>Impact/No Impact</u>	<u>Number of Cases</u>
Increased Incarceration	38
Increased Probation	36
No Effect	52
Off-Grid	5
Total	131

Figure 6

III. Public policy perspectives: Privacy and confidentiality considerations of juvenile record issues

Overview

“The need to know” versus privacy
Robert R. Belair

Practitioners’ perspectives: Using the juvenile record

Juvenile justice issues and the role of juvenile records in
decisionmaking: A prosecutor’s viewpoint
Jan Scully

Florida’s Serious Habitual Offender Comprehensive Action Program:
Collecting and using juvenile offender information to target
detention, intervention and prevention efforts
Donna M. Uzzell

Juvenile justice records management in Washington State
Michael L. Curtis

Striking a proper balance between legitimate uses of
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Even as I speak, we are passing out a report which SEARCH completed with funding, and expert analysis and advice, from the Bureau of Justice Statistics (BJS). Its working title is “Privacy and Juvenile Justice Records: A Mid-Decade Status Report.”¹ This is very much a draft report, and is the fourth major report that SEARCH and BJS have done together on the topic of juvenile records. (Highlights of those previous reports are summarized in the new report.)

Challenges to confidentiality

Let me first give you the bottom line of the report, and then review its contents. The bottom line — and this is not anything that you have not heard already today — is that there has been a dramatic increase, especially over the last couple of years, in the extent to which juvenile record information is available to criminal justice agencies, to noncriminal justice entities, and to the public. You just heard Neal Miller say that there is a shortfall between the theory and reality of juvenile record access. I do not doubt that for a minute, but if you look at the laws and at the changes in the law, there is no question that we are in the middle of a real revolution in the way in which lawmakers and policymakers

approach confidentiality and privacy.

How is this challenge to juvenile record confidentiality and privacy being accomplished? First, by treating juveniles as adults. Second, by relaxing confidentiality provisions in existing juvenile record laws. And third, to some extent, by the advances in centralized State criminal history record systems and repositories.

Looking at this issue over the past couple of decades, juvenile record information was not held in State repositories, and was unavailable to the adult criminal justice system. Not only was it unavailable as a practical matter, but there was also a wide and deep body of thought that juvenile record information should not be available, that there should be this two-track system in which you would have one career as a juvenile offender, and then start over as a first offender at the adult level. I think that has changed.

While the report notes that it is understandable that there would be challenges to juvenile record confidentiality, given the increases in juvenile crime, the report offers a cautionary note. Number one, there remains enormous desistance in the system. Most juveniles do not, in fact, continue to be active and frequent offenders at either the juvenile or the adult level. Number two, before we abandon what is almost 100 years of confidentiality protections, we need to think about the role, as a society, that confidentiality plays in avoiding stigma for those juveniles who do,

in fact, desist, and in promoting rehabilitation.

With that as a summary, let me quickly review the draft report. The report presents some juvenile crime statistics. Obviously, juvenile crime today is frequent, it is serious, it is violent, and it has been on the rise until, perhaps, just very recently. Most importantly, it greatly worries the American public. There is no question about that. Crime in general, and juvenile crime in particular, has become a first-tier political issue, along with war, peace and the economy, leaving behind the second-tier issues that crime always used to be grouped with: education, the environment, and certain consumer issues. Juvenile crime is exacerbated both in the sense of causes, but also in the sense that the American public worries about it, because it is associated with gangs, drug activity and guns.

It is not surprising, then, that the two concepts on which juvenile record confidentiality rests are (1) the notion that juveniles do not have the criminal mind-set to be held responsible for what they do (and this is really hundreds of years of English common law focused for the most part on children under seven), and (2) rehabilitation. Professor Gottfredson talked about that this morning, about how juveniles are malleable and great candidates for rehabilitation. This is addressed in the SEARCH report.

¹ Unpublished draft report by SEARCH Group, Inc., May 1996, which was distributed to conference attendees. The final draft of the report is expected to be published by the Bureau of Justice Statistics, U.S. Department of Justice, in early 1997.

Treating juveniles as adults

Confidentiality is being challenged, as mentioned, by treating juveniles as adults. Let me quote a *New York Times* front page article: "In the midst of the most dramatic changes to the juvenile justice system since the founding of the first family court a century ago, almost all 50 States have overhauled their laws in the past 2 years allowing more youths to be tried as adults, and scrapping long-time protections, like the confidentiality of juvenile court proceedings."

The transfer procedures include judicial waiver (the traditional method, which affects about 2 percent of juvenile offenders), prosecutorial discretion and statutory exclusion. In 1995 alone, State legislatures all across the country amended their laws to treat juveniles more frequently as adults, and to relax confidentiality protections. In 1995, 11 States amended their laws to lower the age of transfer. Vermont's age of transfer is now at 10, Montana's is at 12, and Georgia's, Illinois', and Mississippi's are at 13. The upper age limit for juvenile court jurisdiction is under attack. Almost 10 States now have lowered the upper age limit for juvenile court jurisdiction to sustain, and there are obviously some variations depending upon the nature of the offense and past offense records.

The information implications of this are profound. First, of course, as juveniles get treated as adults, their records get treated as adults, and that, more and more in this country, means public access. Second, the pressure to collect and to maintain juvenile records grows as the demand for the information grows, and the kinds of audiences involved in access grows.

Relaxing confidentiality protections

The second way in which juvenile information is becoming

more available is the relaxation of confidentiality protections. Juvenile court records are more likely to be affected than law enforcement records. Legal records are more likely to be affected than social records. Clearly, if you look at it over a couple of decades, there is far more access — both in theory and, I believe, in practice — to juvenile record information in adult courts today than there was, say, in 1982 for sentencing purposes, for charging purposes or for probation purposes.

As I said at the outset, this notion of a two-track system is clearly in disfavor today and, frankly, for good reasons. Victims today are more likely to be entitled to access to the juvenile record of their offender. Schools and national security agencies, or agencies making national security determinations, are also more likely to get access. Today, in over 30 States, the law provides that the name and photo of a juvenile can be released to the public in cases of violent and repeat juvenile offenders. In 1995, 10 States amended their laws to permit expanded public access to juvenile justice records in various circumstances. Recent case law, for the most part, has been sympathetic to statutory claims for expanding access or making public, juvenile record information.

Juvenile data systems

The third way in which juvenile record information is becoming more available has to do with the existing or emerging systems that collect, maintain and disseminate juvenile record information:

- Today, 40 States authorize the fingerprinting of juveniles, while only 2 States prohibit the fingerprinting of juveniles. That is almost a flip-flop from where we were 20 years ago, where the commonplace was that statutes prohibited the fingerprinting of

juveniles except in extraordinary circumstances.

- Today, there are statewide systems that are at least attempting to collect and maintain juvenile record information. In 1988, only 13 out of 50 State repositories felt that they had legal authority to collect and maintain juvenile record information. Today, that number is 27. It does not mean that all those States have juvenile record repositories that are up and running or that have a great deal of information, but it is certainly consistent with the trend.
- The FBI now accepts juvenile record submissions from the States and treats those submissions in the same way that the FBI treats adult records.
- And, of course, now we are seeing juvenile court systems that are automated, sometimes countywide, sometimes more extensive than that.

Factors ensuring record confidentiality

Let me close by discussing the other side of the equation, and that is the need for privacy and confidentiality in juvenile justice records. Do all of those trends which are moving in one direction mean that privacy and confidentiality, as far as juvenile records is concerned, is dead? Will it go the same way that the adult system seems to be going? Just this week at the Federal level, we have talked about making criminal history record information available for background checks for tenants in public housing, for school bus drivers, for security guards. Obviously, in connection with the Brady Law, there are background criminal history checks of prospective gun purchasers. I do not think there is any question that it is a different environment today with respect to the dissemination and the availability of adult records than 20 years ago.

While I think that juvenile records will become more available, and already have become more available, I think it is also right that they will not become fully available. This is a point that the report makes several times, and there are several reasons for this.

The first reason is the demographics of the record subjects. I think the demographics of juvenile offenders make it likely that society will maintain a reservoir of sympathy for these children. A recent Ohio study of juveniles who are incarcerated in that State shows that 90 percent of these children have substance abuse problems, 5 percent are homeless, 30 percent have mental disorders, 75 percent of the girls and 50 percent of the boys have been sexually assaulted, 25 percent of these children have their own children, 6 out of 10 of these children lived with single mothers, and 8 out of 10 came from homes with an annual income of less than \$10,000. As the Ohio officials who did the survey concluded, these kids truly are the throwaways of our society. And to repeat a telling quote from one of the Ohio officials: "Just the other day we had a 12-year-old who shot a man. He was so little, I had to order special shoes for him, size 3."

A second factor that I think is likely to continue to permit confidentiality and privacy to endure in the juvenile record context is the viability of the juvenile courts. The vast majority of juveniles who are processed in court today, continue to be processed in juvenile and family courts. On experience, this notion of transferring juveniles to adult courts may turn out not to be a useful or helpful strategy. The *New York Times* article that I referred to recounts recent studies in Florida, New York and New Jersey which suggest that juveniles sentenced to adult facilities display what is called a "contagion effect," which I know many of you are familiar with. By

being exposed to hardened adult criminals, juveniles in those settings are more likely to return to crime, and to do so with more ferocity than their juvenile peers who have gone through the juvenile process and were sentenced to juvenile facilities. There is also likely to be a public backlash. Look at what the prosecutors in Richmond, California, are doing. They are charging a 6-year-old with attempted murder. It seems to me that there is at least a good chance that, in time, the American public will have a backlash when society charges its 6-year-olds with murder.

A third factor is desistance: the vast majority of juvenile offenders do desist from crime, and whether that is rehabilitation or the age/crime relationship, the fact of the matter is that the vast majority of juveniles do desist. I think we are going to find that over time, policymakers, after the frenzy of the current period, will ask themselves does it really make sense to abandon confidentiality protections for 90 percent of juveniles in an effort to protect society against perhaps 10 percent or less of juveniles? And maybe the real question is why cannot we do better? Why cannot we do both?

This leads to another point, which is sealing and purging laws. They continue to subsist in most States as a last refuge and a safe harbor. In many States, they are available only in cases where juveniles have shown some rehabilitative effect, or at least the effects of time, and have established a clean record period. It may well be that as a society we will begin to think about using sealing policies in a more creative and pervasive way.

Last, I want to address problems with opening juvenile records. While the records today are authorized to be fingerprint-supported, they are not always fingerprint-supported. They have low disposition reporting rates. They are incomplete. They are inaccurate.

They are not as good as the adult records, and there are many heroes in this room of the 20-year battle to improve the adult record system in this country, and you folks know better than I how difficult a task that is. So it does seem to me, and the report makes this point, that there is still this notion — born of desistance and optimism and the uncertain and often bleak results of incarceration — that, as a society, we need to figure out a way to do better than just throw away 15- and 16- and 17-year-olds, and continue to work on ways to use confidentiality and privacy to both protect society, but also to promote rehabilitation. Thank you.

Juvenile justice issues and the role of juvenile records in decisionmaking: A prosecutor's viewpoint

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Good afternoon everyone. I am probably the "hard nose" of this group, which you will be able to tell from my comments. So just take me as the devil's advocate if you have a different perspective, but I am looking at this issue from a prosecutor's viewpoint.

New laws affecting California juveniles

California, as many of you are probably aware, is notorious of late for getting tough on criminals, particularly violent offenders, and the example of that is our "three strikes" law that was passed in 1994. It sent a clear message to our citizens and our bad guys that Californians were saying, "We're mad as hell and we're not going to take any more!" Three strikes was a citizen initiative, and the focus of the law is on prior violent and serious criminal conduct, on criminal history. Part of that emphasis is that we can best predict the future by looking at the past.

There is a juvenile component to the three strikes law, strikes being considered serious or violent felonies. For purposes of juveniles, if we seek to have the juvenile tried as an adult and the juvenile is convicted, that is an easy strike. If we, for certain designated crimes, petition the court to have a juvenile remanded to our criminal adult court, and even if that petition is denied and the juvenile petition is ultimately sustained, then that counts as a strike for future conduct of that individual as an adult. Of course, that is still continuing to be

tested in the court system, because three strikes is still relatively new.

Another thing happening in California is that in January 1995, the governor signed a bill that allows prosecutors to, for certain types of violent crime, petition the court to try as adults juveniles who are 14 years of age or older. (It used to be that we could only do that at the age of 16.) A trend that we are seeing in California, if not across the nation, is that for the first time in a long time — instead of the sole focus of juvenile justice being rehabilitation with no mention of the "P" word (for punishment) or detention (jail time) — public safety is as important as juvenile rehabilitation. A good example is that for the first time, I have been told, in many, many years, juveniles being held in the detention facility at Sacramento County's juvenile hall actually know the name of the Sacramento County D.A. I know this because one of the correctional officers said my name is used in vain, regularly. I, frankly, view that as a compliment, because that means that our message of "getting tough" on juvenile offenders is being heard.

Upon taking office in 1995, I initiated a policy that we seek to have tried as adults all juveniles who use guns to commit crimes and all juveniles who kill, in every situation. That actually is consistent with the gun and homicide statistics in our county, and I would bet that it is reflective of our State as well as the nation. In 1994, we did an evaluation in our unincorporated part of Sacramento County, and

found we had 72 homicides. The Sacramento County Sheriff's Department analyzed those cases and found that over 40 percent were committed by young people, 19 years of age and under, and of those, the assailants used a gun 80 percent of the time. Clearly, public safety implications have to be considered.

The value of deterrence

An important part of how we deal with juveniles — as far as consequences versus rehabilitation or a combination thereof — is to not only render punishment, but also to underscore the value of deterrence, which impacts whether or not a youthful offender decides to engage in certain types of conduct. Frankly, if my name is being used in vain at juvenile hall, the message is getting out to the youth in the community. If that means that they are being deterred from committing more serious crime, then they are better off and we are better off. I think part of our problem is that our system has devalued itself over the years to the point where we have lost that consequence impact, and so our juvenile justice system is no longer considered a deterrent.

Quick comment on the 6-year-old from Richmond, since I am from California. This type of situation really does pose a dilemma to all of us. Should a 6-year-old have charges pressed against him in the juvenile system and be adjudicated? I do not think there is a right or wrong answer.

What this situation poses to us as a system is that we are not equipped

to deal with a child of that young an age who commits that type of crime. But if our system is not the right one to do it, then which system is? Our child protective service system is equipped to deal with kids in abusive environments who are victims, not offenders. And our juvenile justice system, unfortunately, is the only mechanism by which we can provide evaluations to determine what this child needs.

I have heard that this child, within the last year or so, lost his father as a murder victim; that since this child could walk, he has been walking the streets by himself, lacking supervision; and that he has a number of mental issues. So he was almost predestined to be where he is. All of those things have to be dealt with for the future. Would you not have some record of that conduct for this child in years to come? Is there some way that we need to deal with that?

I am hoping that as a result of this case, our child protective and juvenile justice systems and other appropriate institutions come together to decide how we are going to deal with these sorts of situations. There is not one system that can adequately deal with this case because we have not had to do it before, but we will have to deal with it in the future.

Obtaining and using juvenile records

Where do we get records of juvenile adjudications in Sacramento County? We are just now getting an automated system for juvenile records. We have had an automated system for our adult criminal justice system in operation for a long time. Obviously, when your agency is automated, it is very helpful in terms of being able to acquire information quickly, and that information tends to be more valid than if it is being maintained manually. I do not know about other

States, but we get much scantier information if we have to seek records from other counties in our own State, and certainly other States, that have varying systems of how they keep records, if they provide those records to you at all. We do use the court as a backup, but our information is often quite reliable.

How do we use our juvenile records? It varies, again, from county to county, but there are a number of cases, particularly the lower-level crimes, where probation is really the screening organization, and where the prosecutor will never even see a case. So probation will often make that preliminary decision and will consider, obviously, any prior adjudications or contacts that this juvenile has had in the context of the juvenile system.

We also use juvenile records in detention considerations. Are we going to detain this child or will we, pending his case in court, release him out into the community under certain conditions? Obviously, we are going to look up the number and the nature of prior adjudications, and at previous offenses that were committed when the juvenile was, perhaps, out in the community while he had other charges pending.

We are going to look at previous grants of probation, and whether there were violations or a successfully completed probation. Any prior juvenile history is considered and influences our office in terms of whether or not to charge an individual. If we do charge, the history affects any plea dispositions. Are we going to go for the maximum charge or is there some sort of reasonably related, intellectually honest charge on which we can appropriately dispose of this case?

Impact on decisions

Our decision-making is influenced greatly by the prior adjudications of the juvenile. We

make great efforts to try to find the history because we do not like to make those decisions in a vacuum. At the juvenile level, sentences will certainly be influenced by a juvenile's history, and violations of probations also are dependent in part upon prior adjudications.

Not only are criminal history records important in the juvenile disposition area, they influence us in terms of whether or not to remand a juvenile to be tried as an adult. I have one policy that, irrespective of prior adjudications, a juvenile be tried as an adult (at least we attempt to get the judge to send the juvenile to adult court). But for cases that do not fall within that mandatory exercise of our discretion, we always consider the background and previous adjudications. From my office's standpoint, where there are adult prosecutions for young adults (18 to 21), the juvenile adjudications become more significant because we believe that an 18-year-old who commits a first-time business burglary is very different from the 18- or 19-year-old who commits a business burglary and who had committed crimes as a juvenile and had been remanded in the past to the California Youth Authority.

In addition, we use the juvenile record to argue a position on bail for young adults, to determine whether or not that young adult ought to be released pending his case, whether he should be released on his own recognizance or have some minimal bail imposed. Again, plea disposition and sentencing always makes a difference to our advocacy position. I can tell you, though, it is not unusual to have a juvenile court judge read an entire juvenile file, including all prior contacts with our juvenile system, for juvenile disposition purposes. In adult court, you will frequently find judges who refuse to consider juvenile records. I think it is important that we are consistent in the manner in which we handle these cases.

Restoring confidence in the juvenile system

A point I want to make is that how we treat juvenile records impacts the public's and the youthful offender's perception of our juvenile justice system. Again I reference the attitude of the youthful offenders in our juvenile hall with respect to me. When they have that attitude, I think they tend to fear more the juvenile justice system and the public tends to have more confidence in our system. I do not think the public right now is looking for rehabilitative efforts in our juvenile system; they are looking for deterrence and protection. I believe that the public, over the years, has lost confidence in our ability as a system to protect them. I have told people that I am not a social worker, I am a D.A., and I want people to fear the consequences of contact with my office.

I think it is important that we, as a prosecutorial agency, are the hammer; however, I greatly support collaborating with early intervention and prevention programs so that we get people more motivated to participate in and take advantage of those systems, and to empower themselves.

An example of that is truancy efforts my office undertook in Sacramento County. At the beginning of the school year we reminded parents of their requirement to get kids to school. Later on in the year, we publicly announced that we would hold them accountable in fulfilling that requirement and arrest them for the failure to do so. We actually picked out 12 of the parents of the most chronically truant students in our county and we did a sweep, arresting them on the creative charge of contributing to the delinquency of a minor, a misdemeanor. Now, for the first time in 10 years, our city school district has the highest rate of attendance that it has ever had. Students are coming back to school.

The schools have student attendance review boards, which are multiagency boards that try to address family needs and concerns in order to assist families to keep their children in school. These boards try to resolve issues and get kids to school, and they work with parents and families and kids early on. They are not the hammer. By people knowing that our office is the hammer, parents and students have been flocking to those student attendance review boards. By our office being viewed as strong, I think we empower the social service programs that really aid and assist juveniles and families, and I think this is very important in terms of our relationship so long as our roles are kept in the proper perspective.

I would like to make two more points. One is that there is a trend in which parents are being held accountable for repeat, chronic truants. At least in California, there is a new wave of prosecutors looking at accountability and responsibility by parents. Will we get to the point where chronic criminality by juveniles, prior adjudications, translate into civil or criminal liability or responsibilities for parents? There is a legislative trend that way.

A second point is that there is a move, at least in California, to take some of the discretion away from prosecutors and judges as to whether to try a juvenile as an adult. For certain types of crimes, it's like "one strike, you're out, you're an adult." Legislation is moving forward that deals in large part with prior juvenile adjudications; if passed, certain types of offenses will automatically result in the youths being tried as adults.

If anything, the public backlash against juvenile crime right now is moving toward more consequences and public protection. I think we are going to see, from citizens of California and probably other parts of the nation, a move to focus juvenile justice on rehabilitation counterbalanced with public safety interests.

Florida's Serious Habitual Offender Comprehensive Action Program: Collecting and using juvenile offender information to target detention, intervention and prevention efforts

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I would like to begin by sharing a story about two men who were camping together. They are good friends and they spent a great day fishing. It was time to return to the tent and get ready for a new day. As they were bedding down, one of the guys heard a noise, and they peeked outside the tent but did not see anything. They heard it again, looked outside and, lo and behold, there was a huge bear heading for the tent. They knew they had to evacuate and, as they started to leave, one of them turned back and went into his duffel bag and started searching. The other guy looked at him and said, "Come on, we gotta get outta here. What are you doing?" He said, "Well, I'm looking for my sneakers." His best friend said, "What do you need sneakers for?" He said, "So I can run fast." The other guy said, "You can't outrun a bear." And he said, "I don't have to outrun the bear. All I have to do is outrun you."

This is the moral to my story: we have been trying to outrun the problems that are associated with the increase in juvenile crime, but we have not been doing an effective job. What we really need to do is try to get ahead of the game. And I commend SEARCH for having a conference that focuses on giving you best practices and models and information to take back to your States and to implement.

I am here to address the Serious Habitual Offender Comprehensive Action Program (SHOCAP) in

Florida, and the statewide SHOCAP initiative. SHOCAP is an interagency case management system that enables the juvenile justice system and human services agencies to make more informed decisions regarding the small number of juveniles who commit a large percentage of serious crimes.

Statistically speaking, the U.S. Department of Justice's Office of Juvenile Justice and Delinquency Prevention (OJJDP) stated that 94 percent of the kids who were ever involved with the criminal justice system never came back a second time.¹ Of that remaining 6 percent, 4 percent went on to commit a second offense, and the remaining 2 percent went on to become career criminals. That 2 percent were responsible for about 30 to 40 percent of serious juvenile crime. This correlates with long-term studies that revealed that 6 to 8 percent of male juveniles accounted for over 60 percent of serious offenses committed by juveniles.

I have always been a doubting Thomas, and so I really did not believe those numbers. Prior to joining the Florida Department of Law Enforcement (FDLE), I was a sergeant with the Tallahassee Police Department, where I oversaw the juvenile unit. When we started our

SHOCAP program there in 1992 — we were monitoring about 184 juveniles at the time — we pulled a snapshot look of these kids in our database. And we found that these 184 kids accounted for 35 percent of all juvenile arrests and 56 percent of our part I felony arrests. This is out of a census tract of a population of about 18,000 children in the 10-17 age group. Clearly, the FDLE felt that if it instituted a program that targeted the most serious, repeat, habitual juvenile offenders, this could have a significant impact on criminal activity.

Thus, Florida began the SHOCAP program and every agency that has contact with juveniles in the juvenile justice system is represented at the table in an interagency work group so that we can all agree on what criteria should be used to determine who a serious habitual offender is. The agencies involved in SHOCAP are police; schools; human services agencies (particularly agencies helping the dependency-involved); corrections (the correctional component in Florida is fortunately handled by a new criminal justice agency, the Department of Juvenile Justice); the courts (court administrators, judges and public defenders); and prosecutors.

SHOCAP objectives

The program objectives for SHOCAP are four-fold, and include elements of (1) interagency cooperation, (2) creation of an

¹ The OJJDP started the original Serious Habitual Offender Drug Involved Program (SHODI) and continued with SHOCAP.

operational model, (3) improved information collected on serious habitual offenders, and (4) suppression and control of the criminal activity committed by these offenders.

1. Cooperation. SHOCAP seeks to increase cooperation and coordination between agencies interacting with youths.

2. Operational Model. Agencies must develop an operational model for dealing with those juvenile serious habitual offenders to include school placements, police contacts, arrest procedures, case management, program placement and reintegration/aftercare. This model will help agencies to determine proper school placement of juveniles and to determine police contacts, including field interview reports.

Before SHOCAP was in place in Tallahassee, we would drive around in our police car and see youths on community control or supervision who would not be at the places they were supposed to be. They were out past curfew and, as you would drive by, they would wave to you and you would wave to them. They viewed the system as a joke.

Since SHOCAP, all the terms of supervision for our serious habitual offenders are listed and they are distributed to every police officer. So now in Tallahassee, there are 150 more pairs of eyes and ears on the street, looking at these youth, and knowing that they are not supposed to be there. Now when you drive by and see these youths, waves are no longer exchanged. You get out of the car and say, "Hey, you're not supposed to be here, you're against curfew." You fax that information the next day to their supervisor, and that becomes a violation of community control. We are working on a system that will eventually allow the officer to pick these juveniles up in the street; unfortunately, current Florida laws do not allow that. But doing so

would provide quick consequences for the action.

In terms of arrest procedures, law enforcement officers normally have a great deal of discretion as to whether to arrest a juvenile. In most police agencies where SHOCAP is instituted, the agencies tell their officers that if they come across a juvenile serious habitual offender, the offender *must* be arrested. The officer does not have discretion because the offender has already showed a propensity to continue to commit crime.

In terms of case management, SHOCAP calls for enhanced supervision, having community control counselors or re-entry counselors with lower caseloads.

In terms of program placement, SHOCAP aims to determine what programs are best suited for kids that have committed these serious crimes.

Reintegration and aftercare are important because these kids do not get locked up forever, they do come back in our communities. They come back to the same environments that they left, and unless there are strong reintegration and aftercare programs, those juveniles will re-offend. This includes supervision that allows police officers and prosecutors and schools to have a say-so in the types of supervision and treatment concerns for that child. You should not just tell a child, "You must attend school" and not tell the school system that you are mandating that child's attendance. You should not just put a child back in the community and not let law enforcement know that that child is back. Good community policing goes hand-in-hand with SHOCAP, because these community policing officers could knock on doors, could make sure these kids are home past curfew, and could set up a circle of wagons to hold these children accountable for their supervision.

3. Improved Information. This objective seeks to improve the quality and relevance of the information collected on serious habitual offenders, such as known associates, parents/siblings, police field contacts, school placement, and terms of supervision.

The social services agencies have dependency information on that child. The schools have their own records with exclusively school information. The police have law enforcement information, and the courts have their information of adjudications. When you put this information together and overlay it chronologically, you start to see a picture, and that picture is very important when you look at how this child ended up in criminal activity.

The Tallahassee Police Department started profiling these kids and, in most of our profiles, we found out that the first contact that the system had with this child was an abuse and neglect or domestic violence call to the home. Long before we ever saw this child as an offender, we saw the child as a victim. This collection of information helps us create that kind of profile, and tells us that when we look at it chronologically, we can see that this child was suspended from school, but it was only a couple of days after a domestic violence call or abuse call to his home. We can see that the child then acted out in school, was suspended, and was then caught on the street bashing mailboxes. This information helps us to create a pattern that we can look at and make decisions about that we could not before.

This reminds me of a story that I once heard of a man who was on a train, and he saw this gentleman get on with his children. The kids were being extremely disruptive, but the gentleman was just sitting there, ignoring the fact that his children were causing so many problems for the other passengers. Finally, the man observing this was so fed up

with their behavior, he could not take it any more. He looked at the gentleman and said, "Sir, I do not know if you have noticed this or not, but your kids are disrupting everyone else on the train." And the gentleman replied, "You know, you're right. We just left the hospital an hour ago, where my wife died, and I don't know what to do, and I don't think these kids know what to do either." And the man telling the story said his whole paradigm shifted; it changed the way he felt. He went from total irritation to an understanding, to a compassion, and it was because when the information he received changed, his feelings and behavior changed as well. This tells us that we need to make better decisions based on the information we have about these youth.

As I mentioned, profiles of these offenders can contain known associates information, which is a useful investigative tool for law enforcement. I can think of several cases at the Tallahassee Police Department in which we solved the cases very quickly because we had done a link analysis. We had looked at all the serious habitual offenders in a reporting area where we had a particular crime and we then linked known associates to those offenders. We used our school resource officers to determine who was in school during that time, and who was not. We looked at placement services to determine who was in a program and who was on a home visit. From that, we were able to identify a suspect and actually make the arrest. In Tallahassee, a profile indicated 52 percent of the kids who were serious habitual offenders had older siblings with criminal histories. That list needs to be distributed to every elementary principal because, lo and behold, when these principals see that list and realize an offender has a younger sibling in their school, they know that child should be targeted

for a prevention program. We need to look at a comprehensive approach, not just targeting the hardened.

4. Suppression and control of serious habitual offender criminal activity. In terms of this SHOCAP objective, I reiterate much of what I heard the prosecutors say, and that is that these offenders need to be given consequences for their actions.

Benefits

What are the benefits of SHOCAP? More complete profiles of these habitual offenders, improved and more efficient information sharing, and a more efficient use of resources. If we only have "X" amount of resources, should we blanket our resources or do we look at that 2 percent of offenders who are committing the majority of our criminal activity? How are we going to use the limited detention space we have? How are we going to use the limited bed space that we have? Another benefit is improved interagency cooperation, which then results in improved system credibility.

Information gleaned from serious habitual offender profiles can help you target your detention, intervention and prevention efforts. If you look at a conceptual model of serious habitual criminal evolution, you will find that there is a peak of youthful criminal activity in the 18-year-old category. Once you identify a criteria, and you know who those kids are, that is where you look at targeting your detention and incarceration efforts. You can start monitoring the lower age groups to determine who is the up-and-coming serious habitual offender. That is where you can target intervention efforts. Then, where children are subjected to abuse, neglect and exploitation, this is the at-risk population where you can target prevention efforts.

In determining the criteria for what makes a juvenile a serious

habitual offender, most SHOCAP projects value arrest-alone information, although they require at least one felony adjudication before enabling the child to be in the program. The Tallahassee Police Department's SHOCAP criteria require that a juvenile have a minimum of 21 arrest points.² The juvenile must have one felony adjudication, or adjudication withheld, the juvenile must be less than 18 years, and must never have been convicted or sentenced as adult.

Once your criteria are place, what do they tell you? Based on their criteria, the Tallahassee police developed a collective description of a serious habitual offender. The average offender:

- had been reported missing or run away at least once;
- is associated with some type of gang or group criminal activity;
- is drug-involved (whether using or selling);
- associates with other serious habitual offenders almost 100 percent;
- was 10.5 years of age at first arrest, has been arrested an average of 28.87 times during his criminal career, and averages 18.53 felony arrests;
- was primarily a property offender at first, and then moved on to persons crime;
- is currently on parole from a residential placement;
- is re-arrested every 43 days; and
- was arrested 2.5 times prior to his first adjudication withheld, 9 times prior to his first delinquency adjudication, and has been adjudicated an average of 10.6 times.

² Points are assessed according to the following scale: six points for a persons felony, five for a property felony, and three for a misdemeanor offense.

SHOCAP initiative

Let me briefly discuss the statewide SHOCAP initiative. Florida received initial funding for our five existing SHOCAP sites in 1994-1995.³ We also asked for funding for 10 new sites. In 1995-1996, we continued our funding for the 15 existing sites, and we added 11 more sites which are just now coming on board. And in 1996-1997, we have continued funding for those 26 sites, and we are adding five additional sites. We are looking at linking areas of the State where counties are not involved in SHOCAP so we can look at the offenders' corridors of travel.

We are fortunate in Florida to have legislative authority to do the program. In 1993, our legislature instituted the Violent Crime Act, which authorized a study for the FDLE to look at establishing a juvenile criminal history database.⁴ That database was established in 1994. The legislature also looked at increased information sharing: the law mandated that the schools, law enforcement and juvenile justice share information on juvenile records in that database, and that each county had to have an interagency agreement delineating how they were going to share that information.⁵

This is significant, because it is the first time (and this is for Florida records only) that we have allowed secondary dissemination off of that database. Law enforcement can exchange that information directly with schools, and that is a significant change in the direction that we were going. The law also mandated notification of school superintendents of juvenile arrests. A school superintendent must be

³ "Existing" sites are those that were part of the original OJJDP project that was held nationwide to bring SHODI or SHOCAP sites on board.

⁴ FS 943.05 and 943.0515.

⁵ FS 39.045.

notified immediately after the arrest of a student, and that superintendent has 48 hours to notify his chain of command down to the local classroom teacher and guidance counselor. Finally, the law established record retentions for juvenile serious habitual offenders.

As of May 1, 1996, there were 60,104 records in our juvenile criminal history database, which account for about 112,000 arrests. Of course, juvenile information is collected on all felonies (we had a law mandating that felony prints go to FDLE for automated fingerprint identification system purposes, but now we actually have created a record on those prints), and we also include enumerated misdemeanors. These include violent misdemeanors or those that show a propensity for violence, like cruelty to animals, or repeat misdemeanors, like petty theft, which indicate a felony if three offenses are adjudicated.

Gang initiative

Another initiative we are undertaking involves gangs. If you are aware of the Violent Gangs and Terrorist Organizations File (VGTOF) that the FBI started in the National Crime Information Center (NCIC), we will be using that file statewide rather than developing our own. The NCIC file was developed in late 1995; it is a pointer index, not an intelligence system. As of January 1, 1996, they had 439 subgroups and 127 gangs in that database.

We are pushing for every Florida city to enter in gang information in this file, and we are undertaking an all-out effort to promote the use of the database. We are looking at this hot file as a good barometer to see how much information locals will put into a gang file. To that effect, we are reaching out to all 26 SHOCAP sites and to any counties that have a multiagency gang task force. In a pilot project with one county, we will provide manpower

to help them identify their groups and subgroups, and enter data on their gang members.

It is a big initiative we are undertaking and, based on how that pilot goes, we may even help enter gang data from all the other major counties within Florida. We feel that if we put that effort forth, we will get a workable database that will enhance the safety of our officers in Florida.⁶

I would like to end with a story because I began with one. It is about a captain on a battleship and, as he was sailing along the seas, a seaman came up to him and said, "Sir, there is a light on the starboard side and if we do not change course, we are headed for collision." The captain replied, "You signal that other ship and you tell them to change their course by 20 degrees." The seaman did so, and the reply came back, "No, you change *your* course 20 degrees." The captain became pretty upset and said, "You send them a message saying that 'I am a captain, change your course 20 degrees.'" The reply came back, "I'm a seaman first class, change *your* course 20 degrees." By this point, the captain was so furious, he said, "You signal, and send the message 'I am a battleship, change your course 20 degrees.'" The reply came back, "I am the lighthouse."

I would like to conclude by saying that in Florida we learned the hard way, with our tourist killings

⁶ Since this presentation, the FDLE and local law enforcement officials determined that the NCIC VGTOF file was not meeting all of Florida's law enforcement needs regarding gang intelligence. FDLE is in the process of developing a statewide gang intelligence database for investigative purposes that will merge data into the VGTOF file for purposes of officer safety. The FDLE estimates the pilot database to be operational in January 1997 with full statewide implementation effective with the on-line development of FCIC II system.

and other crimes that affect the economic well-being of our State, that we cannot continue to do the things the same way. We cannot run into a lighthouse, or a brick wall for that matter, and not change the way we look at things and the way we use our information. The pendulum has shifted, as I have heard other speakers say. It is going to be our responsibility to be good stewards of that information, to use it productively, to get the best bang for the buck, and to protect our citizens while protecting the rights of others. That is a challenge for the year 2000, and hopefully we have made a good start. And I thank you for the opportunity to be here.

Juvenile justice records management in Washington State

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The following timeline presents a chronology of events over the past two decades which impact the management of juvenile justice records in the State of Washington. I hope that providing this information helps inform other States which are struggling with the public policy issues involved in such activities as juvenile record handling procedures, juvenile court proceedings and statewide court automation.

1978

Juvenile Code. The Washington State Juvenile Code — the “new code” as we still call it, even though it is almost 20 years old — becomes effective after being passed in the 1977 legislative session.¹ Pursuant to the new code, juvenile offender proceedings, except those cases which are diverted, are no longer confidential; juvenile hearings are open to the public; and the official juvenile court file, the one kept by the county clerk, is considered a public record. In addition, sentencing is based on a presumptive, determinant sentencing model requiring knowledge of a juvenile’s criminal history. Juvenile nonoffender proceedings (for example, dependency and status offenders), however, still remain confidential.

The new code divides juvenile justice into three chapters: status offenders, juvenile dependency, and juvenile offenders.

— **Status offenders.** The chapter of the new code addressing status offenders comes about as part of the

revision to the offender portion of the code.² The idea was that we were incarcerating too many status offenders for minor offenses, that we needed to decriminalize status offenses, and that we needed to provide more services to help these kids instead of locking them up. Thus, the new chapter transfers from the county to the State, the responsibility for intervention with status offender youths. As is the case with the new juvenile offender laws, this new chapter is tied to efforts to stem juvenile institution populations in that a significant percentage of youths currently housed in institutions (particularly females) are there primarily for status offenses.

— **Juvenile dependency.** The dependency chapter of the new code³ is borne out of concepts being incorporated into Federal legislation that ultimately becomes enacted as the Federal Adoption Assistance and Child Welfare Act of 1980.⁴

— **Juvenile offenders.** The offender chapter of the new code⁵ incorporates a “just deserts” model that proclaims the intent of statewide sentencing consistency and the child’s right to due process. However, a major factor contributing to support of a

presumptive determinant sentence model is the State’s inability to control commitments to its juvenile institutions, and the resulting demand for additional institutional beds.

By switching to a formula for determining sentences, the State is able to control the flow of kids going into the juvenile institutions. We developed a formula in which, based on the seriousness of the offense and the age of the juvenile, point values are assigned to each offense. That is multiplied by an increase factor looking at the child’s criminal history, which is based on the seriousness of the offense and how long ago that offense occurred. The points for each prior offense are added up and then multiplied by the point total for the current offense, which results in the total points. This is compared to a chart that identifies what that child’s sentence would be. That sentence depends on whether the child is a first or minor offender, a middle offender, or a serious offender, as well as the child’s age or criminal history. It is a fairly complex system, but we have adapted to it.

— **Records.** A specific chapter under the new code addresses the “keeping and release of records by juvenile justice or care agencies.”⁶ I believe it identifies a fairly decent process for handling juvenile records.

¹ RCW Title 13.

² RCW 13.32, titled “Runaway Youth Act.” The chapter is later repealed in 1979 and a new chapter, RCW 13.32A, “Procedures for Families in Conflict,” is enacted. In 1990, the chapter is further amended and renamed the “Family Reconciliation Act.”

³ RCW 13.34.

⁴ Public Law 96.272.

⁵ RCW 13.40.

⁶ RCW 13.50.

1979

Juvenile Court Information System. The statewide Juvenile Court Information System, known as JUVIS, comes on-line. In a need to expedite the development of a system to track juvenile offender criminal histories, the PROFILE system is imported from the State of Utah for use on an interim basis. The system is relatively labor-intensive and relies heavily on the use of codes for data entry. As of 1996, although some modifications have been made, JUVIS is still primarily PROFILE. (We are currently working toward a new system.)

During the initial implementation phase, the system is brought on-line at five of the State's 33 juvenile courts. The remaining courts submit criminal history information to the Office of the Administrator for the Courts (OAC), which in turn enters the information into JUVIS.

By 1982, JUVIS is on-line in 27 of the Washington's 33 juvenile courts. In 1985, full statewide implementation is complete when the final two juvenile courts come on-line.

1982

Management reports. The OAC commences providing comprehensive management reports using JUVIS data to local courts. The reports provide integrated statistics on case activity, delinquency histories and court action on dependencies. Courts may also request individual "ad hoc" reports which are prepared by OAC Information Services staff.

Codes and procedures task force. A JUVIS "Codes and Procedures" task force is created with the charge to standardize local data entry procedures and transaction coding. If data entry and coding standards are not established,

the system can be a mess. It has been difficult to draw any sense from data entered in JUVIS during the early days.

1983

JUVIS Form 6. The JUVIS "Form 6" comes on-line, providing a "criminal history only" record listing.

Supreme Court ruling. The Washington State Supreme Court finds that newspaper journalism may constitute legitimate research, and establishes policy and procedure for the release of or access to juvenile justice records for research purposes.⁷

1984

Sentencing Reform Act. The Washington State (Adult Criminal) Sentencing Reform Act becomes effective. The new law includes a definition of criminal history that incorporates certain age- and offense-specific juvenile court adjudicated offense history. (Meaning some juvenile court history counts toward the criminal history for purposes of adult sentencing.) This requires juvenile courts to submit fingerprints of adjudicated juveniles who meet these criteria to the Washington State Patrol.

1986

School attendance. A State statute is amended to require children to attend school.⁸ The previous language placed sole responsibility for school attendance on the parents of the student. The amended statute retains a dual jurisdictional approach to truancy actions, providing for either superior/juvenile or district court jurisdiction.

1987

Desk manual. The Desk Manual for Juvenile Court Administration is published and circulated to juvenile courts. This took place because in Washington State, there are 33 county-based juvenile courts and it was difficult when they needed to interact with each other. The OAC was called in to assist with devising a desk manual for juvenile court administrators to help them deal with organizational and communication issues. So now there is a standard way to communicate with each other and with State agencies, such as the Department of Licensing (DOL) or the State Patrol, when they send criminal history information. It seems to help them, and it has been a popular document.

Abuse findings. A new State statute requires county clerks to notify the State Patrol of any dependency or domestic relations case in which the court makes a specific finding of physical or sexual abuse of a child.⁹ This statute is enacted so the State Patrol can have some kind of criminal history information on future perpetrators or situations where a person may be considered a future perpetrator. The only problem is in the specific finding terminology. Generally in our courts, judges do not say, "this person abused that kid"; they simply rule that the child is dependent, and leave it at that. Thus, I do not think this law is a generator of a whole lot of information, but it is another situation in which the courts are required to report to the State Patrol.

Repeal of fingerprint statute. A State statute requiring court authorization prior to the fingerprinting or photographing of a juvenile¹⁰ is completely repealed. The repeal was in conjunction with a new law implementing a statewide Automated Fingerprint Identification System (AFIS); when

⁷ *Seattle Times Co. v. County of Benton*, 99 Wn.2d 291, 661 P.2d 964.

⁸ RCW 28A.225.010.

⁹ RCW 43.43.840.

¹⁰ RCW 13.04.130.

the AFIS came on-line, the administrators decided they wanted this information on juveniles as well.

1988

Driving privileges. A law is enacted that revokes the driving privileges of juveniles found to have been involved in alcohol or substance abuse violations (including diversion cases).¹¹ The new law also establishes procedures requiring court reporting of these offenses to the State DOL. One unexpected result was that because this license revocation information is a public record (even though it does not state the reason for the revocation), insurance companies can obtain it. So car insurance rates for juveniles in these situations went up.

Mandatory HIV testing. A law is enacted providing for mandatory HIV testing of all persons convicted of a sexual offense, prostitution or offenses relating to prostitution, or drug offenses associated with the use of a needle.¹² This imposed another reporting requirement on the OAC; we had to contact public health departments, and they would then do the testing and take care of follow-up information for those persons. The statute's inclusion of the term "persons convicted" resulted in inconsistent interpretations of its applicability to juvenile offenders. However, in a subsequent Washington Supreme Court case, the justices determined that the statute was, indeed, applicable to juvenile offenders.¹³

¹¹ RCW 13.40.264.

¹² RCW 70.24.340.

¹³ *In re A,B,C,D,E*, 121 Wn.2d 80, 847 P.2d 456.

1990

Sex offender laws. Sex offenses, and the need for more information on sex offenders, are the topic of the Washington Legislature in 1990. Two particularly heinous offenses take place around this time to bring this about. One involves a young woman who is murdered by an inmate out on work release; her mother subsequently becomes a State legislator and now chairs the House Corrections Committee. The second situation involves a young boy whose penis is severed by a person who had been recently released from a State institution. Both of these situations result in a huge public outcry.

—**Mandatory registration.** A law is enacted requiring persons, including juveniles, convicted of a sex offense, to register with the county sheriff for the county of the person's residence.¹⁴ The statute is amended the next year, requiring the agency having jurisdiction over the offender to provide notice to the offender of the offender's duty to register.

—**Release of information.** Two laws are enacted authorizing public agency (including Juvenile Rehabilitation Administration) release of "necessary and relevant" information regarding sex offenders when the information is necessary for public protection.¹⁵

—**Victim/witness notification.** A law is enacted providing for law enforcement, victim and witness notification when a juvenile offender, found to have committed a violent or sex offense, is to be discharged, paroled or placed on any authorized leave or release or transfer.¹⁶ The statute is amended in 1993 to include juveniles found to have committed a crime of stalking.

¹⁴ RCW 9A.44.130.

¹⁵ RCW 4.24.550 and RCW 13.40.217.

¹⁶ RCW 13.40.215.

1991

Software integration into JUVIS. We decide that it is about time for courts to be able to access their own data. Although Washington has had a statewide system in place since 1979, the only way local courts can get data is through the management reports we send them or by asking for us to run reports. Thus, Intellect software is integrated into the Juvenile Court Information Center, providing local juvenile courts independent access to JUVIS data.

While the software is made available and training is offered, inconsistent participation in the training programs and eventual discontinuation of training results in few courts using the software. A positive outcome of the availability of the software is the discovery by individual courts of their inconsistent data entry practices and the impact such practices have. There is a real need, in developing information systems, to have a continual, ongoing, consistent training program, or else your data are not going to be useful.

1992

Information exchange. A law is enacted providing for (clarifying) the exchange of information between school districts, law enforcement and juvenile courts.¹⁷

Confidential information. A law is enacted providing that information identifying child victims of sexual assault is confidential, and not subject to disclosure to the media or the public. The following year, the State Supreme Court strikes down the statute, saying there is a constitutional right to open access to judicial proceedings, including access to this information.¹⁸

¹⁷ RCW 28A.600.475.

¹⁸ *Allied Daily Newspapers v. Eikenberry*, 121 Wn.2d 205.

Statistics system. The State implements the Superior Court Management Information System (SCOMIS) statistics model, providing uniformity of data entry procedures and specificity of codes.

1993

Juvenile justice agency definition. A law is amended to redefine the term “juvenile justice or care agency” to include schools.¹⁹ This adds schools to the list of agencies that can access juvenile records, which greatly aids interagency information exchange. This proposal is initially opposed by those having concerns over school districts’ knowledge of certain juvenile offender activity (specifically, diverted offenses such as minor in possession of alcohol offenses).

1994

Firearms laws. In 1994, the legislative topics are guns and drivers’ licenses. A law is amended to redefine the offense of unlawful possession of a firearm.²⁰ Under the amended law, courts are required to report to the State DOL when juveniles are convicted of offenses that make them ineligible to possess a firearm. Another law is amended providing for driving privilege revocation for juveniles found by a juvenile court to have committed an offense while armed with a firearm.²¹

¹⁹ RCW 13.50.010.

²⁰ RCW 9.41.040.

²¹ RCW 13.40.264.

Juvenile court jurisdiction. A law is amended providing that for purposes of enforcement of an order of restitution, the juvenile court has jurisdiction for up to 10 years beyond the juvenile respondent’s 18th birthday.²²

Integrated systems. The integration of the SCOMIS and JUVIS system functions to a DBII database system commences. The integration is pursuant to policy adopted by the Judicial Information System Committee, and effectively eliminates any need for double data entry, thus enabling more efficient and effective data management.

1995

Truancy law. A law is amended to require mandatory filing of truancy petitions and to provide for sole juvenile court jurisdiction over truancy matters.²³ The change requiring mandatory filing results in a substantial increase in the number of truancy petition filings: there are 91 filings statewide in 1994, compared to 2,983 filings statewide from September 1995 to January 1996.²⁴

²² RCW 13.40.190.

²³ RCW 28A.225.

²⁴ This revised statute brings into question under which category juvenile truancy filings should be filed. While statutorily identified as a “civil action,” the matters are, by statute, to be heard in juvenile court. While civil filings/pleadings are not confidential, nonoffender-related filings/pleadings in juvenile court *are* confidential. Under county clerk filing categories, case type 2 is civil (open record), case type 7 is juvenile dependency (closed record), and case type 8 is juvenile offender (open record). The clerks do not have unanimous agreement on the issue. In January 1996, the State Attorney General issued an opinion stating that truancy filings/pleadings are confidential. Some county clerks do not concur and therefore disregard this opinion.

Domestic violence. The legislature enacts new and amended laws addressing domestic violence prevention. One mandate of these laws is for Judicial Information System availability in each district, municipal and superior court by July 1, 1997, to include a database containing information with regard to family member involvement in the court system (criminal, domestic relations, domestic violence, and juvenile dependency, at-risk and child-in-need services).

That system, when complete, will have what is called the “family connector code.” When you bring up the name of an individual in our court system, the database will show that person’s involvement in the court system, as well as the involvement of any family member in all levels of our court system (juvenile court, superior court and district court).

1996

Diversion cases. A law is amended to remove limits on diversion agreement restitution amounts, and to provide a process by which a court may establish jurisdiction over a diversion case (for up to 10 years beyond the juvenile’s 18th birthday) if there is an outstanding restitution amount at the end of the term of diversion.²⁵

²⁵ RCW 13.40.080.

Striking a proper balance between legitimate uses of juvenile records and individual privacy: The District of Columbia experience

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If anything, and I suppose this is no surprise, I hope to be the voice of restraint in this discussion. In Washington, D.C., I have always thought that there was a good balance in the statutes governing juvenile records and, after hearing folks today, I think that even more so.

The District of Columbia statute governing the use of juvenile records strikes, I believe, the proper balance between legitimate uses of those records and not-so-legitimate uses. Basically, it requires consent of an individual in order for the sharing of information to be accomplished, and also largely relies on court involvement when there is an absence of consent. It does provide for release of records to further appropriate law enforcement goals and ends but, at the same time, it has criminal penalties for anybody who violates the confidentiality statutes. This is how it should be.

Juvenile record trends

There are several different trends driving the current attention that is being focused on the juvenile records issue. Some of these arise from very legitimate concerns, and we need to address them. For example, the trend toward pursuing coordinated, holistic services for juveniles and for families and children makes sense. It makes a lot of sense from a treatment perspective, and it makes a lot of sense from a fiscal perspective. The reality is that our resources are dwindling, so we need to coordinate

our resources so that we can provide effective treatment, prevention, intervention and law enforcement.

Others trends driving the juvenile records issue are motivated by fear and by inaccuracies and are, quite frankly, unwise and unwarranted. An example of this is the trend toward criminalizing juvenile behavior, and blurring the line between adults and children. We are treating children more and more like adults. One of the speakers said earlier, "Let's be consistent." Well, the reality is that children are not like adults. They do not think like adults, they do not behave like adults. They never have, and they never will. What is happening is that the trend toward making juvenile court more like adult court and treating juvenile records more like adult records is affecting the bedrock principles of juvenile court: rehabilitation and treatment.

Carefully crafted, but strict, laws against disclosure can promote legitimate treatment and law enforcement goals, while at the same time protect the privacy of individuals and the bedrock principle of *parens patriae* without simply giving lip service to that principle.

Sharing information

In the District of Columbia, the standard for release of information in juvenile court is as follows: the information is available to public or private agencies or institutions that provide supervision or treatment of the child or have custody of the

child, if supervision, treatment, or custody is under order of the Family Division. This allows for people with a professional interest in the protection, welfare, treatment and rehabilitation of a child, or a member of the child's family, to have access to records. Generally, police and law enforcement records for juveniles are not open to the public. However, there are exceptions. If the juvenile is treated as an adult, if he is transferred to adult court, then his records are treated as if he were adult. The court can always order records released in appropriate circumstances, such as to private or public agencies providing juvenile supervision. Fingerprints may not be disclosed, unless they are needed for a criminal investigation or trial, used for law enforcement purposes only, or their disclosure is mandated by court order.

Generally, as I said, a lot of what allows for the sharing of juvenile information in the District stems from law enforcement exceptions, consent of the appropriate individual, or court orders. This, I think, provides appropriate protections, and it works. And here is proof that it works. I was recently at a meeting of the District of Columbia Council, where most of the individuals in the juvenile system were represented: prosecutors, law enforcement, the schools, probation, the courts, the defense council and social services. The question on the table was this: Do we need to open up or change

the statutes regarding juvenile record confidentiality in the District of Columbia? With one exception, the answer was “no”; we are able to get the information we need. Again, with one exception, everyone there felt that they were able to get the information that they needed. In fact, it was said that the problem in the District is not a question of having restrictive statutes that do not permit easy access to juvenile data, the problem is that we do not have the technology to share the information that the statute allows us to share.

The one exception to that agreement at the meeting was the public schools. They wanted more access to information. Interestingly enough, it was officials from the court who spoke up and said, “This is the reality. There are good reasons why the statutes are there, because the fact is, the labeling those statutes are designed to prevent — the prejudice and stereotyping of juvenile offenders — does happen.” It is a real fact of life; I see it every day. Now, a lot of people in schools are motivated and certainly would never use a label to brand a child unfairly, but the reality is that that does happen.

Privacy principles

In talking about changing confidentiality laws and sharing more information, it is important to remember that the reason they are there, the privacy principles that put them there in the first place, are really bedrock principles of our society. They are there for the protection of all of us, and they are there to promote the treatment goals of the juvenile system. The idea is, unless you give someone the protection to be candid and forthright, you are not going to get the information that you need for treatment. That principle will never change, and the consequences of all of this sharing and opening of files and information, while of course

driven by some very, very good motivations, also have some devastating effects.

One is this: When we talk about the sharing of information, there are all different degrees. Sometimes we are simply talking about sharing between public agencies. Other times we are talking about sharing information with the public or the media. A lot of people would draw the line and say juvenile proceedings should be confidential, but all the information that is in the file should be shared with anybody who has anything to do with law enforcement or juvenile justice.

When you open up the records and broaden the number of people who have access to the records, you must remember this: the larger the number of people with access, the larger the potential for abuse. Now most people are law-abiding citizens, and people working in law enforcement or the juvenile justice system generally know what the laws are and follow them. But it is also very true — and this is a practitioner’s view and experience — that even with strict confidentiality provisions, even with criminal penalties in place, information gets out that should not. Oftentimes, it is released by the people who are charged with protecting that information. And the consequences to individuals, to families, to children, is real.

The harm caused by the breakdown of confidentiality is real when a child’s name gets out in the paper, even before the child is convicted of an offense. We see it when that child tries to get employment. When that child — who has turned himself around, and has really done everything that the system tells him he is supposed to do, and has learned from his mistakes and tries to start anew — is haunted when that record comes back, or when someone says, “Oh, I remember you, I saw your name in the paper.” Those things happen.

Unfortunately, what happens is, when the information is released, it is often released partially so, or inaccurately so, and released in a manner that does not allow the public to fully ascertain the truth of the situation. Far too often, I have seen the fact that people do not look at the individual, they look at the charge or offense. They do not know what the circumstances are. And, the more violent the charge, the more negative the response. The bottom line is that these things are all antithetical to the whole notion of *parens patriae* and treatment and rehabilitation.

Openness no deterrent

The trend toward releasing confidential juvenile information in a way that brands or labels people harkens back to the days when women were branded with scarlet letters. What the public wants is less crime. And the question is, is opening up juvenile records and the juvenile courthouse going to lead to increased confidence in either the juvenile justice system or law enforcement? Quite frankly, I think that the answer is no. Because, it does not deter. Our clients generally do not do a cost-benefit analysis when it comes to committing a crime. That is the reality. They do not, and that is true of adults and children, although it is more true of children because of the differences in the way children think. Children are thinking of the immediate, not whether their name is going to be in the paper next week or that some public light will be shed on them that will harm their future. They are thinking, “I have to walk out my door, and there are a lot of people with guns out there, so I need a gun to protect myself too.” And that is the reality. So increased record openness is not a deterrent to that.

Information sharing does lead to better treatment modalities for most treatment goals, but there are ways to do that and still protect

confidentiality and all of the rehabilitative goals that that promotes.

The District of Columbia has a lot of joint collaboratives and initiatives underway, more so than any place I can think of, and that is a good thing. We are all sitting around the table trying to figure out how to share information and to promote all the common and mutual goals that we have in order to reduce crime in our city. And we have been able to do that even in a city where the court of appeals believes that confidentiality is critical to the treatment process for juveniles, in a city where we have to jump through certain hurdles in order to get information from various agencies. But the hurdles really are not that high, and the goals that the hurdles protect are in place and are advancing. That is true in a city where the court of appeals recently said that confidentiality is so important to the juvenile justice system, and to society in general and criminal justice in particular, that they were willing to reverse a trial court decision when the trial court refused a defense request to exclude the media from those proceedings.

I started off by saying that I wanted to be the voice of restraint; I would like to end with that, and remind folks to keep in mind why we are even having this discussion in the first place, and not to throw the baby out with the bath water. Thank you.

Implementing a statewide juvenile criminal history repository in Texas: Issues and practices

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Texas just overhauled its family code, which resulted in the revamp of the State's entire juvenile justice system, one component of which is the creation of a separate repository for juvenile criminal histories. This repository is new for Texas, so I will describe some aspects of that system, as well as some related issues.

In Texas, we are certainly in the midst of the same pendulum swing that has been discussed here all day. All of the juvenile justice issues that have been raised here, have also been discussed in Texas. Many changes were made in the family code in the last legislative session, and already discussions are beginning on what to change in the new family code.¹ (We operate on a biennial cycle; 1995 was the last session, so our next session is in 1997.)

Family code changes

I would like to give an example of how some of these issues were translated into statute by comparing the old statute language with the new statute language. (The family code covers the entire juvenile justice system, not just the information system.)

The previous top three public purposes of the family code were as follows:

1. to provide for the care and protection, and the wholesome moral, mental and physical development of children coming within its provisions;

2. to protect the welfare of the community and control the commission of unlawful acts by children; and
3. consistent with the protection of the public interest, to remove from children committing the unlawful acts, the taint of criminality and consequences of criminal behavior and to substitute a program of treatment, training and rehabilitation.

In the last session, those purposes were changed so that the top three public purposes of the family code are as follows:

1. to provide for the protection of the public and public safety;
2. consistent with the protection of the public and public safety, to promote the concept of punishment for criminal acts; and
3. to remove, where appropriate, the taint of criminality from children committing certain unlawful acts, and to provide treatment, training and rehabilitation that emphasizes the accountability and responsibility of both the parent and the child, for the child's conduct.

I think that is a clear expression of the very issues that have been raised today.

The Texas Youth Commission is the corrections arm of the juvenile justice system in our State. The Commission's executive director has been attending interim legislative hearings, showing a video that clearly demonstrates the change in the programs within the Commission. These changes represent a much more boot camp-

like structure with quasi-military punishment, and have resulted in letters being sent from youths currently in Commission custody to their brothers and sisters and friends, warning them of these changes. These letters are expressing a much different point of view about the Texas Youth Commission and what is happening there than ever before, stressing what these youth regard as the deterrent effect of these changes.

Governor Bush identified juvenile reform as one of his main goals and, in the last session, as mentioned, the legislature did pass a bill focusing on that issue. One component of that bill was the creation of a central repository of juvenile criminal history records. I would like to address my comments to the implementation of the fingerprint-based system, and some of the issues associated with that implementation.

Creating a juvenile repository

Prior to the passage of the new law, there was no State central repository for juvenile records. Records had to be kept at the local level, separate from adult records, and could not be sent to a central State or Federal repository, with the exception of missing person records, wanted person records, or records of children certified to stand trial as adults. But arrest records and custody and treatment records could not be sent to the State for creation of a central repository.

The legislature undertook the overhaul correctly: they held hearings all over the State, had

¹ Title 3, Texas Family Code.

juvenile justice practitioners come in and testify in those hearings, worked cooperatively, encouraged public testimony, asked all the right questions and, I believe, took the right approach to creating the juvenile record system. They made a few key decisions.

First, they decided that it must be a fingerprint-based system. I think that addresses some of the issues that have been raised here in terms of reliability and accuracy of the records. Clearly, fingerprints are the national biometric standard for identification of persons being classified in criminal justice computerized systems.

Second, they decided it was going to be a day-one forward system. This was really a decision by default, since there were very few records that could have been gathered and centralized for offenses occurring before January 1, 1996. It was obvious that it needed to be a day-one forward system.

Third, they wrestled with the key issue of the level of activity that would be entered into the juvenile central repository. This went all over the spectrum during discussions, and it came back to a definition that is consistent with the records that exist in our current adult file, which is Class B misdemeanors and above. We have A's, B's, and C's, with C's being the minor misdemeanors. So what goes into the central juvenile repository is conduct which, had it been committed by an adult, would constitute an offense not punishable by fine only, and that means Class B misdemeanors and above. This drew a very clear line as to the purpose of the database: it is a criminal history repository that is going to track criminal events committed by juveniles.

The law is very clear about what happens to other data that are not reported to the central repository operated by the Department of Public Safety (DPS). That data still remain separate from adult data, and

are not forwardable to any other central repository. There was some concern on the part of the DPS that, as the legislature was writing new laws for what data could be forwarded, we did not lose data that were previously forwarded to us. So we watched very carefully that wanted and missing person records would still come to us. In fact, we lost out on the gang information. A separate statute was passed that prevented the gang information — which was previously referred to the FBI's Violent Gangs and Terrorist Organizations File — from being sent to a State or Federal repository. So it is important to watch, as all of the data are categorized and aggregated in statutes, that your agency not gain one thing only to lose another just by the construction of the language.

Fourth, and most importantly, it was decided that the system had to integrate and be compatible with the adult system. This became, obviously, a key factor for the repository, because there was no question about making separate records. The law gave DPS the authority to mix the records, to integrate the juvenile records into the adult records. We were able to use the same file structure and, in fact, we are putting the juvenile records into the adult file.

This adult/juvenile record integration gives us a number of advantages in that, when the inquiries come in over the law enforcement network (the Texas Law Enforcement Telecommunications System (TLETS)), those inquiries hit a single file. If there happens to be a juvenile arrest in the criminal history database, that is returned. If there happens to be an adult arrest, that is returned. If there happens to be both, then they are both returned. We make no distinction in TLETS of the data being provided. Juvenile arrests are flagged, however, just so that it is clear that an individual arrest

event occurred while the person was a juvenile; thus, if the person's record has a juvenile arrest in it as well as an adult arrest, the juvenile arrest is specifically flagged. But the point is, they reside in the same database.

System components, issues

I would like to describe components of the system, as well as issues that arose in its establishment.

There was a lot of discussion during the legislative session about what level of offense or activity would be reported. That was decided. Then there was a lot of discussion about what would be the threshold for sending the records, and then what would be the sealing and purging procedures. It was finally decided that the law enforcement agency which took the juvenile into custody had 10 days to decide whether they were going to refer the child to juvenile court or juvenile probation (which acts as an arm of the court in Texas). Thus, referral is the key event. The criminal repository file only contains activity for which the child was referred to juvenile court or probation.

If the law enforcement agency does not refer the child within 10 days, then that agency has to destroy all records of that child for that event. This became an 11th-hour issue in the legislative session, and was finally resolved in conference committee after the bill passed in both houses. The voices were so strong in terms of those legislators not wanting the police to gather clandestine files on juvenile custody events, that they actually put in the statute a provision that all police chiefs and sheriffs in Texas have to certify, by December 31 of every year, that they have destroyed all those records for which the juveniles were not referred within the 10 days. If an audit finds that was not the case — that some records were, in

fact, not destroyed — the chief or sheriff is subject to perjury.

Sealing became a very large issue in terms of establishing the repository. Juvenile records can be sealed for misdemeanors if, after 2 years following a final act and adjudication, the child has not had any other activity in the juvenile system. If the record is sealed, we have to return it to the juvenile court, and we have to destroy all indices of that particular arrest. (If the juvenile has other arrests, we can keep those.) Felonies cannot be sealed until after the juvenile's 21st birthday, and there are some other provisions that make it a little bit more difficult to seal felonies. Clearly, the indication is that while there should be a statewide database, there is also going to be a broad authority for taking data out after a certain period of time has occurred. As mentioned, though, certain felonies cannot be sealed.

The statute establishes dissemination criteria, some of which is affirmative and some of which is by default. The statute creates a new dissemination status in which juvenile justice information can be given to military recruiters with the consent of the juvenile; this is not something Texas does for adults. The statute then simply points to the adult statutes for record dissemination criteria. That creates a very interesting situation because when those adult statutes were written, some of them many years ago, the legislators did not anticipate that juvenile records would be part of the information disseminated to recipient agencies. The only law that I can think of in Texas that takes juvenile records into consideration is the newly passed concealed handgun law, which limits the usefulness of juvenile records to the previous 10 years. We may see more of that type of prohibitions as the sessions go on. Importantly, the statute also allows the DPS to send the juvenile records to the FBI.

The statute also mandates the type of information that has to be in the juvenile repository, and this once again reflects the adult model. For adult records, we track the offender from the arrest, through prosecution, through adjudication, to custody, if he goes to the State penitentiary. The same basic model occurs for juveniles: we track the juvenile from the reporting of the arrest, if there is a law enforcement agency involved, through intake, pre-prosecution, prosecution, court adjudication and, ultimately, to detention in the Texas Youth Commission, if that occurs.

We decided to build the system that would work in the manual world. We have 254 counties, so the process of reporting both adult and juvenile arrests and adjudications depends greatly upon the local reporting agencies. We created a manual process that would work, and then allow the counties to substitute automation if they are able to provide the same data in an automated fashion.

The law mandated the creation of a multiple-part reporting form. Upon a juvenile's arrest, the law requires the law enforcement agency taking the juvenile into custody to fill out its portion of the form, as well as a fingerprint card portion. But there can be paper-based referrals from schools or other entities that do not involve custody by a law enforcement agency, and that is where the fingerprints become problematic. The statute specifically says the law enforcement agency, or the intake agency, will take those prints. As a result, we are training the juvenile probation offices to take prints, because at some point the child will appear in person at the juvenile probation office. So if the law enforcement agency does not take the prints, juvenile probation will take the prints and send them to us. The probation officer or prosecutor fills out the pre-adjudication section as that occurs and sends that in, and then there is a

portion of the form that the court sends in when the offense is adjudicated. One form is used for one offense, although we use supplemental forms which accommodate additional offenses and status changes. Again, I emphasize that we do accept electronic submissions of the data supplied on those manual forms.

Key factors to success

What were some of the factors involved in successfully creating the juvenile repository? The compatibility with the adult system was a key factor for us. Because we made the two compatible and integrated, it limited the programming that had to occur in our computerized criminal history system and automated fingerprint identification system (AFIS). It also provided direct access over TLETS, the same methodology for dissemination to all the noncriminal justice agencies, and generally a shorter startup time in terms of getting the system off the ground.

Field staff was also important to getting this program started. Obviously, we have a large State to cover geographically, but there was just no way that this level of requirements could be placed upon the local agencies without funding unless we had field representatives providing personal support to the local agencies, as well as regional and specialized agency training. The field representatives helped to articulate the State requirements and encourage the local agencies' efforts. Implementation of this system is an interjurisdictional and interagency problem within the county to find those local solutions. Using them proved to be key to our efforts.

We have received varied responses from local reporting entities across the State. Generally, the law enforcement agencies are very enthusiastic. During the legislative session the chiefs were

very outspoken about their support for this, even though they saw the additional work required for them to do the fingerprinting. The reality of that workload is now settling in on them, but it has not lessened their enthusiasm for the benefits that are going to be derived from having the fingerprints on file.

As regards the quality of fingerprints we are receiving, these are definitely the worst fingerprints that we have in the file. We see that as a training issue. The poor fingerprint quality is due in part to the fact that children cannot be processed through the adult booking sites; they have to be processed in separate sight and sound areas. There is a learning curve, even within the police agencies, to get in place a new process to fingerprint the juveniles. We also have difficulty in training the juvenile probation offices of their need to fingerprint. Although they are willing to do that, it is very foreign to what they have been doing up to now. So there have the whole process of buying the kits and providing training. We see that as something that is just in its infancy, and is something that we will continue to address.

The majority of the prosecutors and judges have been very enthusiastic about reporting juvenile data, although there are a very few areas where you simply come up against the old mindset. Even though the laws changed, the minds have not in terms of sending juvenile records to a central repository.

Impact of automation

Clearly we are in the very beginning stages of this project. The requirements started for us in January 1996, and we have about 20,000 juvenile arrest events that have been reported to us. That is low. Had we been receiving them all, we would expect to have over 100,000 arrests on file by the end of 1996. We may or may not do that but, again, we see this as an outcome of being in a startup mode, and we will continue to work with the agencies on total compliance.

The sealing requirements of the law are going to have a significant effect upon us. Obviously, there is all the work involved, but there is also an effect that sealing has on the fingerprints and their effectiveness in the AFIS. For example, the juvenile fingerprints become a part of the AFIS database, and there will be a few hits against those fingerprints. But what also happens is those fingerprints are being searched against old latent fingerprints from unsolved cases. We are hitting on older cases that the juveniles perpetrated a year or two ago. There have been some very surprised children in that regard. But if we have to take out the indices and the fingerprint records upon sealing, we will lose the benefit of having those fingerprints in the AFIS as a source for future latent searches against the file.

It is our clear opinion in Texas that electronic reporting is the only way that we can run a State repository of our size. Through the work of SEARCH Member Gene Draper at the Texas Criminal Justice Policy Council and the Criminal Justice Division of our governor's office, some money has been made available to help local agencies automate disposition reporting. We are using National Criminal History Improvement Program grant money from the Bureau of Justice Statistics to distribute live-scan devices to our current remote AFIS sites, if they will also take that money and upgrade their subject-in-process systems to send us electronic arrest data. We will not key in the entry of that data at DPS. Through electronic reporting, the base record is provided to us to send to the FBI, and it is the only vision that we believe will be possible to carry us into the early 21st century. And that is the direction we are headed.

IV. Operational and management perspectives

Day two opening address

Using juvenile records to predict criminal behavior
Dr. Alfred Blumstein

The role of the juvenile record in judicial decisionmaking

Judicial access to information critical to the juvenile court
process and to preserving the juvenile justice system
Gordon A. Martin Jr.

Statewide juvenile systems

Providing statewide access to juvenile court
records and proceedings in Utah
Michael R. Phillips

Juvenile records as a basis for firearm prohibitions

California's approach to using juvenile records in firearms checks
Steve Galeria

Exchanging juvenile records between the juvenile justice system and schools

Information sharing critical to process
of protecting children
Ronald C. Laney

Issues and implications of
school-juvenile justice information sharing
Dr. Bernard James

Using juvenile records to predict criminal behavior

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The answer to the question of whether juvenile records can be used to predict criminal behavior is “somewhat,” and that is about as close a prediction as we are ever really going to get.

I want to talk about some aspects of what is going on in the juvenile system, and that does involve issues of records. I want to say something about the tension between the usefulness of records — particularly in juvenile justice policy and practice — and their protection, and the benefits we get from that. In order to move to that, I want to lay out some definitions of how we use juvenile records in dealing with sentencing issues and policy. Basically, how do we respond when a child commits crime? I want to get at that through a sequence of dichotomies.

How juvenile records are used

There are two primary purposes of using records, one is punishment for punishment’s sake, and the other is because it is going to do something about crime. In the first one, we want to know something about the offender’s record because we want to be more retributive, more punitive to somebody who did wrong previously and did not heed the punishment. Thus, we want record information to decide how punitive we want to be the next time the person offends. This is just for punishment itself, regardless of what it does about crime control.

In terms of crime control, there are two basic thrusts. One is the “macro-thrust,” which is known as

general deterrence. (General deterrence involves sending the message to everybody else, using the punishment of an individual; one purpose of a punishment policy is to deter everybody.) Individual records are not extremely critical in this instance. The individual being punished serves the same role as the Internal Revenue Service trials of tax evaders every March in order to make the message fresh in every taxpayer’s mind in mid-April. They are not going to punish all the tax evaders; they could not possibly do that.

The second basic thrust of crime control is the “micro-level,” which is concerned with the individual offender, and what we as a society do to that person. Micro-level crime control dichotomizes into two basic approaches. One approach is reform of that individual so that after some punishment or treatment, he moves on to some kind of rehabilitation. A criminal record here is of some use. A second approach is incapacitation, which involves getting that individual off the street, usually through incarceration, so that he cannot have further access to victims. There are other forms of incapacitation that simply inhibit the individual from committing crime through some physical or electronic means as a substitute for incarceration.

Incapacitation can be dichotomized into general and selective incapacitation. General incapacitation occurs under any punishment policy; even though it is record-blind, some incapacitative

effect results. The other, which is much more relevant to record issues, is the selective incapacitation of identifying the individuals who represent the greatest threat, and selecting them for incarceration. That selection process inherently involves some degree of individual prediction that identifies an individual who is worth incarcerating because he will continue to be a serious offender for a relatively long time or because he commits crimes at a high rate. That is where record information is certainly going to be relevant.

Tension between using, protecting records

The tension between using and protecting records comes, in part, because we do recognize that lots of kids end up doing some unreasonable things, but that many of them are going to stop doing those unreasonable things. Figure 1 is a graph of the age-crime curve. For robbery and burglary, the peak offending age is about 16 for burglary and about 18 for robbery. Most of these kids stop offending, and that is reflected in the fact that these curves come down so quickly. They get to half the peak at age 21 for burglary and at age 24 for robbery. Most of those criminal careers end fairly early.

Given the recognition of the mischief that lots of kids engage in, we do not necessarily want those indiscretions to follow them the rest of their lives if they go clean and stop offending. On the other hand, we do not want all 18-year-olds who

appear before a judge to be seen as absolutely clean. Thus, there is a fundamental tension between wanting to protect the privacy and not stigmatize young individuals for the rest of their lives, and having information about their crimes available when it is needed. That is not just an act of grace, it is an act of restoring a deterrent threat. If individuals know that in the future they will be punished more severely because of a prior record, that is one of the factors that could work to keep them clean. It is not just for their benefit, it is for society's benefit that we want to protect those records.

Juvenile crime a growing problem

Let me turn to the issue of juvenile crime and the fact that it is a growing problem. In the last several years, we have seen a decline in Uniform Crime Reporting (UCR) crime rates. I want to focus on homicide because it is one of the more reliable UCR measures and it is indicative of a lot of other things. My basic thrust is this: what is going on in the aggregate crime rates as reflected in the UCR is a net combination of the crime rate among kids, which is getting worse, and the crime rate among adults, which is getting better. There are a lot more adults than kids at this point, and so we are seeing that decline. Let me be somewhat specific about that.

Figure 2 is an interesting graph of the last 20-odd years of robbery and murder rates in the United States. The striking thing about homicide, which certainly surprises most people in this country, is that if you look over the past 20 years, there has been no trend whatsoever in murder. Most people think that it has been going out of sight, but it has really been astonishingly flat, with no upward or downward trend. Robbery has had a slight upward trend of about 2.5 robberies per year, or about 1 percent of the mean

value. And if you look at the last several years, both of those crimes seem to have peaked in about 1991 and have generally been coming down.

Let me turn to murder. Figure 3 is a graph from 1965 and 1970 of the age-crime curve for murder, that is, the number of people at each age arrested for murder, divided by the total number of people at that age. In contrast to the robbery/burglary graph in Figure 1, which was really sharply peaked, this has quite a flat peak, and it is quite a bit flatter in its structure than were the property crimes (robbery and burglary are both property crimes from the offender's viewpoint). Figure 3 shows two ancient years, 1965 and 1970. What we see here is an across-the-board rise from 1965 to 1970 in the age-specific arrest rate for murder.

Let me take us closer to current times with the graph for 1985 and 1994 (Figure 4). We see that 1985 is virtually the same as 1970, and it turns out that the whole period between 1970 and 1985 had virtually identical age-crime curves for murder. But we saw a major qualitative change in that process from 1985 to the early 1990s; it is as if someone grabbed the age-crime curve at age 18 and yanked it up and pulled the adjoining years up with it. There was a major change in offending among children, and I want to just take a few minutes to talk about that.

Figure 4 also shows a fairly consistent decline in offending in the older ages. Between 1985 and 1994, we saw a doubling in the homicide rate for ages 18 and under, but that growth rate declined to the point where there was essentially no growth in the mid-20s, and there was a fairly consistent decline after 30.

Let me first focus on the decline in after-30 offending. How did that happen? That is very tough to fully pin down, but certainly one

contributing factor is the fact that in the period 1985-1994, we more than doubled the incarceration rate in the U.S. This put a lot more people in prison, and that can have an incapacitation effect, but that is predominantly in the older ages. Those are folks who are likely to have demonstrated persistent criminality. There is considerable dropout from criminal careers in the late teens through the 20s. By the time people are in their 30s and still criminally active, many are committed to criminal activity, and incapacitation is probably the dominant means by which their crimes are likely to be reduced. (Not all prisoners were necessarily locked up for murder. Locking up a drug seller is not likely to do much about reducing drug transactions (because he will be replaced by another seller), but it might achieve some increment of reduction in homicide as an incapacitation effect.)

In this 1985-1994 time period, people in the younger ages are showing up too fast as new offenders for incapacitation to be a very powerful influence. To put it another way, the people in prison in the older age ranges are probably a relatively large fraction of the people who are currently criminally active. We introduce "wastage" from the viewpoint of incapacitation as we persist in "three strikes" laws, in mandatory minimum sentencing laws, and in handing down draconian sentences. That is because an increasing fraction of the older people in prison will have ended their criminal careers. But during 1985-1994, this period had a relatively large percent of those criminally active in prison, so we can achieve some significant incapacitative effects.

At the younger ages, it is unclear which of the offenders are going to persist in any significant way into their 30s and which ones are about to terminate. We know extreme examples on either side, but for the

large majority of the cases, it is very tough to identify and predict which offenders are going to persist in their criminal careers.

Gun, drug epidemics underlie juvenile crime

Juvenile homicide has been growing dramatically. After the 15 years of stability from 1970-1985, we saw the doubling suddenly start in 1985, and so we must wonder what contributed to that. If you look at the weapons involved in juvenile homicides, for about 15 years they were fairly stable at 60 percent guns and 40 percent non-guns. Following 1985, the juvenile homicides with guns more than doubled, with no change in non-gun homicides.

Another important trend was in arrests for drug offenses of non-white males. That rate was lower than the rate for whites throughout the 1970s. The trend was flat through the 1970s, and then suddenly started up in 1985 and doubled by 1989.

These observations suggest a process that started with the arrival of crack in urban areas, which induced a large market demand because new people were able to buy crack cocaine who could not afford to buy powdered cocaine in the quantities that were previously sold. Not only were these folks able to buy crack, they also bought it one hit at a time because they did not have the capital to buy more, so there was a major increase in the number of market transactions. A lot of people were in prison at the time. The market recruited cheap sellers in the person of kids from urban areas, and that contributed to this major growth in non-whites arrested for drug offenses. People in the drug business could be carrying a lot of money or other valuable stuff, and if someone tries to steal that, they cannot easily call the cops to help get it back. So these kids now carry guns for their own protection. They carry those guns and they show

them in the street, they show them in schools. We know that kids are quite tightly networked, and so the other kids around them started carry guns for their own protection.

What we saw was a gun epidemic that diffused out from the inner-city crack markets into other areas. As a result, we saw a 120 percent growth in homicide rates between 1985 and 1992 for non-white juveniles. For white juveniles, we saw an 80 percent growth in the homicide rate, but that did not start up until 1988, 3 years later, the time it took for that gun epidemic to diffuse itself out into the larger community. That suggests that an important feature of this period was much more one of gun availability to kids, rather than necessarily an inherently greater propensity by kids to engage in violence. You can tell that because the gun homicides went up, but not the non-gun homicides. And when you look at juvenile suicide, suicide with guns went up, while suicide with non-guns stayed flat. Thus, that propensity to violence which underlies some of the cries about “super-predators” may simply not be the case. I think we must explore this issue further, because I believe that the dramatic rise in juvenile violence results from the availability of guns in the hands of kids who do not exercise restraint.

For example, there was no growth in homicide rates of white or non-white adults during the period of the 1980s. Even though non-white adults were significantly involved in an increasing way in the drug business in the 1980s, their homicide rate did not go anywhere during that period.

Youth boom drives increases in crime

The future growth derives from growing young cohort sizes. To give you a window on that issue, Figure 5 is a smoothed graph of the age composition of the U.S. population in 1996, in millions, at each age. If

you read this backward, it is a representation of the fertility history of the United States. The post-World War II baby boom started in 1947 — the war ended in 1945, people got together in 1946, and then the baby boom began the next year. That boom continued until it peaked in about 1960 (the people aged 36 in 1996), followed by a decline. That was part of what contributed to the decline in homicides after the peaking in 1980 (see Figure 2) — a moving out of the high-crime ages by the baby boomers.

We reach a population trough in the cohort born in 1975. That is the smallest cohort in recent decades, and they are now 21. We can see a steadily growing wave behind them of cohorts increasing each year by about 1 percent. We are now moving into a period in which larger numbers of people will move into those peak crime ages, 15 to 19 for property crimes, 15 to 24 for the violent crimes, and so there is a cohort size effect pushing on us, even if no changes occur in age-specific involvement in crime. To the extent that rate changes occur, that could be a double whammy if the rate increases. But it could also decrease. The one thing we can be confident of is that we know the size of oncoming cohorts for the next 15 years. For the nation as a whole, there will be an increase in crime, although not dramatic, and there are some important increases down in these young ages.

As we think of this mixed strategy about what we have to do about adults, as well as kids, there is an important bulge in the population that we ought to start worrying about in terms of preventive efforts. That would move us from the single-instrument strategy of incarceration that has been driving so much of criminal justice policy over the last 10 to 20 years.

Juvenile policy trend

Let me say something about the way criminal justice policy has been moving, with prison as the dominant response. Figure 6 shows the incarceration rate by year in the United States; that is, number of prisoners per capita. Starting in the early 1920s and for about 50 years, to about 1973, this graph was astonishingly flat. For 50 years we had an incarceration rate of about 110 per 100,000, plus or minus 8 percent. It moved upward a bit during the end years of the Depression and downward during World War II (when we had better things for young men to do than stay in prison), and then it reestablished itself at that stable rate. In the post-1973 period, we saw an astonishing growth in the incarceration rate, a quadrupling of the rate that had prevailed for the previous 50 years. This raises the intriguing question of why, in the face of this growth in the use of prison, there is no dramatic reductions in the crime rates. One might anticipate that perhaps crime rates would have gone through the roof if that many people had not been locked up. But it also has to raise some question about some of the unintended consequences of incarceration. For example, has it converted entrepreneurial drug sellers who were sent to prison under mandatory minimum laws into seasoned and well-trained criminals? Much of the incarceration growth is attributable to drug offenders as the nation tried with growing futility to attack the drug problem through increased incarceration.

Incarceration has clearly been the single dominant strategy of criminal justice policy, and we have focused this particularly in the juvenile system lately by the variety of waivers that mandate that children at younger ages go into an adult court under a presumption that the adult criminal justice system will be tougher on them. However, there is

evidence from a number of jurisdictions that suggests that, because these bad kids would show up at the high end in the juvenile justice system and the low end of the adult criminal justice system, in many cases the punishment imposed by the juvenile justice system is greater than that imposed by the adult system.

One of the strong arguments for waiver is that the juvenile court jurisdiction typically ends at some young age, like 19 or 20, so you cannot give an adequate sentence to a kid who got caught in his 17th year. This obviously suggests that perhaps the better way to deal with this problem is to extend the authority of the juvenile system rather than to assume that the adult system is the solution to the problem.

Predicting a criminal career

In terms of using juvenile career information to predict an adult criminal career, first we have to recognize that forecasts are difficult. Many people have made prediction models and then tested them out on real data; more often than not, they find a high error of omission and difficulty in identifying the people who are most severely at high risk in the future. You get some, but you lose some also, in part because there is only a limited amount of information from the juvenile career. The juvenile career is certainly valid for making predictions for some people at the extremes but, again, for the large majority in the middle, prediction is extremely difficult.

The basic purpose for which we want to do the prediction is for incapacitation. Concerns have been raised about incarcerating people for crimes they might commit in the future. That is a legitimate concern, but an even greater concern ought to be raised about deterrence, because that involves using the criminal sanction to deter other people from committing crimes. We are basically

locking up John Doe in order to deter a lot of other people from committing crimes. There are some very tough ethical issues involved, but there is no question that judges do take into account prior records to make some judgments about future criminality by an individual before them. We would like them to be as intelligent in that as possible.

There are two key parameters we want to predict about an individual: one is how much longer he is going to continue in criminal activity, and the other is how many crimes a year is he likely to commit? What is his offending frequency? To some extent, people who commit many crimes a year, just by chance alone, are more likely to end up in prison than low-rate offenders, even if there is no prediction made about them. We have to recognize that we can get a lot of what we want to know just in terms of their frequency of offending. There are some critical variables that are indicative of offending frequency. One of the important ones is drug abuse as an indicator of future criminality. Another variable that is relevant to the juvenile record system is age of onset of criminal activity. That is important information that could be used in the future, and obviously it is the criminal record that provides the information about future criminality. It is important that we be able to distinguish the persisters from the people who are committing only a few crimes, those who might be remediable from those who are the lost causes. Those are important decisions.

Access to the juvenile record

There are certain things we ought to consider doing. A few years ago the National Academy of Sciences Panel on Research on Criminal Careers and Career Criminals recommended that, because there is useful information in the juvenile record and because there is an

important desire to keep that record private, we ought to give the adult system access to the juvenile record at the first serious adult involvement. That approach has the virtue of keeping the juvenile record sealed until the offender does something in the future, and it does provide that protection to those who are going to stay clean. That recommendation has a vague term called “serious involvement.” There is a reasonably consistent ranking of seriousness across crimes, with murder at the top and minor misdemeanor offenses at the bottom. Any a jurisdiction can then decide what is serious enough to make that trade-off between the desire to protect juvenile misbehavior and the desire to identify serious criminals who must be dealt with.

The other vague term is “involvement.” I think a general preference might be to say that when the individual is convicted of a particular offense, then the record should become available for the sentencing decision. But one could make it post-indictment instead of post-conviction. Again, considerable discretion has to be used here, and one of the problems we have seen in criminal justice policy over the last several decades — and part of what has contributed to this dramatic upward growth in incarceration — has been the creation of great big boxes, with all cases that fall in the box treated identically. We see this in mandatory minimum sentences, we see this in a variety of sentencing policies that are adopted by legislatures. The focus in creating the box is on one corner, but then useful and needed discretion is removed elsewhere.

The argument here is that States ought to decide what is serious enough to warrant breaking open the juvenile record, and at what stage of the system that record should be opened. But at least this provides a structure within which that issue can be addressed, and it certainly should

be addressed. There are some people who are going to be adult criminals, and we certainly do not want to presume that every 18-year-old has no prior criminal involvement. Indeed, it is almost certainly the case that judges are going to be taking account of the fact that an 18- or 19-year-old showing up in the adult court has some juvenile record; thus, the ones who are indeed clean at that point will be prejudiced against because of the lack of information. There is some calibration going on, and we must recognize that. Using the information makes sense.

All of the pressure to change the juvenile justice system through waiver procedures seems to be intended to remove kids from the juvenile court; maybe we ought to deal with that more rationally by giving the juvenile court greater flexibility in dealing with its cases.

Conclusion

In conclusion, we have tried a wide variety of methods to predict future criminal behavior. They do not do terribly well, at least in statistical prediction, especially in the middle ranges, rather than at the extremes. Thus, we should continue to work on developing better models. Obviously, that must recognize that some variables are inappropriate to be used, the most obvious being race. I should note that race is not even a good prediction variable. It may be a good prediction variable to distinguish between who gets involved with the criminal justice system and who does not, but when you look at people involved with the criminal justice system, race becomes an enormously weaker prediction variable. It is, however, an important issue to recognize that there are ethical limits on what you may use in any kind of prediction.

Finally, a mixed portfolio is a critical aspect of any strategy in the criminal justice system. We need more focus on prevention,

particularly on the age group now under 10, some of whom are going to be high risk. We have to develop approaches to dealing with prevention in a society where the fundamental socializing unit is the family. We used to have all kinds of backups for the dysfunctional family. We used to have extended families, community centers and churches to help out. We are now in an era when most of those backups have eroded or decayed completely. The extended family is too often remote because of mobility. We are in a period of considerable turmoil in the family; there are high rates of illegitimacy and of children in poverty. We need more parental training, better prenatal care and more early intervention in schools, rather than waiting for the juvenile justice system or any prediction of who should be locked up. Clearly, when people do get to the juvenile justice system, and to the adult system, we ought to be able to have the records available for identifying serious offenders when the time comes to respond to them.

Electronic Editor's Note: Pages 66-71 (Figures 1-6) are not available electronically.

Judicial access to information critical to the juvenile court process and to preserving the juvenile justice system

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As you all know from your own jurisdictions, the 18th birthday is the basic cut-off point in the United States for conduct to be characterized as delinquent that otherwise would be criminal. My home State of Massachusetts, along with seven other States, has legislatively excluded an entire year. We have purposefully kept out that very tough year, the year between the 17th and 18th birthdays, that the vast majority of our sister States deal with every day in their own juvenile systems. Personally, I do not want to have any more exclusions, whether of age or of offense, and that is simply because I would like to do my job, which is judicial decisionmaking and discretion. (Let us all admire Dave Gavin who told us yesterday afternoon that his Texas Legislature would not be back in session until 1997. Praise the Lord for any legislature not in session for the rest of 1996 because nothing good for juveniles is happening in our legislatures today.)

States tinker with juvenile laws

Fox Butterfield, that very able *New York Times* writer, in the lead story in a recent Sunday edition, pointed out that almost every one of our 50 States has been tinkering with, attempting to tinker with or actually revising its juvenile laws during the past 2 years. And what have they been doing? In essence, they have been dumping children into adult court and, ultimately, into adult institutions where it is

presumed that they will serve longer sentences under more punitive conditions, where it may also be assumed that they will become the targets of, and bullied by, older adult prisoners. I regret that some of our political leaders do not seem to regret that. Is it true that they will receive longer sentences in adult court? It depends on what the law is, and what the reaction of judges is to the offense, in the individual jurisdiction.

I urge all of you to review the points made in the *National Juvenile Justice Action Plan* and its summary.¹ It is not a perfect document, but it represents the consensus of a lot of very hardworking people. I was fortunate enough in June 1994 to be one of the appointees of the U. S. House of Representatives to the Coordinating Council on Juvenile Justice and Delinquency Prevention, which developed the *Action Plan*. I hope you will look at what we recommend in terms of extended juvenile jurisdiction. I want to keep kids under the aegis of those who have been trained to deal with them.

¹ U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, *Combating Violence and Delinquency: The National Juvenile Justice Action Plan, Summary*, by the Coordinating Council on Juvenile Justice and Delinquency Prevention (Washington, D.C.: Government Printing Office, March 1996).

If it means extending the age, then let us do it.

There are different ways to extend juvenile jurisdiction. I refer to our most recent legislative change in Massachusetts as the "New Year's Eve legislation of 1991." You can probably guess why: there were so many mistakes in that December 31 enactment that there had to be an eight-part clean-up bill passed in 1992 to correct it. Our legislation, alas, did not include the minimum age for transfer; that 6-year-old from Richmond, California, who has been mentioned could have been swept along into adult court if his offense fell during that time period. I do not recommend our law as a model, but it simply mandates that retained juveniles (those whom we keep in our system) found delinquent because of first-degree murder serve between 15 and 20 years. Up to the age of 21, they are placed in a juvenile facility; beyond that, they serve their sentence in the adult correctional system. For second-degree murder, they serve 10 to 15 years; again, by the age of 21, they move to the adult system.

Unlike Texas, which moved its 30-year determinate sentence to 40 years, there is no hearing that occurs in Massachusetts to find out whether or not the juvenile system has done its job. I do not care for our statute in that form, but it could easily be made palatable. I would like to have a hearing; I would like to find out whether the system that I value so much, my Department of Youth Services (DYS) in the

Commonwealth of Massachusetts, has done its job. There is no reason why the person cannot be released, but remain on intensive parole supervision after that if it is believed that the DYS has done its job. It is, however, obviously easier for DYS to do its job if there is some incentive for offenders to get out before their entire life cycle has repeated itself. If you think about it, if most juveniles kill at the age of 16, and the minimum sentence is 15 to 20 years, they will serve more years in custody than they have lived. Rehabilitation, if it occurs, does not take that long, and there is the distinct possibility of the affirmative work of juvenile authorities being undone during the years in the adult institution.²

Open access preserves system

There is no question in my mind that Sacramento County District Attorney Jan Scully was exactly right yesterday when she said that the public had lost confidence in our system's ability to protect them. However, there is the perception, and it is just a perception, that we slap wrists behind our closed doors. I am here with an agenda, and let me tell you exactly what it is: I am proud of what our underfinanced and understaffed juvenile justice system has accomplished. I am proud of the Massachusetts DYS, nationally recognized because of the success of its smaller community-based facilities.

² Subsequent to this conference, Massachusetts followed the national trend with its new juvenile legislation. St. 1996, c. 200, abolished transfer hearings, replacing them with automatic adult prosecution for those 14 and older accused of murder and prosecutorial discretion as to whether those in that age group accused of other serious offenses would be indicted or remain in juvenile court, but be subject to a state prison sentence. See Mass. G.L. c. 119 §§52-84 as amended July 27, 1996.

My agenda is pretty simple: it is to preserve and to strengthen the juvenile justice system. It is my concern that if we do not show the public what we are accomplishing with our delinquent juveniles, then our system and the 100-some years that have gone into its creation, from the Chicago and Boston juvenile courts, from the House of Refuge in New York City, will come to an end. In an ideal, trusting world, we could keep our traditional system with its current, or recent, confidentiality. Please do not believe for a moment that I do not recognize the down side of publicity. It is only because I view opening access to juvenile proceedings as, by far, the lesser of evils, that I make the proposal that I do. It is my belief, certainly, that once the novelty has worn off, the media will take as little interest in most delinquency cases as it takes in most adult criminal trials. And there will not be anything that our opponents — and I use that term purely in a legislative sense because there are many good people sincerely in that vein — can accuse us of hiding, because the doors will be open.³

As I and my colleagues in the National Council of Juvenile and Family Court Judges have proposed, you would be able to walk into any delinquency trial. This was our organizational statement. And, mind you, these are the working judges who deal with the juveniles in our society every day. Traditional notions of secrecy and

³ See Gordon A. Martin Jr., *Open the Doors: A Judicial Call to End Confidentiality in Delinquency Proceedings*, 21 *New England Journal on Criminal and Civil Confinement* 393 (1995). The July 1996 Massachusetts legislation opened the court records and trials of juveniles 14 and older charged with serious offenses (termed “youthful offenders”). Mass. G.L. c. 119 §§60A and 65. Juvenile murder trials were already open to the public.

confidentiality should be reexamined and relaxed to promote public confidence in the court's work. The public has a right to know how courts deal with children and families. The court should be opened to the media, interested professionals and students and, when appropriate, the public, in order to hold itself accountable, to educate others, and to encourage greater community participation. That is the official policy statement written just a year ago by the National Council.

Judicial decisionmaking

My specific topic is the role of the juvenile record in judicial decisionmaking. Obviously, the basic delinquency history is crucial to the juvenile's first court appearance — arraignment, the setting of bail. What, if anything, has the juvenile been charged with? If there has been a charge, what, if anything, has the child been found delinquent of? Have court appearances been kept? Does the juvenile show up? Has restitution, if ordered, taken place? And has anybody in the community appeared on his behalf?

The more information a judge has, whether it is on paper or presented live, the better, and all those factors that apply at arraignment, at the setting of bail, are equally important when you get to disposition. I value prosecutorial recommendations. I respect prosecutorial discretion. I was a prosecutor myself at the Federal level for more than 3 years. I hope that more than 22 of our States will permit prosecutors access to records. I think that is most important.

I also like to know about the health of the child and when the last physical occurred. I find, as do many of you in our urban areas, that asthma is disproportionately high in our cities. I always make it a point when the intake report shows that a child does have asthma to take out

my own inhaler and say, “Hey, I got here to court this morning. I don’t want you to use your asthma as an excuse to miss school, to miss your appointments with your probation officer,” and then I find out who is caring for their asthma. As to how and where juveniles are going to spend the summer, I find out just how far away their extended family is. Regretfully, I found that many of the children in Roxbury are considered safer if they are sent away from Roxbury for the summer to that extended family in Charlotte, North Carolina, or in the rural parts of the southeast.

In one case that I handled, a young man we shall call “Al” was found delinquent because of rape. Al also set fires. You can imagine how many facilities were eager to have Al as a denizen. He continued on for far too long in temporary detention quarters, and I believe that occurred in large part because the agencies involved were reluctant to share information with each other. Ultimately, I issued an order to the Departments of Mental Health, Social Services and Youth Services, and to his school district, that waived all confidentiality rules that were impeding information sharing. At times, we must tackle these things head-on and deal with them. It is up to judges and legislators to protect those public employees from statutes that, superficially at least, appear to bar their providing obvious information to those persons and agencies who are attempting to work with them for the good of the individual. Once this information was shared, Al was placed into an appropriate facility.⁴

Importance of judicial waiver

I hope that the judges in this country will be able to continue to do what I consider to be the most important judicial decision — waiver. Whether it is called transfer or certification in some jurisdictions, this is the movement of children to adult courts. I believe that it should be a judicial decision, that it should not be an automatic action decided by the exclusion of children because of their age or because of the nature of the alleged offense. In waiver hearings, records are crucial; obviously, we need the school records, we need the psychiatric and psychological records, we need the records kept while the child has been detained in the youth correctional facility. I do not propose that every record involving that youth be made public, but I can certainly see summaries of records being made public, if that is necessary to convey to the public whose support we need to continue our system, why a child is being retained.

Those of us in court of necessity deal with snapshots in time. In one recent 2-year period, every young man who appeared before me for whom transfer was sought had himself either been shot or stabbed at some point. Suppose the camera had clicked an hour before my snapshot, or the following week. Think about that.

Ultimately, virtually every prisoner, juvenile or adult, not executed either by law or by the inmates with whom we have placed him, gets out. What do we want them to get out of their time in confinement? What do we want to have occurred while they were confined? Would we like to see them be literate? Would we like to see them be employable? The adult correctional system has not been — I think you will agree — so notably successful with its constituency to warrant our handing over our children, violent or not, to it.

So let us unite to preserve our juvenile justice system from the present onslaught upon it. Let us open our delinquency proceedings and, where appropriate, records so that a skeptical public may learn of the good work going on. In that way, we shall lead our juvenile courts into a second hundred years.

⁴ Commonwealth v. A Juvenile, No. 85-J-440 (Mass. Dist. Ct., Quincy Div., filed Jan. 24, 1986).

Providing statewide access to juvenile court records and proceedings in Utah

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I attended a similar juvenile justice conference cosponsored by the Bureau of Justice Statistics and SEARCH in 1988 in Boston. There were only about half as many people there as are here today, which is indicative of the increased level of interest. We did not know it at the time, but the ground was shifting under our feet. Things were happening, even as we met, that were going to change the future of juvenile justice.

In 1988-1989, the arrest rate for thousands of juvenile violent crimes went up significantly. This caught the public's attention. This growth, even though it involved less than 1 percent of the children who are referred to juvenile court, had a significant impact on the media and, ultimately, on legislators who wanted to protect their citizens. Our aging population gets more conservative and they want more protection.

This increase in the juvenile arrest rate caused a significant change in juvenile justice. I just celebrated my 30th anniversary in juvenile justice. The first 25 years were relatively quiet; we did not have a lot of media involvement, and we liked it that way. In the last 5 years, I have become personally acquainted with all of the media representatives — television, radio and print — in our State. They call me regularly, and they want information. It has really changed the environment in which we work.

Some of the recent statements made by politicians have had an impact on the system as well.

In one statement, California Attorney General Dan Lungren said that in 1996, he is going to focus his attention on legislation to end confidentiality in juvenile justice proceedings. He said we have to remove the cloak of anonymity that shields juveniles, and that there is nothing wrong with young criminals feeling the sting of public shame when they get arrested. Finally, he said these kids do not deserve a grace period.

Virginia Governor George Allen, in creating an action plan for recently passed legislation in his State, said that the package he had set up would allow criminal prosecution of many youths charged with violent offenses, thus increasing the number of kids transferred to adult courts. He said he is going to open up juvenile proceedings and records to the public. He said he is going to allow dual sentencing, thus empowering juvenile court judges to sentence kids, even into the adult system, if they did not get rehabilitated while they remained juveniles. And he said he is going to allow prosecutors more discretion in transferring certain kinds of very serious felonies to the adult system.

Open records, hearings

These kinds of political statements are typical of what has been going on in State juvenile justice systems throughout the nation during the first half of the 1990s. But, contrary to common belief, many juvenile courtrooms and records are now open to some level to public inspection.

The National Center for Juvenile Justice recently conducted a review of juvenile statutes in every State. According to the Center, as of 1995, 39 States and the District of Columbia allowed some access to both juvenile court records and hearings; 15 States and the District have opened their court hearings to the public; and 9 States have opened their juvenile records to the public with no restrictions. This is a significant change from just 10 years ago in the United States.

Statutes in many other States allow judges to permit the public, especially victims, to attend otherwise restricted hearings on request. All of these changes have put pressure on juvenile justice systems to respond to this new era of openness.

Utah, for example, has had a media committee that has met for the last several years, and they were surprised when I told them that the media could go into any juvenile court hearing, that all they had to do was obtain the judge's permission. They said, "The judge is never going to give us permission." And I said, "Have you ever asked?" They answered "no." And I said, "Don't

talk to me until you've tried." We have been keeping track over the last 2 or 3 years and, except for one or two unusual cases that probably would have remained closed even in adult court, the media have been allowed into these hearings. The media simply did not know they could ask and get in. In fact, we have one judge in our First Judicial District — that judge is on a circuit and holds court in a fairly rural area — who has allowed the local media representative to attend court every Thursday for the last 10 years. Every week, there is a write-up in the local newspaper about what went on in juvenile court. The reporter generally does not publish the names of the juveniles, although there is no prohibition against it.

I think that juvenile courts have been more open than those of us who work in the system have realized, it is just that nobody has asked to attend. I am going to talk a little about that media interest in juvenile proceedings later in my presentation.

Utah laws, rules governing access

I would like to review some of the laws and rules in Utah that govern access to juvenile court records, and to describe, from the court's perspective, how we respond to requests for access to our courts.

Over the last 15 years we have shared our statewide juvenile index with law enforcement. Our Judicial Council passed a rule that authorizes any law enforcement agency in Utah to look at juvenile records that we provide through every dispatch terminal in the State. The same terminals used to access the National Crime Information Center and the National Law Enforcement Telecommunications System are used to access Utah's statewide juvenile index. We allow them to access the index when it is part of an arrest process or an official investigation. We even allow them

to create referral records. For example, if they decided to field card a child and not make a referral to court, we let them add that record to the juvenile index. This then becomes a statewide repository of this type of juvenile involvement with law enforcement.

We do not allow law enforcement to print out the juvenile records, although they can look at them, and we do have the police chief in each agency sign a document stating he will train his staff to use it only for official purposes. We do not want one of the officers to check out his daughter's boyfriend. Although I am sure that may happen, we think the risks are worth allowing this kind of access. Included in this statewide access are pick-up orders, bench warrants, other messages from probation officers regarding the child, and a rap sheet that includes all of the formal referrals to juvenile court and what the court has done with that youth.

In addition, for over 20 years, we have allowed adult probation and parole access to a juvenile record when they are doing a presentence report on a youth who has not been convicted in adult court. We want this as part of their presentence report to the adult court. We want the adult court to be informed.

Through the main menu of the statewide system, law enforcement users can view the youth's rap sheet and create a critical message if they want to add a message on the child's file. We allow them to create and update their own diversion records if they are not going to refer the child to court. We allow them to run a list of the kids they have referred to us in the last few months so they can see what we did with them. We allow them to see a record summary, and we allow them to run a list of the cases that we have closed that their agency has sent to us so that they can see what the court did with those.

The system provides a summary screen of the child's record, which can run several pages. We know that law enforcement officers sometimes do not want to cover a lengthy rap sheet, so the screen summarizes in plain English exactly what this youth has done, based on the records we have, and then provides information on what occurred in the court hearing.

Let me describe the contents of a typical on-line summary record. The screen shows that the youth has been convicted of two criminal offenses which were included in two criminal episodes. These offenses included no felonies and two misdemeanors. None of these criminal episodes consisted of two or more offenses. In terms of what occurred in court, the youth was fined \$100, which he has paid, and he spent 4 days in detention. The screen also says a more detailed rap sheet can be accessed that provides the names of all the probation officers and the judges who have worked with this youth.

Even though our information system is simply full of dates, offense codes and dispositions, we have tried to summarize this in plain English for professionals who want to use it to prepare their presentence report. Our example screen shows that the youth, at last report, was residing with his mother only; the marital status of his natural and legal parents was indicated as divorced. It says the youth was referred to the Third District Juvenile Court for the first time for a criminal or status offense in November 1991, for bike theft when he was 12 years of age. Since that time, he has been referred 46 times for criminal or status offenses; he has been convicted on 30 of those charges; and a total of 11, or 23 percent, of the charge referrals have taken place over the past 12 months. The youth's offense rate during the past 12 months is .92 offenses per month.

Another page of the summary indicates that the youth had been referred as a dependent neglected or abused child when he was 7.3 years of age, showing a history of abuse on this record. The record also provides a history of detention or other placements. We share this information system with our Division of Youth Corrections, and any time a youth is removed from his home for a delinquent reason, either for detention or foster care or community placement or to a secure facility, he is booked in and out on this system. In this way, we have a complete history of placements. In this example, the youth spent 315 days in some sort of alternative placement, mostly detention. If the youth would have escaped from any of these placement options, the absence without leaves would also show.

The summary record also indicates that the youth was placed on probation in 1993, and has spent 1,090 days on probation. It then lists the names of all the agencies and people (judges, commissioners, etc.) who have dealt with this youth. The last section references fines, restitution and collections; we use this information system to collect and disburse restitution and to keep track of community service hours. The summary record contains a list of the critical messages and other materials that professionals want to put in the system. The system also displays a chronological rap sheet, which details in chronological order the youth's history in the system.

Changes to the access law

The public has had access to portions of the juvenile court record in Utah for as long as I can remember, but recently our law changed to allow both media and public access to any case in our system in which a youth aged 16 or 17 is charged with a felony. It also allows parents or guardians, other parties, defense attorneys and

prosecutors to have access to any element in the juvenile record. The law also allows the State Division of Law Enforcement and Technical Services to look at a person's juvenile record for purposes of establishing good character for issuance of a concealed firearm permit. Thus, if they think the juvenile record is too long, they can recommend denial of that person's concealed weapon application by stating he is not of good character, based on his juvenile record.

A subsection of that law states that if a petition is filed charging a minor 16 or older with an offense that would be a felony if committed by an adult, the court shall make available to any person upon request the following items: the petition, any adjudication or disposition orders, and a delinquency history summary of the minor charged. This means we give the media and the public, on request, the prior record of juveniles.

When the media request the record of a 16- or 17-year-old youth who has been charged with a felony, we provide them with a "media rap sheet" in which we purposefully summarize the juvenile's record into criminal episodes, convicted offenses and court appearances. This gives the media a more accurate view of the record, since they are not going to take the time to carefully review and summarize the information on a long rap sheet. They are going to jump quickly to conclusions unless we format our information in such a way that leads them to accurate evaluations of these records. We hope this makes it easy for them to understand and not misinterpret the record.

In one typical media rap sheet, the youth in question has been convicted of 23 criminal offenses which were included in 19 criminal episodes. These offenses included 5 felonies and 18 misdemeanors or infractions. Four of these criminal episodes consisted of two or more offenses. These 23 criminal offenses

were heard by the court in 12 hearings held over the course of the youth's court history. As a result of the findings of these hearings, a variety of orders were issued, including fines of \$78, 100 percent of which were paid, restitution of a couple of hundred bucks, which was received, and 352 hours of community service, which he has not completed. He has spent over 1,000 days on probation and, while on probation, he has committed 3 felonies and 13 misdemeanors. He was sent to the Division of Youth Corrections in September 1994, and he has spent 94 days in community placements of some sort. He was placed in detention first in 1993, where he spent 212 days, and he was first placed in home detention in 1995, where he spent 7 days.

Automated name searches

I would like to digress and talk about the art of name searching. We have talked about fingerprint information systems and how that positively identifies individuals, but often law enforcement or other field officers do not have time to take fingerprints and do the number check. They are going to go into the system and look for a person based on a name search. Utah's system is probably the oldest juvenile justice system in the world, brought on-line in the summer of 1973. It has gone through three iterations. In each successive system, we have brought all of our historical data with us, so we are now dealing with some of the grandchildren of the kids we dealt with when we first started collecting this statewide juvenile information. We think it is fairly accurate because we use it to drive our courts; it produces petitions, summonses, notices of hearing, court dockets, intake rap sheets, and all sorts of documents that flow in and out of the court. In the process of that flow, we collect and update the information.

Back in 1980, a bright young man working for SEARCH Group, Robert Marx, wrote an article in SEARCH's magazine in which he discussed how good name searches should be designed.¹ They should be forgiving, so if your search criteria are wrong, the computer does not disqualify that particular entry, and it should be sorted. In other words, the most likely person should rise to the top of the list. And he used Bay's Law, a statistical probability theory, to sort these lists into ways that would make it more likely that someone searching for a name would make a hit.

The article is well worth taking a look at because it is what we used to develop our name search algorithm, which has worked quite well for us. If we cannot find the person using that probability search, we can default to a regular alphabetic search, but invariably we will make the hit on probability. Robert Marx's name search used the first and middle names, first and middle initials, last name, as well as a phonetic match on the last name; the year, month and day of birth; and, of course, gender. We also discovered recently that there is one thing kids will not lie about — mom's first name. So we are going to add the mother's first name to our information system and see if this helps improve our hit rate. Seventy percent of the kids on whom we do a name search have a prior record. So we need an accurate name search algorithm. We also need to help law enforcement make accurate hits when their dispatcher is trying to tell an officer in the field whether this kid has a pick-up order or something else in his record.

¹ Robert L. Marx, "Probability Theory and the Art of Name Searching," *Interface*, June 1980, p. 7.

School notifications, adult system transfers

In terms of juvenile records in schools, Utah State law requires that the court notify the school when a youth is convicted of any serious felony against a person or when a youth is placed on probation. We have 3 days to do that, so we try to hustle those out. This was set up to help schools protect students from more violent offenders and offenders who have offended enough to receive probation.

Utah recently adopted a serious youth offender act, which changed the way we transfer kids to the adult system. It creates three categories of serious youthful offenders:

- In the 601 category are youths charged with murder or a felony who have been sent to one of our secure facilities. These youths are automatically sent to adult court; the juvenile court no longer has jurisdiction over them. We discovered that a third of our secure facility beds were taken up by kids who were in for their second or third time in that secure facility. They were taking up a lot of space, so we said, "Okay, kid you get one chance. You come out charged with a felony, you're going to go to the adult system."
- Our 602 kids are what we call the "10 deadly sins" group. If a youth is 16 or 17 and charged with an offense that falls within this "10 deadly sins" list, he is presumed to be transferred to adult court, but there is a hearing in juvenile court to decide if that really should happen. Many children fall in this category.
- In the 603 category are children who are transferred to adult court after a prosecutor files a motion asking for transfer. These children must be at least 14 years of age and charged with a felony.

Since we use the system to process new referrals to court and it provides a face sheet for intake staff, the system now produces a special warning notice to the probation department when a youth may qualify as a serious youthful offender. The notice also defines what it takes to become a serious youth offender. So now the probation officer is warned that this kid fits our new law; he can then discuss the case with the prosecutor. In some cases, our courts just send those cases directly to the prosecutor.

Sentencing guidelines

In August 1995, the Utah Sentencing Commission adopted sentencing guidelines for juveniles, which are fairly common in the adult system. I worked with the commission for 2 years as it tried to hammer out what these sentencing guidelines for juvenile court judges ought to be. Depending on the severity of the offense, a youth can fit under one of four sentencing categories.

For every child who is newly charged in court and who fits one of the four sentencing categories, a notice is produced and sent to that child's probation officer. The notice informs the officer that the youth qualifies for one of the categories under the State sentencing guidelines; lists the category; lists the offense that qualified the youth for that particular category; and lists the sentencing recommendation. Nonjudicial, nonpetition kind of offenses are not included. At the bottom of the notice is a warning to probation officers that this is a computerized analysis that counts every offense, but that the officers should carefully review this because, unless other conditions are present, this is what their recommendation to the court ought to be.

The reality of media interest

In conclusion, for those who are concerned that the opening of juvenile court records and hearings will destroy the juvenile justice system as it was envisioned by its founders in 1899, take heart: the economics of media coverage usually prohibit extensive involvement in juvenile courts. Media representatives only have enough time to cover the most serious of juvenile crime. So even if you open up your courts, they do not often show up. We even produce an automated felony docket for 16- and 17-year-olds, and we post it out in front of the juvenile court for anybody who wants to look at it. It lists the juveniles' names, when their hearings are going to be held, and in what courtroom.

We have found that even with open juvenile proceedings, nobody comes unless it is a very serious kind of a case. Most private citizens are too busy with their own interests to spend time watching in juvenile court. Most of the time, even with unlimited access to juvenile court, no one shows up except the parties involved and those close to the juvenile, either family, friends, neighbors or schoolmates who already know about the problems this kid has had. If there is a stigma attached to this juvenile's actions, it was attached when those closest to him became aware of his problems.

But for those youths who are worried about having their name in the media, I have a suggestion for them. Let this serve as a warning to them that, in order to keep their illegal juvenile activity confidential, do not screw up big time on a slow news day. Thank you.

California's approach to using juvenile records in firearms checks

STEVE GALERIA
Manager
Statistical Data Center
California Department of Justice

I have been asked to give a brief presentation about how California uses its juvenile records to disqualify individuals from purchasing firearms.

Before I discuss the specific laws and procedures governing juveniles, let me put these facts into their proper perspective. The information I am going to provide is about the *legal* sale of firearms in California. It does not address illegal sales between individuals or account for the number of firearms brought into the State, legally or illegally.

Regulating firearm sales

It is also important to know something of California's gun regulation history. Contrary to popular belief, California has a much more restrictive review process than any other State in the nation and it all started in 1909.

1909. Gun dealers were required to keep a register of pistol and revolver sales and to make the register available to law enforcement.

1923. Handguns could not be released to the purchaser on the day of the sale and a copy of the register had to be sent to the local law enforcement agency.

1953. The waiting period was extended to 3 days. The California Department of Justice (DOJ) would notify local law enforcement if the person was prohibited from possession of a handgun and the local agency would confiscate the weapon.

1965. The waiting period was extended to 5 days.

1972. The California DOJ, for the first time, was required to notify gun dealers of prohibited purchasers, but 5 days was not enough time to process the numerous checks.

1975. The waiting period was extended to 15 days to give the California DOJ enough time to review records to determine if purchasers were prohibited and to notify dealers to stop sales.

1991. All private party transactions were required to be processed by a licensed dealer. Rifles and shotguns were added to the review process. Prohibited categories were expanded.

Rapid changes in 1991

In 1991, things started to heat up in California. There was a great deal of interest in gun sales, and significant legislative changes occurred that year. All private party transactions were required to be processed by a licensed gun dealer, and rifles and shotguns were added to the review process; up to that point, only handguns were controlled. Rifles and shotguns were added because California found that it did not take convicted felons long to figure out that even if they were turned down to buy a handgun, they could return to the same store and buy a shotgun or rifle. There was nothing in the penal code to stop them from purchasing, or the dealer from selling, a long gun.

Adding shotguns and rifles to the controlled category required several compromises. First, California requires the collection of quite a bit of information about a handgun

when it is purchased, such as make, model, serial number, etc. California does not collect the same information on rifles or shotguns. Second, after review of the application for the purchase of a rifle or shotgun, current law requires the destruction of that record after 5 days, whereas handgun purchase applications are kept for several years. Also, all of the handgun information is entered and maintained in an automated system so that there is a complete history of the purchase and any subsequent transfers. Registration information on rifles and shotguns is not recorded in any system.

Purchase procedures

The review process is basically straightforward and simple. Before a gun dealer can release a gun to a purchaser, the dealer must complete a Dealer Record of Sale (DROS) form and submit it to the California DOJ for review. The DOJ will review that person's records, if any, to determine if the person is in a prohibited classification. If the dealer does not hear from the DOJ within the 15 days, the gun can be released. Of course, if the DOJ notifies the dealer that the purchaser is prohibited (notifications are usually made by telephone), the sale must be canceled. This sounds easy enough, but the complexity comes from trying to process 400,000 DROS forms each year and reviewing all the corresponding records for prohibiting offenses and related conditions.

Prohibited categories

The categories of persons prohibited from purchasing firearms were expanded in 1991, rather extensively. Let me talk about it here because I think it is the crux of the issue as it relates to juveniles.

First, there is an age requirement. A person must be 18 years of age before he can own a rifle or a shotgun, and 21 years of age before he can own a handgun. Also, if the person committed a specified offense as a juvenile, it will have an impact on whether or not that person can purchase a handgun as an adult. For example, let us say a person wants to purchase a handgun at age 22, but he has committed a serious crime at age 17. In this case, California law will prohibit that person from purchasing, possessing or controlling any handgun or rifle until he is 30 years old.

Second, most people who are convicted of felonies (there is an extensive list) — whether the conviction is in California, anywhere else in the U.S., or any other country — may not possess any firearm. California recently added a related prohibition against the possession of ammunition. The logical connection is that if a person cannot possess a firearm, why would they need to possess any ammunition?

Third, if a person is convicted of specified misdemeanors, such as threatening public officers or witnesses — again, the list is rather lengthy — there is an additional prohibition of an extra 10 years.

Another recently added prohibition, which applies to both adults and juveniles, has to do with mental health patients. The medical community was not comfortable sharing such information with the law enforcement community, but was convinced it is in the best interest of the patient and the public to provide the State with information on individuals under a physician's care who had been

committed or who had committed themselves. Because of the sensitive nature of the information, it is kept in a separate file, but is reviewed for each gun purchase. In addition, if an individual under a physician's or psychiatrist's care makes a threat against an identifiable individual, that person's doctor is required to notify the State of the threat. Such threats result in an additional prohibition of 6 months after the date the threat is reported.

In summary, the prohibited categories are straightforward at first glance, but cover a wide variety of offenses and conditions. A person will be denied a gun purchase for one of the following:

Age: A person must be 18 years of age to own or possess a long gun, and 21 years of age to own or possess a handgun.

Felony conviction: Persons convicted of a felony, whether by the U.S., California, or any other State or country, cannot own or possess any firearm or ammunition.

Misdemeanor conviction: Adds a prohibition of 10 years after the conviction.

Probation: If it is an express condition of probation, a person may not own or possess a firearm for the duration of the probation period.

Protective order: The order may direct the respondent to relinquish any firearm and prohibit the purchase or possession of any firearm for the duration of the order.

Temporary restraining order: The order may direct the respondent to relinquish any firearm and prohibit the purchase or possession of any firearm for the duration of the order.

Juveniles: Persons who have committed specified offenses may not own, possess or have under their control any firearm until they reach 30 years of age.

Mental: Mental patients or mentally disordered persons may not purchase or possess firearms for 5 years after treatment and release.

Tarasoff: Persons who are a threat to themselves or others, as reported by their personal physician, are prohibited from purchasing or possessing firearms for 6 months from the date of the report. (Named for a Dr. Tarasoff, who proposed the prohibition.)

California DOJ staff reviews several in-house files and automated databases to conduct the DROS review. This is a name-check process and it has some inherent limitations. The files include:

- Automated Criminal History System;
- Mental Health File;
- Restraining Order File; and
- Supervised Release File (includes probation and parole).

Under reporting

In California, all arrests, including juveniles, are to be reported to the DOJ and entered into its Automated Criminal History System. When the arrest fingerprint card is received, it creates or adds to that person's criminal history. When the disposition of that arrest is received, it is added to the history. The problem in California is that juvenile arrests and corresponding dispositions are significantly underreported. Only 25 percent of the juvenile felony arrests are reported and available in the criminal history system. This is due to the reluctance of local law enforcement and the courts to submit juvenile data. As discussed earlier in this conference by officials from other States, the same conflicting views about how best to rehabilitate or treat juveniles exist in California.

Impact of regulations and legislation

There have been other changes to California's gun check system that apparently are having an impact on all firearm sales. In 1993, gun sales exceeded 600,000. In 1995, they were down around 400,000.

In 1994, purchasers of hand guns were required to obtain a Basic Firearm Safety Certificate prior to taking possession of a firearm. This can be obtained by taking a written test at the gun dealer's place of business, watching a video, or by exemption if the person is a retired peace officer, retired military, has a hunting safety certificate, etc.

The other significant change in 1994 was the strengthening of gun dealer licensing control laws. Prior to 1994, a person could become a "dealer" if he possessed a Federal Firearms License (FFL). The cost was low and many people could legally sell from their home. But having an FFL is not enough. As of 1994, gun dealers must not only have an FFL but also a State Sellers Permit, a DOJ Certificate of Eligibility and a local Sales License. In 1995, there were 12,788 FFL dealers in California. As of May 15, 1996, there are only 3,578 legal firearm dealers, which is still much more than the 230 McDonald's restaurants in California.

This is all interesting and helpful, but what is the magnitude of fire arm sales in California? What are the trends? How well is the review process working? And how is this relevant to juveniles?

During the period of 1990-1995, firearm sales steadily increased, peaked and have been on the decline for the last 2 years. The chart (Figure 1) starts in 1990, when California was keeping the records of handgun sales only. The total sold that year was approximately 330,000, or about 900 handguns a day. In 1991, the total volume jumped to 489,000, but that is because California started recording the sale of rifles and shotguns. The sale of handguns remained about the same. There was a slight increase in 1992, up to 560,000. Total sales peaked in 1993 at 642,000 and then there was a 7 percent decrease in 1994, down to 599,000. In 1995, firearm sales dropped significantly,

30 percent, down to a total of 412,000.

The reason for the downward trend in firearm sales in California is not known. Some individuals have suggested it is a matter of economics, others (jokingly) say that California is just saturated with guns and that "everybody has at least one." The California DOJ believes, but cannot prove, the down trend is the result of a combination of actions but has been most significantly impacted by the dealer licensing regulations and the increased safety training requirements.

Recent firearm transactions

How well the gun check/record review process is working is also open to interpretation. In 1995, 411,668 guns were sold and 185,072 records were reviewed to determine if the purchasers should be prohibited from owning a gun. Based on those record reviews, 4,206 individuals were determined to be in a prohibited classification and denied a gun purchase (Figure 2). It is of particular interest, given the purpose of this conference, to note that 554 of those denials were juveniles. Given the level of underreporting of juvenile offenses in California, it is reasonable to assume the number of denials should be significantly larger, perhaps two or three times larger. Clearly, from the viewpoint of gun sale control, there is a need for better juvenile arrest and disposition reporting in California.

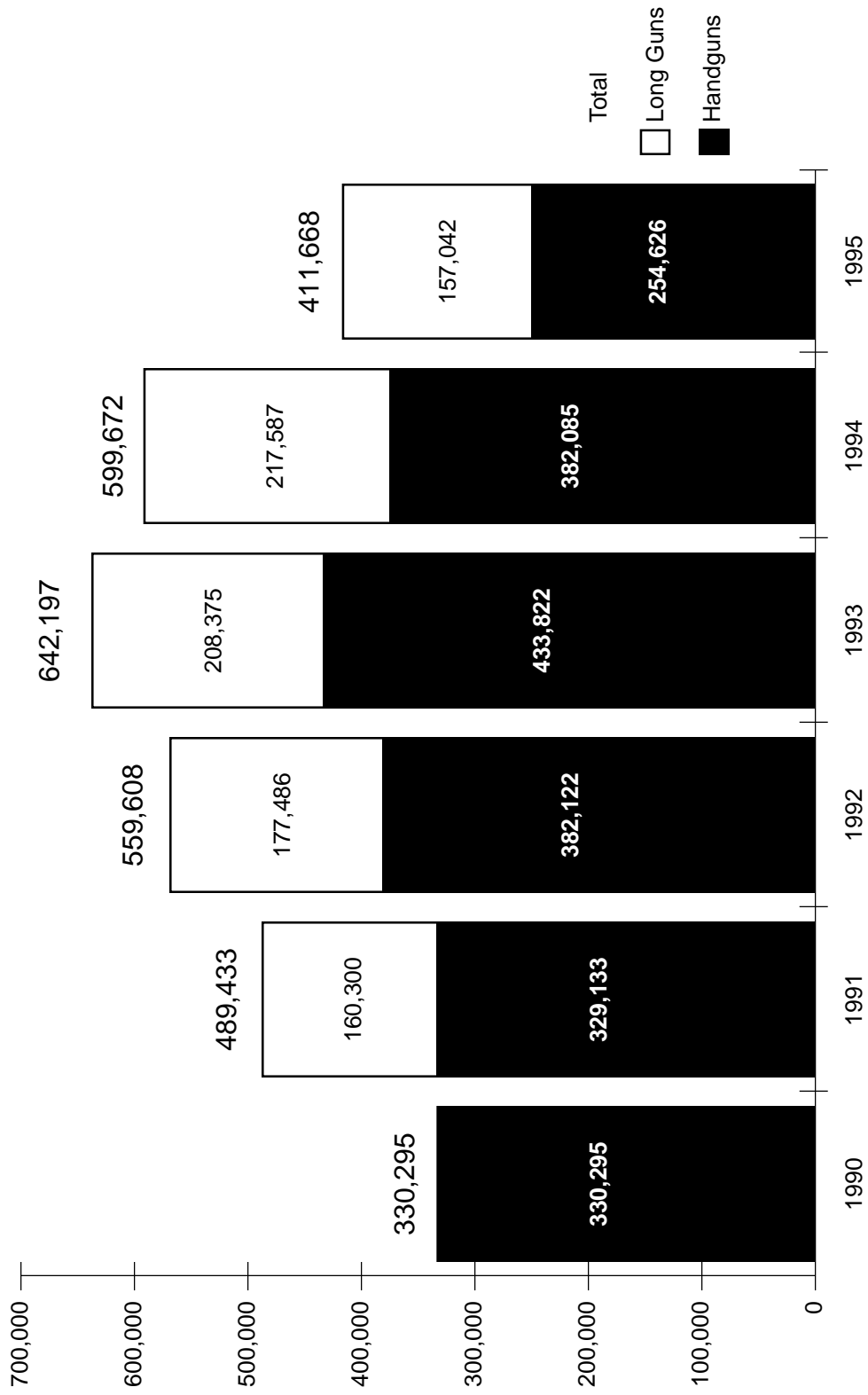
Future activity

We think we have made several significant improvements during the past 2 years to regulate the sale of firearms in California. It appears that more needs to be done with regard to juveniles, and planning is under way to collect more arrest records. In 1997, California DOJ also plans to start conducting dealer inspections to ensure the dealers are

in compliance with current laws and regulations. It also plans to begin "point-of-sale" checks. Dealers will be able to electronically submit DROS information directly to the DOJ and reduce the time it takes for a record check from 15 to 10 days.

The questions still remain. If there are fewer firearm sales, does it mean it is becoming safer in California or in any State? And if we deny gun purchases to more juveniles or those who committed serious offenses as juveniles, will it become safer in our cities and towns?

CALIFORNIA FIREARMS SALES, 1990-1995



SOURCE: DOJ, Firearms Program

Figure 1

HANDGUNS AND LONG GUNS

Dealer Record of Sale Statistics

January Through December 1995

OFFENSE CODE DENIALS

Dangerous Drugs/Narcotics	449	411,668	-	<u>DROS Documents Processed</u>
Assault	1,864			
Sex Crimes	54	254,626	-	Handguns
Kidnapping	0	157,042	-	Long Guns
Homicide	35			
(Includes Manslaughter)				
Vehicle Violations.....	103	<u>185,072</u>	-	<u>Folders Reviewed</u>
(Includes Auto Theft)				
Theft	104	131,469	-	Criminal Folders
Arson	10	53,603	-	Applicant Folders
Burglary	169			
(Includes RSP)				
Robbery	58			
Forgery/Fraud	58			
Weapons Offense	15			
Other	63			
(Includes Conspiracy, Accessory, "yes" answer to question s, etc.)				

TOTAL DENIALS

Misdemeanors:	1,770
Felonies:	1,510
<u>Other:</u>	<u>926</u>
TOTAL	4,206

OTHER DENIALS

Federal Denials	58
Out-of-State Denials	226
Military Denials	16
Under-Age Denials (21 years)	54
8103 W&I Denials	3
Juveniles (707b W&I).....	84
5150, 5250, 5260, 5270.15	470
Probation (Condition)	48
Restraining Order	267

DENIALS BY FIREARM TYPE:

Rifle/Shotgun	1,672
Handgun	2,534

PRIVATE-PARTY SALES

Rifle/Shotgun	5,373
Handguns	14,647
Denials	51

Figure 2

Information sharing critical to process of protecting children

RONALD C. LANEY

Director

*Missing and Exploited Children's Program
Office of Juvenile Justice and Delinquency Prevention
U.S. Department of Justice*

In the past 12 years, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) has trained around 20,000 individuals under our law enforcement training program. Of those, 5,000 individuals represented communities; they included mayors, city managers, judges, prosecutors, probation officers and law enforcement personnel. We found that the one constant problem for every community was the area of sharing information. As a matter of fact, we just recently conducted a training program in San Diego, California, with students representing 10 communities, and they said their number one priority is sharing information.

OJJDP always runs into a problem because we are told by school officials, "We cannot share this information with you," or we are told by the social service agencies, "We cannot share this information with you." As a person who works in OJJDP's Missing and Exploited Children's Program, I can tell you that we run into that all the time. We *need* to have information.

As a matter of fact, we like to demonstrate a "social autopsy," if you will, of a child. What happens is the child typically comes in contact somewhere in the system as a victim or an at-risk child before he ends up either committing serious delinquency acts or being murdered. In our case, in investigating child abuse cases and cases of missing and exploited children, it is very critical for us to share information at an early stage. We run several major programs that actually accomplish information sharing. We formed multidisciplinary teams and talked about developing protocols for sharing information.

When a child is first identified in the system in any manner, somebody has to write a report. Where does that report go? In most cases, it stays in that agency, where it is buried in a file that nobody else knows about.

A little over a year ago, we started working with the U.S. Department of Education, negotiating with them on their policies and procedures regarding the Family Educational Rights and Privacy Act (FERPA). In a couple more weeks, we hope to release an instruction guidebook and fact sheet that gives educators and juvenile

justice system practitioners information about the FERPA law, and what they can and cannot do in terms of information sharing between schools and the juvenile justice system.¹ In most cases, we have found that laws do not necessarily restrict agencies from sharing information; rather, it is an existing policy or procedure or tradition passed down from generation to generation in that office that prevents information sharing.

Of course, information sharing has to go both ways. A lot of times a police chief or sheriff will say, "You know, if schools would give me that information, I could do a lot with it." And then you talk to a school administrator and he will say, "You know, if the police gave us that information, we would know a lot more about this issue." That cooperative information sharing is what we are trying to accomplish.

I would like to introduce Dr. Bernard James. Bernie is the person who we use out in the field as we conduct training programs across the

¹ U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, *Information Sharing and the Family Educational Rights and Privacy Act*, Fact Sheet series, No. 39, by Ronald Laney (Washington, D.C.: Government Printing Office, July 1996). The guidebook, *FERPA: Schools and Interagency Communication for Delinquency Intervention and Prevention*, can be obtained from OJJDP's Juvenile Justice Clearinghouse, 1-800-638-8736.

country for community leaders on topics ranging from gangs and drugs to child abuse and child exploitation. His expertise is the legal aspects of interagency information sharing, and in our training programs he provides trainees with their specific State laws governing access to information. He has actually created a useful compilation of these State laws that we are going to put on-line with the National Criminal Justice Reference Service soon so that everybody can access them and find out what stage of confidentiality each State is in. (We will also be including information about the FERPA.)² Bernie has helped trained officials from 500 communities and has helped some States write legislation on these issues. He has also helped us to prepare the FERPA instruction guidebook and fact sheet.

² Contact the Juvenile Justice Clearinghouse, 1-800-638-8736, to find out how to access this information.

Issues and implications of school-juvenile justice information sharing

DR. BERNARD JAMES

*Professor
School of Law
Pepperdine University*

I want to talk about the issues involving, give you a legal update regarding, and discuss some implications surrounding interagency information sharing, with a focus on school-juvenile justice information sharing. (Feel free to substitute any agency in the mix because there are some generic concerns that surface, and you will be able to see the interchangeability of agencies in this discussion.)

When we talk about interagency information sharing, we have to start with the issues and (a) ask ourselves what resource do educators offer to the juvenile justice system, (b) determine whether there is a dual benefit, and (c) suggest whether any legal rules apply. As Ron Laney pointed out, after 9 years of looking at different State laws and talking with communities regarding information sharing, it becomes clear to us that interagency communication is the essential link for a successful reform movement in any local juvenile justice system. In this context, we are talking about school-juvenile justice information sharing, but again, feel free to substitute other agencies and I think the model will still be applicable.

Information as resource

If you begin with the notion that we are in the business of providing a more technical level of services to juveniles, it is clear that the decisionmaking in which we engage will be dependent on timely, accurate information. I think it is clear that schools need status

information about juveniles who are constantly being placed on campus as conditions of probation. There are cases in which schools just have to say “no” to local judges who attempt to continue to boilerplate serious and violent offenders back into the schools. But, at the same time, the juvenile justice system needs a complete behavioral picture of that youth, and so there is clear mutual reliance and interdependence between the two.

Mutual benefit

The objective of reform in local juvenile justice systems is to place increased responsibility and accountability on the juvenile. The educators’ contribution to information exchange is, again, essential. In terms of giving the educators an additional tool, however, there is another benefit that is conferred upon them by information sharing, because each educator will need to have notice of what lies underneath a condition of probation, which is often not available.

If you know an educator or if you are an educator, think for a moment about the knowledge that you have of juveniles who are on your campus under condition of probation after going through the juvenile justice system. Think of how you acquired that knowledge, either through a formal routine system or something a little more clandestine, to the comical in many jurisdictions where the student will actually come to the administrator and say, “Principal

Jones, I’ve been gone for a while and that’s because I’ve been in secure detention, but I’m back.”

The reality check is that the schools are often left in the dark and the juvenile justice system, as is historically involved, is shut out of the educational system. So both sides are acknowledging one another, but not participating in the information sharing process. Perhaps the most unfortunate issue — particularly in groups like this that come together to herald reform in different areas across a wide variety of legislation — is that reform models often ignore certain agencies and leave them isolated. I think when you look at a short list of agencies that remain isolated, schools somehow find themselves creeping toward the top of the list.

Juvenile justice models

In terms of emerging models, States are expanding the concept of the juvenile justice system to include the educator. There are certain States that I often offer to local policymakers, legislators and agencies as models of interagency information sharing: Washington, Florida, Oklahoma, Illinois and Connecticut offer extremely good models as to how to activate and then implement an expanded notion of the juvenile justice system that includes other agencies that share not just a common interest but also contain a pivotal piece of the juvenile behavioral puzzle that, unless it is added, will not complete the picture for decisionmaking.

Interagency agreements are either authorized or required in many States in this emerging model, and the two States that are taking the lead in that are Florida and Illinois. Illinois takes the permission approach and authorizes local jurisdictions to form interagency teams under a pact or agreement that identifies their common interests and how they will share information, and holds them harmless from liability. The State of Florida, under their Serious Habitual Offender Comprehensive Action Program (SHOCAP), requires it. Jurisdictions under the SHOCAP mandate are coming together under the force of law to do precisely what this emerging model suggests: expand the juvenile justice concept to include other agencies, and then to sign agreements.

Another emerging model is that State record laws require the juvenile justice system to give notice to schools at the point of arrest and disposition. There are a list of States that provide models in this regard; within this list, let me point out that the States of California and Texas require this notice to be given to the superintendent, after which the site administrator must be notified, and then all teachers who will engage or confront the student must be told.

Thus, in the emerging models there is a reflection of the awareness of both the need to include schools in the information stream and to create a juvenile justice system that relies on two-way communication between not only the law enforcement and educational components, but also other agencies as well.

Legal update, implications

If we had more time, I would talk about how the nuts and bolts work with oral referrals, and the degree to which Congress is on a reform trail to the point where they have amended the Family Educational Rights and Privacy Act and the Federal Privacy Act. We would look at the text of both those laws and see how Congress has gotten out of the way.

The implications are that State and Federal laws encourage a legitimate exchange of information between agencies, not the least of which will include the conditional core of the law enforcement agencies and courts in the juvenile justice system, but others as well. And educators should examine their local policies to take advantage of this ability. Thank you for your time.

Contributors' biographies

Contributors' biographies

Robert R. Belair

Mr. Belair is a partner with the Washington, D.C., law firm of Mullenholz, Brimsek & Belair, and is General Counsel to SEARCH, The National Consortium for Justice Information and Statistics. He also serves as CEO of Privacy and Legislative Associates, a legal and policy consulting firm. The principal emphasis of Mr. Belair's practice is privacy and information law involving administrative, legislative and litigation activity. His practice includes counseling in all aspects of privacy and information law, including credit and financial records, educational records, criminal records, juvenile records, medical records, employment records and telecommunications; defamation; intellectual property, including software copyright; constitutional law; and criminal justice administration.

As General Counsel to SEARCH, Mr. Belair has participated in SEARCH's privacy and security programs and has authored many studies in the area of criminal justice information law and policy. He was actively involved in the development of SEARCH's revised standards of criminal history record information, *Technical Report No. 13: Standards for the Security and Privacy of Criminal History Record Information (Third Edition)*.

Mr. Belair has served as a consultant to numerous Federal agencies and commissions on information policy and law. He is former Deputy General Counsel and Acting Counsel of the Domestic Council Committee on the Right of Privacy, Office of the President.

Mr. Belair is a graduate of Kalamazoo College and the Columbia University School of Law.

Hon. Shay Bilchik

Mr. Bilchik was confirmed as Administrator of the Office of Juvenile Justice and Delinquency Prevention (OJJDP) in October 1994. He previously served as Associate Deputy Attorney General in the Office of the Deputy Attorney General.

As Administrator, Mr. Bilchik is responsible for the agency congressionally mandated to lead the effort to address the public safety issues of juvenile crime and youth victimization. OJJDP leadership responsibilities include: identifying effective strategies to address juvenile crime through research; coordinating, implementing and supporting effective programs and encouraging innovative approaches to deal with existing and emerging juvenile justice issues; developing priorities and goals and setting policies to guide Federal juvenile justice issues; providing technical assistance and training to essential components of the juvenile justice system; and disseminating information on juvenile justice trends, programs and new approaches.

Mr. Bilchik began his career in 1977 as an Assistant State Attorney for the 11th Judicial Circuit of Florida in Miami. In 1979, he was promoted to Juvenile Division Chief and later to Deputy Chief Assistant for Administration. In 1985, he became the Chief Assistant for Administration and was responsible for administering an office of over 200 attorneys. He had supervisory authority over juvenile prosecution programs including those involving prosecution of juveniles as adults in the Criminal Division. He also established and had oversight responsibility for the Child Advocacy Center, which is a multidisciplinary intake unit for

cases involving victims of child abuse.

As a prosecutor, Mr. Bilchik served as the coordinator of a number of special programs, including the Police-Juvenile Prosecutor Liaison and the School-Juvenile Prosecutor Liaison Projects. He has lectured extensively on juvenile justice issues and served on the faculty of the National Council of Juvenile and Family Court Judges. In addition, he was the author of the "Court Handbook for Dade County Lawyers, Juvenile Practice," 1980 and "Prosecuting Juveniles in Criminal Courts – An Empirical Analysis," 1984.

Mr. Bilchik has served on numerous task forces and advisory committees dealing with juvenile delinquency and drug abuse issues. He was also involved in the drafting of a number of juvenile justice and child abuse legislative proposals in the State of Florida.

Mr. Bilchik received his education at the University of Florida, where he earned his B.S.B.A. in 1975 and his J.D. in 1977.

Demery R. Bishop

Mr. Bishop is Section Chief in the Criminal Justice Information Services (CJIS) Division of the Federal Bureau of Investigation, U.S. Department of Justice. Mr. Bishop began his career with the FBI in August 1975. He has served in the Knoxville, Tennessee Division, the Newark, New Jersey Division, the Birmingham, Alabama Division as Senior Supervisory Special Agent in the Huntsville Resident Agency, and the Atlanta, Georgia Division as Assistant Special Agent in Charge.

Mr. Bishop also has served at the FBI Headquarters in several capacities, including legal advisor to

the National Crime Information Center, assignment to the Inspection Division, and Unit Chief in the Office of Public Affairs. He assumed his current assignment in the CJIS Division in November 1993.

Mr. Bishop received his Juris Doctorate in 1974.

Dr. Alfred Blumstein

Dr. Alfred Blumstein is J. Erik Jonsson Professor of Urban Systems and Operations Research and former Dean (1986-1993) of the H. John Heinz III School of Public Policy and Management at Carnegie Mellon University. Dr. Blumstein has had extensive experience in both research and policy in the criminal justice system since serving on the President's Commission on Law Enforcement and Administration of Justice in 1966-1967 as Director of its Task Force on Science and Technology.

Dr. Blumstein was a member of the National Academy of Sciences Committee on Research on Law Enforcement and the Administration of Justice from its founding in 1975 until 1986. He served as Chairman of that committee between 1979-1984, and has chaired the committee's panels on Research on Deterrent and Incapacitative Effects; Sentencing Research; and Research on Criminal Careers.

On the policy side, Dr. Blumstein served from 1979-1990 as Chairman of the Pennsylvania Commission on Crime and Delinquency, that State's criminal justice planning agency. He also has been a member of the Pennsylvania Commission on Sentencing since 1986.

His research over the past 20 years has covered many aspects of criminal justice phenomena and policy, including crime measurement, criminal careers sentencing, deterrence and incapacitation, prison populations, flow through the criminal justice

system, demographic trends and drug enforcement policy.

Dr. Blumstein is the recipient of many prestigious awards in his field. He also currently serves as an At-large Member of SEARCH. Dr. Blumstein's degrees include a Bachelor of Engineering in Physics and a Ph.D. in operations research from Cornell University.

Dr. Francis J. Carney Jr.

Dr. Carney is Executive Director of the Massachusetts Sentencing Commission, an appointment he accepted in December 1994. He previously served as Executive Director of the Massachusetts Criminal History Systems Board and as Director of Planning and Research for the Massachusetts Department of Correction.

Dr. Carney also teaches courses on Corrections and Youth Crime Problems at Boston University, Metropolitan College. He has also had teaching assignments at the University of Massachusetts, Boston State College, Boston University School of Social Work, Boston College and Tufts University. He has served as a lecturer and conducted training sessions on correctional philosophy, research and evaluation, planning, and the security and privacy of criminal records at the Department of Correction Training Academy. He has participated in the Municipal Police Officers Training Program at the State Police Training Academy and the New England Criminal Justice Training Institute at Babson College.

Dr. Carney received his B.A. from Boston College and his M.A. and Ph.D. from Tufts University. He served as Chair of the SEARCH Membership Group and Board of Directors from 1992-1996.

Dr. Jan M. Chaiken

Dr. Chaiken is Director of the Bureau of Justice Statistics (BJS), U.S. Department of Justice. His appointment to this position was confirmed in September 1994.

Dr. Chaiken earned his Ph.D. in mathematics at the Massachusetts Institute of Technology. He was a senior mathematician at the Rand Corporation in Santa Monica, California, from 1972 to 1984, and was a principal scientist in the law and justice area at Abt Associates, Inc., in Cambridge, Massachusetts, from 1984 until he was nominated as BJS Director by President Clinton in 1994. He was selected as an Abt Fellow and directed the Federal Justice Statistics program at Abt Associates.

Dr. Chaiken's research has focused on developing and applying methods for improving operations of criminal justice agencies. He is a co-author of the "blueprint" for the Federal Bureau of Investigation's new incident-based crime reporting system, and he designed a microcomputer software package for police patrol car allocation that is used by law enforcement agencies in the U.S. and abroad. His best known work has been carried out jointly with his wife, Dr. Marcia Chaiken, who is Director of Research at LINC in Alexandria, Virginia. Together, Drs. Jan and Marcia Chaiken have authored numerous book chapters, reports and articles on crime and criminals.

Two LINC projects in which Dr. Chaiken has been involved included recommendations for improving the sample of the National Institute of Justice's Drug Use Forecasting (DUF) program and expanding uses of DUF statistics for the development of State and local policy. He also has worked directly with such agencies as the California Corrections Department, the Kings County (Brooklyn) District Attorney's Office, the Colorado Division of Criminal Justice, the Los

Angeles Sheriff's Department, and the Massachusetts Committee on Criminal Justice. Dr. Chaiken has also taught mathematics and public policy analysis at Cornell, the Massachusetts Institute of Technology and the University of California, Los Angeles.

Michael L. Curtis

Since August 1985, Mr. Curtis has been the Juvenile and Family Court Specialist of the Washington State Supreme Court's Office of the Administrator for the Courts (OAC). In this position, Mr. Curtis works closely with the superior court judges and the administrators of the State's 33 juvenile courts, acting in the capacity of an informational conduit between the courts and other agencies and individuals.

Also in his current capacity, Mr. Curtis is involved in formulating statewide policy, drafting and implementing legislation and court rules, responding to research inquiries, and providing technical assistance to the local courts. As the judicial branch Juvenile and Family Court Specialist, he also provides technical consultation to State executive branch agencies and the State legislature. Recent project areas of involvement include racial disproportionality in the juvenile justice system; unified family court; and the Federal court improvement grant program. He recently was appointed lead staff to the Supreme Court's Domestic Relations Commission. In addition, Mr. Curtis regularly serves on various committees and advisory boards as a representative of the courts.

Prior to his employment at the OAC, Mr. Curtis was employed for 10 years at the Benton and Franklin Counties Juvenile Court located in southeastern Washington State. Positions held included court officer (intake/diversion), probation counselor, and manager of the legal process unit.

Mr. Curtis holds a B.A. from Washington State University.

Dr. Charles M. Friel

Dr. Friel is a Professor in the College of Criminal Justice, Sam Houston State University (Texas), where he previously served as Dean.

In 1978 and again in 1984, Dr. Friel received fellowships from the Japanese Ministry of Justice to study that nation's correctional system. In 1988, he served as a visiting lecturer in various police colleges in the People's Republic of China.

Dr. Friel has lectured extensively throughout the U.S. and Canada. He is an At-large Member and a Board Member of SEARCH. He was the 1988 recipient of SEARCH's *O.J. Hawkins Award for Innovative Leadership and Outstanding Contributions in Criminal Justice Information Systems, Policy and Statistics in the United States*. Dr. Friel is also the 1992 recipient of the *Justice Charles W. Barrow Award* for distinguished service to the Texas judiciary.

Dr. Friel's undergraduate studies at Maryknoll College (New York) included philosophy and Latin; he received a Ph.D. in experimental psychology from the Catholic University of America, Washington, D.C.

Steve Galeria

As a Senior Program Manager, Mr. Galeria has gained a wide diversity of experience with ever-increasing levels of responsibility over his 25-year career with the California Department of Justice. Mr. Galeria is currently the Manager for the Department's Statistical Data Center. The statistical programs administered by this center include the following: Homicide, Hate Crimes, Domestic Violence, Uniform Crime Reporting, Law Enforcement Officers Killed and Assaulted, Death and Custody, Citizens' Complaints Against Peace

Officers, and the Juvenile Court and Probation Statistical System.

Prior to his current position, Mr. Galeria served in various analytical and management roles associated with the Department's Criminal History System; California Law Enforcement Telecommunications System; Law Enforcement Audit Program; Firearms Program; National Crime Information Center Project 2000 Implementation; Violent Crime Information Center; and Law Enforcement Automated Tactical Systems Program.

David Gavin

Mr. Gavin is Assistant Chief of the Administration Division of the Texas Department of Public Safety. His current responsibilities include the Texas State Criminal History Repository, the statewide Automated Fingerprint Identification System (AFIS), the National Crime Information Center (NCIC) Control Terminal, and the Uniform Crime Reporting Program. He has worked in the field of crime records for over 19 years. In addition to his current areas of responsibility, Mr. Gavin has worked with the Texas Crime Information Center, the Texas State Identification Bureau, including the Computerized Criminal History System, the Texas Help End Auto Theft project, and recently, the Texas Concealed Handgun Licensing Section.

Mr. Gavin has served as the Western Regional Chairman within the FBI's Criminal Justice Information Services (CJIS) Division advisory process. He is currently a Western Region representative to the CJIS Advisory Policy Board, serving on the Identification Services Subcommittee.

Mr. Gavin received his M.A. degree in English from the University of Texas at Austin.

Dr. Michael R. Gottfredson

Dr. Gottfredson is Vice Provost for Undergraduate Education at the University of Arizona and Professor of Management and Policy, Law, Sociology and Psychology. He joined the University of Arizona in 1985, after teaching at the Claremont Colleges, the University of Illinois at Urbana, and the State University of New York at Albany.

Dr. Gottfredson's research and teaching specialties are crime and the criminal justice system. He is the author of several books, including *The Generality of Deviance* (1994); *A General Theory of Crime* (1990); *Decision-Making in Criminal Justice* (1988); and *Policy Guidelines for Bail: An Experiment in Court Reform* (1985). He has published numerous articles in professional literature about the causes of crime and crime policy. He has frequently consulted with State, county and Federal governments concerning criminal justice policy.

He is a Fellow of the American Society of Criminology. In 1994, Dr. Gottfredson was selected as the Andersen Consulting Professor of the Year in the College of Business and Public Administration.

Dr. Gottfredson received his A.B. from the University of California at Davis and his Ph.D. from the State University of New York at Albany.

Dr. Bernard James

Dr. James is a Professor of Law at Pepperdine University School of Law. Dr. James has served on the Pepperdine faculty since 1984. He teaches courses in Federalism, Individual Rights, First Amendment, and State Constitutional Law. In addition, Dr. James has taught a seminar on U.S. Supreme Court History with Chief Justice William Rehnquist at the Pepperdine Law School. Prior to joining the Pepperdine faculty, Dr. James served as judicial clerk for the Hon.

Judge Myron Wahls for the Court of Appeals in Michigan.

Dr. James specializes in constitutional matters, serving as the First Amendment Contributing Editor on the *ABA Preview Journal*, which reviews cases of the U.S. Supreme Court. He also writes for the *National Law Journal* on First Amendment matters.

Dr. James lectures in America and Canada on legal issues and serves as a constitutional law commentator for the national and local media. In 1995, he spoke before a national audience on the C-SPAN network show "Supreme Court Review" about the flag-burning cases decided by the Court in its 1989-1990 term. Later that year, he provided the analysis of the Court's decision in the high school student Bible Club case for Los Angeles talk radio stations.

Dr. James serves as Special Counsel to the National School Safety Center, a partnership between the U.S. Departments of Justice and Education and Pepperdine University. He is the California Chair of the National Organization of Legal Problems in Education (NOLPE) and is a member of the faculty of the National Criminal Justice Institute in Louisville, Kentucky.

Dr. James received his undergraduate and J.D. degrees from the University of Michigan.

Ronald C. Laney

Mr. Laney was appointed Director, Missing and Exploited Children's Programs, Office of Juvenile Justice and Delinquency Prevention (OJJDP), in May 1994. He had served as Acting Director of the Programs from January 1993-April 1994. From 1981 to April 1994, he was the Law Enforcement Program Manager in OJJDP. He has developed a series of Law Enforcement Training Programs that are offered throughout the country today. Over 15,000 law enforcement

personnel have participated in these training programs since 1982. Prior to coming to OJJDP, Mr. Laney served as a Program Manager in the Law Enforcement Assistance Administration for 5 years.

Mr. Laney has a Bachelor's degree in criminology from the University of Tampa and a Master's degree in criminal justice from the University of South Florida. He served in the U.S. Marine Corps from 1964-1970 before being wounded during his second tour of Vietnam and medically retired. He also served as a probation officer in St. Petersburg, Florida, during 1974, and has received numerous awards from local and State law enforcement organizations for his work in juvenile law enforcement.

Kent Markus

Earlier this year, Attorney General Janet Reno appointed Mr. Markus Counselor to the Attorney General for Youth Violence. Prior to this appointment, Mr. Markus initially worked as Counsel to the Deputy Attorney General of the United States, the Justice Department's chief operating officer. In that capacity, he worked on a broad range of departmentwide management, policy and administrative issues. He was responsible for oversight and coordination of all department activity with respect to the implementation of the Brady Law and the National Child Protection Act and served on the department's Crime Bill and Judicial Selection teams.

After passage of the Violent Crime Control Act, Mr. Markus became a Deputy Associate Attorney General with responsibility for coordination of the department's implementation of the Act. In that capacity, he oversaw the development of billions of dollars in new grant programs and the establishment of departmental policies associated with the

prosecution of new crimes created by the Act.

Prior to his service at the Justice Department, Mr. Markus was Chief of Staff at the Democratic National Committee and Chief of Staff for Ohio Attorney General Lee Fisher. In each capacity, he had overall management responsibility for the budget, staff and operations of the institution.

Earlier in his career, Mr. Markus worked at law firms in Australia, Alaska and Washington, D.C., before returning to Ohio to practice law and teach at the Cleveland State Law School. On Capitol Hill, Mr. Markus also worked for U.S. House Speakers Carl Albert and Tip O'Neill and House Rules Committee Chairman Richard Bolling.

Mr. Markus is a graduate of Northwestern University and Harvard Law School. He is also a graduate of the Kennedy School of Government's "Program for Senior Executives in State and Local Government."

Hon. Gordon A. Martin Jr.

The Honorable Gordon A. Martin Jr. has served as an Associate Justice of the Massachusetts Trial Court since 1983, having been appointed to the Roxbury District Court in Boston, one of the country's busiest urban courts with great numbers of drug and gun cases. Since 1994, he also has served on the Special Assignment Session of longer, more complex cases from various Eastern Massachusetts courts. He previously served as the Presiding Justice with administrative and security responsibilities (1992-1994) and has sat in two superior courts and 28 other district courts.

Justice Martin has extensively lectured and served as a visiting professor throughout the U.S., including the University of San Diego School of Law, Tulane University Law School, New England School of Law, Boston College Law School and Harvard

University. In May 1995, Justice Martin was a guest lecturer at the University of Regensburg Faculty of Law, Germany, speaking on civil rights in the U.S. to an expanded Comparative Constitutional Law course.

Justice Martin began his legal career in private practice in Boston and also has served as a trial attorney in the Civil Rights Division of the U.S. Department of Justice (1961-1963); Assistant United States Attorney for Massachusetts (1963-1967); Special Assistant to U.S. Sen. Edward M. Kennedy (D-MA) (1967); and Associate Professor at Northeastern University School of Law (Boston). Justice Martin was the Chair of Boston's Coordinating Council on Drug Abuse (1970-1972) and was the Commissioner of the Massachusetts Commission Against Discrimination (1969-1972). He also was appointed by President Carter in 1980 to the National Institute of Justice Advisory Board.

Among the many more recent professional activities in which Justice Martin has participated are Trustee of the Massachusetts Law Reform Institute; Chair of the National Council on Juvenile and Family Court Judges' Juvenile Law Committee; Director of International Institute for Youth, Inc.; Chair of the Advisory Committee on "Effectiveness of Juvenile Offender Prevention and Treatment Programs: What Works Best and for Whom," a study by the National Center for Juvenile Justice; and a member of the Federal Coordinating Council on Juvenile Justice and Delinquency Prevention, an appointment made by the U.S. House of Representatives in 1994.

Justice Martin also has published numerous articles and books, including a 1995 article in the *New England Journal on Criminal and Civil Confinement* titled, "Open the Doors: A Judicial Call to End Confidentiality in Delinquency

Proceedings." His forthcoming book, whose working title is, "How Many Bubbles in a Bar of Soap: A Fight for the Right to Vote in Mississippi," is an account of the 1963 Forrest County, Mississippi, voting case. In connection with this case, Justice Martin received the first Marjorie Kovler Research Fellowship of the John F. Kennedy Library and Fellowship for Independent Scholars from the National Endowment for the Humanities.

Justice Martin received his A.B. from Harvard College and his J.D. from New York University.

Neal Miller

Neal Miller has 24 years of experience in policy-related research on criminal justice issues. Mr. Miller also has helped draft legislation for the Congress and State legislatures. His research has covered fields as disparate as development of inmate work programs and analysis of court preliminary arraignment processes.

Mr. Miller recently completed a study of how juvenile adjudication records are accessed and used by criminal court judges and prosecutors, including a national survey of practitioners and field studies in two jurisdictions. Other recent studies have included a survey of attorneys in Federal court civil removal cases (where both the Federal and State courts have jurisdiction) to determine both plaintiff and defendant reasons for selecting a court; jail capacity studies in Kansas, Ohio and Oregon; State prosecution of gang-related crime; private employer-law enforcement cooperative efforts to fight drug trafficking in the workplace; and law enforcement/corrections use of less-than-lethal force weapons. At present, Mr. Miller is completing a publication on exculpatory use of DNA testing in 29 post-conviction

cases and a national study of juvenile waiver practices.

Mr. Miller has authored over 40 publications in law reviews, criminal justice-related journals, professional association publications and monographs published by the U.S. Government. He also has contributed to or been joint author of three books, the subjects of which range from legal education for the layman to works on the law school preparation for criminal justice practice, correctional industries and court studies.

Mr. Miller received a B.S. from Dickinson College and a J.D. from the University of Pennsylvania Law School.

Michael R. Phillips

Mr. Phillips is Deputy Administrator of the Utah Juvenile Court, a position which he has held since 1975. His current responsibilities include serving as staff to the Board of Juvenile Court Judges and other administrative responsibilities related to the Juvenile Court system, including the review and analysis of the Juvenile Court's \$9 million budget. He also has responsibility for the expansion of the statewide juvenile information system, including directing its design, implementation and operation.

Mr. Phillips also has served as Director of the Division in the Administrative Office of the Courts and served as staff to the statewide judicial performance evaluation program for judges at all of Utah's court levels. He began his work in the juvenile justice area as a Juvenile Probation Officer for Utah's Third District Juvenile Court in 1966.

Mr. Phillips has served as a consultant to numerous juvenile court systems. He also has published articles relating to the Utah experience and on various other juvenile court topics.

Mr. Phillips has a B.S. in political science from Weber State College and an M.P.A. from Brigham Young University.

Jan Scully

Ms. Scully was elected District Attorney for Sacramento County, California, in 1994. Since she began her term, Ms. Scully has established a policy that the District Attorney's Office will seek to try as adults all juveniles 14 years of age and older who use a gun to commit a crime. She has restructured the office to add two attorneys at Juvenile Hall, one attorney to the Homicide Bureau, and one attorney to the Gang Unit to carry out her plan to focus on violent offenders. In addition, she has instituted a policy to notify all victims of the name of the deputy district attorney prosecuting their case and to inform them of their rights to seek restitution.

Since her graduation from law school, Ms. Scully has served in the Sacramento County District Attorney's Office. In 1983, she became a supervising deputy district attorney and from 1984-1990, she was in charge of the Sexual Assault and Child Abuse Unit — a unit that earned the respect of the legal community and served as a model for other units in the State.

During that time, Ms. Scully served on the Board of Directors of Women Escaping a Violent Environment (WEAVE) and the Children's Receiving Home.

Ms. Scully currently serves on a number of advisory boards and Boards of Directors, including People Reaching Out and Safe Streets. She is one of three district attorneys serving on the California Department of Corrections Law Enforcement Consortium. She also serves on the Children's Justice Act State Task Force.

Ms. Scully is a graduate of California State University,

Sacramento, and Lincoln Law School.

Donna M. Uzzell

Ms. Uzzell is the Special Agent in Charge of the Investigative Support Bureau of the Florida Department of Law Enforcement in Tallahassee, Florida. Her duties include management of the Intelligence Section and Special Programs such as the Missing Children Information Clearinghouse, Drug Abuse Resistance Education Program (DARE), Statewide Serious Habitual Offender Program (SHOCAP), Crimes Against Children Program, Fugitives and Domestic Marijuana. She previously served as a Sergeant with the Tallahassee Police Department and was a member of the agency for 13 years.

In 1988, Ms. Uzzell was elected to the Leon County School Board and is now in her second term of office, serving 2 years as Board Chair. During the past 8 years, she has worked on safe school policy and procedures and has conducted training throughout the State on Crisis Intervention, Safe School Planning, Interagency Collaboration and SHOCAP. She currently is an adjunct professor at Florida State University teaching in the School of Criminology and is a consultant for Fox Valley Technical College in Wisconsin.

Ms. Uzzell is a certified Crime Prevention Practitioner and former DARE officer. She has received recognition for her work in the area of child safety, including a Law Enforcement Officer of the Year Award. She has served on several statewide Task Forces on school and child safety and juvenile justice issues. In 1993, she completed a four-month special assignment to the Commissioner of Education on Law Enforcement and Education Collaborative Relationships. In 1993, she spent 5 months on special assignment to the Florida Attorney

General's Office developing and implementing the Florida Community Juvenile Justice Partnership Grant Program.

Jo-Ann Wallace

Ms. Wallace has been Director of the Public Defender Service for the District of Columbia since 1994. Prior to that position, she was the Deputy Chief of the agency's Appellate Division. She previously served as a staff attorney and as the Coordinator for the agency's Juvenile Services Program.

Ms. Wallace is a member of the American Bar Association Criminal Justice Standards Committee. She currently serves on the Board of Directors of the National Legal Aid and Defender Association, on the Defender Council, and is Chair of the Blue Ribbon Advisory Panel on Defender Services. Ms. Wallace co-chairs the District of Columbia Reclaim Our Youth Courts and Justice Committee. In 1994, Ms. Wallace founded the District of Columbia Annual Appellate Practice Institute. She is a member of the visiting faculty for the Trial Advocacy Workshop at Harvard Law School.

Ms. Wallace clerked for the Hon. Morris E. Lasker in the U.S. District Court for the Southern District of New York from 1984-1986. She is a graduate of New York University Law School.