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JUVENILE JUSTICE.pdf

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I. JUVENILES AND THE JUVENILE JUSTICE SYSTEM

A. INTRODUCTION

We have become a nation of people at war with its children. During the last decade, we have chosen to escalate our militaristic approaches to overtaking, and perhaps even annihilating this “enemy.” During that same period, the enemy has escalated its counteroffensive. *714 The enemy’s actions are used to support national efforts to beef up police departments, sheriff departments, constable offices, transit police, education security forces in universities and public schools, private security companies, and more. These increased security forces serve to protect us from our children. As we increasingly pressure the judicial system to lock these enemies away, we convince ourselves that these actions constitute an intelligent approach to ending the war victoriously. They are not.

We focus our attention on short-term approaches rather than long-term solutions. Can we believe that our short-term approach—long-term incarceration and other serious punishments—will not result in long term destruction? Specifically, a new adult population that is uneducated, angry, vicious, trained in criminal conduct, and able to act without remorse will be created.

Perhaps in our search for solutions, we need look no further than ourselves, our priorities, our legacies. We value prisons over education despite overwhelmingly persuasive statistics that an educated person is significantly less likely to commit violent crimes than an uneducated one. Furthermore, the reasonableness of our current policies and actions is challenged by statistics which show high recidivism rates for uneducated inmates.

We value our physical strength and agility over our mental strength and intellectual ability, even in so basic a public policy as encouraging regular physical and dental checkups while ignoring periodic or regular mental checkups. We immunize our children from physical ills while virtually ignoring their mental ills. Often, children who receive mental treatment are cared for by abusive care givers. Our problems with child care givers are not limited to mental health facilities. Americans rely on child care givers for their children from nursery school years through years of higher education. Some child care givers are not licensed, are poorly trained, and are grossly underpaid. Though Americans generally believe “you get what you pay for,” we seem shocked that we are getting just those results in our children. Surprisingly, we accept poor child care service, which is commensurate with poor salaries for these workers and especially teachers.

*715 Our men batter, bruise, rape, assault, maim, and murder our women in movies, on television, and in our homes. We glorify the powerful and mock the weak. We ignore the damage we do to our environment, the land, the air, the water, and the wildlife that we leave to our children. We distort history, propagandize the present, equivocate, obfuscate, prevaricate.

Then we ask why our children are the way they are. That answer seems simple enough. They have learned by example, our
example. They have accepted our values. They too believe in their lack of worth. We call them stupid, wish they had never been born, and, during our lifetime, exclude them from certain residential communities.7 We engage in incestuous relationships with them and photograph them pornographically. We abuse them physically, mentally, and emotionally. We abuse ourselves and each other. Our children have learned well. The real question is, have we?

Our current juvenile justice system has existed since the early 1900s.8 Yet, our nation has changed dramatically during that same period. If we look solely to the juvenile justice system to resolve the problem of juvenile crime, we will fall far short of resolution. Nevertheless, it is a very important participant in this solution matrix.

This Report considers the state of the current juvenile justice system, and how it can be changed to help reduce violent crimes committed by juveniles. The paper is divided into three sections. In Section I, we review the history of our juvenile justice system; we look at the constitutional rights of children once they are in the juvenile system, the operations of the juvenile justice system, and the statistical data on the incidence of juvenile crime in Texas with emphasis on Harris County. In Section II, we review generally accepted factors of juvenile crime causation and explore the impact these factors have on the incidence *716 of juvenile crime. In Section III, we look at programs throughout the country which have had some measure of success at combatting juvenile crime. In Section IV, we make recommendations for action in Texas, and we conclude in Section V.

It is not a particularly sterile report, and may be laced with emotion. There are no apologies for this.

B. HISTORY

There is evidence that the earliest of cultures distinguished somewhat between crimes committed by adults and crimes committed by children.9 The people of Northern Africa who lived along the Nile, for example, differentiated between the punishment of parents who murdered their children and children who murdered their parents.10

This Egyptian law did not impose death on parents who killed their children, but decreed instead that they must embrace the corpse and hold it continuously for three days and nights under constant public guards; for the Egyptians considered it unfair to take life away from those who had given life to their children, but rather by a reproof tinged with discomfort and regret to deter others from acts of this kind. But on the other hand, the laws reserved unusual punishments for children who murdered their parents, requiring people convicted of this crime to be burnt alive on a bed of thorns, after having finger-sized pieces of flesh gouged from their bodies with sharpened reeds; for they accounted it men’s greatest sin forcibly to take the lives of the parents who had given life to them.11

There is apparently no other direct evidence of a separate penalty for juveniles than adults in that society, and none of a separate judicial system. However, ancient Greeks adopted many Egyptian laws, among which the Egyptian law that pregnant women condemned to death were not executed until they had given birth.12 One of the primary bases for this law was the belief that “since crime is an act of willful evil ... it is unfair to visit the same penalty on a child who is without the faculty of reason.”13

This concept of reason as the basis for creating a separate justice *717 system for children and identifying the age at which such reasoning skills occur is still the subject of debate today, some 2,000 years later.14

Later cultures proscribed childhood disobedience based on the principle that children had an obligation to obey their parents.15 The modern concept of childhood appears to have begun in the 17th Century16 and to have grown out of the expectation that the child was required to obey his parents. From the early 1600s, children were considered weaker than adults and in need of adult supervision.17 Children were considered inherently evil and were subject to severe punishment for disobeying the parent.18 However, a child below the age of seven was deemed to lack the ability to form criminal intent and therefore to commit a culpable criminal act.19 It is apparent that those children who were considered culpable were treated
similarly to adults and were subjected to punishments, including banishment, whippings, public humiliation, and incarceration in adult jails and penitentiaries.\textsuperscript{20}

By the 19th Century, separate patterns were emerging. In 1825, seventy-four years before the first juvenile court was to open, “Houses of Refuse” were founded in New York.\textsuperscript{21} Similar facilities were created in Boston in 1826 and Philadelphia in 1829.\textsuperscript{22} These facilities were created for the purpose of housing youthful offenders who had not committed a serious crime, their goal being rehabilitation.\textsuperscript{23} By the 1870s, Massachusetts had enacted laws which created separate judicial forums for juveniles accused of crimes and required such juveniles be accompanied in court by a parent or court-appointed guardian.\textsuperscript{24}

The issue of what to do with juvenile offenders was controversial \textsuperscript{718} during the late 1800s.\textsuperscript{25} Society was becoming increasingly more urban as it became more industrial, and with these significant changes came the need to modify the way society handled its problems.\textsuperscript{26} From this need, a progressive reform movement emerged that addressed numerous issues including children. Children’s issues included child labor, child welfare, compulsory school attendance, and the juvenile court.\textsuperscript{27} Regarding juvenile justice, there emerged two major opposing groups; reformers and nonreformers. The nonreformers believed that children tried in adult courts might be more leniently treated by adult jurors who would be unwilling to impose full criminal liability on a child.\textsuperscript{28} The reformers saw the need to create a benign, nonpunitive, and therapeutic system of justice for children. In the reformer’s view, the juvenile court judge served as a “wise and merciful father” disciplining the children who came before him as if they were his very own.\textsuperscript{29} It was this philosophy which gave birth to the legal concept of the state as the parent or \textit{pares patriae}. The \textit{pares patriae} theory expands “parent” to include the state.\textsuperscript{30}

In any event, these two opposite theories gave support to the singular notion that traditional adult courts were ineffective, or at least inappropriate, for considering offenses and punishment of juveniles.\textsuperscript{31}

In 1899, the first juvenile court in the country opened in Cook County, Illinois.\textsuperscript{32} Its purpose was to secure guidance and care for minors in keeping with a healthy home environment and in best serving the children’s welfare.\textsuperscript{33} The Illinois legislature, which created this separate juvenile court, is said to have patterned its laws after England’s Courts of Equity or Chancery.\textsuperscript{34} However, since courts of equity were required to make specific evidentiary findings, unlike the juvenile courts under these statutes, it is more widely accepted that the legislation was born out of the progressive child reform movement.\textsuperscript{35}

\textsuperscript{719} By 1906, the Boston Juvenile Court opened and from 1906 to 1932, it was noted for bringing social work and psychological approaches to the management of juvenile delinquency.\textsuperscript{36} The juvenile court system was also popularized by juvenile court judges who advocated the reformist separation of the juvenile court system from the system for adults.\textsuperscript{37}

By 1917, all but three states had established juvenile court systems.\textsuperscript{38} In 1932, the juvenile court’s jurisdiction included young female offenders, children who violated local or state laws, and children who were physically or morally neglected or endangered.\textsuperscript{39}

The 1960s brought additional reform to the juvenile justice system. In 1965, the President’s Commission on Law Enforcement and the Administration of Justice was established.\textsuperscript{40} This commission concluded that both the juvenile and adult courts had failed to achieve their goals.\textsuperscript{41} The Commission advised a revision in juvenile justice philosophy toward prevention of delinquent conduct. It also recommended expanded use of nonjudicial community agencies and alternatives to institutionalization of juveniles.\textsuperscript{42}

In 1966, the National Council on Crime and Delinquency (NCCD) surveyed state and local correctional agencies and institutions throughout the United States.\textsuperscript{43} The NCCD concluded that detention was being used for disposition, punishment, protection, and storage.\textsuperscript{44} The NCCD recommended detention only for delinquent children or for children who were likely to commit an offense dangerous to himself or the community.\textsuperscript{45}

Because juvenile courts were not considered criminal courts, many of the rights afforded to adults accused of criminal acts were not granted to children similarly accused. However, amid increasing evidence that the promise of juvenile rehabilitation
had not been reached by the juvenile courts, significant changes began occurring which would seriously alter the philosophy of children’s judicial rights.

*720 In Kent v. United States, the United States Supreme Court decided its first juvenile case. Recognizing the past failure of the juvenile justice system to either rehabilitate delinquents or to effectively deter the commission of delinquent acts, the Court extended due process rights to juveniles. In the Court’s opinion, where the juvenile would be subject to the same punishment as his or her adult counterpart, he or she should similarly be cloaked with the same protection of the laws.

Later that same year, the United States Supreme Court decided the case of Mirandav. Arizona. The Court ordered police to advise juveniles of their constitutional rights to remain silent and to consult with an attorney prior to questioning following an arrest for a felony or an offense which could result in adjudication of delinquency and commitment to a secured facility.

The United States Supreme Court’s 1967 decision in In re Gault interpreted the Constitution as a document whose enumerated rights were applicable to children as well as adults. The Gault Court ruled that juveniles facing incarceration enjoyed constitutional rights to counsel, notice of the charges against the accused, confrontation and cross-examination, and the privilege against self-incrimination.

In In re Winship, the United States Supreme Court held that due process required the state to prove its case establishing juvenile delinquency beyond a reasonable doubt in lieu of the prior “preponderance” standard of proof. Gault and Winship did not serve to eliminate the juvenile court system or the separate juvenile justice process. The Gault decision is thought to have abolished many distinctions between the informal juvenile court and the adult criminal court. However, the full range of rights were not afforded the juvenile, who was denied the right to a jury trial in McKiever v. Pennsylvania. The ruling in McKiever is seen as a reaffirmation of parens patriae. However, the next five years witnessed a growing trend away from the parens patriae concept and rehabilitation in favor of punitive measures meted out at younger ages.

In the early 1970s, Massachusetts took steps away from juvenile correctional institutions like the traditional training school for serious offenders in favor of community-based programs. Attempts were made on the national level to limit the authority of the juvenile court to institutionalize only those delinquents whose offenses would be crimes if they were committed by adults. In 1974, President Gerald Ford signed the Juvenile Justice and Delinquency Prevention Act. The primary purpose of the Act was to remove the nondelinquent child from the juvenile justice system. The nondelinquent child would be removed from juvenile detention or correction facilities in favor of placement in shelter facilities.

In 1977, the State of Washington abandoned the rehabilitation or “best interest” model of juvenile justice in favor of an offense-based, “just desserts” model, focusing on punishment and accountability. This switch in policy affecting the administration of justice for juveniles was borne from several facts. The increase in the seriousness of juvenile crime, the cost of maintaining the juvenile justice system, and the increasing population in juvenile corrections facilities were seen as clear indications that the rehabilitative system used by Washington was failing. The Juvenile Justice Act of 1977 focuses almost exclusively on making the punishment fit the crime rather than considering addressing the juveniles’ individualized needs.

The last two decades have been wrought with controversy and confusion regarding the solution to the juvenile justice crisis. Children’s rights advocates have noted that the protection and treatment of children in the United States has been deteriorating since 1983.

The adoption by Congress in 1987 of the United States sentencing guidelines is further evidence that the rehabilitation system of juvenile justice is giving way to the punitive system. The sentencing guidelines are rigid in terms and in application. For example, the guidelines substantially reduce, and in many cases eliminate, the discretion of the trial judge.

Another indication of the growing trend away from rehabilitation was the government’s reaction to a class action lawsuit filed in Washington. The lawsuit claimed that the King County Detention Center was unsafe, overcrowded and unsanitary. The government was reportedly outraged over the suit.
The most startling indicator of the trend away from rehabilitation and in favor of punishment is the policy toward transferring juveniles from the juvenile court to the adult court. In 1990, the Massachusetts legislature amended its transfer statute to facilitate the trial of juveniles accused of certain offenses as adults. Prior to December 5, 1990, a Massachusetts juvenile transfer hearing could be held regarding a juvenile accused of a criminal offense only if the accused was a child: (a) who had previously been committed to the Department of Youth Services as a delinquent child and was accused of an offense that ‘if he were an adult, would be punishable by imprisonment in the state prison; or (b) has [allegedly] committed an offense involving the infliction or threat of serious bodily harm, and ... such alleged offense was committed while the child was between his fourteenth and seventeenth birthdays.’

The statute requires that “the court shall hold a transfer hearing whenever the commonwealth so requests.” In 1991, then mayor of The District of Columbia, Sharon Pratt Kelly, proposed an act which would reduce the age for possible transfer to fourteen (from fifteen if the act charged is a felony and sixteen if the act is not a felony, but the juvenile has already committed a delinquent act). Additionally, for the purpose of the transfer hearing, the child was presumed to have committed the delinquent act.

C. DETERMINATION OF CHILDREN’S RIGHTS UNDER THE CONSTITUTION

1. Introduction

“The world of children is not strictly part of the adult realm of free expression. The factor of immaturity, and perhaps other considerations, impose different rules.”

Who should be the voice for the child—the parents, the state, or the child himself? In relation to children, the law is torn between conflicting interests: “The desire to protect children on one hand, and on the other hand, to grant them as much autonomy as possible, as soon as they can bear it.”

The issue of children’s rights in general and juveniles’ rights in particular is a topic about which there is currently much discussion. The “study of rights is the study of power, control and decision-making.” It is asserted that:

To the extent children have rights, they have the right to make choices for themselves and to exercise control over their lives. When children do not have certain rights, it is usually because someone else, either parents or the state, has power or control—and therefore decision-making power—over them.

The scope of this section of the report centers around the conditions, circumstances, and the means through which courts have allowed parents and the state to exercise this “decision-making power” over children. This section begins by looking at the historical development of cases involving children’s rights.

2. Historical Development

To fully understand the status of children’s rights today, it is imperative that the analysis begin with a historical perspective of the development of children’s rights under the Constitution. This perspective starts with the First Amendment.

a. First Amendment—United States Supreme Court
The First Amendment provides that Congress “shall make no law ... abridging the freedom of speech, or of the press ....” Freedom of speech has been described as the matrix, the indispensable condition of nearly every other form of freedom. Consequently, “it has been recognized as one of the prominent rights of individual liberty.” However, the state’s power to control the conduct of children reaches beyond the scope of its authority over adults, and the wellbeing of children is one subject entirely within the state’s constitutional power to regulate. The balancing of the child’s First Amendment rights and the state’s authority over the child is not without controversy. For example, while courts have recognized the importance of public schools in the preparation of students as citizens, and in the preservation of the values on which society rests, “it is also beyond dispute that school authorities must also act within the confines of the First Amendment.” One of the first cases to address this tenuous balance was Tinker v. Des Moines Independent Community School District.

In Tinker, a group of students decided to display their objections to the Vietnam War by wearing black arm bands to school. The students were suspended and sent home. The students filed suit in the District Court of the Southern District of Iowa, seeking an injunction to prevent the school officials from suspending them. The Court dismissed the complaint, and upheld the constitutionality of the school officials’ action on the ground that it was reasonable in order to prevent disturbance of school discipline. In reversing the district court’s decision, the United States Supreme Court stated that students do not shed their constitutional rights at the schoolhouse gate. In upholding the students’ right to wear the arm bands, the Court reasoned that:

[Whether a student] is in the cafeteria or on the playing field, or on the campus during the authorized hours, he may express his opinions, even on controversial subjects like the conflict in Vietnam, if he does so without materially and substantially interfering with the requirements of appropriate discipline in the operation of the school ....

The Court further stated that students may not be confined to the expression of those sentiments that are officially approved, and “[i]n the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views.” The ruling in Tinker thus ensures that children, like adults, are protected with First Amendment rights to free expression and that such rights outweigh the state’s interest in controlling the child. As with adults, a child’s right to free expression is limited.

Obscenity is not protected by First Amendment guarantees. The leading case in this area is Miller v. California. In Miller, the petitioner was convicted of violating state law by mailing obscene materials to a restaurant that had not requested the materials. The United States Supreme Court reasoned that “states have a legitimate interest in prohibiting dissemination or exhibition of obscene material ....” The Court noted that obscene material was not protected by the First Amendment. Though Miller is not a case dealing with children’s speech, it does illustrate that obscene material, including language, as it has been defined, is not protected speech. This result was similarly applied and extended in a case involving juveniles. In Interstate Circuit, Inc. v. Dallas, the Court held that a state could regulate the dissemination and access of objectionable material to juveniles, even though the state could not prevent adults from obtaining such materials. Arguably, the Court’s decision in Bethel School District No. 403 v. Fraser further delineates the distinction the Court will make in protecting speech depending upon the age of the speaker and, conceivably, the age of the audience.

In Fraser, a student delivered a speech nominating a fellow student for a student elective office at a school assembly. The assembly, which was attended by about 600 students, was part of a student-sponsored education program in self-government. While delivering the speech, Fraser referred to his candidate in terms of an elaborate, graphic, and explicit sexual metaphor. Fraser, who had discussed the speech with two of his teachers before he delivered the speech, was told the speech should not be given and that delivering the speech might have severe consequences. The next day, the school officials found that his speech had violated a school disciplinary rule prohibiting the use of obscene language. Fraser was subsequently suspended for three days, and after a review of his suspension by the school board’s grievance committee, which upheld the suspension, Fraser was permitted to return to school after serving only two days of his suspension.

Fraser, by his father as guardian ad litem, filed suit claiming that his freedom of speech under the First Amendment had been
violated and that his removal as speaker for graduation violated his due process rights. The district court agreed and enjoined the school district from preventing Fraser from speaking at the commencement. The Court of Appeals for the Ninth Circuit affirmed the lower court’s judgment, rejecting the argument that the speech had a disruptive effect on the educational process. The Supreme Court, in reversing the two lower courts’ decisions stated that “schools, as instruments of the state, may determine that the essential lessons of civil, mature conduct cannot be conveyed in a school that tolerates lewd, indecent, or offensive speech and conduct....”

As a consequence, the Court held that the school board was entirely within its authority in placing sanctions upon Fraser in response to his offensive behavior, and that such “conduct [was] wholly inconsistent with the ‘fundamental values’ of public school education.”

Though the Court did not specifically base its decision in Fraser on the standards enunciated in Tinker, it is clear that the Court did apply the Tinker standards in arriving at the results in Fraser. The Court, in distinguishing Tinker, noted that the viewpoints expressed in Fraser, unlike those in Tinker, caused substantial and material disruptions in the educational process.

However, the Court deviated from the Tinker standard in reaching its decision in Hazelwood School District v. Kulmeier.

*728 b. First Amendment—Lower Courts

Until the decisions in Hazelwood, the Supreme Court had consistently refused to hear student free press cases. As a result, a wide variety of standards were developed by lower courts for dealing with the issue of students’ free press rights.

i. Gross Disobedience Standard

Under the “gross disobedience” standard, a school regulation is upheld if the student challenging it was grossly disobedient of school rules or extremely disrespectful toward school officials. This standard was applied in the case of Sullivan v. Houston Independent School District. Sullivan involved a high school student who was standing near an entrance to the campus selling SPACE CITY!, an underground newspaper, to students as they entered the campus. The principal obtained a copy of the newspaper and noticed that it contained several instances of impudent language. The plaintiff was ordered to stop, but he continued selling the newspaper. The student was subsequently suspended by the principal for failing to comply with the prior submission rules that required that he stop selling the paper. The student, through his father, filed suit, alleging that selling the newspaper was protected under the First Amendment, and should not be suppressed because it did not disrupt normal school activities under the Tinker standard. The Court, in upholding the student’s suspension, stated that “considering the student’s flagrant disregard of established school regulations, his open and repeated defiance of the principal’s request, and his resort to profane epithet, the school was within its powers to discipline him, even though his actions did not materially and substantially disrupt school activities.”

*729 The decision in Sullivan has been criticized as a convenient way of circumventing discussion of the constitutionality of a particular school district’s regulation, because the disciplinary decision is based almost exclusively on the student’s conduct rather than on the constitutionality of the regulation involved. It is not surprising that this standard is used in a limited number of jurisdictions. Still, this case illustrates at least one method used by courts to restrict children’s First Amendment rights.

ii. Public Forum Doctrine

The public forum doctrine is a more flexible standard and more widely used than the gross disobedience standard used in Sullivan. This doctrine was developed in San Diego Committee Against Registration and the Draft v. Governing Board of
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**Grossmont Union High School (hereinafter C.A.R.D.).**

In *C.A.R.D.*, the organization sought to purchase advertising space from student newspapers published by high schools within the district. The school district issued a directive instructing all principals to reject *C.A.R.D.*’s requests because publication of the advertisements would contribute to the solicitation of illegal acts by the district’s students.

*C.A.R.D.* brought suit against the board, alleging that the board’s actions and policies had deprived *C.A.R.D.* of its First and Fourteenth Amendment rights. The circuit court began its analysis by discussing the three types of forums recognized by the Supreme Court in *Cornelius v. NAACP Legal Defense & Education Fund* and *Perry Education Association v. Perry Local Educator’s Association.*

The first type of forum consists of “places which by long tradition or by governmental fiat have been devoted to assembly and debate, such as streets and parks....” Restrictions on time, place, and manner of expression must be “narrowly tailored to serve a significant governmental interest, and leave open ample alternative channels of communication.” The second type of forum has become known as a limited public forum by designation. A limited public forum may, depending on its nature and the nature of the state’s action, be open to the general public for the discussion of all topics that can be discussed. Restrictions on time, place, and manner must meet the same traditional forum standards. The third type of forum is “public property ... which is not by tradition or designation a forum for public communication.” This type of forum is commonly known as the non-public forum, and regulations on time, place, and manner must be reasonable.

The circuit court, in refuting the school board’s claim that the newspapers fell into the non-public forum category, held that the newspaper fell under the category of limited public forums. The court reasoned that since the board had permitted the publication of advertisements advocating military service on other occasions, it could not, absent a compelling interest, exclude speech otherwise within the forum. Under this compelling interest standard, a governmental regulation which interferes with a fundamental right, such as freedom of speech, will only be upheld if there does not exist a less intrusive manner for achieving the governmental interest. No such compelling interest existed in *C.A.R.D.*, and therefore the board could not have allowed presentation of one side of the issue, while denying the presentation of the other side. The distinction between a student newspaper as a public forum or as part of the curriculum is important because papers which are a part of a school’s curriculum are subject to more regulations and control by school administrators. A problem arises when circumstances indicating curricular paper are combined with those suggesting a public forum.

**iii. Endangerment Standard**

The endangerment standard was developed in *Williams v. Spencer.* Under this standard, regulation of a publication is permissible when the publication promotes participation in activities that will endanger the health and safety of students. In *Williams*, two students brought suit claiming interference with their First Amendment rights and sought an injunction to prevent school authorities from restraining distribution of their non-school publication. In upholding the district court’s decision, the court of appeals found no merit in the plaintiff’s claim that the school officials had to show that the material would cause a substantial disruption in school activities. Rather, the court noted that the school disruption standard was just one way for school authorities to regulate the distribution of a publication; the disruption standard has never been held to be the only justification. The court further held that a “regulation which prevents the distribution of materials that encourage actions that endanger the health or safety of students does not violate the First Amendment.”

**iv. Substantial Disruption Standard**

Probably the most widely used standard in determining whether a regulation of student newspapers is valid is the substantial disruption standard. This test was laid out extensively in *Burnside v. Byars.* In *Burnside*, plaintiffs brought suit alleging that school officials had breached their children’s First and Fourteenth Amendment rights by not allowing the children to wear freedom buttons while attending school. The Fourteenth Amendment provides, in part, that no state shall...
“deprive any person of life, liberty, or property, without due process of law.” The appellate court, in reversing the district court’s denial of preliminary injunctions, stated:

[School officials] cannot infringe on their students’ right to free and unrestricted expression as guaranteed to them under the First Amendment to the Constitution, where the exercise of such rights in the school buildings and school rooms does not materially and substantially interfere with the requirements of appropriate discipline in the operation of the school.

The court concluded that, after examining all the evidence presented, the regulation forbidding the wearing of freedom buttons on school grounds was an arbitrary and unreasonable interference of the students’ right of free expression.

Since most courts have not defined what constitutes a “substantial disruption,” a “great deal of subjectivity is involved in application of this test.” Nevertheless, since Tinker, this standard continues to be applied, with each individual fact situation used as the basis for application of the standard.

As was mentioned above, the United States Supreme Court did not use the Tinker standard when the Hazelwood decision was rendered. In Hazelwood, Hazelwood East High School offered a Journalism II class, which included publishing and editing the school newspaper, SPECTRUM. The paper was published approximately every three weeks, with over 4,000 copies distributed each year to students, school personnel, and members of the community. The publication procedure during the Spring semester of 1983 required the principal to review proofs of each SPECTRUM issue before the issue could be published. The journalism teacher submitted the May 13 edition to the principal, who disagreed with two of the articles scheduled to appear in that particular edition. One of the articles discussed the pregnancies of three Hazelwood students, while the other described the effects of divorce on students at the school.

Believing that there was no time to make the necessary changes in the stories before the scheduled printing, the principal concluded that, under the circumstances, the school’s newspaper would contain only four pages instead of the planned six pages because the two pages on which the offending articles appeared were going to be eliminated.

Three staff members filed suit in the district court alleging that their First Amendment rights had been violated. After a bench trial, the district court refused to grant injunctive relief holding that there had been no First Amendment violation. The Court of Appeals for the Eighth Circuit reversed, holding that SPECTRUM’s contents, except when “necessary to avoid material and substantial interferences with school work or discipline ... or the rights of others,” precluded school officials from censoring it.

c. Majority Opinion

Justice White, who was joined by Chief Justice Rehnquist and Justices Stevens, O’Connor, and Scalia, began the analysis for the majority by stating that public school students do not shed their constitutional rights at the schoolhouse gate. However, he quickly added that the rights of public school students do not extend to the same boundaries as those of adults in other settings. Unlike the court of appeals, the Supreme Court found that the school newspaper was not a public forum because school facilities may be held to be public forums only if school authorities have, by custom or regulation, opened those facilities for random use to the general public. In examining the control the school exercised over the publishing of SPECTRUM, the Court concluded that school officials did not show by custom or policy to have opened the pages of SPECTRUM to random use by students at the school. Therefore, the Court reasoned, school officials could regulate the contents of the newspaper in any reasonable manner.

The Court concluded that the principal had acted reasonably in deleting the pregnancy article, the divorce article, and the other articles which were going to appear on the same pages of the newspaper. Regarding the pregnancy article, the principal was under the impression that the anonymity of the students was not adequately protected. The Court agreed, indicating that it was probable that many of the Hazelwood students could have successfully identified the pregnant
The Court also reasoned that the principal was correct in deleting the divorce article because the father identified in the article did not have the opportunity to defend himself against the allegations, and thus, the article did not meet journalistic standards of fairness. The Court finally concluded that, under the circumstances, the principal was reasonable in requiring that two pages of the newspaper be deleted, rather than have the students delete only the offending articles.

d. Dissenting Opinion

Justice Brennan authored the dissenting opinion, and was joined by Justices Marshall and Blackmun. The dissenters made an impassioned plea that the governing standard of the Hazelwood decision should have been the same as that in Tinker. The purpose of public schools is to teach future leaders those fundamental values necessary to maintain a political democracy. Also, the “mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint ... does not justify official suppression of student speech in the high school.” The dissent contended that the majority did nothing more than give educators three excuses for exercising greater control over school-sponsored speech. Those excuses are: (1) the public educator’s prerogative to control curriculum; (2) the educational interest in protecting students from objectionable viewpoints; and (3) the school’s need to distance itself from student expression. The dissent reasoned that not one of the excuses supported the distinction made by the majority in Hazelwood. Tinker addressed the first issue; the second was without merit; and the third was readily achievable through less overbearing means.

In dealing with the three excuses, the dissenters first stated that under Tinker, school officials could censor only such student speech which would create a material disruption in a proper curricular function. The dissenters addressed the second concern by indicating that the school’s duty to instill moral and political values does not give the school a general warrant to allow discussion of only those issues and positions which have been state approved. The dissent also asserted that the Hazelwood decision was an ample illustration of the manner in which school officials and courts can camouflage viewpoint discrimination as protecting students from sensitive topics. Finally, the dissenters, in responding to the majority’s third contention, argued that even though “educators may ... have a legitimate interest in disassociating themselves from student speech ... such a purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved.” According to the dissent, the school officials could have required the students to publish a disclaimer, or the school could have issued a response explaining its position and indicating why it believed the students were wrong.

*736 e. Critique of the Court’s Decision in Hazelwood

Tinker allows an inquiry into the balance between the public school students’ First Amendment rights and a school’s need to carry out its educational mission. Under this standard, censorship of student speech or conduct will only be permitted if it substantially and materially disrupts school or invades the rights of others. However, in Hazelwood, the Court’s attention was focused on the place involved in the First Amendment dispute instead of focusing on the constitutional rights at stake. By refusing to apply the Tinker balancing methodology, the Court reduced the importance of students’ First Amendment interests and rights. As the dissent correctly points out, under Tinker, the principal would not have been able to prove that the two deleted articles would substantially and materially disrupt classes. The majority in Hazelwood expressed concern over the fact that the pregnant teenagers could possibly be identified from the article. It goes without saying that, as the pregnancies progressed into the latter stages, the identities of the girls would definitely become known. Also, an article on teenage pregnancy would be very informative on an important social issue which has far-reaching implications on society as a whole. Furthermore, in regard to the divorce article, many marriages end in divorce. This implicitly means that there are a lot of families headed by single parents. Thus, the divorce article, instead of being shocking or disruptive, could have provided sound advice and insights on an important topic.

The majority in Hazelwood justified its failure to apply the Tinker standard by asserting that the school newspaper was not a ‘public forum,’ made available by practice or policy for “indiscriminate use” by the general public or student organizations. However, the paper there was a statement that the school newspaper did accept all rights implied by the First
Amendment. The majority did not feel that such a statement indicated a desire from the school to expand the school’s newspaper into a public forum. Instead, attention was placed on the control possessed by the Journalism II teachers. The majority failed to realize that this type of censorship “in no way furthers the curricular purposes of a student newspaper, unless one believes that the press ought never report bad news, express unpopular views, or print a thought that might upset its sponsors.” The distinction the majority asserted to exist between Tinker and Hazelwood must also be criticized. In looking at prior cases involving student expression, no justification can be found for the distinction between “personal and school-sponsored speech.” Failing such a distinction, there was no reasonable basis for not applying the Tinker standard to Hazelwood.

f. Fourth Amendment

The Fourth Amendment states that the “right of the people to be secure in their persons ... against unreasonable searches and seizures, shall not be violated.” The purpose of the Fourth Amendment is to protect the reasonable privacy interest of individuals from unreasonable invasion by government officials. The most significant Fourth Amendment case involving children’s rights is New Jersey v. T.L.O. In T.L.O., a Piscataway High School teacher alleged that she saw two girls smoking in the restroom. Smoking in the restroom was prohibited, so the teacher took the girls to the principal’s office, where they met with the assistant principal. T.L.O.’s companion admitted that she had been smoking, but T.L.O. denied violating the anti-smoking rule and also stated that she did not smoke at all.

T.L.O. was subsequently escorted to the assistant principal’s private office, where he demanded to see T.L.O.’s purse. Opening the purse, the assistant principal found a small amount of marijuana, other drug paraphernalia, and writings which indicated that T.L.O. was dealing in drugs. The assistant principal then telephoned T.L.O.’s mother and the police. At the police station, T.L.O. confessed to selling drugs at school, and combined with the evidence that the assistant principal had obtained, the State of New Jersey brought delinquency charges against T.L.O. T.L.O. filed a motion to “suppress the evidence found in her purse as well as her confession, which, she argued, was tainted by the allegedly unlawful search.” The juvenile court denied the motion, and T.L.O. appealed to the appellate division of the New Jersey state court, which affirmed the trial court’s decision. T.L.O. then appealed to the New Jersey Supreme Court. That court reversed the judgment of the state court’s appellate division, and ordered the suppression of the evidence found in T.L.O.’s purse.

The United States Supreme Court, in reversing the judgment of the state supreme court, stated that school searches do not have to meet the probable cause requirement, but instead have to be reasonable under all the circumstances. The reasonableness of such a search depends on a two-part test. First, the search must be “justified at its inception,” and second, it must be determined whether the search, as actually conducted, “was reasonably related in scope to the circumstances which justified the inference in the first place.” In applying this standard to T.L.O., the Court held that the assistant principal’s search of the purse was reasonable in that she had been caught smoking in a prohibited area, and the search turned up evidence of the violation. The Court reasoned that in placing emphasis on the issue of reasonableness, the standard spares teachers and school administrators the necessity of learning the intricacies of the probable cause standard, and allows them to regulate student conduct according to reason and common sense.

Thus, under T.L.O., school officials may conduct searches of the students on a lesser standard than probable cause. The Fourth Amendment, by its very language, compels that in cases like T.L.O., the search will only be valid if supported by cause. The “reasonable” standard of T.L.O. could allow school officials to arbitrarily and unjustifiably intrude on the privacy of students. Furthermore, this standard leaves teachers and administrators uncertain as to their authority, and thus opens up the possibility that searches of students could be conducted on mere suspicion, rather than on objective facts. Also, the assertion by the majority in T.L.O. that school officials need broad authority in order to provide conducive environments for learning does not justify the lower reasonableness standard. Even under normal Fourth Amendment standards, probable cause is not applied to all searches and seizures. For example, police officers can conduct a brief stop and frisk search based on something less than probable cause. Therefore, giving teachers the same type of flexibility under the probable cause standard would allow the teachers to provide an environment conducive to learning, and would provide students with total protection under the Fourth Amendment.
There are also several lower court decisions which deserve mentioning here. First, in *State v. Lowry*, a New Jersey case, three defendants, including a 17-year old juvenile, were charged with unlawful possession of marijuana. The defendants urged the court to suppress the evidence because the search of their persons and car were conducted without a warrant and not incident to a valid arrest. In deciding the issue of whether the Fourth Amendment applied to juveniles, the court stated that the fundamental guarantees of the United States Constitution applied to all persons, and thus, the right of privacy, security, and liberty against unreasonable searches and seizures applied to a juvenile in accordance with due process of law. The court also indicated that the exclusionary rule, being more than a mere discouragement to improper police procedure, was the force which safeguarded the individual’s right to be free from unreasonable searches and seizures under the Fourth Amendment. The exclusionary rule dictates that evidence, which has been obtained in violation of the privileges guaranteed by the Constitution, must be excluded at trial. However, the United States Supreme Court in *T.L.O.* specifically refused to address the question of whether the exclusionary rule applied to students. Since the Court did not take a stand on the issue, lower courts are free to assess their own standards, which allows some courts to hold that the exclusionary rule does not apply to school searches.

Another case involving juveniles and Fourth Amendment protections is *In re State in Interest of Carlo*. In that case, two boys, ages 13 and 15, were charged with the death of a 10-year old girl. A written confession was obtained from the 15-year old after six and one-half hours of continuous interrogation, while a written confession was obtained from the 13-year old after five hours of successive questioning. Both confessions were obtained without the presence of counsel or the children’s parents. In reversing the trial court’s decision, the New Jersey Supreme Court held that in light of the age of the children and the oppressive environment of the police station where the questioning took place, the state did not meet its burden to prove that the confessions were voluntarily obtained. Thus, the confessions were improperly introduced into evidence. The court reasoned that even though a juvenile is not entitled to “all the constitutional requirements of criminal trial ... he is at least entitled to a fact-finding process which measures up to the essentials of due process and fair treatment.”

Another case which afforded students some constitutional protection under the Fourth Amendment, until the Court’s decision in *T.L.O.*, was *Horton v. Goose Creek Independent School District*. In *Horton*, plaintiffs brought suit to challenge the school district’s canine drug detection program. The school district had adopted the program in response to an increasing drug and alcohol problem in the schools. Dogs were taken randomly to various schools in the district, where they sniffed students’ lockers and cars. The dogs also went into classrooms and sniffed students. The court held that the sniffing of the cars and lockers by the dogs was not a search under the Fourth Amendment. However, the court found that the sniffing of a child’s person by the dogs constituted a search within the Fourth Amendment. Therefore, individualized reasonable suspicion is necessary for a valid search.

In another Texas case, *Spears v. State*, the juvenile defendant was convicted of aggravated sexual assault of a child. The juvenile appealed his conviction, alleging that the warrantless search of the house and car violated the Fourth Amendment of the United States Constitution and Article I, Section 9 of the Texas Constitution. The appellate court, in affirming the lower court’s decision, indicated that a “warrantless search and seizure can be justified under three exceptions: exigent circumstances, consent, and plain view.” Applying three exceptions to the appellant’s case, the court held that: (1) since the kidnapped girl was still missing, exigent circumstances existed for a warrantless search; (2) the appellant’s father, who owned the house and the car, signed a valid consent form to have the search conducted; and (3) that even if the first two exceptions did not apply, key evidence was located in plain view in appellant’s car which justified a warrantless search and seizure of the car.

**g. Fifth and Sixth Amendments**

The Fifth Amendment provides, in part, that no person “shall be compelled ... to be a witness against himself.” The Sixth Amendment states that an accused has the right to have the assistance of counsel for his defense. The following cases illustrate how courts have applied these amendments to children. First, in *Kent v. United States*, a 16-year old boy was...
taken into custody for the rape and robbery of a female in her apartment.\textsuperscript{230} After being arrested, “Kent was taken to police headquarters where he was interrogated by police officers.”\textsuperscript{231} While he was being detained and interrogated, Kent’s counsel arranged for him to be examined by two psychiatrists and a psychologist.\textsuperscript{232} Kent’s counsel then filed with the juvenile court a motion for a hearing on the question of waiver of juvenile court jurisdiction, together with an affidavit of a psychiatrist certifying that petitioner “is a victim of severe psychopathology” and recommending “hospitalization for psychiatric observation.”\textsuperscript{233} After the juvenile court waived its jurisdiction, Kent was indicted by a federal grand jury in an eight-count indictment.\textsuperscript{234} Kent subsequently moved to have the district court dismiss the indictment on the grounds that the waiver was invalid.\textsuperscript{235}

The district court, in denying the motion to dismiss, ruled that “it would not ‘go behind’ the juvenile court judge’s recital that his order was issued ‘after full investigation.’”\textsuperscript{236} The district court later determined that Kent was competent to stand trial.\textsuperscript{237} At trial, “Kent’s defense was wholly directed toward proving that he was not criminally responsible because his unlawful act was the product of mental disease or mental defect.”\textsuperscript{238} The jury found the defendant not guilty by reason of insanity as to the two counts of rape.\textsuperscript{239} The jury found Kent guilty on the six counts of housebreaking and robbery.\textsuperscript{240} Kent appealed the verdict to the United States District Court of Appeals for the District of Columbia Circuit, and that court affirmed the District Court’s decision.\textsuperscript{241}

On appeal, Kent raised several grounds for reversal.\textsuperscript{242} These grounds, which the Supreme Court agreed with, consisted of the following:

> ... [t]hat petitioner’s detention and interrogation ... were unlawful, ... that the police failed to follow the procedure prescribed by the Juvenile Court Act in that they failed to notify the parents of the child and the Juvenile Court itself ... that petitioner was deprived of his liberty for about a week without a determination of probable cause which would have been required in the case of an adult, ... that he was interrogated by the police in the absence of counsel or a parent, ... without warning of his right to remain silent or advice as to his right to counsel, in asserted violation of the Juvenile Court Act and in violation of rights that he would have if he were an adult; and that petitioner was fingerprinted in violation of the asserted intent of the Juvenile Court Act and while unlawfully detained and that the fingerprints were unlawfully used in the District Court proceeding.\textsuperscript{243}

The Court vacated the order of the court of appeals and the judgment of the district court and remanded the case to the district court for a hearing de novo on the issue of waiver.\textsuperscript{244} The Court, in reaching that decision, made several rulings. First, the Court held that “it is incumbent upon the Juvenile Court to accompany its waiver order with a statement of the reasons or considerations thereof.”\textsuperscript{245} The court said that the statement need not be formal but should be “sufficient to demonstrate that the statutory requirement of ‘full investigation’ has been met; and that the question has received the careful consideration of the Juvenile Court....”\textsuperscript{246}

Second, the Court concluded that the “opportunity for a hearing which may be informal, must be given the child prior to entry of a waiver order.”\textsuperscript{247} Citing \textit{Black v. United States}\textsuperscript{248} and \textit{Watkins v. United States},\textsuperscript{249} the Court stated that the “child is entitled to counsel in connection with a waiver proceeding, and ... counsel is entitled to see the child’s social records.”\textsuperscript{250} The Court indicated that while the hearing did not have to conform to all of the “requirements of a criminal trial” or even an administrative hearing, the “hearing must measure up to the essentials of due process and fair treatment.”\textsuperscript{251}

In \textit{In re Gault},\textsuperscript{252} a 15-year old boy was taken into custody for making obscene phone calls to a neighbor.\textsuperscript{253} The authorities left no messages at the boy’s home to indicate that he had been taken into custody.\textsuperscript{254} Nor was an attempt made to contact his mother or father, who were at work at the time he was taken into custody.\textsuperscript{255} No transcript or record was made of the proceeding.\textsuperscript{256} Gault was sentenced to six years detention for conduct which would have resulted in no more than a $50 fine and two months imprisonment if committed by an adult.\textsuperscript{257} The Supreme Court, in reversing the appellate court decision, stated that the “constitutional privilege against self-incrimination is applicable in the case of juveniles as it is with respect to adults.”\textsuperscript{258} The Court further indicated that without a valid confession sufficient to support the determination of the juvenile court, “confrontation and sworn testimony by witnesses available for cross-examination are essential for a finding of..."
In *McKeiver v. Pennsylvania*, the Supreme Court again had an opportunity to address the rights of juveniles. In *McKeiver*, juveniles raised the issue of whether they were entitled to a jury trial, because the juvenile proceedings were “substantially similar to a criminal trial.” The Court began its analysis by stating that the “Due Process Clause has a role to play in juvenile proceedings,” and it was the Court’s responsibility to “ascertain the precise impact of the due process requirement.” In upholding the lower court decision that juveniles were not entitled to a jury trial in juvenile proceedings, the Court found that “if the formalities of the criminal adjudicative process are to be superimposed upon the juvenile court system, there is little need for its separate existence.” The Court reasoned that the concern regarding the inapplicability of exclusionary and other rules of evidence ignores “every aspect of fairness, concern, sympathy, and of paternal attention which the juvenile court system is designed to accomplish.” It should also be noted that the *McKeiver* Court found the procedural guarantees extended to juvenile delinquency proceedings by *Gault* were for the purpose of ensuring accurate fact finding, and that a right to a jury trial would not advance this purpose.

In *Breed v. Jones*, Jones, a 17-year-old juvenile, committed acts which under the California Penal Code constituted the crime of robbery. Jones was first convicted of robbery by the Juvenile Court Division of the Superior Court of the County of Los Angeles, which was rendered on March 1, 1971. Subsequently, Jones was convicted in superior court of robbery in the first degree. The question before the United States Supreme Court was whether Jones’s situation violated the double jeopardy clause of the Fifth Amendment. The Court, in holding that Jones’ treatment did violate the double jeopardy clause, stated that “there is little to distinguish an adjudicatory hearing such as was held in this case from a traditional criminal prosecution.” The Court concluded that Jones was “put in jeopardy at the adjudicatory hearing ... and jeopardy attached when respondent was put to trial before the trier of facts, ... that is, when the Juvenile Court as the trier of the facts, began to hear evidence.” The Court reasoned that “knowledge of the risk of transfer after an adjudicatory hearing can only undermine the potential for informality and cooperation which was intended to be the hallmark of the juvenile court system.” The Court stated that “rather than concerning themselves with the matter at hand, establishing innocence or seeking a disposition best suited to individual correctional needs, the juvenile and his attorney are pressed into a posture of adversary wariness that is conducive to neither.”

Three years later, the double jeopardy question was again raised in *Swisher v. Brady*. In *Swisher*, a group of minors brought a class-action lawsuit challenging a rule of procedure whereby that state could file exceptions with the juvenile court judge to proposed nondelinquency findings made by the judge’s master. The juvenile court judge could accept, modify or reject the master’s proposals, but only to the extent that a record had been made before the master. The district court ruled that a juvenile in a hearing before a master is placed in jeopardy, and the juvenile court judge’s review of the master’s findings placed the juvenile in jeopardy a second time. The United States Supreme Court, in reversing the trial court, stated that in filing such exceptions, the state does not require the juvenile to stand trial twice, but under the pertinent rule, the accused juvenile is subjected to one single proceeding which starts with a hearing before a master and ends with an adjudication by a judge. The juveniles argued that the rule operated to give the state the opportunity to present its case before two fact finders: the master first, then the juvenile court judge. In rejecting this contention, the Court stated that the juvenile court judge is empowered to accept, modify, or reject the proposals of the master. It is the state, and not the parties, who decides whom the fact finder and adjudication will be, and in this instance the state has given this authority to the juvenile judge. Under these conditions, the Court reasoned, the juvenile judge does not violate the “constraints of the Double Jeopardy Clause.”

The United States Supreme Court also considered juvenile rights issues in *In re Winship*. *Winship* involved a 12-year-old boy who had stolen $112 from a woman’s purse which was in a locker. This act of juvenile delinquency would have constituted the crime of larceny if committed by an adult. Consequently, the juvenile argued that his guilt should be established beyond a reasonable doubt. The judge, while acknowledging that the evidence in the case might not establish guilt beyond a reasonable doubt, relied on § 744(b) of the New York Family Court Act which provided that ‘a determination at the conclusion of an adjudicatory hearing that a juvenile did an act or acts must be based on a preponderance
of the evidence.”*330 After being adjudicated as having committed an act of juvenile delinquency, the juvenile was “ordered placed in a training school for an initial period of 18 months, subject to annual extensions of his commitment until his 18th birthday—six years in this case.”*331

In reversing the New York Court of Appeals, the United States Supreme Court made several observations. First, the Court found that the reasonable doubt standard “provides concrete substance for the presumption of innocence—that bedrock ‘axiomatic and elementary’ principle whose ‘enforcement lies at the foundation of the administration of our criminal law.’”*352 The Court stated that during a criminal prosecution, the accused has important interests at stake, “both because of the possibility that he may lose his liberty upon conviction and because of the certainty that he would be stigmatized by the conviction.”*352 Last, the Court wrote that “... important in our free *749 society that every individual going about his ordinary affairs have confidence that his government cannot adjudge him guilty of a criminal offense without convincing a proper factfinder of his guilt with utmost certainty.”*334

The Court concluded its opinion by stating that the “observance of the standard of proof beyond a reasonable doubt ‘will not compel the states to abandon or displace any of the substantive benefits of the juvenile process.’”*335 Furthermore, “the constitutional safeguard of proof beyond a reasonable doubt is as much required during the adjudicatory stage of a delinquency proceeding as are those constitutional safeguards applied in Gault...”*336

h. Eighth Amendment

The Eighth Amendment to the United States Constitution states that cruel and unusual punishment shall not be inflicted.337 Regarding juveniles and the death penalty, “the American colonies relied upon several treatises which contained interpretations of the common law as it had been developed and practiced in England.”*336 One such treatise was “Blackstone’s Commentaries,” published in 1768.339 According to Blackstone, “infants under the age of discretion ought not to be punished by any criminal prosecution whatever ... the age of discretion is, in various nations, ... a matter of some variety.”*340 In England, a child could not be found guilty of a felony because “a felonious discretion is almost an impossibility in nature.”*343 When under the age of 750 fourteen, “a child was prima facie innocent, but this presumption could be overcome by evidence that the juvenile was ‘doli incapax’ and ‘could discern between good and evil.’”*342 Earlier American courts “relied upon the rules developed by English courts” when the cases involved juvenile felons.343 “Between 1642 and 1986, 281 persons who committed crimes while under the age of 18 were executed in the United States ... as many as 126 were less than 17 years old.”*344

The Supreme Court, in applying the cruel and unusual clause, “turned to the sparse legislative history of the Eighth Amendment and the tenor of the time for guidance.”*345 After the abdication of James II in 1688, the subjects of the new monarchs, William and Mary, demanded that “ ... e xcessive b ail ought not be required nor e xcessive f ines imposed, nor cruel and unusual punishment inflicted.”*346 The issue then became determining which punishments were cruel and unusual. Seventeenth-Century England imposed such punishments as beheading, burning, hanging, or being disembowelled alive.347 In the early colonial days, “ ... d eath by hanging, burning, and breaking on the wheel were common.”*348

Four United States Supreme Court cases set out the parameters by which states can punish those convicted of crimes.349 Wilkerson v. Utah350 and In re Kemmler351 established that the “cruel and unusual punishment clause prohibits the physical torture of offenders and barbaric forms of execution, such as crucifixion or burning at the *751 stake....”*352 Weems v. United States353 prohibits “all punishments which, by their excessive length or severity, are greatly disproportionate to the offenses charged.”*354 In Trop v. Dulles,355 the constitutionality of the punishment is determined by “whether the penalty subjects the individual to a fate forbidden by the principle of civilized treatment ... or violates the dignity of man.”*356 However, establishing standards to impose the death penalty is not enough; proportionality must be addressed.357 In Solem v. Helm,358 the Court found that proportionality was a “deeply rooted and frequently repeated”359 principle in common law, a long-standing feature of Supreme Court jurisprudence, and a basic requirement of each criminal sentence.360 When imposing punishment, courts should also consider the “human dignity” standard discussed in Trop.361 This consideration involves four conditions. First, a “punishment must not be so severe that it reduces *members of the human race to the level of nonhuman,
or objects to be toyed with and discarded.”**362 Second, the “punishment must not be arbitrarily inflicted; it must be carried out in the ‘great majority in which it is legally available’**363 otherwise the penalty becomes so rare that its imposition is ... wanton and freakish.”**364 Third, “there must be some ‘objective’ evidence that the punishment is acceptable to contemporary society.”**365 Last, “the punishment must not be ‘excessive’ in that it involves ‘the pointless infliction of suffering. If there is a significantly less severe punishment adequate to achieve the purposes for which the punishment is inflicted, the punishment inflicted is unnecessary and therefore excessive.”**366

The Court viewed the clause as “prohibiting punishments that were inhuman, barbarous, or involved torture and excessive punishment out of proportion to the offense.”**367 Also, “e xcept for a period of four years during the 1970s, the death penalty was never held to violate the Eighth Amendment.”**368 The case that established this principle was* Furman v. Georgia.**369 Furman “effectively invalidated capital punishment statutes on the ground that the imposition of the penalty under existing laws constituted cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments.”**370 Though “all nine J ustices in Furman wrote separate opinions reflecting the difficulty the Court encountered in applying the Eighth Amendment to the state statutes on the death penalty, according to a majority of the Court, the existing sentencing procedures lacked guidelines or standards.”**371 Justices Brennan and Marshall found that the death penalty was unconstitutional per se, while the remaining justices were concerned “that the death penalty failed to serve the penological purposes of retribution and deterrence.”**372

After the Furman decision, several states reenacted some type of death penalty law.**373 In 1976, the Supreme Court reinstated the death penalty in the case of* Gregg v. Georgia.**374 In Gregg, the Court reasoned that the death penalty was not impermissibly “cruel and unusual”**375 and was an “e xpression of society’s moral outrage.”**376 Furthermore, the “death penalty is essential in an ordered society that asks its citizens to rely on legal processes rather than self-help to vindicate their wrongs.”**377 The Court stated:

**753** Indeed, the decision that capital punishment may be the appropriate sanction in extreme cases is an expression of the community’s belief that certain crimes are themselves so grievous an affront to humanity that the only adequate response may be the penalty of death.**378

The death penalty and its application to juveniles first appeared in the case of* Eddings v. Oklahoma.**379 Eddings, who was 16 years old at the time of the offense, had murdered a highway patrol officer.**380 Oklahoma state law required the trial court to consider mitigating evidence during sentencing.**381 However, the court did not consider evidence of “Eddings’ unhappy upbringing and emotional disturbance.”**382 The Supreme Court, in vacating Eddings’ death sentence, based its ruling on the decision in* Lockett v. Ohio.**383 The Lockett Court ruled that “any aspect of a defendant’s character or record must be considered in mitigation at the sentencing stage of a capital trial to avoid violating the Eighth Amendment.”**384 The trial court’s decision violated this rule.**385 Justice Powell, writing for a five-to-four majority, stated “because we decide this case on the basis of Lockett v. Ohio, we do not reach the conclusion of whether—in light of contemporary standards—the Eighth Amendment forbids the execution of a defendant who was 16 at the time of the offense.”**386

The next case that involved juveniles and the death penalty was* Thompson v. Oklahoma.**387 In Thompson, the defendant, who was 15 years old at the time of his criminal act, “i n concert with three older persons, ... actively participated in the brutal murder of his former brother-in-law ...”**388 The evidence introduced at trial revealed that the victim had been shot two times, and had been cut on his throat, **754 chest, and abdomen.**389 The victim’s body was then “chained to a concrete block and thrown into a river where it remained for almost four weeks.”**390

Since Thompson was a “child” under Oklahoma law,**391 the state filed a statutory petition, “seeking an order finding ‘that said child is competent and had the mental capacity to know and appreciate the wrongfulness of this conduct .’”**392 The trial court, after a hearing, concluded “that there are virtually no reasonable prospects for rehabilitation of William Wayne Thompson within the juvenile system and that he ... should be held accountable for his acts as if he were an adult and should be certified to stand trial as an adult.”**393 Thompson was found guilty and sentenced to death.**394

The court of criminal appeals affirmed the conviction and sentence, relying on its previous decision in* Eddings v. State,**395
which stated the proposition that “once a minor is certified to stand trial as an adult, he may also, without violating the Constitution, be punished as an adult.”

The United States Supreme Court “granted certiorari to consider whether a sentence of death is cruel and unusual punishment for a crime committed by a 15 year old....” The Court, in reversing the death sentence, reasoned that:

[since] eighteen states ... have uniformly required that the defendant have attained at least the age of 16 at the time of the capital offense—[it] supports the conclusion that it would offend civilized standards of decency to execute a person who was less than 16 years old at the time of his or her offense.

The Court looked at how states treated those persons who are under 16 years old. For instance, 15 year-olds cannot vote or serve on a jury, cannot drive or marry without parental consent, may not purchase pornographic materials, and may not participate in legalized gambling without parental consent. These statutes, reasoned the Court, are “consistent with the experience of mankind, as well as the long history of our law, that the normal 15-year-old is not prepared to assume the full responsibilities of an adult.”

The Court further explained the importance of treating a defendant’s youth as a mitigating factor in capital crimes: ... is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and to psychological damage. Our history is replete with laws and judicial recognition that minors, especially in their earlier years, generally are less mature and responsible than adults. Consequently, this is “why juveniles are not trusted with the privileges and responsibilities of an adult ... and why their irresponsible conduct is not as morally reprehensible as that of an adult.”

Next, the Court discussed the purposes of the death penalty. The Court stated the death penalty serves “two principal social purposes: retribution and deterrence of capital crimes by prospective offenders.” Citing Gregg, the Court indicated that as “expression of society’s moral outrage at particular offensive conduct, retribution was not inconsistent with our respect for the dignity of men.” However, “given the lesser culpability of the juvenile offender, the teenager’s capacity for growth and society’s fiduciary obligations to its children, the conclusion is simply inapplicable to the execution of a 15-year-old offender.”

Furthermore, reasoned the Court, the deterrence rationale is equally unacceptable to offenders under 16 years for two reasons. First, the likelihood that a teenage offender will make the “kind of cost-benefit analysis that attaches any weight to the possibility of execution is so remote as to be virtually nonexistent.” Second, it is unrealistic to believe that a 15-year-old would be deterred from his conduct because a few people his age have been executed. Thus, concluded the Court, the imposition of the death penalty on such offenders is “nothing more than the purposeless and needless imposition of pain and suffering ... and thus an unconstitutional punishment under the Eighth and Fourteenth Amendments.”

Two other cases which involve juveniles and the death penalty are Stanford v. Kentucky and Wilkins v. Missouri. The United States Supreme Court consolidated the two cases so as to “decide whether the imposition of capital punishment of an individual for a crime committed at 16 or 17 years of age constitutes cruel and unusual punishment under the Eighth Amendment.”

In Stanford, the petitioner and an accomplice “repeatedly raped and sodomized [Barbel] Poore during their commission of a robbery at a gas station where she worked as a gas station attendant.” The defendants subsequently drove Poore to a secluded area where Stanford shot her two times, once in the face and once in the back of the head. After Stanford was arrested, a juvenile court held a hearing to determine whether he should stand trial as an adult. After reviewing Stanford’s numerous instances of delinquent behavior and the seriousness of his current offense, “the juvenile court found certification for trial as an adult to be in the best interest of petitioner and the community.”
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*757 Stanford was convicted of “murder, first degree sodomy, first degree robbery, and receiving stolen property and was sentenced to death and 45 years in prison.”417 The death sentence was affirmed by the appellate court, indicating that Stanford’s “age and the possibility that he might be rehabilitated were mitigating factors appropriately left to the consideration of the jury that tried him.”418

In Wilkins, the petitioner murdered Nancy Allen, a 26 year-old mother of two, who was working behind the sales counter of a convenience store she and her husband owned.419 Wilkins, who was 16 years old at the time of the murder, stabbed Allen eight times, leaving her to die on the floor while he and his accomplice helped “themselves to liquor, cigarettes, rolling papers, and approximately $450 in cash and checks.”420 Like Stanford, Wilkins was certified to stand trial as an adult under Missouri law, with the juvenile court basing its decision on the “viciousness, force, and violence of the alleged crime, petitioner’s maturity, and the failure of the juvenile justice system to rehabilitate him after previous delinquent acts.”421

Wilkins pled guilty to charges of “first degree murder, armed criminal action, and carrying a concealed weapon.”422 During the penalty phase, both the prosecution and Wilkins himself sought the death penalty.423 Psychiatric evidence indicated that Wilkins had “personality disorders.” Witnesses testified that “Wilkins was aware of his actions and could distinguish right from wrong.”424 The trial court, in finding that the death penalty was appropriate, held that “the murder ... was committed while the defendant was in the perpetration of the felony of robbery, and ... involved depravity of mind and that as a result thereof, it was outrageously or wantonly vile, horrible, or inhuman.”425

The Missouri Supreme Court rejected Wilkins’ automatic appeal *758 and ruled that his death sentence did not violate the Eighth Amendment.426

The central theme of Stanford’s and Wilkins’ contentions were that “the imposition of the death penalty on those who were juveniles when they committed their crimes fall within Eighth Amendment prohibition against ‘cruel and unusual punishment.”427 The Supreme Court began its analysis by stating that neither Wilkins nor Stanford contended that his sentence was cruel and unusual under the meaning of the Bill of Rights when it was adopted because they could not support such a contention.428 Consequently, Wilkins and Stanford were “left to argue that their punishments were contrary to the ‘evolving standards of decency that mark the progress of a maturing society.”429 The Court stated that it looked to the modern American society in its entirety to determine the evolved standards of decency and not to its (the Court’s) own concept of decency.430

The petitioners, in seeking to have their death sentences overturned, relied on a recently-enacted federal statute limiting the death penalty for certain drug-related offenses to those 18 years old and over.431 The Court responded to those arguments by indicating that even if there was no federal statute permitting the imposition of the death penalty for those under 18 years, said absence “would not remotely establish—in the face of a substantial number of state statutes to the contrary—a national consensus that such punishment is inhumane.”432 The Court further indicated that it was not up to the petitioners’ states to “establish a national consensus approving what their citizens have voted to do; rather, it is the ‘heavy burden of the petitioners ... to establish a national consensus against it.”433 The petitioners, *759 said the Court, “failed to carry that burden.”434 Wilkins and Stanford also argued that the application of the death penalty to minors established a national consensus against its imposition.435 Using statistical evidence, they demonstrated that out of over 2,000 death sentences between 1982 and 1988, “only 15 were imposed on individuals who were 16 or under when they committed their crimes and only 30 on individuals who were 17 at the time of the crime.”436 The Court again rejected petitioners’ argument that it was the Court, and not the citizens, who determined whether a punishment is cruel and unusual.437 The Court stated that it had “no power under the Eighth Amendment to substitute their belief in scientific evidence for society’s apparent skepticism.”438 The Court concluded its opinion by indicating that it “discern ed neither a historical nor a modern societal consensus forbidding the imposition of capital punishment on any person who murders at 16 or 17 years of age”439 and ruled that “such punishment did not offend the Eighth Amendment’s prohibition against cruel and unusual punishment.”440

Because Stanford and Wilkins were close decisions, the dissenting opinion merits mentioning here. Justice Brennan, who was joined by Justices Marshall, Blackmun, and Stevens, stated that taking the life of a person who committed a crime before the age of 18 was “cruel and unusual and hence [was] prohibited by the Eighth Amendment.”441 Justice Brennan believed that
there was strong, compelling evidence that it was not “constitutionally tolerable that certain states persist in authorizing the execution of adolescent offenders.” Furthermore, *760 reasoned Justice Brennan, the “execution of juveniles fail ed to satisfy two well-established and independent Eighth Amendment requirements—that a punishment not be disproportionate and that it make a contribution to acceptable goals of punishment.”

The dissent also indicated that the death penalty’s deterrent value is decided by the assumption that people are “rational beings who always think before [they] act, and then base [their] actions on a careful calculation of the gains and losses involved.” Consequently “ t he likelihood that the teenage offender has made the kind of cost-benefit analysis that attaches any weight to the possibility of execution is so remote as to be virtually nonexistent.” Thus, concluded Justice Brennan, “ b ecause imposition of the death penalty on persons committed under the age of 18 years makes no measurable contribution to the goals of either retribution or deterrence, it is ‘nothing more than the purposeless and needless imposition of pain and suffering.’”

In analyzing *Thompson* and *Stanford*, the questions arise: Why did the Court reach different results in the two cases? Is a 16 year old or 17 year-old automatically more mature than a person who is 15 years and 364 days old? Should the latter escape the death penalty simply because he or she committed murder two days before his or her 16th birthday? Obviously, the Justices on the Court have different opinions on this matter, which explains the plurality decision in both cases.

First, consider the three-prong test set out in *Gregg* by which states can impose punishment. The punishment must not be one that was prohibited at the time of the adoption of the Bill of Rights. *Second*, the punishment, in order not to be cruel and unusual, must not violate “the evolving standards of decency that marked the progress of a maturing society.” *Last*, the punishment could not be “so excessive or disproportionate as to be inconsistent with the basic concepts of human dignity.”

*761 If the punishment to be imposed failed any part of the test, then it was considered cruel and unusual and violated the Eighth and Fourteenth Amendments. In *Thompson*, the plurality used the three-prong test and held that executing a 15 year-old constituted cruel and unusual punishment. Thus, 16 years of age represents a “significant ‘bright line’ separating childhood from adulthood, since this is the age (in most states) when minors begin to take on at least some adult responsibilities.” Furthermore, “in all these states that have expressly considered the issue, it represents the minimum age for execution.”

Justice O’Connor, in casting the deciding vote, could not totally accept the plaintiff’s “sweeping generalizations about the maturity of minors” stating that:

I agree that proportionality requires a nexus between the punishment imposed and the defendant’s blameworthiness [citation omitted]. Granting the plurality’s other premises—adolescents are generally less blameworthy than adults who commit similar crimes—it does not necessarily follow that all 15 year olds are incapable of the moral culpability that would justify the imposition of capital punishment.

The dissenting justice in *Thompson* also stated that there was “... no rational basis for discerning ... a societal judgment that no one so much as a day under 16 can ever be mature and morally responsible enough to deserve that penalty.” Another problem for the dissenters with the plurality’s decision in *Thompson* is that it overlooked the fact that:

[the] constitutional rules relating to the maturity of minors must be drawn with an eye to the decision for which the maturity is relevant (citation omitted). It is surely constitutional for a state to believe that the degree of maturity that is necessary to fully appreciate the pros and cons of smoking cigarettes or even marrying may be somewhat greater than the degree necessary to fully appreciate the pros and cons of brutally killing a human being.

In *Stanford*, the plurality did not use the proportionality analysis *762 that was used in *Thompson*, and an argument could persuasively be made that this is the reason, or at least one of them, that the Court reached different results in the two cases. In *Stanford*, Justice Scalia, a dissenter in *Thompson* but writing for the plurality here, stated that while it was true that
“several ... cases have engaged in so-called “proportionality” analysis ... [the Court] has never invalidated a punishment on [that] basis alone.” Rather, “a ll of the cases condemning a punishment under this mode of analysis also found that the objective indicators of state laws or jury determinations evidenced a societal consensus against that penalty.” Justice O’Connor and those Justices in the Stanford dissent, however, indicated that “merely acknowledging that some juveniles may be responsible enough to be executed is not enough to validate the execution of juveniles.” Justice O’Connor and the dissenters would require the Court to “judge whether the ‘nexus between the punishment imposed and the defendant’s blameworthiness is proportional.”

So where do we stand today regarding the death penalty and juveniles? It seems that “Justice Scalia’s avoidance of a proportionality analysis represents a significant break with past death penalty cases.” Since Stanford, “it is not clear what role disproportionality analysis has in evaluating the constitutionality of a punishment: it may be relegated to a secondary consideration, or perhaps it is no longer necessary at all.”

II. FACTORS WHICH CONTRIBUTE TO JUVENILE CRIME

A. THE PARENTING CONNECTION

“Today was a good day; I didn’t have to use my AK.”

These words are a verse from a popular rap song. Why would such violent sentiments be embraced or condoned by young music listeners? Perhaps it is a reflection of a society where violence has become an accepted commodity to be consumed and bartered among American youth. Statistics indicate that the primary victims of youth offenders are other juveniles who look and live like themselves. A disproportionate number of murder victims are young males, especially young Black males between the ages of 15 to 21 years, who are murdered at a rate of 85.6 per 100,000. This rate is seven times greater than for White males.

This Report will discuss: (1) psychological and sociological theories of juvenile crime causation; (2) family dynamics and the effectiveness of parenting as influenced by socio-economic factors; (3) children’s rights against abuse and neglect and the causal connection between these factors and the disproportionate incidents of violence among juveniles in society; and (4) society’s rights and obligations to respond to the conditions which promulgate a violent and economically disadvantaged sector of society. No one factor presents an isolated key to the dynamics of the delinquency problem, but each plays an important role in the dominion of parenting and antisocial behavior.

1. The Statistics on Juvenile Crime in America

The primary tool used to assess the scope and character of crime statistics in the United States is the Uniform Crime Report (UCR). This annual report is compiled by the Federal Bureau of Investigation and reports offenses committed by juveniles in two categories: Type 1 (index) and type 2 (non-index) crimes. Type 1 crimes consist of the most serious violent crimes: murder; rape; robbery; aggravated assault; property crimes; burglary; larceny; car theft and arson. During the ten-year period from 1980 to 1990, index crime arrests increased by 27%. From 1990 to 1991, index crimes rose less than 1% for adults and 5% for juveniles. Six percent of all persons arrested nationally in 1991 were under the age of 15 years; 17% were under the age of 18; 35% were under the age of 21 years.

2. What is Delinquency?

A delinquent child is “one who has violated criminal laws or engages in disobedient, indecent or immoral conduct and is in need of treatment, rehabilitation or supervision.” The model definition delineates the character of delinquents between
those juveniles who commit criminal offenses and all others. It is important to clarify the dual meaning associated with the term “delinquent” in its application to these two groups.

Juvenile offenders are classified into two main categories, juvenile delinquents and status offenders. Juvenile delinquents are charged with breaking some criminal law that is applicable to all citizens. However, status offenders are guilty of behavioral malfeasance based on a statute applicable only to juveniles. California Penal Code section 13750(b) is applicable to both categories of offenders, and reads as follows:

.... Delinquent offenders who are described in Section 602 of the Welfare and Institutions Code are involved at younger ages in more serious, gang-related, and violent offenses than in past years. They are in need of immediate and coordinated intervention to prevent their progress toward adult criminality. Status offenders who are described in Section 601 of the Welfare and Institutions Code are multiproblem children who do not attend school, run away from home, or are out of control of parents and school authorities. These children are in need of early intervention to prevent delinquency, drug and alcohol involvement, school dropout, and their own further injury and victimization.

For purposes of this Report, discussion will be limited to various factors contributing to the stigma of delinquency.

It is not difficult to recognize that these types of statutes are broad and capable of subjecting almost any child to the juvenile justice system. Consequently, no matter how the juvenile is categorized, until he reaches the age of 18 years, he will be processed in juvenile court. A juvenile can be labeled as exhibiting antisocial behavior even if that behavior is considered legal and acceptable when demonstrated by adults. The result is the identification of the child as a delinquent with the associated stigma and perceptions that entails. Non-status offenders may be tried in criminal court as adults for participation in prohibited criminal behavior only where there has been a waiver by the juvenile court. The scope of these statutes thrusts courts into the core of family government in the roles of babysitter, substitute parent, truant officer and moral advisor.

The Supreme Court has determined that the state may intervene when it determines that the parents are derelict in performing their custodial functions and if the child becomes delinquent. However, in the case of status offenders, especially runaways, some courts have determined that there is a sufficient state interest justifying state intervention based on the function of government to protect its citizens. Surveys indicate that 60% to 80% of runaways have been physically or sexually abused at home, which is frequently associated with parental drug and alcohol problems. Virtually all of the runaways are in significant danger of physical, sexual, or other criminal exploitation. In effect, the child is first a victim of the parents’ breach of responsibility to care for him and later often becomes a victim of court intervention that may result in probation, incarceration, or removal from the home for the child’s protection.

The juvenile justice system and the laws it enforces disproportionately impacts minorities and the poor. In America, “lower-class children more than middle class ones, black children more than white ones, and boys more than girls, face high probabilities … not only of engaging in rule violation, … but also of becoming enmeshed in official negative label processes.” This result occurs in significant part because in any community where there is a high incidence of young, single female-headed households, there is a corresponding restriction of children to criminogenic communities. “The way in which parents interpret their roles is as much a function of the neighborhood as of their own personalities.” However, since delinquency statutes are generally “less specific in defining behavioral elements required for adjudication,” it is possible for judges to impose their personal code of proper behavior on these youth and is ripe ground for broad “exercise of discretion by juvenile justice decision makers.”

3. Theories on Causes of Delinquency

Although many theories seek to explain delinquent behavior, most criminologists seem to support one of two main viewpoints. The most generally accepted theories have psychological and sociological underpinnings.
a. Psychological Theories

The psychological theories of juvenile criminality contend that delinquency is attributable to mental, emotional or personality disfunction, usually correlated to a dysfunctional family environment in which sexual or physical abuse is present. In his explanation of the criminal personality theory, Stanton Samenow argues that there exists a deviant or abnormal way of thinking in violent criminals which develops in early childhood. In nearly every case where a criminal has come from an oppressive social background, he has siblings or other family members who are law-abiding citizens. Under this theory, parental influence is inconsequential because the child ultimately makes the choice to be delinquent. Researchers who support this theory reject any notion that environmental factors per se are critical to deviant behavior. Instead, they posit as the controlling factor the series of choices made in response to the environment as a result of socially abnormal thinking by the individual.

There is, however, some support for the belief that parental influence and emotional variables are an associated cause of delinquency. Although the overwhelming majority of psychological evidence rejects the premise that such variables have a prominent role in delinquent behavior, it does not exclude them unconditionally.

b. Sociological Theories

The underlying assumption of the social learning theories asserts that children learn how to behave from their social environment. Most sociological and psychological theorists agree that violence is a problem that begins at home. There is a clear and undisputed nexus between child abuse and aggression. Although not all abused children grow up to be abusers, there is a strong correlation that those who are seriously abused become the most violent members of society.

“In 1982, there were 76,000 juveniles arrested for violent crime and more than 1.3 million juveniles arrested for all other crime.” In the 1970s and 1980s, there was a drastic increase in the number of very poor Black families headed by women, which appears to have been a significant factor in the increase in crime and violence in the poorest Black neighborhoods. “While blacks are approximately 12% of the population, they generally comprise half of all those arrested for murder and non-negligent homicide and half of the homicide victims.” Most of these results have been attributed to poverty. However, regardless of the race or class of people, when large numbers of men are out of work and the number of female-headed households increases, the crime rate in a community rises dramatically. Parents of aggressive children are often preoccupied with other serious problems such as marital difficulties, substance abuse, or financial problems. In turn, children in these homes use aggressive and coercive behavior to get attention from their apparently inattentive parents and to satisfy other needs.

Unemployment and low income are factors in diminishing parental effectiveness. Families which are burdened by inadequate income, lack of responsive social networks, internal conflict and a tradition of parental violence are often less able to ensure the kind of supervision and guidance that families with better resources have to reduce the risks of youth criminality and violence. In a study funded by the Carnegie Council on Children, the authors stressed that full and fair employment, minimum income and access to services, parent education and preventive assistance are factors that improve family effectiveness. Providing parents with this power allows them to be effective advocates in “bringin up” their children.

Poverty has a significantly greater impact on increasing a child’s propensity to commit crime when there is no family or community support to counteract the process. The impact of the community on family relationships, especially public agencies, social agencies, and the public schools may also augment patterns of delinquency. The significant encounters that teachers and school officials have with students escalate the importance that the school plays in the welfare of a community.

Academic failure is a key variable in the characteristics of delinquent juveniles. It is generally charged that many schools institute policies or practices that contribute to academic failure. The educational system has a two tier structure which...
differentiates between the affluent and the poor. Financial patronage is usually inadequate for the less affluent schools which often exist in deteriorating buildings and lack proper materials and equipment. Though efforts are being made to equalize school funding, preconceived ideas held by many school personnel that poor children have limited intellectual capacities result in a failure to correctly diagnose the causes for failure.

Children from traumatized families often begin to fail in school unnecessarily and continue a downward trend until they drop out altogether. Indifference toward these children establishes a cycle which fosters low self-esteem and results in low educational standards and an inferior education. Schools are better qualified than the juvenile courts to supply programs to overcome cultural and cognitive deficiencies that may have unfavorable future consequences. Without the proper educational tools, the cycle of unemployability, poverty, disadvantage, delinquency, and violence is perpetuated. This unstable foundation increases the probability that children will acquire serious criminal tendencies and criminal records.

4. Family Dynamics

A family is defined in its most common terms as “a group of persons consisting of parents and children, ... [or] immediate kindred, constituting a fundamental social unit in civilized society.” Its purpose is to benefit society and provide a system in which its members are dependent on each other for support, which in turn imposes a legal and equitable obligation upon them. As the family structure evolves, the family role may best be evaluated from four general perspectives.

a. Parenting

The biological status of the parent is no longer the exclusive qualifier for recognition in the family unit. The United States Supreme Court has acknowledged the broadening of the family unit to include more than the traditional nuclear family structure.

The structure of the modern American family has changed from the 1950s concept of the nuclear family. The percentage of the population that is divorced and the number of female-headed households impact parental efforts and have become a significant predictor of crime rates. The divorce rate is approaching 50% with second marriages failing at a rate close to 60%. The number of working mothers has also increased sharply since the late 1960s. The work force is now one-half women. Forty-five percent of these women have preschool children, and 50% or more have children of ages ranging up to adolescence. Although the fact that a mother works has not been cited as a predictor of youth criminality, studies of the growth and development of children ... indicate a close relationship between an individual’s ability to function in society and the quality of relationships within his family. Consequently, when both parents work outside the home, there should be affirmative action by the parents to ensure that their relationship with their children is a close one.

Many single mothers manage to bring up healthy, well-adjusted children, however, a single mother household is significant to the psychological development of well-adjusted males. Boys seem to be disadvantaged by the absence at home of a non-violent male role model, and they have a harder time managing their aggression.

Research has shown that a child’s emotional tie to his parents is probably the most influential factor contributing to antisocial behavior. There is a definable correlation between violence in children who are products of two parent homes and children from single parent or broken homes. Children from unbroken homes have a lower rate of crime. The percentage of homes headed by women only, and the percentage of unattached individuals in the community is ranked among the most powerful predictors of crime rates. In the case of teenage mothers, the children they raise are more likely to become school dropouts, be abused, use drugs, and become delinquent than those raised either in two parent homes or by single parents with better economic resources.

b. Caretaking
The second role of the family is one of support, which is not limited to finances. Parenting encompasses both the economic and social realms. Economic investment is necessary in the form of food, clothing, tuition, and other essentials for children to realize their potential and to achieve a high level of utility.

It is the parent as caretaker who guides many of Western civilizations’ perceptions about parenting, as expressed by John Locke:

Adam was created a perfect man, his body and mind in full possession of their strength and reason, and so was capable from the first instant of his being to provide for his own support and preservation and govern his actions according to the dictates of the law of reason which God had implanted in him. From him the world is peopled with his descendants who are all born infants, weak and helpless, without knowledge or understanding; but to supply the defects of this imperfect state till the improvement of growth and age has removed them, Adam and Eve, and after them all parents, were, by the law of nature, “under an obligation to preserve, nourish, and educate the children” they had begotten.

Our culture and constitutional system have rejected the status of children as “mere creatures of the state” and acknowledge that parents generally “have the right, coupled with the high duty, to recognize and prepare [their children] for additional obligations.” Most people consider parenting the most important and toughest job they do. Beyond the physical necessities they must provide is the responsibility to provide moral character models. It is further presumed that natural bonds of affection direct parents to respond and comport their conduct in the best interests of the child.

Where familial interaction is strong, there is significant correlation with delinquency. One of the most important variables is the quality of parental supervision. Lax supervision has been linked to problematic or antisocial behavior conducive to delinquency when, as is often the case, these parents are not aware of the child’s peer associations, or activities and whereabouts outside the home.

The personal relationship between parents and their children establishes the affirmative parental duty to protect the child and to protect third parties from the child’s conduct. When parents are unable to provide a safe environment, the children suffer emotionally. Aggressive behavior is usually an end effect of this powerlessness.

c. Children’s Rights

Parents are the social agents of society who promote “social, psychological, and moral development of their children to enable them to cope nonviolently in society.” Though the individual child may reject the attitudes and values of the family, model parenting is the most common corollary, and most important potential preventer of violence.

The family traditionally has occupied a unique position in American jurisprudence. However, there is conflict between autonomy against unwarranted state interference and the state’s duty to protect “mislabeled” or abused children in its role as parens patriae. It is society’s long held view that “it is the natural right as well as the legal duty, of a parent to care for, control and protect his child from potential harm, whatever the source and absent a clear showing of misfeasance, abuse or neglect, courts should not interfere with that delicate responsibility.”

However, when parents breach their duty, it becomes society’s duty to protect children and rehabilitate parents in abusive home situations. Many criminal law experts suggest that because of the personal relationship between parents and children, there is an affirmative duty for parents to safeguard children and to safeguard third persons from their children. It is widely recognized that children have a right to be safe in their homes and to be free from emotional and sexual abuse.

Basic children’s rights have been recited in case law and the general tenets of the Constitution’s Declaration of Independence. The complexity of this issue arises in enforcement of these rights, especially in the case of minor children.
because application of these principles are subject to parental control. Courts have consistently granted parents broad authority under the Fourteenth Amendment to manage their children. Not surprisingly, this may lead to emotional and physical abuse and consequently delinquency. The New York State Assembly’s Select Committee on Child Abuse found that over half of the families officially suspected of child abuse had children who were later arrested for delinquency.

### d. Society’s Rights and Obligations

The family as a basic social unit has a duty to confer benefits to society as a matter of social policy. Numerous studies have shown that adult criminality has its inception in juvenile delinquency and that child abuse victims become violent criminals in disproportionate numbers. Accordingly, if it is true that criminality begins in childhood and is in many cases progressive, then the damage to society will continue to escalate unless something is done to break the spiral.

Falcon Baker proposes in his book *Saving our Kids from Delinquency, Drugs, and Despair,* that there should be dual accountability for the increase in juvenile violence. He suggests that the offender should be accountable for his own actions, while society should be held responsible for creating conditions which spur such behavior.

Unemployment and poverty are root causes of violence because of the secondary effects of these conditions. Poverty in America almost ensures life in substandard housing, crime-ridden neighborhoods, poor educational opportunities and expectation for failure as well as the probability of broken families.

An individual’s degree of integration into local structures of kinship, neighborhood, and organization is significant to physical health, well-being and criminality. Lack of affordable housing and deprivation of daily essentials often lead to the breakdown of stable family life and prevents parents from adequately caring for their children.

### e. Conclusion

It is a popular notion to support tough justice, adult prosecution and jail time for children as a solution to juvenile crime. This response fails to recognize that jails are currently bursting at the seams with repeat offenders and with inmates whose time of incarceration is never fully served. In addition, if delinquent behavior is learned, there can be no better model for destruction than time spent with career criminals.

As long as there is no legitimate showing of abuse present, the place for children is within the family structure, even when it is not ideal. The Constitution generally does not permit the state to disrupt families where there is evidence of abuse or neglect of children unless the circumstances are severe. The continuity of relationships, surroundings and environmental influence are essential for a child’s normal development in the crucial areas of individual maturation, personality, structure, and creativeness.

The state could take affirmative action to help strengthen the family structure. Family intervention in order to teach proper parenting skills could be required or offered to families at risk to help foster a healthy and nurturing home environment. If it is true that delinquent behavior is learned at home, that is the place where the solution must begin or we will forever be concerned with the inevitable effect.

The critical role of family and its dependence on economic opportunities and positive relationships with institutional leadership needs more focus than justice and criminal issues. Solutions to the juvenile delinquency dilemma must not restrict themselves to the effects on society without also addressing the social issues that contribute to its perpetuation.

### B. GANGS: AN EXTENDED FAMILY?

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Gangs are not new. William Shakespeare describes a classic scene of rival gang confrontation in *Romeo and Juliet* which resulted in the deaths of Tybalt and Mercutio and to a degree Romeo and Juliet. The Jesse James Gang was a popularized gang which operated in the 1800s. Since the early 1900s, organized crime was composed of numerous gangs. By the 1980s that number reached 25 gangs with bases in several states, including “New York, New Jersey, Illinois, Florida, Louisiana, Nevada, Michigan, and Rhode Island.” “These gangs consist of about 2,000 full members, all of Italian descent” and 20,000 multi-ethnic associates. These gangs of organized criminals are commonly referred to as the “Mafia” or “La Cosa Nostra.” The James and Mafia gangs principally engaged in illegal conduct for the purpose of generating profit. Estimates are that the Mafia controls a multi-billion dollar crime empire.

The major difference between the “gangs” in Shakespeare’s *Romeo and Juliet* and the Jesse James and Mafia gangs is their central purpose for operating. Shakespeare’s gangs were social gangs created as clubs for youngsters to associate within as some extension of the family.

Describing such diverse collaborations as gangs necessarily places in doubt fraternal societies, the YMCA, the Boy Scouts and other groups. The definition of gangs has been inconsistent. Some social scientists recognize that common gang activities such as partying and getting high are identical to activities of many adolescent friendship groups. Some social scientists identify unorganized and unplanned activities as the central characteristic of the gang. Others identify the psychosocial support among gang members as a central characteristic.

Law enforcement officials and the juvenile justice system in general identify gangs as “a group of youths, [who are] known criminals, or convicts from the same neighborhood or penal facility and generally of the same race, banded together for anti-social and criminal activities.” Although this Report considers socially-formed gangs because they often develop into criminal gangs, it is the juvenile delinquent gangs and the system’s response to those juveniles which is the focus of this section. According to law enforcement officials, gangs which generally fit their description of gangs are comprised of inner city Black, Hispanic, and Asian youths.

Despite daily reports of the horrors of urban killings, there is little difference in the homicide rate in the United States today than in 1980. But since that year, “this nation has experienced a new trend towards younger and better-armed murderers.” “The last two decades have witnessed unprecedented youth violence, and much of this violence has been savage.” According to many observers, a significant cause of this violence is the “dramatic expansion in the number and power of youth street gangs.” “Public fascination with these gangs is intense.” “Newspapers, television, and films have explored extensively the African-American gangs” of Chicago, Los Angeles, New York and other major cities. “Social scientists and journalists have in turn conducted extensive field research (urban ethnology) into gangs.”

Youth gangs are recognized as the most visible peer group associated with youth violence. Traditionally, youth gangs were mostly a problem in big cities, but today gangs are becoming increasingly common in smaller cities and towns. In addition to spreading territorally, these youth gangs are using lethal weapons to express increasingly violent behavior. “Although gang violence is difficult to quantify, some statistics are available. For example, between 1987 and 1991, juvenile gang killings soared nearly 265% and deaths classified by the FBI as ‘gangland homicides’ increased over 556%.”

1. What is a Gang?

One of the problems that anti-gang strategies face is that youth gangs defy easy definition. Prosecutors, legislators, columnists, and academics lack an adequate understanding of the subject and “uniformly side-step the definition of a youth gang when proposing or devising anti-gang strategies.” One widely accepted definition “is that a gang is a group with social, racial, or ethnic ties that acts to further a criminal purpose.” Two dominant theories of gang organization focus on that characteristic in totally different ways. “One school of thought views gangs as primarily social units, while the other considers a gang’s presumed criminal purpose as the organizing principle.”

“The public’s perception and anti-gang strategies readily incorporate the criminal purpose model.”
concerning gangs is triggered mostly because gangs exist and has less to due with the result of any association with actual crimes committed by gangs or their members. These assumptions generate:

[A] publicly accepted definition of a gang [as]: Uniformly ethnic, often Black or Hispanic, males united by strong social ties; Organized principally for a criminal purpose; and Although lacking a philosophy or guiding purpose other than criminal activities, manifesting some outward sign of group consciousness such as hand signs or clothing.

In order to attack gang association, police departments of smaller cities in the United States, which recently began experiencing gang problems, have come up with their own definitions of a gang. The San Diego Police Department defines a gang as "a number of individuals that meet all of the following criteria: They have a name or identifiable leadership. They claim a geographic, economic or criminal turf/territory. They associate on a continuous and regular basis. They engage in criminal activity." The Kansas City Police Department has a more specific definition of a gang. It describes a gang "as an organized group of people whose group formation is based on ethnic, geographic, or social ties where narcotics are the basis for funding and provide a recruitment incentive." The Kansas City definition is also supplemented with social markers such as:

[g]eneral age range [of between] 13 to 25 years; [u]sually from a dysfunctional family (i.e., single parent or abusing parent); [r]arely has any form of identification; [u]ses monikers; [u]sually wears specific brand jogging outfits and tennis shoes—[n]ational baseball/football jackets and caps, Dickey brand work clothing, [and] [c]lothing colors are usually well established.

The Portland Police Department’s definition is both broad and lengthy, and it reads in part:
A [youth] gang is an on-going organization, association, or group of three or more persons, whether formal or informal, which is involved in criminal acts or suspected criminal behavior on a regular basis. One of the primary activities of a gang is the commission of crimes which may include robbery, homicide, or manslaughter, sale or possession for sale of narcotics, shooting at inhabited dwelling or a car, person, believed to rival gangs, arson, witness intimidation, extortion and assault.

The definition compiled by the Office of Juvenile Justice and Delinquency Prevention of the United States Department of Justice, under the umbrella of the National Youth Gang Suppression and Intervention Program also bears review. They define a youth gang as:

[A] group of people that form an allegiance based on various social needs and engage in acts injurious to public health and public morals. Members of street gangs engage in (or have engaged in) gang-focused criminal activity either individually or collectively; they create an atmosphere of fear and intimidation within the community.

*780 “The notion of youth gang also incorporates two concepts: often a more amorphous ‘delinquent group’ (e.g., a juvenile clique within a gang), and the better organized and sophisticated ‘criminal organization.’”

Notwithstanding all our attempts to define this phenomenon, certain basic facts exist. The modern inner city gang tends to grow out of the same social rot which has fostered gang growth and development since the 17th Century. Poverty, racially segregated neighborhoods, and inaccessibility to mainstream success cause young people to turn to gangs for a sense of respect and power. Dysfunctional or struggling families that are strained by economic pressure to provide alternatives to gangs instead often provide the incentive for youngsters to turn to gangs as an alternate family. For a majority of youth gang members, the gang provides support, companionship, and familial bonds which may be lacking in the gang members’ home environment. In these respects, the gang is similar to other social organizations, such as fraternities. This quest for social identity coupled with the need for power and money, coalesce to support the increasing numbers of gangs, and the increasing violence perpetrated by gang members.
Generally, gangs are considered a social problem only when juveniles organize to engage in criminal or socially unacceptable activities. In the 1980s, an unprecedented growth in gang size, scope of activities, and sophistication occurred. “Today’s Black street gangs are more volatile, more destructive and more criminally-oriented than their predecessors. They are also better organized to enact these negative traits.”

Contrary to popular belief, youth gang activities, whether criminal or non-criminal, are also about pleasure. When interviewed, many gang members mentioned the enjoyment they received from their gang activities, whether criminal acts or otherwise. Though the pleasure may seem hard to imagine, “the image of a gang member as an angry criminal is often inaccurate.” The fact is that criminal activity is often secondary to the pleasures of friendship; and the criminal activity is often done for pleasure and not criminal gain. “The fact that pleasure manifests itself as crime is simply a brutal and disheartening truth,” which is part of the reality of gang association.

There are a variety of organizations which could arguably constitute a gang. “Not all ethnic, ostensibly criminal, organizations are even called gangs; nor would a group of unorganized juveniles selling drugs always be formed along racial or ethnic lines.” Naturally, young people frequently organize themselves into groups. “In the United States, urban youths have long formed organizations that are both informal and public.” Also, the use of drugs and guns have long been part of inner city life. Many gang characteristics have actually manifested themselves over generations.

However, many street gangs of the 1980s and 1990s have organized a network of drug trafficking that generates high profits. This phenomenal rise is purportedly more prevalent among Black gangs which are experiencing a metamorphosis from the loose association of youthful street fighters into organized crime units, thus escalating some street gangs to the criminal threat of the Mafia. The crack cocaine trade, which flourishes in communities where hopelessness and despair abound, is very lucrative for these newly organized crime units. These units thrive on supply and demand. In Dallas, Texas, organized crime gangs were making an estimated $400,000 per day in 1987.

For the majority of gangs there is hope of molding their members into a productive life and reducing the number of newly created gangs. One commentator has stated “that [g]angs are, and always have been, groups of youths formed for many of the same motives that youths have always organized themselves—friendship and social identity as well as the pursuit of delinquent or criminal activities.” “The gang represents a ‘counter-organization’” with the goal of “fulfilling the standards of the larger society.” In Islands in the Street, Martin Jankowski reported finding that members join gangs because they believe that the gang is capable of providing them with advantages they would not otherwise be afforded. Attractions to gangs include the opportunity to: Legitimately assert one’s masculinity; fulfill emotional needs; feel loved or cared about; and have access to acceptable social recreation, decent education or employment. Arguably, if barriers to participating and succeeding in society were removed, the lure of the gang and the violence and crime it generates would decline substantially.

2. The Juvenile Justice System’s Approach

There has been no singular approach by the juvenile justice system to eliminate gang violence and crime. However, there has been an overriding theme of punishment over prevention. Throughout the country, measures have been employed to punish association in or with a gang. These measures include civil nuisance abatement lawsuits, curfews, parental responsibility laws, aider and abettor liability, and gang evidence laws. These approaches have impacted public perception of gang activity more than the gang itself.

3. Prevention: An Alternate Approach

Gangs are neither a new nor peculiarly American phenomenon. During this past century:

[U]rban male adolescents subject to segregation because of their ethnic identities—the Irish in the 1900s, New
York, Eastern European ethnics in Chicago in the 1920s, Italians in Brooklyn in the 1950s, Blacks in Chicago in the 1960s, Mexican-Americans in barrios in the 1970s and 1980s—have drawn battle lines to enforce [territorial] boundaries.\textsuperscript{633} Today, gangs exist in almost all urban cities across the world.\textsuperscript{634} Consider for example, the Calabrian and Sicilian Mafiosi in Southern Italy, the Yakurza in Japan, and the Punks of Great Britain.\textsuperscript{635}

The similarities which emerge are the focus on territorial control and the generally urban and poor geography.\textsuperscript{636} They are adolescents who are often deprived of good education, job opportunities and legitimate recreational outlets for socialization.\textsuperscript{637} Conscientious efforts to include adolescents in the mainstream before they seek gangs and offering parenting skills to parents of at risk children are the kinds of preventative measures which society should address in order to reach the goal of safer streets as well as more fulfilled youth.\textsuperscript{638}

\textbf{C. POVERTY}

Much research has been done on the impact of poverty on delinquency. In spite of all the research on poverty and its causes, it has not been eliminated. It has been said:

\textit{[A]s long as people are able to amass wealth and power and are able *784 to profess commitment to capitalism and insist that wealth stays in the hands of the private, wealthy class, which has ben\textsuperscript{e}Nationfitted from the inequalities in the system, there will continue to be a group of individuals who are impoverished.\textsuperscript{639}}

But, the effects of poverty are both profoundly and heavily weighted on children. In a 1992 American Bar Association report entitled \textit{America’s Children at Risk}, researchers found that “20\% of the children in the United States live in families with incomes below the poverty level; 50\% of African-American and 40\% of Latino children under the age of six live in poverty.”\textsuperscript{640} Statistics show that “children today are more likely than their counterparts of 10 to 15 years ago, to be poor, to lack access to health care, to be victims of violence, to become pregnant as teenagers, to be homeless, or to be in foster care or juvenile detention.”\textsuperscript{641} In this section, we review poverty and its impact on juvenile crime.

For purposes of this Report, research theories about the correlation between poverty and crime can be functionally categorized into two groups: cultural and economic. The economic approach primarily focuses on employment. The result of data collected by a National Bureau of Economic Research (NBER) survey of inner city youths in the worst poverty tracts in Chicago, Boston, and Philadelphia reviewed this relationship.\textsuperscript{642} In reviewing survey responses of out-of-school Black youths between the ages of 16 to 24, researchers found a direct correlation between criminal activity and unemployment.\textsuperscript{643} Employed youths committed far fewer crimes than those who were unemployed.\textsuperscript{644} The survey indicated that, when the employment rate was low, youths generally perceived society as offering a significant “chance to make money illegally.”\textsuperscript{645} Children who perceived their opportunity for economic success by legal means to be remote, chose illegal activity to produce income.\textsuperscript{646} Still another report analyzed the relationship of criminally delinquent behavior and social factors such as family, moral influences, and education, along with labor market activity.\textsuperscript{647}

\textsuperscript{*785} Sociologist Mercer Sullivan considered the ethnographics of poverty and crime in a study involving three New York City neighborhoods: An African-American public housing project; a Hispanic neighborhood located adjacent to a declining industrial area; and a White working-class community.\textsuperscript{648} Sullivan found that society’s transition from an industrialized economy, characterized by high wage, secure jobs in manufacturing, to an insecure economy of low wage jobs in the information and service sectors has impacted poverty and crime.\textsuperscript{649} He postulated that the recent trend of cities exporting jobs and thereby creating unemployment was decisively linked to the disadvantaged circumstances of minority neighborhoods.\textsuperscript{650} In response, those who were unemployed began to steal, mug and rob as an economic strategy to deal with such circumstances.\textsuperscript{651} Thus, these strategies are passed down generation after generation not as an expression of cultural preference, but rather as cultural adaptions to restricted economic opportunities.\textsuperscript{652} The difference between the response of
individuals in the non-White communities and those in the Anglo community appeared to be the differences in available job opportunities. Although the predominately White working-class community was faced with its own economic problems, its members still retained legitimate job opportunities through a network of personal contacts. Because of this network system, when the youths in this neighborhood got into trouble with the law, they were more likely to be reintegrated into their families and community, and less likely to be permanently excluded from labor-market opportunities.

Cultural theorists have studied social forces other than the labor market in relation to crime and poverty. They theorize that criminal socialization, and not the lack of job opportunities, is the reason criminal activity is more prevalent in lower income neighborhoods. These theorists suggest that children who grow up in upper and middle class settings are taught to believe that if they work hard enough they will be rewarded, and that they are the masters of their own fate. In contrast, children in poverty “who want something badly enough usually do not receive it no matter how long they wait or how hard they work.” Sociologist Robert K. Merton states that the American culture puts a high premium on success coupled with an emphasis on sustaining lofty goals regardless of one’s station in life. He opines that American culture is perpetuated by television and the media, and that the poor are constantly reminded of their limitations in attaining the affluence enjoyed by the rest of society. This quest for success and the relative chance of attaining it arguably differs between lower income Americans and those who are financially better situated.

Cultural theorists believe that the availability of one’s choices plays an important role in the decision-making process, and that people will often choose those routes that seem successful. Lower-class youngsters are not different, however, they often know a good deal more about criminal occupations available to them than middle-class youngsters do about their similar options. In his conversations with young offenders, Charles Silberman, found that their knowledge of which “fences,” “numbers operators,” and other criminals were paying off police officers, as well as their cynicism about governmental corruption in general, was extensive. Silberman opined that lower-income youngsters are probably more likely to get involved in criminal activities because they are armed with a vast knowledge of criminal occupations and lack knowledge of legitimate endeavors.

Another major component of the socialization process is the process of criminal education. The education of crime in lower income neighborhoods largely is executed by a mentorship system where the role models commonly derive their income from illegal means. One of the persons interviewed for the study stated:

> It seems to me that the kind of neighborhood you come up in may make all the difference in which way you go and where you end up ... If it had been doctors and lawyers who drove up and parked in front of the bars in their [Cadillacs], I’d be a doctor today. But it wasn’t; it was the men who were into things, the pimps, the hustlers and the numbers guys.

Often, “[t]he visibly successful people in poor neighborhoods are members of organized crime.” They are not only role models, but major employers as well as often the only source of credit. In a study of organized crime in Bedford-Stuyvesant, a Brooklyn neighborhood of about 280,000 people of whom 95% are Black, the numbers business was the largest single employer in the area. Cultural theorists postulate that there is a slow and persistent adaptation of an individual into a criminal way of life which occurs frequently and naturally in the lower-income neighborhoods because of the criminal environment and the availability of criminal opportunities.

Culture and economic theories merge when considering the impact of education on the occurrence of criminal activity. Essentially, lack of an education directly relates to criminal socialization. In the United States, there is a direct correlation between economic status and a person’s level of education. Those who have more education are more likely to have a higher earning capacity. In recent decades, the number of blue-collar and skilled jobs has decreased, thereby diminishing the opportunities available to the less educated worker. “The combination of a decline in the value of real earnings and the rising level of unemployment has thrust a very high proportion of families headed by an adult aged 25-34 years into poverty.” As a result, “crime has become an attractive alternative to working for many poor, less educated young men.” Studies suggest that men with limited skills and few legal earnings opportunities net substantially more from criminal activities with rates of pay as much as 2 to 4 times higher than those from legitimate work.” This may explain why:
At any time, as many as 18% of all 18 to 24-year-old dropouts and 30% of 25-34-year-old dropouts are under the supervision of the criminal justice system. Among Blacks the figures are much higher: 41% of 18-24-year-old dropouts and over three-quarters of 25 to 34-year-old dropouts.

The concentration of crime among high school dropouts suggests a strong association between crime “and the inability to perform in a modern technological and service-oriented economy—and to the decline in legitimate employment and earnings opportunities available to the less educated.”

Poverty subjects its victims to “multiple stresses and constraints that lead to feelings of hopelessness and helplessness and often reduces parents’ ability to provide children with the emotional support and stimulation critical to healthy development.” Such deficient, unhealthy development places children at a high risk for physical and mental disabilities that will influence the remainder of their lives, and a crime-infested environment will only serve to increase its impact. In conclusion, without regard to the specific theory offered, it is the general consensus that there is a direct link between poverty and crime, especially crime committed by juvenile offenders.

D. EDUCATION

You cannot teach a child who you do not love. You cannot teach a child who you do not respect. You cannot teach a child who you do not understand. You cannot teach a child whom you are afraid of. You cannot teach a child if your “political baggage” i.e. sexism and racism, is brought into the classroom.

Statistically, education is directly correlated with criminal activity. Three factors pose a universally accepted impact on juvenile delinquency in our society: Family relationships; religion, when viewed as an institutional embodiment of moral and ethical behavior; and schools. Though “controversy surrounds the precise role of the school in keeping youngsters from delinquent behavior or training them in law-abiding ways,” it is apparent that school bears an important relationship to juvenile delinquency in our society. This is not a difficult concept to embrace. For most youngsters, the school occupies a very considerable portion of their lives, six or seven hours a day for about 180 days a year, and for twelve years, if they continue through high school. Inevitably such exposure is going to have a strong impact on most of those who undergo it.

Despite recent public attention to delinquency in schools, delinquent behavior has long been a problem in schools. Indeed, the public school system was one of the first American attempts to create an institutional response to juvenile crime. The underlying rationale was that educating the “lower classes” would create more civilized persons, thereby reducing their threat to the social order. Though the creation of schools had an influence on the incidence of juvenile delinquency, delinquent behavior continued to be prevalent in schools even during the Nineteenth Century.

There are apparently two general theories accounting for the increasing incidence of juvenile delinquency and schools’ impact thereon. One theory views juvenile crime as symptomatic of societal changes toward permissiveness. The other view is that the school itself, and the way it chooses to educate children, are major causes of juvenile delinquency. The former view suggests that the increase in juvenile crime in schools is due to a number of factors including increasing regard for children’s rights and due process in school discipline. These theorists rely on what they hail as an increasingly devalued juvenile court system as modified after certain court decisions, particularly Gault. These theorists propose greater discipline, increased school security and harsh penalties for offenders as a means of reducing the incidents of juvenile delinquency.

Schools across the country have tightened safety measures in an attempt to thwart juvenile delinquency on school grounds and to increase safety for children and teachers. Though these measures began in earnest in the 1970s, incidents of
delinquent acts in schools and on school grounds have increased. Police forces for public schools in many larger cities rival city-wide forces for other communities. Yet with all these measures being employed, juvenile delinquency remains a growing concern of schools and the public at large.

The second theory purports to address that issue. These theorists opine that the school is an active agent in the genesis of aggressive behavior. It is believed that schools serve as sources of frustration for many youngsters who make low marks, who are not promoted, or who suffer other school failures. Jawanza Kunjufu hypothesizes that the method of teaching used most frequently by educators across the country promotes school failure and frustration and leads to rebellion and delinquency. This method of teaching is generally credited as a creation of Alfred Binet, a psychologist, who developed a test used to classify children. Although it is believed that it was Binet’s intent that the test be used only as a diagnostic indicator, using the test for classification was more readily accepted in the education industry.

Kunjufu apparently rejects the Binet method in favor of the Montessori method, created by Maria Montessori, M.D. The Montessori approach recognizes that children develop at different rates, and takes into account sexual, ethnic, and social differences in children and the effect on learning. These differences are being recognized by many sociologists and educators as significant in the way people learn. As a result, educational methods which take into account these diversities are being embraced at different levels throughout the country.

1. The Impact of Sex

Recent studies reveal physiological predispositions that differ based on sex. Males and females seem to differ in such areas as reading, writing, verbal skills, mathematics and visio-spatial skills. Females generally appear quieter and less active. Statistics appear to support that theory: 75% of all people who are dyslexic are male; 90% of hyperactive children are male; and 75% of children in remedial reading are male.

In addition to these general differences between males and females, some noticeable at birth, there are phenomenal differences which seem to occur at puberty. This biochemical process has at its roots, chemicals or hormonal influence. Theorists have to various degrees shown a correlation between hormonal influence and criminal activity. For example, premenstrual and menstrual periods have been related to incidence of violent criminal behavior among women.

Similarly, biological differences are said to be the reason males are more aggressive. This aggressiveness is reportedly seen in the male of the species from mouse to man. Indeed, in certain tests where aggressive behavior was identified in a male mouse, the female mouse was injected with male hormones which, when injected early enough in life, resulted in a female as aggressive as the male. The male hormone connected to aggressive behavior is testosterone. Thus, not only is sex a factor in the learning process but it is a factor in the incidence of juvenile delinquency as well as the time when the child is more receptive to learning.

2. The Impact of Ethnicity

Similarly, there are differences in learning based on ethnicity. For example, tests show a significant disparity in natural and raw intelligence between the African American and European American child from birth through the first three years. One such study revealed that African American and European American children first perform various activities at different ages, for example:

1) being drawn up into a sitting position, able to prevent the head from falling backwards—at 9 hours old for African Americans, at 6 weeks old for European Americans; 2) with head held firmly, looking at face of examiner—at 2 days old for African Americans, at 8 weeks old for European Americans; 3) supporting herself in a sitting position and watching her reflection in the mirror—at 7 weeks old for African Americans, at 20 weeks old for European Americans; 4) holding herself upright—at 5 months old for African Americans, at 9 months old for European Americans; 5) taking a round block out of its hole in the form board—at 5 months old.
for African Americans, at 11 months old for European Americans; 6) standing against the mirror—at 5 months old for African Americans, at 9 months old for European Americans; 7) walking to the Gessell Box to look inside—at 7 months old for African Americans, at 15 months old for European Americans; 8) climbing the steps alone—at 11 months old for African Americans, at 15 months old for European Americans.722

Kunjufu also refers to a study which looked at the television shows, “Mr. Rogers” and “Sesame Street.”723 “Mr. Rogers” was considered a very slow moving show while “Sesame Street” was deemed more action oriented.723 According to Kunjufu, “Yale University researchers found that African American children responded better to Sesame Street and European American children responded better to Mr. Rogers.”723 Additional ethnic considerations seem to merge with issues more commonly referred to as social or cultural.

3. The Impact of Social/Cultural Issues

Current theories about the education of youth in America are broadly Anglicized.724 This Anglicization naturally reduces the legitimacy of these theories when most of the world’s people are neither Anglos nor culturally American.725 This fact is significant if cultural and social differences impact education and juvenile delinquency. In many countries, the role of religion dominates political and other policies.726 In America, one of the basic tenets for creating political policy is that there will be a separation of church and state.729

*794 Social and cultural differences have long been recognized among the world’s people. During the last thirty years great emphasis has been placed on the differences among Americans.730 As the goal of creating an American melting pot has given way toward acceptance of diversity, Americans have recognized major social differences among its people.731 These differences are commonly drawn along ethnic, geographic, national origin, sexual, and racial lines.732 If these groups are socialized differently and have significant cultural differences, then it follows that an educational structure must take these differences into account to produce educational successes instead of educational failures.

Kunjufu refers to the problem the current education system produces for many African American boys.733 He says: “The African American home is filled with a great deal of stimuli.”733 The stimuli include five or more children with various radios and televisions playing at the same time on different stations.733 It also includes the constancy of extended family members moving freely in and out of the home.733 These children, according to Kunjufu, are accustomed to having numerous things going on at the same time and to doing more than one task at the same time.735 It is Kunjufu’s theory that children who are products of this environment tend to perform lower in the standard classroom setting which is based on less stimuli.736 If this is true, then the current school system, working as a uniform, factory-based melting pot is not functional in our diverse society. This is important because, if true, then the current public education system may indeed be playing a major role in the incidence of juvenile delinquency. The theory is simple. One of the primary functions of the education system is to socialize children to a single order. If the system fails to *795 address children in a way they can or will learn, then the exact result sought to be avoided by the institution will likely occur.

Recently, the Houston Chronicle reported that social scientists are recognizing that schools “are doing as much to contribute to juvenile delinquency as to curb it.”739 Relying, in part, on case studies and interviews with students at one low performance Houston high school, the Chronicle reported that “the standardized, one-size-fits-all approach” to education which exists in our public schools encourages educational failure and criminal behavior.740

Reinforcing the theories promulgated by Kunjufu,741 the article cites a Washington D.C. Urban Institute report.742 These studies found that from a very early age, the Black male student is alienated, ignored and discouraged from participating in main-stream academia.743 The result is that Black male students are more likely to be suspended and *796 to drop out.744

The Texas Youth Commission reports that an overwhelming number of children who are sent to state detention facilities are drop outs.745 Many of these children were held back at least once in their educational career.746 Almost half of the males are
unable to read.347

Thus, there is a clear correlation between education and the commission of crimes. Persons who commit crimes are overwhelmingly school drop outs, are unable to read and write, and have incomplete educational training. Standardizing the school system in order to educate such children has failed. Moreover, standardization has played a large role in increasing the numbers of violent juvenile offenders. Clearly, education is a factor which must be adequately addressed if we are to decrease the incidence of juvenile delinquency.

E. DRUGS

“The Department of Justice estimates that approximately 60 percent of the 18,000 juveniles held in long-term state youth correctional institutions throughout the nation indicated that they regularly used drugs.”348 Of that 60%, approximately 25% “had regularly used major drugs such as heroin, cocaine, PCP, or LSD.”349 Half of those who had reported using any drug stated that they had begun drug use at 12 years old or younger.350 As many as 50% stated that “they were under the influence of drugs or alcohol at the time of the offense that resulted in their incarceration.”351 These statistics suggest a connection between drugs and youth violence.352

“Illcit drugs and alcohol have at least two [recognizable] effects on youth violence.”353 First, there is a pharmacological connection between the aggressive behavior of youths and the consumption of drugs and alcohol by youths.354 Second, there exists a financial connection *797 between drug trafficking and youth violence.355 Although the extent of the connection of alcohol and drugs to these factors is unknown, there is an undeniable connection.356 For example, there tends to be a parallel over the last decade in the trend in juvenile arrests for cocaine and heroin violations and the trend in juvenile homicide arrests over the same period.357 “Between 1980 and 1990, the overall rate for juvenile heroin/cocaine arrests rose 713%, while the arrest rate for Black juveniles for the same offense rose 2373%.”358 During that same time, the overall rate of juvenile arrests for homicide also rose.359

In Houston, Texas, a recent study showed a connection between drug use and crime.360 According to Jay Lindgren, deputy executive director of the Texas Youth Commission (TYC), this connection “illustrates a need for more juvenile treatment programs. ‘Clearly, so much of our violent crimes are committed while kids are under the influence of something,’ Lindgren said. ‘If they don’t come out in better shape than when they went in, we all pay.’”361

“The Texas Commission on Alcohol and Drug Abuse surveyed 1,030 youths who entered TYC centers during the last half of 1994.”362 According to the survey, “59% of the youths were chemically dependent.”363 Eighty-nine percent stated that they had used an illegal drug at least once, and 62% were currently using drugs.”364 Marijuana was the drug of choice by 57% of those presently using drugs, and cocaine or crack was the second choice by 15.7%.365 Surprisingly, “youth offenders used drugs more than adult inmates.”366 The study also noted that the “TYC youths who were surveyed are more violent than the 97% of juveniles whose cases are handled at the local level.”367

“The use of drugs—by which we mean any substances that are *798 ’ psychoactive,’ or tending to affect the mental or emotional state of the user might be related to criminality either directly or indirectly.”368 The drug might make the youth more impulsive.369 It might make the youth “less concerned with the delayed cost and more attracted to the immediate benefits of the act.”370 This results in the youth committing an act he would not ordinarily do, such as breaking a window, grabbing a purse, racing a car, or assaulting a person.371 “Some drugs are thought to make persons more aggressive, by which is meant that they derive more satisfaction from, and thus are more strongly reinforced, by the act of inflicting injury on a target, such as another fellow’s jaw.”372

Another connection exists between drug abuse and teenage runaways and suicides.373 It is estimated that there are “1.5 million teenage runaways on the streets.”374 Of this number, 75% are drug abusers.375 Youths who use drugs are three times more likely to attempt suicide than youths who do not use drugs.376 “Teen suicide has increased dramatically during the past few years, and is now the third leading cause of death for fifteen to twenty-four year-olds.”377
One recovering young adult said the following:

I began using drugs when I was 13. My parents thought I had mental problems, so I lied and manipulated my way through four years of psychiatric therapy, hiding my addiction. I was taking drugs intravenously at 15 and had tried to commit suicide five times before getting into treatment at 21. I was angry, lonely, and very scared.

Despite the number of existing drug rehabilitation centers for youth, one problem appears to be the lack of dedicated funding. Currently, the centers sponsored through the Texas Youth Commission treat only 54% of those who need treatment. According to Lindgren, “under the 1996-97 state budget proposal approved by House budget writers, the Commission would be able to treat even fewer youth” because although the demand has increased the funding remains stagnant. Without regard to the type of treatment programs established for youthful drug users, the need for treatment programs is evident in the statistics. These statistics “demonstrate the social costs of youth alcohol and other drug problems as they manifest themselves in the juvenile justice system.” The statistics also show that there is a connection between drugs and juvenile crimes to an alarming degree. But as saddening as this link may be, there is nevertheless another effect of youth drug use which is quite different than delinquency.

A study at the University of California, Los Angeles, revealed that youths who use drugs have an increased risk of experiencing “painful social and emotional difficulties as they grow older.”

These youth’s development of skills necessary to function effectively in personal and family relationships is [thereby] hindered. They are more likely to leave school at an earlier age, marry and have children sooner, and seek employment at younger ages. These youth are also more likely to divorce sooner and experience greater job insecurity than non-users.

“David Evans, an attorney and chief of the State of New Jersey’s Intoxicated Driving Program, [says he] comes in contact with many young people with drug problems. ‘Young people have no defense against addiction,’ Evans believes. Many come from homes where there is an alcoholic parent.” Evans further contends that alcohol addiction results in the development of a steady decrease in the youthful drug users’ abilities. “They never get a chance to develop normally during their teenage years. They come into adulthood crippled. Even if they recover, they spend years undoing the damage that was done. They have difficulty in relating to people, trouble in holding down jobs, and they don’t reach their potential.”

There are many theories citing everything from race to socioeconomic factors regarding why adolescents abuse drugs. But, virtually all scholars agree that drug use cannot be explained solely by any one factor. Statistics show that “over half of American youth from every race, ethnic group and class have tried at least one illicit drug.” There are also psychological theories “that attempt to attribute youthful drug abuse to the internal psychological needs of individual youth.” These fall into the categories of ‘self-medication’ and ‘sensation seeking.’ The first theory asserts that adolescent drug abuse is a ‘self-medication’ response to depression or other psychiatric problems. In the second theory, ‘sensation-seeking’ is the psychological factor most important in distinguishing which youths use drugs and which do not. Neither theory explains “why drug use rises so quickly in mid to late adolescence, and then subsides by the late twenties.” However, it is generally believed that if the abuse was connected to personality traits or psychological needs, “the abuse would not disappear so rapidly.”

Today’s youthful drug users are a very troubled population. As late as 1984, drug use seemed to be less threatening than other problems faced by youths. But today’s statistics show that drugs are a big problem with youth, and that there is a serious connection between drug use and violence.

F. GUNS, VIOLENCE AND JUVENILES
Americans are barraged nightly with stories of criminal violence. Prominent journalists admit that in television news shows across the *nation, “if it bleeds, it leads.” The fact is, this popular focus notwithstanding, the homicide rate in the United States was about the same in 1991 as it was in 1980. On the other hand, reports indicate that the rate at which juveniles are committing violent crimes has dramatically increased.

Between 1980 and 1990, there was a 79% increase in the number of juveniles aged ten to seventeen [years] who committed murder by using a firearm. By 1990, 82% of all homicides among teenagers fifteen to nineteen years-old involved firearms. Between 1982 and 1991, arrests for weapons violations (carrying, possessing, etc.) among juveniles increased almost 80%, while corresponding arrests among those eighteen years of age and older increased less than 13%. During those same nine years, juvenile arrests increased 71.7% for aggravated assault and 92.4% for other assaults. The corresponding arrests among individuals 18 years of age and older increased 61.3% and 97.5% respectively.

“While arrests for general assaultive violence have increased at roughly equal rates among juveniles and persons over 18 years of age, arrests for weapons violations and murder have skyrocketed among juveniles.”

Statistics show that the amount of guns in the United States doubled between 1950 and 1970 and doubled again between 1970 and 1990. There are an estimated 215 million guns in the hands of United States citizens. “Never before have there been so many guns, and never before have there been so many juveniles killing with guns-and dying by them.” “For black men ages 15 to 34, and for all black and white teenagers, murder by firearms is the number one cause of death. The rate of firearm homicides has increased 125% since 1984 FOR BLACK MALES 15 TO 19 YEARS OLD.” POLITICIANS ARE RESPONDING WITH LEGISLATION TO ADDRESS CRIMES RELATED TO THE EMERGENCE OF THIS CURRENT YOUTH CULTURE, WHICH HAS LITTLE REGARD FOR HUMAN LIFE.

In Houston, Texas, of the 1,500 people treated for gunshot wounds at Ben Taub and Lyndon B. Johnson county hospitals last year, one-fifth were between the ages of 15 to 18 years old. According to Paul Pepe, the director of emergency services for the Houston Fire Department, “last year the county hospitals billed $36 million for treating victims of shootings, stabblings and assaults—$25 million went to gunshot wounds alone.” Pepe estimated that $6 billion is spent nationwide for such injuries. “Guns have pushed juvenile crime into a deadly stratosphere, marked by escalating numbers of youths arrested for murder.”

Today’s youths commit crimes “tinged with nihilism.” Fights that were in the past settled with fist fights or at the worst with a knife, have now turned into shootouts. The unimaginable nightmare of children getting shot over jackets and tennis shoes has now become an all too common reality everywhere, not just in urban settings. In Houston, the death rate for Black male teenagers is twice that of the national average, while Latino teenage males die at one-third of the rate of Blacks, and White teenage males die at one-seventeenth that rate. Today’s urban Black males are faced with two realities: There is a high possibility that many of them will die young; their deaths will likely be by gunshot.

From 1980 to 1990, the arrest rate of juveniles for possession of weapons rose almost 63%. “By 1990, there were 151 arrests per 100,000 juveniles, which represented a 58% increase for White youths and a 103% increase for Black youths since 1980.” Given these statistics, it is not surprising that juveniles easily have access to firearms. “A recent study found that, among male, juvenile inmates and male students from ten inner-city public schools, 83% of the inmates owned a gun just prior to confinement and 22% of the students owned a gun at the time of the survey.” It is clear the youths are carrying guns at unprecedented rates.

“In schools, where America’s children spend the greater part of their days, an estimated 270,000 guns accompany youths to class daily.” A recent survey conducted by the University of Michigan ... revealed that nine percent of eighth graders reportedly ... chose to bring a gun, knife or club ... to school at least once a month.” Some schools in inner-cities have even added “drive-by-shooting drills” to their traditional fire drills in order to deal with the problem of juvenile violence and gun
A story of one child caught up in this juvenile violence culture was told in a *Houston Chronicle* article. “As a student, Dagoberto Torres carried a .380-caliber pistol to Eisenhower High School, shoving it in his jeans and stating ‘just to protect yourself from other people.’”832 The reality of youths killed in drive-by shootings entrenched itself in the neighborhood where Torres liked to hang out.833 “Like any teen-ager, Torres also has problems with his family, girlfriend and school.”834 Like others, the violence that surrounds Torres as he grows up on Houston’s northwest side, clouds his vision of the future beyond his youth.835 Torres’s story, is the story of many youths today.836

“Although juveniles represent less than 14% of the population in this country, they account for nearly 25% of individuals arrested for major violent crimes such as homicide, rape, robbery and felonious assault.”837 Youth violence is having an impact throughout society. The increase in the use of firearms by children to commit violent acts has caused an upsurge in fear.838 “Small business owners fear that they may be robbed, ... parents fear that their children may be shot at school, and entire communities live in ... fear of unrelenting, random acts of youth violence.”839 There is also a connection between firearms and the recent increase in the number of youths who suffer from violent injuries and deaths.840 Between 1985 and 1988, the number of firearm-related deaths among children and youths ages one to nineteen rose 25%; between 1987 and 1990, gunshot wounds among children ages sixteen and under nearly doubled in major urban areas. In fact, in addition to the scores of children killed, every day somewhere between thirty and sixty-five children are injured by guns.841

As incidents like those steadily rise, the nation searches for institutional solutions. The search has often been stifled by the debate itself and by the various theories surrounding disarmament.

1. Regulation of Handguns

The goal of handgun regulation proponents is the elimination of violent crime.842 Opponents of hand gun regulation argue that regulating guns will not help reach that goal because the failure of existing gun-control laws proves that “no controls will work.”843 Succinctly stated, the latter view is that “guns don’t kill people ... bullets do.”844 The second major argument of anti-regulation forces is that regulation would violate their Constitutional rights protected by the Second Amendment.845 Their third major argument is that as long as police and other officers are permitted to keep guns, the arguments favoring gun control fail.846

*805 2. Guns Don’t Kill People ... People Kill People*

To argue this issue is akin to arguing whether it was the chicken or the egg which came first or whether the tree in the forest is actually heard crashing in the absence of human presence. They may both make for interesting philosophical discussion, but they never really get to the bottom line. In an effort to circumvent the philosophical and achieve the goal of eradicating violent crime, United States Senator Daniel P. Moynihan offered a series of interesting bills.847 Senator Moynihan’s proposals supposedly addressed the apparent impotency of gun regulation. He believed that regulation is both enforceable and effective if ammunition, rather than guns, were regulated.848 The Moynihan bills “prohibit ed the manufacture, transfer, or importation of .25 caliber, .32 caliber and 9 millimeter ammunition,” imposed a 1000% tax on all regulated calibers, “raise d the federal excise tax on all centerfire handgun ammunition from eleven to fifty percent, as well as provided for other economic penalties.”849 Moynihan limits his bills to the stated calibers because he contends that they are “disproportionately responsible for bullet-related death and injury.”850 Senator Moynihan also charges that these calibers are used in the guns of choice of street criminals and drug dealers.851

As a legislative response to violent crime, there may be some merit to these bills. However, there is little reason to believe
that this type of legislation serves any effective purpose. On the other hand, there is value in clear legislative policy against the availability of guns and ammunition to children. But it is clearly not enough. Guns do not kill people without some person pulling the trigger. When the person behind the gun is irresponsible and immature, chances increase that the person will kill someone else. Though legislation has not been and will not be enough to curb the influence of crime on juveniles, policies which discourage juveniles’ access to guns and ammunition should be enacted.

*806 3. Why Legislation has Been so Ineffective

Despite ineffective legislation, there is significant evidence that crime is generally declining. Data indicate that the decline is occurring in spite of, and not because of, larger police forces and other security factors.\(^{385}\)

The debate concerning the proper interpretation of the Second Amendment also impacts legislative potency. The United States Constitution provides:

> [A] well-regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.\(^{384}\)

The debate regarding the interpretation of the Second Amendment concerns whether the Second Amendment prohibits the government from infringing upon the people’s right to maintain a militia for security or to bear arms for any legal purpose.\(^{385}\)

Some theorists consider the debate itself as a problem in eliminating handguns.\(^{386}\) So long as the Constitution can be interpreted to ensure the right of every American to bear arms for any lawful purpose, then our acceptance of guns, and even preference for guns is inferred.\(^{387}\) When that argument is combined with the commonly accepted position held by gun prohibition advocates that police would be exempted from such a prohibition, then the integrity of a policy against handguns is undermined.\(^{388}\) Those who support the view that the Second Amendment provides every American the right to bear arms, necessarily embrace the Amendment’s language that the right is conditional on the maintenance of a well-regulated militia. When individuals believe they must maintain a militia separate from that of the United States government in order to ensure security, then that amendment would allow the individual’s maintenance of not only simple assault weapons and M-16s, but also of tanks and missiles.

*807 4. Can an Effective Policy of Gun Prohibition be Established

The most effective way of enforcing a prohibition of gun ownership is to ban all firearms. A no-exception prohibition would disarm private citizens, police, and the military. Of course, the question would remain—would the criminal be disarmed? Criminologist David Bayley says that “American police attitudes toward guns make it impossible for gun control to be achieved.”\(^{389}\) “As long as the police are armed, they send the implicit message that armed confrontations with civilians are the norm, and that shootings of police officers, while sad, are nothing extraordinary.”\(^{390}\)

Nonetheless, the question remains whether such a controversial policy would produce the desired results. In both Britain and Japan, police are mostly unarmed.\(^{391}\) The general populace in both nations similarly are unarmed.\(^{392}\) Thus, the conclusion is that “the examples set by the police and government may be an important reason why criminal and noncriminal civilians in those nations have, to varying degrees, voluntarily foregone the use of handguns.”\(^{393}\)

Presumably, such a policy would effectively get rid of guns in America. As interesting as the debate on armament is, to have or not to have guns begs the ultimate question. Whether the elimination of guns will reduce crime is unknown. Though there are arguments for both sides of the question, the apparent conclusion is ‘maybe’.\(^{394}\)

5. Conclusion

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Some scholars suggest that people must convince youths to not want guns. Conceivably, this could be effected through some form of social counseling and educating or through the coercive power of the law by establishing penalties for gun possession designed to quell the juvenile demand for guns. Numerous states have attacked this problem by focusing on the demand for guns. Currently, 21 states have statutes prohibiting minors from possessing dangerous weapons and firearms. These statutes were enacted as public safety measures in response to the recent upsurge in youth violence, particularly violence with firearms. For example, Florida enacted its statute “after four teenagers allegedly shot a tourist at a highway rest stop.” Also, Colorado enacted its statute after a six-year-old was wounded in a drive-by shooting and two youths, in separate incidents, were both shot by youths attempting to take their jackets; one of the children died. The recent increase in the juvenile murder rate seems to be inextricably linked to firearms, and when coupled with the experience of Britain and Japan, support at least a ban on firearms. However, though it is one thing for a person to forego a privilege, such as hunting for the good of the society, it is quite another to eliminate a Constitutionally guaranteed right for the hope of reducing crime.

G. THE MEDIA

Media play a variety of roles in our society. Historically, they filled those roles mainly through printed material. Recently, they exploit the advances in technology in order to present material in ever-expanding contexts. With the development of radio, television, movies, video tapes, tape recordings, computers, telegraph, satellite relay and modern transportation, media reach literally anywhere in the world, at any time, and in practically any form they desire. Clearly, media are indispensable to our daily lives. What concerns us here is whether this massive array of technological capability gives media an enhanced ability to affect the thoughts and actions of the members of our society, especially our youth.

The juvenile is central to the continued existence of the nation. Without a continual regeneration of the population the nation dies. Today’s children are tomorrow’s leaders. The nation’s future commands the expenditure of considerable resources in order to nurture the juvenile into adulthood and to prepare children to assume their roles in society. This demands both a willingness to devote resources necessary to ensure success, and requires dedication to ensure that our efforts will produce a citizen capable of running the country and who is worthy of such a trust. In the past, this task was accomplished with a substantial degree of success. However, recently there are signs that the effort has faltered, resulting in more youths being incapable of discharging the duties and responsibilities of citizenship. One must consider a variety of factors in order to appreciate the difficulties in developing tomorrow’s adult citizens.

We propose to provide an overview of one such factor—the media. As noted above, media pervade our society. Although they can instill the nation’s youth with positive attributes, they are often seen as a threat.

1. The Impact of Media on Juvenile Crime

While legal purists demand that courts continue to protect the First Amendment right of the media to transmit information without regard to its violent content, a different approach may be needed when the audience is made up of children. The approach taken must be tempered by sound reasoning rather than by tempestuous emotion. The idea that violence contained in the information and entertainment media causes an increase in crime, especially among young children, is not new. Plato believed mass culture was threatening to children. Nonetheless, violence has long had mass appeal. Modern societies are familiar with past civilizations’ violent practices including ritualistic sacrifices, public flogging, fights held in large amphitheaters, extreme violence in Roman drama and the Greek tragedies, and the words of Shakespeare and other authors who portrayed violence in their works. Arguably, violence in books or on stage does not compare with exposure to television violence. Television’s twenty-four hour accessibility has caused considerable concern about its impact on its audience. In 1988, it was estimated that 96% of all American households had at least one television. One 1990 study showed that prime-time programs showed, on average, five or six violent acts each hour, while Saturday morning
children’s programs showed, on average, twenty-six violent acts each hour. A separate study found that 50% of televised cartoons used violence as a method of entertaining children. Recent attempts to quantify a child’s exposure to televised violence have produced estimates indicating that a child who watches two to four hours of television per day observes 8,000 murders and 100,000 other acts of violence by the time he reaches the age of twelve.

When these statistics are coupled with the rising incidence of juvenile crime, especially violent crimes committed by juveniles, there is little wonder that many see a causal link between the two. Whether or not exposure to televised violence causes children to commit violent acts has been debated for over forty years.

As Americans’ interest shifted from international to domestic affairs after World War II, one of the areas which garnered political and social focus was juvenile delinquency. During the early to mid-1950s, the United States Subcommittee to Investigate Juvenile Delinquency was formed and issued its first report. The Subcommittee’s focus was the possibility that violence depicted in popular media was an important contributing factor to increasing juvenile delinquency and crime. The Subcommittee investigated a variety of possible causes of juvenile delinquency; however, the Subcommittee hearings focused American attention on the media linkage.

The Subcommittee hearings also provided a national forum for Dr. Fredric Wertham to express his views on the causal linkage. Dr. Wertham believed that mass media violence desensitized children to the real suffering caused by violence. Beyond that, he believed the media actually encouraged violent acts by children. Dr. Wertham was one of the foremost advocates of this position, which is still argued today.

*811 Since the 1950s, a number of studies have been produced which either support or tend to disprove any media/crime linkage. Professor Leonard Eron, in response to the question whether “violence in today’s movies, television, other media make the society more violent or merely reflect the violence as it exists in society,” answered that:

[T]he most important aspect for us is that television violence, viewing of it continually by young children leads to their own aggressive behavior and future violent behavior. This has been demonstrated in many studies by now. It has been corroborated by five different independent commissions, noted scholars, researchers in the area from the National Institute of Mental Health, the Surgeon General’s Office, the American Psychological Association, the National Research Council, all have come to the conclusion that the continual viewing of violence, especially by young people, leads to an increase in their aggressive behavior and in their future violent and criminal activity.

Many of the studies Professor Eron referred to have come under considerable attack during recent years. However, even the most ardent challengers recognize one basic fact, that at least in some instances, viewing televised violence may lead to increased aggressive behavior in children and adults. The problem seems to be that much of the research in this area has been inconclusive and faulty. Professor Eron’s critics claim that his research methods are deficient. Studies on television violence fall into three categories: 1) laboratory experiments, 2) field experiments, and 3) correlational studies. Critics generally claim that laboratory experiments use stimuli that provoke certain responses. Critics also aver that the experiments “suffer from strong experimenter demands.”

Field experiments are challenged on several grounds. One challenge is that the research setting places the subject in an unnatural environment which may tend to cause unnatural reactions. Another challenge is that the tested group is not a representative sample of the general population. Still another major challenge to these kinds of studies and their conclusions is that programming available to the study groups is restricted, as are the study groups themselves, which are often comprised of persons who have already shown some predisposition to violent activity.

Nonetheless, researchers on both sides of the issue tend to agree that television violence and aggressive behavior are related. Under some conditions, watching violent events on television may cause some people to act aggressively.

Professor Eron makes the following analogy:
I never thought that there was a relation between television violence viewing and violent behavior on the part of the viewer; but it just hit us in the face. The results we got couldn’t be explained any other way. It’s like the relation—it’s the same strength as the relation between cigarette smoking and lung cancer. Not everybody who smokes gets lung cancer. Not everybody who has lung cancer has smoked. But there is no rational person outside the tobacco industry who would deny that there is a causative link between cigarette smoking and lung cancer. And it’s the same thing with television violence viewing and subsequent behavior, especially in young children. I think adults can watch whatever they want.\textsuperscript{894}

Perhaps there is not a direct link between televised violence and aggressive or violent behavior. However, there is at least an indirect link between the two. A 1982 report by the National Institute of Mental Health concluded:

\begin{quote}
After more than ten years of research, the consensus among most of \textsuperscript{813} the research community is that violence on television does lead to aggressive behavior by \textit{[people]} who watch the program.... Not all \textit{[people]} become aggressive, of course, but the correlation between violence and aggression are positive.\textsuperscript{895}
\end{quote}

However, it is also apparent that people who are directly affected by violent television shows are likely to be influenced by other factors as well. A 1971 Surgeon General’s Committee report concluded, among other things:

\begin{quote}
\textit{[P]eople hunt and choose the kinds of stimulus material they want. Violent material is popular. If our society changed in no other way than changing the balance of television offerings, people, to some degree would still seek out violent material. How much effect a modest quantitative change in television schedules would have is now quite unanswerable.}\textsuperscript{896}
\end{quote}

If it is true that even without televised violence there would be other stimuli to fulfill our appetite for violence, then why should the juvenile justice system participate in, or even consider the effect of televised violence on juveniles? The simple reason is that, although the research is inconclusive, there is sufficient evidence of a causal link between televised violence and criminal behavior to incorporate it in our policies for eliminating juvenile crime.\textsuperscript{897}

\section*{2. Conclusion}

In summary, there is a long history of violent portrayals in the media. These portrayals are depicted in books, records, and live and recorded theater. The medium with the greatest accessibility, especially to young children, is television. It routinely shows violence in movies, commercials, and in staggering numbers in children’s programming, especially cartoons. However, even with such dramatic exposure to such violence, there is no conclusive evidence that viewing televised violence causes violent behavior. Nevertheless, the frequency of violent portrayals and their prevalence throughout the media, when coupled \textsuperscript{814} with the availability of guns and opportunity to imitate the acts witnessed on television, conjure a dangerous recipe for juvenile violence.

\section*{H. RACE}

In 1856, when the United States Supreme Court considered the plea of a Black man to be able to exercise his rights as an American citizen, the Court found that because the petitioner was Black he could not be a ‘man’ as contemplated by the United States Constitution.\textsuperscript{898} The Court’s decision was based on what it considered a reasonable result based on the evidence before it.\textsuperscript{899} The evidence was rooted in the Court’s view that a different decision would mean that the men who framed, wrote, and signed the United States Constitution were themselves criminals guilty of heinous crimes against nature.\textsuperscript{900} They reasoned that these great men themselves owned slaves and thereby condoned slavery.\textsuperscript{901} Thus, when they wrote the Constitution which \textsuperscript{815} clearly stated that all men were created equal, they could not have contemplated that the Black male slave was a man.\textsuperscript{902} To find otherwise, the Court believed would have meant these great men were people who should be
reviled. That was a much greater evil, in the Court’s view, than acknowledging that the Black man before it was indeed a man, and so the Court declared him to be only three-fifths a man.

Ensuring that the great White fathers retained their positions of high regard and stature was more important than the recognition of human decency or the enforcement of constitutional rights. This rudimentary fact of White preference above all else makes an intellectual discussion of race as a factor of criminal predisposition fundamentally implausible.

Consider the absurdity of intellectually analyzing statistics of crime and ethnicity. First, as the United States Supreme Court in Dred Scott and numerous other court decisions before and after showed, creating and maintaining the illusion of White primacy is far more important than anything else; even more important than the United States Constitution. Thus, there is every reason to believe that the maintaining, recording, reporting, and analysis of these statistics is skewed and inaccurate.

Second, even if the numbers were properly maintained, the statistics are woefully incomplete. For example, many statistics are based on the number of arrests and not on the acts or crimes actually committed. Police are encouraged to arrest Black males more often than any other class of offender. Their common criminal profile is that of a Black male. It follows that when you are given a picture of the person to be arrested that you arrest those who looks like the one in the picture.

Third, criminal activity itself is societal based. That is, it is society which determines what is criminal and what crimes constitute the greater wrong. Thus, crimes, however egregious they might be, like slavery for example, are justified or even legal when committed by the preferred group. This explains, for example, why the disparate sentencing laws between crack and powder cocaine are justifiable to a 1995 United States Congress. As long as this basic truth remains, the issue is not whether race predisposes a person to crime. For many Americans, race is the crime.

III. PROGRAMS WHICH WORK

Throughout our country, people are grappling with the issue of reducing juvenile street crime, including gang violence. This section of the paper focuses on programs which appear to have had some success in reducing incidence of juvenile crime and recidivism. In many cases, because recordkeeping is poor or nonexistent, it is difficult to determine the actual success and failure rates. Nonetheless, the following information is provided for consideration.

A. PAINT CREEK YOUTH CENTER

Juvenile offenders in Ohio participated in a placement program called the Paint Creek Youth Center. The Center, located in rural Ohio, was lauded for its well-trained counselling staff and small size. The unlocked facility was well furnished and maintained. When compared to the Ohio training schools where juvenile offenders would customarily have gone, the Center provided more of a home environment for the children.

The Center’s focus is talk therapy where children are counselled to develop coping skills. In 1990, research showed that of the first forty youths who finished the one-year residential program at the Center only six or 15% had gone back to jail. In contrast, about 50% of “youths held in traditional juvenile institutions get in trouble again.” The Center’s success, when later measured for a larger group of seventy-five graduates, showed a marked increase in recidivism—up to 50%. However, for the same period, children in the typical Ohio juvenile institution experienced a 60% rate of recidivism. Although not a dramatic improvement, the Center seems to have a positive impact on recidivism by about 10%.

B. BOOT CAMPS

Generally, military-style drills, hard physical training, structured days, and inflexible rules describe the juvenile boot camp.
There is customarily no television and no radio. No profanity is permitted. Rule breakers are disciplined with physical exercise or essay writing.918

Boot camps are immensely popular with both the public in general and legislators.919 During the first year of operation, one boot camp boasted a recidivism rate of only one in fifty-nine.920 However, like the Ohio Center, over the longer haul, the recidivism rate is expected to rise significantly as offenders spend more time back in the ‘old’ environment and as the pool of graduates expands.921

Across the country, studies indicate that the recidivism rate for former boot camp inmates rises to as high a rate as prison parolees by the sixth month after release from boot camp. By two years after release, former boot camp inmates were more likely to violate probation by committing noncriminal acts, like missing appointments or using alcohol.922 They were, however, less likely to commit new crimes.923 To improve rates, some boot camps are adding strong “educational components and therapeutic intervention” to change the inmates’ criminal beliefs and values.924 This type of training is believed to add a fundamentally crucial element of standard military training—guaranteed opportunity for advancement.925 Many believe that boot camp success rates would dramatically increase if, like military personnel, graduates of boot camps were assured employment opportunities.926 Notwithstanding the arguable success of boot camps, some critics warn that the boot camp program is a feeder to standard prisons. They point to the typical, non-violent first offender who received probation, not prison. They contrast that with the 30% to 40% of boot camp recruits who drop out of the program and as a result face time in prison.927

Both the Paint Creek and boot camp programs place varying degrees of emphasis on remolding the child’s value system. Florida Circuit Judge Frank Orlando asks:

When a 13-year-old commits murder and has no remorse, what do you see there? You see a kid that’s never had any love, or any care. No one’s ever bonded with him, his mother was probably 14 years old, so what do you expect? If you really want to stop the violent offense, you start dealing with that kid when he’s born.928

C. EARLY INTERVENTION

In 1977, the North Carolina legislature adopted a law eliminating “as a dispositional alternative, [the] commitment of status offenders to the state training schools.”929 The legislature also provided funds to create community-based programs for juvenile cases.930 One such program was the “intensive protective supervision of status offenders.”931 The targeted children were undisciplined youths with no prior history*820 of court referrals for delinquent acts. The program goals were to keep the children from becoming delinquent, to cease undisciplined acts, and to cause the children to “display more fulfilling and acceptable behavior.”*820

These goals were attained by providing intensive protective supervision for the child and his or her environment. Proactive contact occurred between the court counselor, the status offender, and the child’s family. Current indication is that the program has provided a 15% to 20% reduction in the rate of progression to delinquent offenses during the supervision period. That is a 25% to 30% reduction when compared to youths in regular protective supervision.933

The study found that early intervention reduces subsequent delinquent behavior, primarily in non-felony delinquent offenses.934 Intensive supervision also reduces recidivism rates for runaways and truancy offenses, and has a longer lasting effect than regular supervision.935

Programs are being implemented in other states with a view toward early intervention.936 Some theorists have suggested boarding schools for at-risk children, while others favor home-based programs that start at birth and continue into early childhood, teaching young, impoverished single mothers how to be parents.937

In Greenville, South Carolina, a program for violent children tackles poverty, family violence, and education all at once.938 In
Nebraska, reports indicate that an approach known as the “multisystemic family preservation therapy” approach has cut chronic delinquents’ arrest rates in half.939

One analysis of over 400 programs geared toward child rehabilitation demonstrates the most effective programs.940 The study found the most effective program includes efforts to improve scholastic performance, increase job skills or change the child’s anti-social responses to other people.941 The study found weaker results for “talk therapy” which are programs aimed at giving children insight into the reasons for their behavior.942 The least effective programs are the “scared straight” models, which use intimidation and fear to modify behavior.943

D. SUCCESS WITH THE MORE VIOLENT OFFENDER

While the percentage of teenagers committing violent crimes has not skyrocketed, the deadliness of their actions has reached a new level.944 Violent repeat offenders actually constitute a tiny fraction of the young people who end up in the juvenile system.945 Nonetheless, it is the emergence of the violent repeat offender which has influenced the call for more punitive measures against juvenile offenders. The current juvenile justice system is not designed to handle violent juvenile offenders. Some criminologists have stated that we do not even know what to do to intervene positively in order to curtail delinquency before it starts.946 Criminologist James Q. Wilson has said:

We think we know what causes young people to become offenders at the age of eight. But I can assure you ... we don’t know. We know the characteristics of persons who do become those offenders. They tend to be impulsive. They tend to be poorly socialized. They tend to have bad relations with their parents. They tend not to have many friends. We can enumerate those factors. But [what] we don’t know is what program of intervention in the early years will make a difference. I think it’s vitally important that we find out, but it is going to take a long time. And in the meantime, we can waste a lot of energy and money funding programs of the sort that now exist which have no proven record of altering the situation.947

Imprisonment has proved to have limited value. While it arguably protects society—at least as long as the offender is locked up—it doesn’t stop the production of others similarly disposed. It also does not serve to rehabilitate or stop the person from committing crime once they are back on the street. Consequently, it is important to look at programs which have had some success in altering the behavior of the more violent offender.

E. OMEGA BOYS CLUB

In San Francisco, youthful offenders with a substantial history of juvenile arrests can participate in the Omega Boys Club, an organization founded in 1987.948 The program targets African American males between eleven and twenty-five years who have grown up in the culture of violence.949 This culture of violence is marked by single parenthood, poverty, substance abuse, and violence.950

Omega is generally heralded as a successful program although specific data seem sparse.951 At least one statistic indicates that the program has made a difference, even to violent offenders: More than 100 alumni of Omega’s college preparatory class and other club programs are now attending college.952 The care providers at Omega cite several factors for their success. First, they offer the children love and friendship—even a family environment.953 Second, they never give up and believe that everyone is salvageable.954

F. PEER LEADERSHIP

In peer leadership programs young people work with children of similar ages to help them learn non-violent ways of dealing with conflict.955 These programs have received high marks. Dr. Barry Krisberg, President of the National Council on
Crime and Delinquency lauds peer leadership programs because they are apparently effective in reaching young people. Krisberg believes children listen to the message given by their peers while they would not listen to similar messages from adults. Citing programs in St. Petersburg, Florida and Boston, Massachusetts, Krisberg describes peer leadership as an effective outreach vehicle to curbing violence among young people. There is little data which support the effectiveness of these programs. However, the programs operate on a basic principle of youth involvement, which is arguably vital to reducing juvenile delinquency.

G. AVANCE

Like many urban cities, San Antonio, Texas, is learning to cope with rising juvenile delinquency. The Avance program attempts to curb violence by launching preemptive strikes. It works with parents of young children, “trying to change the way they relate to each other.” The program also offers “day care and free transportation to parenting classes.”

Avance president and founder, Dr. Gloria Rodriguez says that its program has served over 5,000 people since it was founded in 1973. The majority of the Avance parents are single parents who are on welfare and who dropped out of school by the ninth grade. Avance has found that since violence is learned, a focus on alternative techniques of disciplining children must be taught to parents.

The program reports that 60% of the parents enrolled in the program are going back to school, getting their GED, and going on to college. The children in the program are graduating school at a 94% rate; 43% of those children are attending college. Presumably, the Avance program has successfully “reversed a generation within a seventeen-year span.”

While various programs attempt to curb teen violence, there is reason to believe that programs which provide intervention are more successful than those that target rehabilitation. Generally, the earlier the intervention, the better. But there is also evidence that violent juvenile offenders can turn their lives around. There is little data indicating which programs are the most successful for the juvenile offender. Experimentation, however, should not be discouraged since it is very important to learn what makes programs work. This requires that we review existing programs for these answers with the view toward replicating the success and discarding or revising the failures. Without discouraging innovation, we simply cannot stand to lose generations of our children to trial and error when they can be saved by what we know works.

IV. RECOMMENDATIONS FOR ACTION

A. INTRODUCTION

The juvenile justice system has two recognized functions, that of punishment and that of reformation. It has historically performed those functions pursuant to a principle of the loving parent which we describe in legal terms as parens patriae. The juvenile justice system has also been recognized as a tool for prevention of criminal behavior. Currently, this system is under severe criticism for what has become a favored national crisis, juvenile crime. Without regard for our compelling need to isolate the wrongdoer and heap upon him the blame for all that is going wrong, the probable truth is that the juvenile justice system is no greater failure than the rest of our national systems.

Although our nation is skyrocketing into the technological age, our systems continue to operate under antiquated principles and criteria. Perhaps it should come as no surprise that the most visible rebellion against the reluctance by the past will be from the urgency of the future. The national generation gap between the industrialists and the technologists has reached warring proportions as our children commit increasingly more violent crimes using increasingly more sophisticated instruments of war. America’s pervasive response has been to round up the juvenile offenders and store them in blockaded and other penal compounds. The shortsightedness of this response as the “cure” for juvenile crime would be laughable were it not for the deadly consequences of these actions.
In this part of the study, we consider things which can be done to curb juvenile delinquency. We will examine the burdens and benefits of such programs. It is easy to cite the juvenile justice system as the sole reason for our failure in curbing juvenile delinquency. We make no such singular indictment. Instead, we find that the failure is systemic including: national and international policy; the education system; poverty; racial and gender bias; parental and family life; and the justice system. All of these failures and more have resulted in an increase of violent crimes by juvenile offenders.

To eliminate juvenile crime, we must all participate. It is first and foremost the responsibility of the parent to provide the child with the appropriate social values and with the tools for success. It is then the village or society which must do its part. We must also be able to look to government to support our efforts by adopting policies and laws which assure compliance. This section is divided into three parts: Family; Society; and Government. Each section includes recommendations for action.

B. FAMILY

The child’s introduction to society is through the family. It is within this familiar social unit that a child learns nurturing, morals, and basic social values. Thus, influences on the family often directly affect the child’s future. A convergence of obstacles can lead children to drift into crime. Some of the most commonly recognized obstacles include poverty, unsafe neighborhoods, lack of education, gang influence, a mother’s abuse of drugs while pregnant, failure to get prenatal care, poor parenting skills, and single parenthood.

1. Single Parenthood

We have to find a more effective way of convincing young people of what is in fact true: Namely, that they are diminishing their own prospects and those of their children if they have children too early.

Children of single mothers are well-represented in the criminal justice system. For example, “in Texas Youth Commission facilities, about 80% of juveniles were raised by a single parent, a number that is similar for youths in Harris County detention centers.” In addition to the apparent consequences of a single mother household, there is a connection between the mother’s age at childbearing and the likelihood her child will become a juvenile delinquent. “Texas ranks fifth in the country in births to girls fifteen to nineteen and, until recently, had more births to unmarried girls under fifteen than any other state.” Though there is much speculation about the direct impact on delinquency of rising births among unmarried women, there is little argument that there is at least significant indirect impact.

Young unmarried mothers are often poor and uneducated. Therefore, their children are likely to suffer from poverty, illiteracy, and poor health. At least 50% of Black children are born to single mothers and there is a large overrepresentation of Blacks in the criminal justice system. Race is not a direct factor in this correlation, but it has an indirect effect. As the numbers of White children born to young single mothers increase, there is a similar rise in poverty and crime among the White underclass. This clearly suggests that one of the primary links to crime is poverty, regardless of race. Additionally, the single parent household often substantially reduces the adult supervision children need. Thus one of the challenges we face in meeting a goal of eradicating crime is to eliminate poverty and childbirth among young unmarried teenage girls.

2. Eliminating Poverty

The appearance of millionaires in any society is no proof of its affluence; they can be produced by very poor countries.... It is not efficiency of production which makes millionaires; it is the uneven distribution of what is produced.
It seems contradictory to the practicing capitalist to focus any time, let alone money-making time, on alleviating poverty. It is arguable that poverty grows out of the individual’s failure to take advantage of available opportunities. But there is another school of thought. Perhaps the opportunity does not really exist because there are no reasonable means of taking advantage of it. By way of example, a recent newspaper article profiled a 33-year old single mother of seven. The mother had been employed and her employer provided day care as a benefit. When she lost her job, her family lost their sole source of income. Unable to secure employment, she accepted Aid to Families with Dependent Children (AFDC). The AFDC provided her with $900 per month. The mother explains: “the only way that I could find a job, is if I could have free day care or pay little, because I would be paying all my money out on day care. So why should I work? I might as well stay home and keep my own kids.”

Given the circumstances, the mother’s opportunities are very limited, and her family’s future is seriously threatened.

Their individual futures will have a grave impact on the rest of us. The cost of substance abuse in crime and medical care costs, the cost of a failure to maximize national production, the cost in property damage, personal injury, and lost human lives is almost immeasurable. This cost factor alone should encourage affirmative action against poverty. Although it is unlikely that poverty can be eliminated, there are fundamental acts which can alleviate a substantial amount of the poverty we see today.

3. Recommendations

   Cease to be a drudge, seek to be an artist.

We can begin the fight against poverty by employing single mothers. Governmental agencies, private firms, and educational institutions should work hand in hand to facilitate training and placement of potential workers. To further encourage employment of single mothers, incentives such as tax deductions or credits should be offered to businesses who choose to participate in such programs.

Public child care facilities, including Head Start and similar programs should be made available to these new working mothers. These child care facilities should provide academic training for children. The cost for such service should be based on the number of children as well as the income of the parent. To encourage single mothers to seek employment, child care costs should be such that it would be to the mother’s economic benefit to work.

Parents should be penalized for failing to provide financial support for their children. Government benefits, including education grants, veteran benefits, and social security benefits, should be contingent on the parent having provided for the support of their children. Driver’s, fishing, hunting and other licenses, including professional and trades licenses should be subject to suspension for the parent’s failure to provide for their children. Internal Revenue tax refunds should be subject to child support obligations.

We must discourage repeated pregnancies by single mothers who cannot support their offspring. Employing single mothers is likely to reduce such pregnancies. To further discourage repeated pregnancies by single mothers, the financial benefits of reproduction should be reduced. When the public foots the bill for reproduction, it is no wonder that some women keep having children. Child subsidies should be allocated on a declining scale to act as a disincentive to reproduction.

Poor children are continually ‘told’ “that the public would rather spend its tax money elsewhere.” Currently, money is not spent on school safety or health care, but rather on lock-up facilities which trap children after they fall rather than preventing them from falling in the first place. “Poor girls who have babies display the same fatalism as their male peers who join gangs and carry ... a fear of dying young.” “If the routes are closed to them for regular participation, then they turn to alternatives ... like pregnancy.... A young woman who has the likelihood for a bright future is not going to take those kinds of
chances.**990

We must protect young girls from child abuse. Many girls who give birth to children have themselves been the victims of family abuse and neglect.991 They are preyed upon by male family members and strangers alike.992 Many of these unprotected children who are the target of abuse, later themselves become abusers.

A child born under oppression has all the elements of servility in its constitution.993

“Being abused or neglected as a child increases the likelihood of arrest as a juvenile by 53%.**994 “Children who grow up in violent homes are six times more likely to commit suicide, twenty-four times more likely to commit sexual assault crimes and fifty times more likely to abuse drugs or alcohol.”995

The National Committee to Prevent Child Abuse reports that in the United States, in 1994, about 3,140,000 children were reported abused or neglected.996 It is estimated that about 33% of these reports were substantiated.997 The types of substantiated abuse were:

<table>
<thead>
<tr>
<th>Type</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Physical Abuse</td>
<td>21%</td>
</tr>
<tr>
<td>Sexual Abuse</td>
<td>11%</td>
</tr>
<tr>
<td>Neglect</td>
<td>49%</td>
</tr>
<tr>
<td>Emotional Abuse</td>
<td>3%</td>
</tr>
<tr>
<td>Other</td>
<td>16%</td>
</tr>
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Child abuse is not a new phenomenon. “Children have been physically traumatized, deprived of the necessities of life, and molested by adults since the dawn of human history.”999 Many young single mothers are victims of abuse. They “never actively decide to become pregnant.”1000 “Forced sex is common among sexually active teen-age girls, and for many of the youngest, it is the only kind of sex they have known.”1001 For almost half of the girls under the age of fifteen, the only kind of intercourse they know is involuntary.1002

Children raised in abusive environments may learn violence as an adaptation to life. They know of only one approach to use in the face of stressful situations.... They have seen their parents, and all adults in their lives, use violence to settle their problems, and they probably don’t know any other way to cope.1003

Children who are suspected of being sexually or physically abused should be removed from the site of the abuse. False claims of abuse do occur, and disrupting a child’s sense of security and family life is no insignificant matter. However, the best interests of the child must prevail. This requires placement outside of the offending site and away from the offender.

We must increase the number of alternate care facilities available to puberty age and prepubescent children. Residential schools could address the housing shortage and familial insufficiency. Though long considered an ideal only for the rich, sharing this ideal with qualified children could produce a more stable family environment. Increasing the availability of family counseling services would also be helpful.

We should establish a partnership with state bar associations and public school systems to provide conflict-resolution programs. The purpose of the programs would be to expose “violent” children to alternate nonviolent ways of solving problems.1006 We must also expand programs to eliminate spousal abuse and provide better counseling to abused children.

It takes an entire village to raise a child.1007
Despite the controversy over family values, it appears that the role of the male adult is crucial to deterring juvenile crime. It is reported that at about nine years of age, or the fourth grade, the influence of men appears to become vitally important to some boys. Experts say even single mothers who are fully committed to raising positive and productive sons often lose the fight against the sway of street gangs and other male-dominated vices. Many children lack meaningful relationships with adults. Their value system is being shaped by other children. That means a lot of children are relying on authority figures who are inexperienced, poorly informed, and weak.

Male support organizations should be established to serve as mentors and other role models for children growing up in fatherless homes. Among the problems with male mentoring programs is that they rely on young men who are themselves burdened with career and household burdens. Retired men could be targeted for the roles as mentors, as such men have the time and valuable experience which would be beneficial to the children. Additionally, we should restore the former roles community churches and schools played in developing social values for children. Finally, parenting programs should be taught to children as part of their health education curriculum. Such programs should also be made available to adults.

C. SOCIETY

When you treat a man like a human being, you must expect that he will act like a human being. When you treat a man like a dog, then you should be surprised if he acts like a human being. You should expect him to act like a dog.

The ideal of the whole village’s participation in raising a child is not so ideal when used to reinforce negative development. Children imitate the adults. Today, children not only are exposed to adults in their immediate community, but also to adults across the world. The “village” is now global. Our children are increasingly exposed to failures in the moral fibers of our international communities. Heads of state and leaders of countries across the world are linked to drug exportation, thievery, extortion, burglary, murder, and moral crimes like sexual harassment, sexual abuse, and prostitution. We train our children that “greed is good” as we set out to monopolize, oligopolize, and rationalize, all in the name of more. We minimize the value of character and integrity and maximize the value of wealth. When greed is extolled and virtue ridiculed, it is not surprising that so few of our children are adjudicated delinquent.

In civilized society, endangering the welfare of a child is considered criminal and punishable under the law. When one is found guilty of such endangerment, he is subject to penalties, including imprisonment, fines, and loss of custody of the endangered child. What penalty should then be assessed against a society guilty of endangering the welfare of its children? Statistics reflect years of “systematic neglect of our children”. As a result of this neglect, America’s illiteracy and poverty rates are abysmally high. We have failed to educate our children in rising numbers, and we have glorified guns and put them in the hands of children throughout the village. Our actions amount to nothing less than the neglect of our children and we must change our ways.

D. EDUCATION

Fundamental education including basic reading and arithmetic is critical to the development of a child’s potential. “Just as the failure to receive proper medical or emotional care can handicap a child, so too can the failure to receive a proper education adversely affect a child’s development.” There is a strong correlation between “juvenile delinquency and low educational success.” The correlation is evident in the overall criminal population. The United States Sentencing Commission reports that in a recent sampling of about 40,000 sentenced guideline defendants in the primary offense category, over one-third had no high school diploma.

The above data suggests that there is a correlation between education and criminal activity, as well as a correlation between...
education and the type of crime committed. While the statistics show that almost 70% of the convictions were of persons with a high school diploma or less, statistics also show a high incidence of their crimes as being violent or drug related. On the other hand, over half of all those convicted for white collar crimes, were persons with some college education. It is also noteworthy that while the violent and drug related crimes account for as much as 70% of the criminal convictions, white collar criminal convictions amount to only 30%. While many factors may explain this disparity, other than that white collar crimes are committed less often, it is apparent that white collar crimes are less often subject to conviction. One thing seems certain, individuals with at least some college education are convicted far less frequently than those without any college education. Education must be given considerable attention in any proposal to reduce juvenile delinquency.

Educational achievement is directly linked to economic achievement, social status and approval. Further indication of the import of education to criminal behavior is the correlation between education and recidivism. Some studies have shown that recidivism rates for inmates who received post-secondary education ranged from 10% to 40%, compared to the national rate of 60% to 65%. To address the rising juvenile crime rates, we must first examine our public education system.

The decline of our public education system, and hence the decline of our children’s performance, is a significant threat to America’s leadership in the international arena. Evidence of the system’s failure is seen in several areas. Substantial academic performance gaps exist between the Anglo population and the other populations. Limited curriculum choices fail to prepare children for life in the age of technology, and alternative education models fail to ensure academic success.

1. Academic Performance

The United States Department of Commerce reports that the nation’s primary and secondary schools are becoming more racially and ethnically diverse. One third of all students at these levels are “non-Anglos”. This growing segment of the population is suffering an ever increasing gap in its academic performance when compared to its Anglo counterpart. This is particularly discouraging when we recognize that the Anglo student population is itself suffering an increasing gap in its academic performance when compared to the international population. It is imperative to bridge these gaps.

2. The National Divide

The gap between America’s children and the differences in their academic performance levels begins very early in their lives. Aside from learning activities at home, the best preparation for school is the time they spend in a successful nursery school or pre-school program. Although the number of three and four-year-olds attending nursery school significantly increased during the twenty-five years from 1968 to 1993, many were from families with annual incomes of $40,000 or more. Government programs like Head Start reached low-income families and provided opportunities to children who would otherwise not have had the exposure. Now that we recognize the importance of nursery schools, instituting nursery school programs for children between the ages of three and five should be a part of our public education.

A child who starts behind has a more difficult time of performing well academically because she must first “catch up” to her classmates. The public school can address this gap at grade one. Children who are not at grade one level must get the proper remediation so that by the end of that first year, they are performing at grade level. This should substantially reduce the need for remediation at higher grade levels.

3. Shorter Term Remediation

In addition to focusing on children who will be new entrants to the system, it is urgent that we address those students already in the system who suffer the performance gap. Remediation programs necessarily vary from the “standard” teaching model. The program must be designed to address the needs of individual students. These individual needs must be based on some
diagnostic testing which identifies the level of the child’s performance. Once that is established, the curriculum for that child must address the child’s needs. It is unavailing to recognize a child’s performance level and then to place him in a classroom with students of his age, but where the curriculum is taught slower. A different book and different curriculum are needed to help the *836 child meet grade level. There must be established specific performance mastery where the child masters each level before moving forward.

4. Bridging the Gap Between America and the World

In order to bridge the ever increasing gap between America and the rest of the world, our schools need to focus on math, science, reading, writing, history, humanities, and geography. This curriculum must be taught as if we were preparing children for the 21st and not the 19th Century. We are living during a time when computer technology is rapidly replacing industrialism. Our classrooms should be computerized, our teaching tools and methods technological. Typing is fast becoming at least as important as penmanship. Yet, typing is not a required course in our schools. The written textbook should be changing from a hardcover book to a computer disk. Our children should experience international cultures in their classrooms and homes. The technology is available and our schools should be using it. The job of the educator is to teach the child so that she can acquire and use her knowledge in the future. Unfortunately, public schools remain stoic examples of the industrialized standard of education.

5. The Failure of Standardization

America is a diverse society. The issue seems to be whether we will strive to quash diversity in furtherance of a melting pot or celebrate diversity in furtherance of an ethnic quilt. It seems apparent that the melting pot theory presumes that people will withdraw from their heritage to adopt a single “Americanness”. This standard gained special favor during the industrial age; however, this “Americanness” was so exclusive that many people were ignored and rejected. This “Americanness”, when visualized, is a White, protestant, middle income, no less than third generation suburban-dwelling person. Clearly, this standard is not met by millions of people in America. In education, many of our children fall outside the standard. Consequently, the public education model continues to fail them because they are not even considered in the standard.

People learn differently. They bring different experiences to the learning environment and they are impacted by different teaching styles. To successfully address these learning issues, the “standard” model should be only one of many teaching models. We must recognize, first and foremost, that with some minimal modifications to the standard model, most children, regardless of their personal circumstances, *837 will achieve academic success. Some children, however, do have special needs, requiring alternative approaches to education.

6. The Alternative School: The Texas Approach

The alternative school is an approach to educating children with non-standard needs. In Texas, the alternative school has reached children who are pregnant, and who have alternate scheduling needs.1029 Recently, the alternative school program has been expanded outside the school system to the county juvenile system.1030 This program is specifically geared to the juvenile felony offender.1031 The Texas plan is new and poses a number of potential problems. First, there is considerable reason to be concerned about the expanded duties of the county. County juvenile officials are not educators. Their expertise is penal. Thus, there is reason to believe this program would be geared away from education toward imprisonment. Second, Texas legislators have not provided adequate funding for these alternative schools.1032 Third, under the Safe Schools Act, children can be sent to alternative schools for violation of the school conduct code.1033 Since each school district has its own conduct code, there is no guarantee of consistency and the likelihood that children will be treated differently for similar offenses or actions is great. Fourth, this program is limited in scope. It only addresses the educational needs of children who have committed a felony offense as defined by the Act.1034 Children who are expelled from school for non-felonious acts are still being expelled to the streets. They receive no institutionalized education and may eventually participate in criminal activity.
The challenges to the alternative school are significant. If these challenges are not recognized and addressed at the outset, they can become overwhelming, dooming more children to even more dismal futures. It is important for the system to be open to the establishment of viable alternate education models to address the alternate learning needs of our children. These alternate models must be able to address children who pose discipline problems as well as those with medical, learning, and goal differences. The potential liability of the public school system for failing our children is so great that it is only practical for the school system to develop these alternative education programs as part of its overall education system.

7. Addressing Discipline Issues

The alternative school under the Safe Schools Act, along with the boot camp schools, are examples of schools which focus on providing a disciplined learning environment for children. The first is being met with great suspicion and the second has not proved to be as successful as anticipated. However, the way we measure that success may be the bigger problem. If success is measured based on the premise that the boot camp must succeed universally, then it will fall victim to the standardization which has already adversely affected so many of our children. Boot camps have been shown to be effective in some communities. The reasons for that success, coupled with the existing factors in the successful community, should be identified to help determine when and where the boot camp model can be effectively used.

8. Addressing Medical and Learning Issues

Similarly, education models need to be developed to address learning needs of children who have special medical needs. Children’s medical problems range from learning disabilities to mental disorders. Indeed, the United States Supreme Court has held that where the public school system could not meet the medical needs of the child, then they would be liable for the child’s cost to secure that education alternatively or elsewhere.

9. Addressing Goal Issues

The standard education model presumably prepares the child for college. Of course, there is significant value to college education. This standard model, however, fails to address the needs of children who do not share that goal. Past alternative programs have included job corps and vocational training. These programs are currently viewed with various degrees of skepticism. These alternatives should, however, be reconsidered, especially in light of current job market needs. A 1993 report of the United States General Accounting Office states “many youth are ill prepared for work when they leave high school, often with long-term negative consequences.” The impediments to effective school-to-work transition included “poor academic preparation, limited career guidance, and inadequate workplace experiences.” The report also suggested that secondary schools should expand their goals to include “having all youth possess good academic skills, marketable occupational skills, and appropriate workplace behaviors.” Of special importance was the comparison of the preparedness of our children to those in countries such as Japan, the former West Germany, Sweden, and England. Our children were found lagging. Also each of these other countries “have national policies that emphasize preparing youth for employment.”

Of further interest is the view that these alternative models should be available to all children within each single school environment as opposed to separating the children by some multitrack system. Functionally, students would graduate having met both academic as well as vocational performance prerequisites. Any such program would need to be forward-thinking. Vocational training must be geared to current and future market opportunities to fill the current gaps between schools and the workplace.

10. Administering the Education System
The public education system de-emphasizes teaching and overemphasizes administration. Many school systems have several layers of administrators and these positions are generally viewed as positions to be promoted into and as higher in rank and status than that of a teacher. This should change and be replaced with a process which focuses on classroom performance and centers around the teacher-student relationship. For example, teachers could be ranked from introductory to master teacher level. At each promotional level achieved, the teacher must meet certain measurable performance standards related to student performance. The master teacher will be the highest ranking teacher, compensated at a level commensurate with rank and achievement. Administrators should act as support personnel for the teachers. Any principal should have achieved a master teacher status first, and there should be moderate pay differences between the master teacher and the principal. This alone would indicate that our priority is on educational achievement and not bureaucracy.

Another issue which the education system addresses from time to time is the school curriculum. Despite the controversy which often accompanies any discussion about curriculum, certain basic things seem to be true. First, children need basic education and knowledge in mathematics, science, reading, geography, language, history, and culture. Of course, the curriculum must also be reflective of our time, and therefore must be designed for our technological age. Although this may seem obvious, it is not, when one considers that our education system still operates its daily and annual calendar on the agrarian day—a time which predated the industrial age. Our schools should be computerized. Children should be trained using computers, since even basic jobs will require some computer exposure. Teaching tools should reflect advances in technology and media.

E. THE MEDIA

I have only just a minute, Only sixty seconds in it, Forced upon me—can’t refuse it, Didn’t seek it, didn’t choose it. But it’s up to me to use it. I must suffer if I lose it. Give account if I abuse it, Just a tiny little minute—But eternity is in it.

The debate over media and their impact on children and their behavior has been an expensive one. It is one that we have paid for with the morals, values and lives of our children. Even if there is no direct link between violence in media and violence in reality, there can surely be no argument that media exposure impacts the viewer. There is probably little argument that the child is often more likely to be persuaded by media events than the mature adult. However, it is apparent that the mature adult is often greatly impacted by media portrayals even when a cursory analysis of the facts would show the media portrayal to be false.

From advertising budgets, to what gets covered by the news media, to how it is covered, our views, tastes, and biases are shaped by the media. The First Amendment guarantees our right to speak freely. It is our protection against censorship and tyranny. But with such broad freedom must come broad responsibility—responsibility to exercise our freedom in ways which have social value, and a recognition that civilized society can only tolerate so much freedom. Without some boundaries, there will be barbarism and anarchy.

To gain market share media have often fallen victim to the same hysteria for financial wealth and material greed which permeates our society. This hysteria often precludes responsible actions and decisions. In an economic system of supply and demand, it seems likely that if media representations—often misrepresentations—are to change, then our demand for it must change. It is also likely that the demand will change as the education level of the populace changes. Demand will change as more of us recognize our power to make it change. That is, if we don’t buy it, it won’t sell.

As a society, we must recognize our duties to contribute our part. People must be educated, and parents must monitor their children’s media habits as well as their own. The media, in turn, should become more responsible to the greater good.

F. THE GREATER GOOD
The “greater good” is not a clearly definable term. However, it is often described as the general welfare which conjures up common thoughts of basic necessities, including food, safety, and housing. Americans have accepted the notion that the general welfare of the nation’s citizens is provided for. In fact, the United States Constitution specifically states in its preamble that:

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessing of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Within the very essence of the Constitution is the recognition that we all must promote the general welfare. “We the people” must promote the general welfare. It is a fundamental responsibility. While the Constitution was enacted as a tool to achieve this result, it by no means removes the responsibility from our own shoulders—we the people’s shoulders. If we view the trend in violent crimes committed by juveniles as a threat to the general welfare, then it is society’s obligation to act—to promote the greater good.

Though the appeal may be emotional, the recognition of the benefits gained are not. Among other things, we promote the general welfare to ensure domestic tranquility. It is, quite simply, the cost of a free civilization.

G. WE THE PEOPLE

In Seattle, Washington, a program has been launched which focuses on the value of the community’s role in reducing adolescent problem behaviors. It is called “Communities that Care.” and serves as a model for the nation. “Communities that Care” is preventative rather than rehabilitative. Rather than putting their resources and efforts in trying to treat our children after they’ve become symptomatic, it works as a prevention model. In describing our current methods of seeking to reverse the trend of juvenile delinquency, it has been said:

It is as if we were providing expensive ambulances at the bottom of a cliff to pick up the youngsters who fall off, rather than building a fence at the top of the cliff to keep them from falling in the first place.

The Communities that Care plan requires that we recognize the community risk factors. They may include the availability of drugs, firearms, or community laws and norms which support delinquency. Other factors include extreme economic deprivation, family management issues, academic deficiencies and peer pressure. The Program emphasizes the importance of establishing protective factors which buffer young people from the negative consequences of exposure to behavioral risks. Protective factors include bonding and mentoring, establishing clear standards of behavior, and developing clear value systems. To make the program work, children must be allowed to be participants. They must be provided with opportunities to make positive contributions to their community, and their efforts must be recognized.

“Communities that Care” recognizes that it takes a whole village to raise a child. The community must be mobilized in the effort. Key leaders in the community must be involved. Programs compatible with resources must be designed, and a long term strategy should be developed with effective means of measuring results.

H. GOVERNMENT

It is far better to be free to govern, or misgovern, yourself than to be governed by anybody else.

Much talk is heard about the omnipotence of government in our lives. Perhaps as a result of this perception, we tend to have a growing expectation of government to solve all our social problems. This expectation is unrealistic. “Government alone cannot solve the ills of society which affect our youth." No amount of tax dollars or grant monies will alone satisfactorily
modify the juvenile justice system. However, government does have an important role to play in ensuring justice for our children. Public policy must reflect national support for our children and in so doing, our support for our national future. Our legislatures must enact, eliminate, and revise laws to implement such national policy. We must provide adequate financial and other resources to help reach our public goal. We must not lose sight of the fact, though, that these efforts constitute only part of the solution; government is only one of the partners toward effecting change.

*844 1. Policy

Justice 1 a: the maintenance or administration of what is just: impartial adjustment of conflicting claims: the assignment of merited rewards or punishments.... 2 a: (1) the quality or characteristic of being just, impartial or fair: ... (2) the principle or ideal of just dealing or right action.... 3: conformity to truth, fact, or reason: Correctness, Rightfulness.\textsuperscript{1064}

For many of us, the concept of justice conjures up courts, lawyers, judges, and penal institutions. Actually justice is much more basic and includes primal concepts of fairness, impartiality, reasonableness, and correctness. Our juvenile justice system attempts to institutionalize this notion of fairness to children. I submit that to really be fair to our children, they must all have a fighting chance to avoid the courts and penal institutions altogether. This too must be part of juvenile justice. Consequently, it must be national policy to expand our juvenile justice system to include all areas which contribute to the fair and just apportionment of opportunities to succeed to our nation’s children. This means that juvenile justice would incorporate family, parenting, environmental, educational, as well as courts, punitive and rehabilitative issues.

Our national policy should adopt a “best-interest of the child” model.\textsuperscript{1065} This almost seems obvious, were it not for the popular balancing model where we attempt to balance the interest of the child, interest of the victim, interests of society. Clearly, if we place the fence at the top of the cliff to prevent the child from injury in the first instance, we have acted in the best interest of the child and thus in the best interest of society. “The fate of humanity is in the child’s hands.”\textsuperscript{1066}

The child who commits a crime, especially a violent crime, may represent a great threat to society. Presumably this supports a de-emphasis on rehabilitation in favor of punishment. But punishment without rehabilitation works to the disadvantage of both the child and society. The child gains no meaningful tools to avoid future criminal behavior and society must face again this non-rehabilitated criminal once he or she is released from the system.

Our national policy must be to educate our children. Education \textsuperscript{*845} must include academic and workplace training. It must train our children for the future, and it must demand the best from all its children, including mastery of basic education courses.

Our national policy must be to end the war with our children and to love them. We must recognize that we send mixed messages regarding what we value from morality to ethics, from healthiness to drug use, from intellectual to the physical, and from honesty to overt deception. Our national policy must be to end the physical and sexual abuse of our children. The desire of the abusive family or family member can no longer take precedence over the need of the child to be protected from it. Our national policy must be to fund children’s needs.

2. The Courts

There is evidence, in fact, that there may be grounds for concern that the child receives the worst of both worlds: that he gets neither the protection accorded to adults nor the solicitous care and regenerative treatment postulated for children.\textsuperscript{1067}
The modern trend in United States courts is to view the child as “sophisticated, mature, and culpable.” Courts have responded to the public perception that juvenile crime is such a threat that our children need to be cast out of our homes and imprisoned. Compassion for our children is being replaced with contempt for them. Recent studies indicate that our fears are not well founded and that our harsh, punitive approaches in lieu of rehabilitation measures may be just another tactical move against our children in the war against them.

In June 1994, the National Council on Crime and Delinquency produced a report on juvenile crime, youth violence, and public policy. The report, called Images and Reality, emphasized that “the perception that our society is in the midst of a dramatically rising epidemic of violent crime committed by the nation’s youth is not supported by the facts.”

The report summarized its major findings on juvenile crime and youth violence:

*846 According to the Justice Department, the nation’s overall violent and nonviolent crime victimization rates have actually fallen over the last 20 years. While America has an unacceptably high murder rate, rates of theft, larceny and household crimes were at an all-time low in 1992. Victimization rates for the violent crimes of rape, robbery, and assault are all below those reported 10 years ago.

The vast majority (94 percent) of young people who are arrested in the U.S. are arrested for property crimes and other less serious offenses. Arrests for property offenses, particularly burglary and larceny, represented 85 percent of all arrests of juveniles for serious crimes in 1992. Over the past 10 years, the contribution to the pool of total arrests in the U.S. by persons under the age of 18 years has actually declined from 18 percent in 1982 to 16 percent in 1992. The proportion of total arrests for serious (index) crimes attributed to juveniles decreased from 31 percent to 29 percent over the same period.

Between 1982 and 1992, arrests of adults for serious (index) crimes increased at a rate three times that for juveniles—5 percent for juveniles versus 15 percent for adults.

Between 1982 and 1992, the proportion of the youth population in America arrested for violent crimes increased from three tenths of one percent to five tenths of one percent. In 1982, 17.2 percent of all arrests for violent crimes were of juveniles. By 1992, the proportion had increased by less than half of one percent to 17.5 percent.

The arrest categories of murder and rape represented only 7 percent of all juvenile violent arrests in 1992. Combined, these categories represented less than half of one percent of all juvenile arrests in the U.S. in that same year. During the decade of the 1970s the increase in arrest rates for persons under the age of 18 years was actually double the increase recorded during the 1980s. If current arrest trends continue through 1995, the five-year increase in arrest rates for violent juvenile crime between 1990 and 1995 will be the second lowest increase recorded since 1965.

While the proportion of arrest clearances for violent crimes has increased moderately since 1989, the proportion of violent crimes attributable to persons under 18 years of age continues to be below levels reported in 1972. Due to the proclivity of juveniles to commit crimes in groups, arrest statistics considerably overstate the true level of violent criminal behavior attributable to juveniles. The proportion of violent crime attributable to
juveniles as measured by the number of crimes cleared by law enforcement is actually lower than the proportion of youth in the U.S. population.\textsuperscript{8071}

*847 If our basic premises are incorrect, then the conclusions we reach are bound to be skewed. Part of those faulty conclusions have resulted in the diminution of constitutional protections being afforded to children. Arguments against affording our children certain constitutional rights range from the position that the government must be free to act as the child’s parent (\textit{parens patriae}) unrestrained by procedural complications, to denial based upon our antipathy toward our children.\textsuperscript{1072} As a result, our court system applies the “just deserts” approach to the detriment of our children.\textsuperscript{1073} Children are denied more constitutional rights in the juvenile system, when compared to the adult criminal system.\textsuperscript{1074}

This injustice may lead to avoiding future similar deprivations by abandoning the juvenile court system altogether thus affording the child the protections of the adult system. That idea would be misguided. Juvenile courts afford certain benefits to children which would likely be unavailable to them in the adult system. These benefits include the noncriminal dispositional nature of the proceedings, anonymity, a greater focus on rehabilitation, and more humane institutions.\textsuperscript{1075}

While proponents of the single criminal justice system agree that youthful offenders deserve the harsher penalties of an adult system, experience has not born that result as fact. Indeed, in review of a New York system effected in 1978, juveniles could be arraigned, tried, and sentenced in the adult criminal court.\textsuperscript{1076} During the first decade and a half of this law, less than 5\% of those arrested received sentences longer than they would have received in the juvenile system, and the vast majority of the children received no criminal sanction at all.\textsuperscript{1077}

*848 The juvenile court system should continue to exist separate from the adult criminal system. Juvenile proceedings, in contrast to adult proceedings, have traditionally aspired to be intimate, informal, and protective. One reason for the traditional informality of juvenile proceedings is that the focus of sentencing is on treatment, not punishment. “The presumption is that juveniles are still teachable and not yet ‘hardened criminals.’”\textsuperscript{1078} Although many things in the world have changed in the years since the creation of the separate juvenile justice system, many things have not changed.\textsuperscript{1079} Juveniles today—like those at the turn of the century—still have limited judgment and experience; they still have less clear responsibility for unwise or illegal acts; and they still have a greater capacity for rehabilitation and change.\textsuperscript{1080} As the historical data suggest, the criminal system, being primarily concerned with the guilt or innocence of autonomous, responsible individuals, has a difficult time fitting these semi-autonomous, semi-responsible persons into its punitive scheme.\textsuperscript{1081} By contrast, the more flexible structure of the juvenile justice courts is specifically designed to respond to the unique characteristics of juveniles.\textsuperscript{1082}

The juvenile courts must recognize what our own history has shown. Reliance on jails and prisons to solve society’s crime problems has produced minimum benefit at astronomical costs.\textsuperscript{1083} No reasonable investor would continue to dump her money into anything which required such massive capital for so little return. In light of the fact that society’s push for harsher penalties against juveniles is apparently a knee jerk reaction to vivid but incorrect media portrayals, it should summarily dismiss this approach in favor of the more compassionate rehabilitation model.

Race discrimination is a major factor in the juvenile courts as it is throughout society in general. Studies show that the current system does not treat all juveniles the same.\textsuperscript{1084} In fact, harsher treatment is routinely meted out to minority youthful offenders.\textsuperscript{1085} In a study on*849 detention utilization practices in several of the nation’s largest counties, researchers found that minority youth, particularly African Americans, were likely to be arrested and detained more often than Whites for the same charges.\textsuperscript{1086} African American children “were almost twice as likely to be held in secure pretrial confinement than were white youth.”\textsuperscript{1087} “In addition, higher minority detention rates were observed even when controlling for such factors as gender, arrest charge, home living situation and prior offense history.”\textsuperscript{1088} “Once securely detained, minorities are confined for longer periods of time than whites.”\textsuperscript{1089}

It is again important to remember that an adoption of an effective juvenile court system is not enough by itself to reach the goal of eliminating juvenile crime. Greater effort must be placed on ensuring that our children never reach the juvenile court system in the first place.
One of the problems which plague any system appears to be the availability of adequate resources. Many agree that the money just isn’t there, while others believe the money is there but inefficiently used. Still others argue that if the money is not there, then we need to find it.

3. Funding

Art for art’s sake is just another piece of deodorized dog [mess].

The cost of imprisoning a child ranges from $30,000-$60,000 per year, far more than the cost for educating a child. A change in policy and focus should result in increased funding for education. Indeed, given the importance of education, one has to question the national governments priorities. The government is reluctant to spend money on education, yet, each year it spends millions of dollars subsidizing private business. Current estimates are that the American public finances more than 125 programs which subsidize private businesses at a net cost of about $85 billion per year. That number increases to over $100 billion a year when tax breaks are added to the calculation. The Cato Institute based in Washington has identified several private subsidies which could produce substantial resources to be used for our children. Here is only a sample:

The Pentagon provides $100 million dollars to benefit the 14 largest U.S. chip makers. The 33 largest American sugar plantations each receive more than $1 million a piece in higher sales prices. Two billion dollars in subsidies is paid each year to large and profitable electric utility cooperatives. In 1994, the forest service spent $140 million building roads in national forests, thus helping pay for the removal of timber by private timber firms. The Department of Agriculture spends $110 million a year advertising American products abroad. In 1991, these Products included Sunkist oranges (at a cost of $10 million), Pillsbury muffins and pies ($2.9 million), American legend mink coats ($1.2 million) and McDonald’s chicken McNuggets ($465,000). Millions of dollars are granted to Chevron, General Electric, IBM, and Texaco.

The Progressive Policy Institute has identified over fifty other subsidies which could be eliminated at a five-year savings of $131.2 billion. These subsidies are often supported on the ground that they protect American jobs. However, most private businesses do not receive such public assistance and hence are competing on an uneven playing field. In any event, these purported benefits must be weighed against the short and long-term benefits to our children and our society.

There is little reason to believe funds and other resources are not available to save our children. Our choice not to spend the needed funds for our children speaks loudly about our commitment to our children, our society, and our future.

*851 V. CONCLUSION

When I began researching the issue of juveniles and the juvenile justice system, I found myself searching for some great new innovative solution. What I found were some basic realities. Certain basic human characteristics are essential to maintain a high quality of human life—integrity, honesty, the desire to help fellow human beings, charity, personal dignity, and respect for the individual and the collective. How far have we gotten from doing that which we know is fair, just and right? Perhaps not very far, perhaps an eternity away.

But there are things we can do. Things that are not necessarily new or innovative, but which have withstood the test of time. We must strengthen and support our families, act in community to instill values in our children and to help them develop into productive adults, and insist on policies which support our goals and efforts.

We must reclaim our nation, ourselves and our children. We must replace our fear with rational caution, our despair with anticipation, our hopelessness with hope, our greed with charity, our lethargy with renewed energy, our laissez faire with
activism.

This Report has considered the history and processes of the juvenile justice system and the factors often identified as causes of juvenile crime. But its emphasis is on solutions.

America is facing tough issues. This calls for tougher responses. It can be done. It must be done.

If we are to ensure our children receive justice, we must be willing to look beyond the juvenile court to conception. We must focus our attention and significant wealth to ensuring the health of new born babies. We must ensure that health is maintained physically, mentally, and emotionally in healthy families which are nurturing and trained. We must work together as a community to create and maintain safe, moral environments. We must educate our children with a goal of preparing our citizenry for global competition.

The justice courts should be only a part of the overall system of juvenile justice. The system must also include mechanisms which help prevent our children from ever entering the court system. Once a child does enter the system, he should have his constitutional rights and be subject to a compassionate system which treats him fairly regardless of race. The system should promote rehabilitation while recognizing the need for institutionalization of serious and violent offenders. Violations must be uniformly enforced.

*852 It is important to recognize the cultural and ethnic diversity of our society and to create models of action which celebrate diversity without developing approaches that re-emphasize negative stereotypes, lower expectations and promote failure.

Despite the various scholarly positions, innumerable studies, and conflicting statistics, there are certain basic truths. Children will inherit our society, all that it is and all that it will become. We the people must meet the challenge; we must adjust our course or accept the blame for our failure.

Footnotes

a1 A Report of the Earl Carl Institute for Legal and Social Policy, Inc., a Research Center at Thurgood Marshall School of Law, Texas Southern University.

aa1 Marcia Johnson is an Associate Professor at the Thurgood Marshall School of Law, Texas Southern University, directs the institute and authored this Report, researched all sections and either wrote all or part of each section, subject to the following acknowledgments. In addition, she coordinates and manages the project. Johnson also established the Earl Carl Institute for Legal and Social Policy, Inc., a nonprofit corporation at Thurgood Marshall School of Law, Texas Southern University. This Report was funded in substantial part with a grant from the Texas Bar Foundation. That financial support is genuinely appreciated. The creators additionally want to thank the Texas Bar Foundation’s patience since this Report has taken more time than we had originally projected.

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Facility.

1 The annual cost of imprisoning a child ranges from $35,000 to $60,000, while the cost of educating that same child would range from $6,000 to $9,000 per year. See generally infra part II.

2 See generally infra part II.

3 See infra part II.

4 See U.S. Department of Education, National Center for Education statistics, 1993 (reporting that in 1990-1991, scheduled teacher salaries showed a range from $19,001 to $42,842. The latter amount is paid to a teacher with a master’s degree, 20 years experience, and who is working in a district of 10,000 or more).

5 See generally infra part II.

6 Winston Churchill is credited with saying that if you want history to represent your interests, then you have to write it. During the past few decades, we have witnessed national leaders lie as they sought to alter history and our perception of it. From Watergate to Iran-Contra; from World War II to Vietnam; from tobacco industry studies to automobile safety standards; from our over-politicizing of AIDS treatment to our under-politicizing of politics, we have witnessed national distortions of facts, policy and law.


8 See generally infra part I.

9 DIODORUS SICULUS, Book I of DIODORUS ON EGYPT 99-104 (Edwin Murphy, trans., P., MacFarland and Co., Inc. 1985).

10 Id. at 100.

11 Id. at 100-01.

12 Id. at 101.

13 Id.

14 See, e.g., Rayna Hardee Bomar, Note, The Incarceration of the Status Offender, 18 MEM.ST.U.L.REV. 713 (1987). Apparently, beyond the household, at least during the Middle Ages, children were treated no differently in society than adults. Id. at 716.

15 Id. at 716.

16 Id. at 717.
17 Id.

18 Id.


21 Sweet, supra note 19, at 390.

22 Id.

23 Id.


25 See Day, supra note 20, at 400-02.

26 Id. at 401.

27 Id.

28 See, e.g., Martin, supra note 24, at 65.

29 Day, supra note 20, at 402.

30 Id.


32 Id. at 476-77.

33 Id.

34 Sweet, supra note 19, at 394.
Justice Abe Fortas recognized the increasing evidence that, while laudable in its goals, the juvenile courts lacked adequate personnel, facilities, and techniques to represent the state as co-parent under the theory of parens patriae. Based on these facts, Justice Fortas concluded that a juvenile experienced the worst of both worlds because he or she received neither the protections provided to adults, nor the care and treatment necessary for juveniles. Id. at 555-56.

Fifteen year-old Gerald Gault was accused of phoning a neighbor and making lewd and indecent remarks. The police arrested Gault without notifying his parents. The juvenile court sentenced the child to a state industrial school until he reached age twenty-one or was discharged. The ruling was made after several hearings where no record was made, where no lawyer was provided to the accused minor or his family, and no witnesses were sworn to give testimony. The maximum penalty Gault could have suffered as an adult offender would have been a $50 fine or two months imprisonment. Id. at 4-9.

Tinkler, *supra* note 31, at 477.

403 U.S. 528 (1971). In recognizing that the juvenile court system rarely, if ever, reached its ideal of providing an intimate, informal protective proceeding, the Court opined that jury trials would do nothing to reach the ideal and was antithetical to the ideal by creating a more formal and unduly adversarial process. *Id.* at 545.

Sweet, *supra* note 19, at 403.

*Id.*

*Id.* at 404.

*Id.* at 405.

*Id.* at 406.

Day, *supra* note 20, at 408.

*Id.*

1977 Wash.Laws ch. 291 (codified at WASH REV.CODE ANN. §§ 13, 40 (West 1992)).


*Id.* at 131.

*Id.*

Martin, *supra* note 24, at 58.

*Id.* at 59.


70  *Id.*

71  Martin, *supra* note 24, at 70-71.

72  *Id.* (quoting MASS.GEN.L. ch. 119 § 61 (1988)).

73  *Id.* at 71 (footnote omitted).

74  *Id.* at 75.

75  *Id.*


78  *Id.*


80  Davis and Schwartz, *supra* note 77, at 71.

81  *Id.* Davis and Schwartz further assert that it would be nearly impossible to do a study of children’s rights “without examining the respective roles played by parents and the State.” *Id.*

82  U.S. CONST. amend. I.


85  *Ginsberg*, 390 U.S. at 638 (quoting Prince v. Massachusetts, 321 U.S. 158, 170 (1944)).

86  See Kalail, *supra* note 84, at 564.

88 Id. at 504.

89 Id.

90 Id.

91 Id. at 504-05.

92 Id. at 506.

93 Id. at 512-13 (quoting Burnside v. Byars, 363 F.2d 744, 749 (5th Cir.1966)).

94 Id. at 511.


96 Id. at 18.

97 Id. Obscene material has been defined as “material which deals with sex in a manner appealing to prurient interest.” Id. (quoting Roth v. United States, 354 U.S. 476, 487 (1957)).

98 Id. at 36.


100 Id. at 685.


102 Id. at 677.

103 Id.

104 Id. at 677-78. Specifically, the following statements were included in his speech:
I know a man who is firm—he’s firm in his pants, he’s firm in his shirt, his character is firm—but most ... of all, his belief in you, the students of Bethel is firm. Gogh Kuhlman is a man who takes his point and pounds it in. If necessary, he’ll take an issue and nail it to the wall. He doesn’t attack things in spurts—he drives hard, pushing and pushing until finally—he succeeds. Gogh is a man who will go to the very end—even the climax, for each and every one of you. Id. at 687 (Brennan, J., concurring).
The disciplinary rule states: “Conduct which materially and substantially interferes with educational process is prohibited, including the use of obscene profane language or gestures.”

Fraser, who was elected by write-in vote to be a speaker at commencement ceremonies, was removed as a speaker for his speech. Some of the 600 students in the audience “hooted and yelled; ... [others] graphically simulated the sexual activities pointedly alluded to in Respondent’s speech ... [and still] [o]thers appeared to be bewildered and embarrassed by the speech.”


Id. at 190. See infra notes 118-161 and accompanying text.

Hamilton, supra note 116, at 190.


Id. at 1074.
The Court further stated that “[i]n the years since Tinker was decided courts refused to accord constitutional protection to the action of students who blatantly and deliberately flout school regulations and defy school activities.” Id.

Hamilton, supra note 116, at 192.

Id. at 190.

Id. at 192.

790 F.2d 1471 (9th Cir. 1986).

Id. at 1472.

Id. at 1472-73.

Id. at 1473.


C.A.R.D., 790 F.2d at 1475 (quoting Perry, 460 U.S. at 45).

Id.

Id.

Id.

Id.

Id.

Id. at 1476 (quoting Perry, 460 U.S. at 46). An example of this type of forum is a military base or jail. Id.
The Court stated that “the state may reserve the forum for its intended purposes, communication or otherwise, as long as the regulation on speech is reasonable.” Id. (quoting Perry, 460 U.S. at 46).

Hamilton, supra note 116, at 194.

The advertisement at issue “primarily promoted the sale of a water pipe used to smoke marijuana and hashish ... [as well as] paraphernalia used in connection with cocaine.” Id. at 1203.

Id. at 1204.

Id. at 1205.

Hamilton, supra note 116, at 195 n. 98.

363 F.2d 744 (5th Cir.1966).

Id. at 746. The buttons “were circular, approximately 1½ inches in diameter, containing the wording ‘One Man, One Vote’ around the perimeter with ‘SNCC’ inscribed in the center.” Id.

U.S. CONST. amend. XIV, § 2.
Hamilton, supra note 116, at 196.

Id. at 197.

Hazelwood, 484 U.S. at 262.

Id. The funding for the school’s paper were allocated from the board of education. This funding was supplemented by proceeds from sales of the newspaper. Id.

Id. at 263.

Id.

Id. The principal was:
Concerned that although the pregnancy story used false names ‘to keep the identity of ... [the] girls a secret, the pregnant students still might be identifiable from the text ... [and] [h]e also believed that the article’s references to sexual activity and birth control were inappropriate for some of the younger students at the school. Id.

Id. at 263-64.

Id. at 264. The suit sought injunctive relief as well as monetary damages. Id.

Id. at 265.

Id.

Id. The court of appeals decision was reversed by the United States Supreme Court. Id.

Id. at 266 (citing Tinker, 393 U.S. at 506).

Id.

Id.

Id.

Id. at 270. The Court stated that the school’s newspaper was reserved for the intended purpose of supervising the “learning experience for journalism students.” Id.

Id.
A teacher at the school “credibly testified that she could positively identify at least one of the girls and possibly all three.”

Thus, “the school may constitutionally punish the budding political orator if he disrupts calculus class but not if he holds his tongue for the cafeteria.”

One of the reasons the majority asserted for upholding the principal’s censorship of one of the articles was “potential sensitivity of teenage sexual activity.”

However, “without so much as acknowledging the less oppressive alternatives, the Court approves of brutal censorship.”


*Tinker*, 393 U.S. at 511, 513.
Comment, supra note 195, at 856.

Id. at 857.

*Hazelwood*, 484 U.S. at 286-87 (Brennan, J., dissenting).

Id. at 274.


Comment, supra note 195, at 857 n. 119.

Williams, supra note 201.

*Hazelwood*, 484 U.S. at 269.

Id.

Id. at 270.

Id. at 284 (Brennan, J., dissenting).

Id.

Id. at 282.

Id. at 281.

U.S. CONST. amend. IV.


Id. at 328.

Id.

Id.
Id. The other paraphernalia consisted of a pipe, a number of empty plastic bags, and a substantial quantity of money in one-dollar bills. Id.

Id.

Id. at 329.

Id.

Id. at 329-30.

Id. at 330.

Id. at 341.

Id.

Id.

Id. (quoting Terry v. Ohio, 392 U.S. 1, 20 (1967)).

Id.

Id. at 344.

Id. at 343. The Court further stated that the “reasonableness standard should ensure that the interests of students will be invaded no more than is necessary to achieve the legitimate end of preserving order in the schools.” Id.

Id. at 368 (Brennan, J., dissenting).

Id. at 366.

Id. at 367.

Id.

Id.
The dogs were trained to alert their handlers “to the presence of any one of approximately sixty different substances,
including alcohol and drugs, both over-the-counter and controlled.” *Id.*

*Id.*

*Id.*

*Id.* at 473.

*Id.* (emphasis added).

*Id.*


*Id.* at 574. “Appellant abducted a thirteen-year old girl and twice forced her to have sexual intercourse with him. Appellant subsequently beat the girl with a lug wrench and left her to die.” *Id.*

*Id.* In addition to challenging his conviction based upon the warrantless search and seizure, the appellant also alleged his warrantless arrest was invalid, that he did not voluntarily waive his Miranda rights because the juvenile warnings he received were inadequate, and the evidence obtained as a result of his confession was improperly admitted. *Id.* at 575-77. The court overruled all of the appellant’s points of error. *Id.* at 574-79.

*Id.* at 574.

*Id.*

*Id.* at 575. There was no testimony from the father or mother that disputed the prosecution’s assertion that the father’s signing of the consent form to search the house and car was voluntary. *Id.*

*Id.* The court indicated that case law made it clear that an individual has no reasonable expectation of privacy in that which he exposes to public observation. See *Jones v. Latesco Indep. School Dist.*, 499 F.Supp. 223, 231 (E.D.Tex.1980).

U.S. CONST. amend. V.

U.S. CONST. amend. VI.


*Id.* at 543.

*Id.*

Id. at 545.  

273.  

Id. In support of Kent’s motion, his counsel argued that if Kent was given adequate hospital treatment, he (Kent) would be a suitable candidate for rehabilitation. Id.  

274.  

Id. at 548. The indictment consisted of eight counts: Two counts each of housebreaking, robbery and rape, and one each of housebreaking and robbery. Id.  

275.  

Id.  

276.  

Id. at 549. The juvenile court’s recital stated that “[t]he only matter before me is as to whether or not the statutory provisions were complied with, and the [c]ourts have held ... with reference to full investigation, that that does not mean a quasi judicial or judicial hearing. No hearing is required.” Id.  

277.  

Id.  

278.  

Id. at 550. That defense was supported by extensive evidence, including expert testimony. Id.  

279.  

Id.  

280.  

Id. For each count for which he was found guilty, Kent was given a sentence of five to fifteen years. Id.  

281.  

Id.  

282.  

Id. at 551.  

283.  

Id.  

284.  

Id. at 565.  

285.  

Id. at 561.  

286.  

Id.  

287.  

Id.  

288.  

355 F.2d 104 (D.C.Cir.1965).  

289.  

343 F.2d 278 (D.C.Cir.1964).
290 Kent, 383 U.S. at 561. The Court reasoned that “[t]hese rights are meaningless—an illusion, a mockery—unless counsel is given an opportunity to function.” Id.

291 Id. at 562. The Court also reasoned that it was obvious, with respect to access to the social records of the child, that if these records were going to be considered by the Juvenile Court, the records had to be made available to the child’s counsel. Id.


293 Id. at 4. The Court stated that the remarks were of an irritatingly offensive, adolescent, sexual variety. Id.

294 Id. at 5.

295 Id.

296 Id. The entire record of the “proceedings and subsequent hearing on June 15, derives from the Juvenile Court Judge, Mr. and Mrs. Gault and Officer Flagg....” Id. at 5-6.

297 Id. at 29.

298 Id. at 55.

299 Id. at 56. The Court stated that the juvenile’s alleged admission was not reduced to writing, that the manner in which the admission was “obtained and received” lacked the certainty and order “which are required of proceedings of such formidable consequences.” Id. There was also no sworn testimony in that the complaining witness was not present. Id.

300 Id. The Court held that due process entitled Gault to notice of the charges against him, the right to counsel, the right to confront and cross-examine his accuser, and the right to protection against self-incrimination. Id. at 33-34, 41, 55, 56.


302 403 U.S. 528 (1971) (plurality opinion).

303 Id. at 541.

304 Id.

305 Id. at 551.

306 Id. at 550.
Id. at 547. The Court reasoned that requiring a jury trial in a juvenile court proceeding could detract from the Court’s ability to determine the best interest of the child. Id. at 545.


Id. at 521.

Id. at 525. The juvenile entered a plea of not guilty, and “he also pleaded that he had already been placed once in jeopardy and convicted of the offense charged by the judgement of the Superior Court of the County of Los Angeles, Juvenile Court,...” Id.

Id. The juvenile did not appeal his judgment of conviction. Id.

Id. at 527-28. The Court further reasoned that though the juvenile system has “fallen short of the high expectations of its sponsors,” this short-coming does not “detract from the broad social benefits sought or from those benefits that can survive constitutional scrutiny.” Id. at 529.

Id. at 530. “For that reason,” stated the Court, the hearing held in the case at bar “engender[ed] elements of anxiety and insecurity in a juvenile and imposes a heavy personal strain.” Id. at 530-31.

Id. at 531.

Id. at 540.

Id. at 540-41. The Court regarded this dilemma as being “at odds with the goal that, to the extent fundamental fairness permits, adjudicatory hearings be informal and nonadversary.” Id. at 540.


Id. at 206.

Id.

Id at 210.

Id. at 215. The Court indicated that “[a] Rule 911 proceeding does not provide the prosecution that forbidden ‘second crack.’ The State presents its evidence once before the master. The record is then closed, and additional evidence can be received by the Juvenile Court judge only with the consent of the minor.” Id. at 216.

Id. at 216. Juveniles and their parents sometime mistakenly consider the master “the judge” and recommendations “the verdict.” Id.
The Court stated that it found nothing in the “record to indicate that the procedure authorized under Rule 911 unfairly subjects the defendant to the embarrassment, expense, and ordeal of a second trial proscribed in Green v. United States, 355 U.S. 184 (1957).” Id. at 216-17.

Id. at 216.

Id. at 219.


Id. at 360.

Id.

Id.

Id.

Id.

Id. at 363 (quoting Coffin v. U.S., 156 U.S. 432 (1895)). The Court, agreeing with the dissenter in the opinion by the state appellate court, indicated that “a person accused of a crime ... would be at a severe disadvantage, amounting to a lack of fundamental fairness, if he could be adjudged guilty and imprisoned for years on the strength of the same evidence as would suffice in a civil case.” Id.

Id. at 363. The Court reasoned that in a society that “values the good name and freedom of every individual” a man should not be condemned “for commission of a crime when there is a reasonable doubt about his guilt.” Id. at 364.

Id. at 364. “[T]he reasonable-doubt standard is indispensable to command the respect and confidence of the community in application of the criminal law.” Id. The Due Process Clause, stated the Court, “protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.” Id.

Id. at 367 (quoting In re Gault, 387 U.S. at 21).

Id. at 368. These safeguards consist of notice of charges, right to counsel, the right of confrontation and examination, and privilege against self-incrimination. Id.

U.S. CONST. amend. VIII. The Eighth Amendment was made applicable to the states through the Due Process Clause of the Fourteenth Amendment. See, e.g., Robinson v. California, 370 U.S. 660, 667 (1962).

Under these common law principles, the courts in England sentenced a 13-year old girl to be burned and an eight year-old boy and a 10 year-old boy to be hanged. Id.

Id. The few cases that exist where a juvenile’s death sentence was appealed share some common characteristics: Most of the defendants were black and the court rulings reflected the principle of “juvenile criminal incapacity expressed by Blackstone and others.” Id.

Id. at 1320. James Madison introduced the Eighth Amendment into the U.S. House of Representatives in June of 1789. Id.

Id. It should be pointed out that the wording was changed from “ought not” to “shall not” by Madison. Id.

Id. at 1321.

Id. In the 1650s, after the Quakers arrived in North America, New England’s Christians “whipped, pilloried, stocked, caged, imprisoned, laid neck and heels, branded, and maimed [them]....” Id.


99 U.S. 130 (1878).

136 U.S. 436 (1890).

Gewerth and Dorne, *supra* note 349, at 8.

217 U.S. 349 (1910).

Id. at 371.

356 Id. at 99-100.

357 Gewerth and Dorne, supra note 349, at 7-8.


359 Id. at 284.

360 Gewerth and Dorne, supra note 349, at 8. In determining the proportionality of a sentence, courts must first:
Weigh the harshness of the penalty in relation to: (1) the gravity of the offense, as measured by factors such as the harm to the victim, the harm to society, the absolute magnitude of the offense, the offender’s role in the crime and whether the crime was attempted or completed; and (2) the offender’s culpability, taking into account such factors as the offender’s intent and motive. Second, proportionality may be judged by comparing the challenged punishment to the punishments imposed on other offenders in the same jurisdiction. If those convicted of more serious offenses are punished less harshly, then it is likely that the challenged punishment is disproportionate. Finally, the court must compare the challenged punishment to the sanctions for similar crimes in other jurisdictions. Here, disproportionality is likely if many other jurisdictions punish a similar offense less harshly. Id.


362 Gewerth and Dorne, supra note 349, at 9.

363 Id. (quoting Wilkerson v. Utah, 99 U.S. 130 (1878)).

364 Gewerth and Dorne, supra note 349, at 9.

365 Id.

366 Id. (quoting Furman v. Georgia, 408 U.S. 238, 279 (1972)).

367 Nanda, supra note 338, at 1322.

368 Id. at 1322-23.

369 408 U.S. 238 (1972).

370 Nanda, supra note 338, at 1319.

371 Id.

372 Id.
If people believe that “organized society is unwilling or unable to impose upon criminal offenders the punishment they ‘derive’ then there are sown the seeds of anarchy, of self-help, vigilante justice, and lynch law.” Furman, 408 U.S. at 308 (Stewart, J., concurring).

The Court was asked to decide whether imposing the death penalty on a 16-year-old constituted cruel and unusual punishment. Id. at 105.

Id. at 106. The victim also had multiple bruises and a broken leg. Id.

Id. The four defendants were tried separately and each was sentenced to death. Id.

Id. at n. 2. The Oklahoma statute provides:
‘child’ means any person under eighteen (18) years of age, except for any person sixteen (16) or seventeen (17) years of age who is charged with murder, kidnapping for purposes of extortion, robbery with a dangerous weapon, rape in the first degree, use of a firearm or other offensive weapon while committing a felony, arson in the first degree, burglary with explosives, shooting with intent to kill, manslaughter in the first degree or nonconsensual sodomy. Id.

Id. at 819.

Id. at 819-20.

Id. at 820. The prosecutor requested “the jury to find two aggravating circumstances: that the murder was especially heinous, atrocious, or cruel; and that there was a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society. The jury found the first, but not the second....” Id.


Thompson, 487 U.S. at 820.

Id.

Id. at 815.

Id. at 824.

Id. at 824-25. Furthermore, all states have passed legislation setting the “maximum age for juvenile court at no later than 16.” Id. at 825.

Id. at 834.

Id. at 835. The juvenile’s inexperience, lesser education and lesser intelligence make the juvenile “less able to evaluate the consequences of his or her conduct while at the same time he or she is much more apt to be motivated by mere emotion or peer pressure than is an adult.” Id.

Id. at 836. (quoting Gregg, 428 U.S. at 183).

Id.

Id. at 836-37.

Id. at 837.

Id.
Id. at 838.

Id. The Court indicated that it was “not persuaded that the imposition of the death penalty for offenses committed by persons under 16 years of age has made, or can be expected to make, any measurable contribution to the goals that capital punishment is intended to achieve.” Id.


Id.

Stanford, 492 U.S. at 364-65.

Id. at 365.

Id. The robbery netted the perpetrators some 300 cartons of cigarettes, some fuel, and a little cash. Id.

Id.

Id. During his interrogation, Stanford stated that he had to kill Poore because she was his neighbor and would recognize him. After this statement, Stanford started laughing. Id.

Id. at 366.

Id.

Id.

Id. Wilkins testified that it was his intention to kill whomever was behind the store counter because a dead person could not identify him. Id.

Id. at 367.

Id.

Id. At the hearing, the evidence showed that Wilkins had been in and out of juvenile facilities since he was eight years old for such criminal acts as robbery, theft, and arson, had attempted to kill his mother with poison, and had killed several animals in the neighborhood. Id.

Id.

Id.
During this period, the “rebuttable presumption of incapacity to commit any felony” was set at the age of 14, which, in theory, allowed capital punishment to be imposed on anyone over the age of seven. Id.

The Court conceded the point that it (the Court) had “not confined the prohibition embodied in the Eighth Amendment to ‘barbarous methods that were generally outlawed in the 18th century,’ but instead has interpreted the Amendment ‘in a flexible and dynamic manner.’” (quoting Gregg, 428 U.S. at 171 (1976)) (opinion of Stewart, Powell, and Stevens, JJ.).

The Court emphasized that it is “American conceptions of decency” that are controlling and not, as the petitioner and their various amici contend, the punishment guidelines of other nations. Id. at n. 1.

The “absence of a federal death penalty for 16- or 17-year olds (if it existed) might be evidence that there is no national consensus in favor of such [capital] punishment.” Id.

Justice O’Connor, who wrote a concurring opinion, used the same analysis she used in Thompson. She concluded “that the death sentences for capital murder imposed by Missouri and Kentucky on ... Wilkins and Stanford respectively should not be set aside because it is sufficiently clear that no national consensus forbids the imposition of capital punishment on 16- or 17-year old capital murderers.” (O’Connor, J., concurring). Id. at 381.
Justice Brennan asserted that a majority of the states had rejected the death penalty for juveniles, that the sentence was rarely imposed on juveniles, both as an absolute and comparative manner, that respected organizations in the field insisted that such punishment was unacceptable, and that the world rejected that punishment. *Id.*

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*Id.* at 390. "[J]uveniles have less capacity ... to think in long-range terms than adults, and their careful weighing of a distant, uncertain and indeed highly unlikely consequence prior to action is most improbable." *Id.*

*Id.* at 405. (quoting *Coker*, 433 U.S. 584, 592 (1977)).


*Id.* at 1099-1100. (quoting *Trop*, 356 U.S. at 101).

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*Thompson*, 487 U.S. at 838 (plurality opinion).

Gewerth and Dorne, *supra* note 349, at 11.

*Thompson*, 487 U.S. at 839-48 (plurality opinion).

Gewerth and Dorne, *supra* note 349, at 11.

*Thompson*, 487 U.S. at 853 (O’Connor, J., concurring).

*Id.* at 870 (Scalia, J., dissenting).

Gewerth and Dorne, *supra* note 349, at 12.

*Thompson*, 487 U.S. at 871 (Scalia, J., dissenting).

*Stanford*, 492 U.S. at 379 (plurality opinion).
Id.

Gewerth and Dorne, supra note 349, at 12.

Id. (quoting Stanford, 492 U.S. at 382).

Id.

Id.

Id.

ICE CUBE, IT WAS A GOOD DAY (Priority Records 1992).


Id.; see also Lois A. Fingerhut & Joel C. Kleinman, International and Interstate Comparison of Homicide Among Young Males, 263 JAMA 3292, 3292 (June 27, 1990).


See id.

Id. at 1.

Id. at 279.

Id. at 6.

Id. at 221, 223.


Id.; CAL.WELF. & INST.CODE § 602 (West 1995).


CAL.PENAL CODE § 13750(b) (West 1996).

TEX.PENAL CODE ANN. § 8.07(b) (West 1995).
JUVENILE JUSTICE, 17 Whittier L. Rev. 713


480 In re Gault, 387 U.S. 1, 17 (1967).


484 See BAKER, supra note 482, at 82-92.


486 See Merry Morash & Lila Rucker, An Exploratory Study of the Connection of Mother’s Age at Childbearing to Her Children’s Delinquency in Four Data Sets, 35 CRIME & DELINQ. 45, 48-49 (1989).


488 William Feyerherm, Juvenile Court Dispositions of Status Offenders: An Analysis of Case Decisions, in R.L. MCNEELY & CARL E. POPE, RACE, CRIME AND CRIMINAL JUSTICE, at 128 (1981); see also BAKER, supra note 482, at 82.


490 Id. at 118.

491 See generally STANTON E. SAMENOW, BEFORE IT’S TOO LATE: WHY SOME KIDS GET IN TROUBLE AND WHAT PARENTS CAN DO ABOUT IT (1989).

492 Id.


494 Id.

495 Id.

PROTHROW-STITH & WEISSMAN, supra note 466, at 44.

See generally SAMENOW, supra note 493.


Regnery, supra note 483, at 40.


PROTHROW-STITH & WEISSMAN, supra note 466, at 65.

Id.

See Sampson, supra note 501, at 352-53.

PROTHROW-STITH & WEISSMAN, supra note 466, at 154.

Id.

Id. at 73.


Id.

PROTHROW-STITH & WEISSMAN, supra note 466, at 79.

Id. at 76.

SHELDON & ELEANOR GLUECK, UNRAVELING JUVENILE DELINQUENCY 135-53 (Harvard University Press 1957) (1950) (studying 500 White delinquent boys in Boston; two-thirds were two or more years behind in grade level, and 85% had school behavioral problems).

See BAKER, supra note 482, at 68.

Id. at 69-80.
515  Id. at 68-72.

516  See JAMES P. COMER, SCHOOL POWER: IMPLICATIONS OF AN INTERVENTION PROJECT (1980).

517  BAKER, supra note 482 at 69.

518  Id. at 73.

519  See id. at 173-76.


522  Id.


526  Id.

527  Id.

528  See Robert E. Furlong, Youthful Marriage and Parenthood: A Threat to Family Stability, 19 HASTINGS L.J. 105, 115 (1967); SHELDON & ELEANOR GLUECK, supra note 512, at 113-14 (families that are committed to family recreational activities are less likely to have delinquent youths).

529  PROTHROW-STITH & WEISSMAN, supra note 466, at 79.

530  SHELDON & ELEANOR GLUECK, FAMILY ENVIRONMENT AND DELINQUENCY 126-29 (1962) (discussing a study comparing 500 delinquent and nondelinquent adolescents; a large proportion of the delinquent boys had no close emotional attachment to their fathers, while those with close family ties were less likely to be delinquent).

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532 Hirschi, supra note 524, at 138.

533 See BAKER, supra note 482, at 125.


535 Id. at 149.


539 Parham, 442 U.S. at 602.


541 James Snyder & Gerald R. Patterson, Family Interaction and Delinquent Behavior, in HANDBOOK OF JUVENILE DELINQUENCY 225-26 (Herbert C. Quay, ed. 1987).


545 See id. at 70.

546 Ginsberg v. New York, 390 U.S. 629, 638 (1968). The Supreme Court stated: “[C]onstitutional interpretation has consistently recognized that parents’ claim to authority in their own household to direct the rearing of their children is basic in the structure of our society.” Id. at 639.


RICHARD J. GELLES & CLAIRE PEDERICK CORNELL, INTIMATE VIOLENCE IN FAMILIES 20 (1985). Child abuse is the physical or mental injury, sexual abuse, negligent treatment or maltreatment of a child under the age of 18 by a person who is responsible for the child’s welfare. *Id.*

*See In re Juvenile Appeal, 438 A.2d 801 (Conn.1981).* The commonly understood general obligations of parenthood entail these minimum attributes: (1) express love and affection for the child; (2) express personal concern over the health, education, and general well-being of the child; (3) the duty to supply the necessary food, clothing, and medical care; (4) the duty to provide an adequate domicile; (5) the duty to furnish social and religious guidance. *Id.*

*See Parham, 442 U.S. at 602-04* (recognizing the child’s liberty right not to be confined to a mental institution but holding the parents’ rights superseded it).


*See BAKER, supra* note 482.

*See id.* at xv.


*See e.g.,* PROTHROW-STITH & WEISSMAN, *supra* note 466, at 96.


*Id.* at 1325-26.
Illegal activities which produced significant income for the Mafia included gambling, loan sharking, narcotics, fixing sports events, pornography, securities thefts, hijacking, cigarette bootlegging, extortion, labor racketeering and arson. The Mafia also made significant profits from legal activities including night clubs, hotels, restaurants, laundries, taverns, manufacture of clothing and cigarette vending companies. Id. at 1327-28.

Burrell, supra note 560, at 748.

Though the juvenile justice system will process children who have committed no crime and who are or may be gang members, this Report focuses on the gang members who do engage in criminal behavior, why they become members, why their behavior escalates to criminal activity, and how the juvenile justice system can address their and society’s needs more effectively.


582  Id. at 1901.

583  Id.

584  Mayer, supra note 575, at 951.

585  Id.

586  Id.

587  Id.

588  Id.

589  Id.

590  Id.

591  Id. at 951-52.

592  Id. at 969.

593  Id. (quoting BUREAU OF JUSTICE ASSISTANCE, U.S. DEP’T OF JUSTICE, URBAN STREET GANG DRUG TRAFFICKING ENFORCEMENT DEMONSTRATION PROGRAMS 2, 14, 30 Ex. 2-1 (1991) [hereinafter Demonstration Programs]).

594  Id. at 970 (quoting Demonstration Programs, supra note 593, at 18).

595  Id. at 971 (citing Demonstration Programs, supra note 593, at 31).

596  Id. at 972 (citing Demonstration Programs, supra note 593, at 35-36).

597  Id. at 978.

598  Id. at 979 (citing Irving A. Spergel et al., U.S. Dep’t of Justice, National Youth Gang Suppression and Intervention Program, JUVENILE JUST.BULL. 3).

599  Id.

600  Burrell, supra note 560, at 739 n. 2.
601  Id. at 740.


603  Id.


605  Id. at 489.

606  Mayer, supra note 575, at 953-54.


608  Mayer, supra note 575, at 960.

609  Id.

610  Id.

611  Id. at 960-61.

612  Id. at 961.

613  Id. at 952.

614  Id. at 952-53.

615  Id. at 953.

616  Id.

617  Id.

618  Id.
619  

Id.

620  

Skalitzky, supra note 607, at 348.

621  

Id.

622  

Id. at 364.

623  

Mayer, supra note 575, at 949.

624  

Boga, supra note 604, at 489.

625  


626  

Id.

627  

Burrell, supra note 560, at 745.

628  

Id.

629  

See Note, supra note 602 (discussing the growing popularity of curfews and their goal of taking gang members off the streets). The article points out that curfews “regulate legitimate conduct that is seen as related to criminal gang activity.” Id. at 1696. The author profiles the effect of the Hartford Connecticut curfew ordinances. Although the apparent result was the reduction of violence in the neighborhood, it came at the cost of “community life and individual freedom.” Id. at 1697-98.

630  


631  

See Skalitzky, supra note 607.

632  


633  


634  

Id. at 50.

635  

Id.

636  

Id. at 49.
Boga, supra note 604, at 487, 489, 493.


CLAUDE ANDERSON, black labor, white wealth: the search for power and economic justice 45 (1994).


Id. at 14.


Id. at 106.

Id. at 101.

Id.


LAD PHILLIPS & HAROLD L. VOTEY, JR., the economics of race and crime: rational choice models of crimes by youth 2 (1988).


SULLIVAN, supra note 648, at 227.

Id.

Id.

Id.

Id.

Id.
SILBERMAN, supra note 646, at 87-88.

Id. at 88.

Id.

Id. at 89.

Id.

Id. at 89-90.

Id. at 89.

Id. at 89-90.

Id. at 90.

Id.

Id. at 91.

Id.

Id. at 90-91.

Id. at 96.

Id.

Id. at 99.

Id. at 92.


Id.
See Binder et al., supra note 638. Arguably, educated people commit as many crimes as the uneducated with such crimes costing more in money and in lives lost. From the corporate executives who refused to comply with the ban on DDT or building a safe automobile or complying with environmental standards to the hundreds of educated people who violated securities and other laws resulting in the savings and loan debacle to large corporate heads who permit (authorize) the overcharging and double charging for goods sold to government agencies, educated people have cost and are costing the country billions of dollars and a tremendous toll on the lives and health of its citizens (just consider the effect of tobacco products on medical costs and people’s health). Nonetheless, these criminals are less often charged or held accountable in civil or criminal actions or imprisoned for their deeds. Our society apparently has classified its punished crimes along racial and economic lines. White collar crimes committed overwhelmingly by White people are viewed as negligible while blue collar crimes committed overwhelmingly by Black and brown people are viewed as sinister and punished by imprisonment. Joseph F. Shley, Structural Influences on The Problem of Race, Crime, and Criminal Justice Discrimination, 67 Tul. L. Rev. 2273, 2275 (1993); Dwight L. Greene, Justice Scalia and Tonto, Judicial Pluralistic Ignorance and the Myth of Colorless Individualism in Bostwick v. Florida, 67 Tul. L. Rev. 1979, 2033 (1993); Erika L. Johnson, “A Menace to Society:” The Use of Criminal Profiles and its Effects on Black Males, 38 How. L.J. 629, 637 (1995).

Because of these disparities in what constitutes actionable criminal activity, this Report is limited to the type of criminal activity which is generally punished and the impact of education on reoccurrence.
688  Id. at 207; see generally IRA KATZNELSON & MARGARET WEIR, SCHOOLING FOR ALL: CLASS, RACE, AND THE DECLINE OF THE DEMOCRATIC IDEAL (1985).

689  BINDER ET AL., supra note 638, at 207.


691  BINDER ET AL., supra note 638, at 455-56.

692  Id.

693  Id. at 456; see Gault, 387 U.S. 1 (1967).

694  BINDER ET AL., supra note 638, at 459.

695  Id. at 456.

696  Id.

697  Id.

698  Id.

699  Id.

700  Id.

701  See generally KUNJUFU, supra note 682, at 9.

702  Id.

703  Id.

704  Id.

705  Id.

706  Id.
707  Id.


709  Id. at 63-67.

710  Id.

711  KUNJUFU, supra note 682, at 6; MOIR & JESSEL, supra note 708, at 65.

712  MOIR & JESSEL, supra note 708, at 68-69.

713  Id.

714  Id. at 72-73.

715  Id. at 74.

716  Id. at 76.

717  Id.

718  Id.

719  Id. at 80. “The level of the male hormone, testosterone, soars during puberty. It is therefore deemed no coincidence that the highest crime rate occurs during ages 13-17 years. Most criminals who have committed violent offenses during adolescence had high testosterone levels.” Id.

720  See KUNJUFU, supra note 682.

721  Id. at 5.

722  Id. (citing AMOS WILSON, DEVELOPMENTAL PSYCHOLOGY OF THE BLACK CHILD 46 (1978)).

723  Id. at 10.
724 Id.

725 Id.

726 Binder et al., supra note 638, at 552.

727 Id.

728 Id.

729 U.S. CONST. amend. I.


731 Id. at 158 (quoting Supreme Court Justice Thurgood Marshall: “The dream of America as the great melting pot has not been realized for the Negro; because of his skin color, he never even made it into the pot.”); see also Stephanie M. Wilderman, Integration in the 1980s: The Dream of Diversity and the Cycle of Exclusion, 64 TUL.L.REV. 1625, 1629 (1990).


733 Kunjufu, supra note 682, at 13-14.

734 Id. at 13.

735 Id.

736 Id.

737 Id.

738 Id.

739 Robbie Morganfield et al., Schools often fail those on the edge, HOUS.CHRON., August 14, 1994, at 8-9.

740 Id.

741 Kunjufu, supra note 682, at 20. Kunjufu suggests that the turning point for black males is the fourth grade. He refers to this phenomenon as the “fourth grade failure syndrome.” Relying on standardized test score performances by Black male children, he found a direct relationship between school performances in grades K-3 when the children performed equally or better than Anglo
children and performances from grade 4 and up when Black children’s performances begin to drop and continue to drop through 12th grade and beyond.
Similarly, test scores in the Houston area reflect their own curious performance occurrences. For example, the Texas Education Agency reported its Academic Excellence Indicator system for the school year 1990-1991. Overall performance by ethnicity, showed performance decline for all students; however, black students declined at a higher rate than Anglo students. In grade 3, blacks passed at a rate of 56%, hispanics at a rate of 54.2%, whites at a rate of 80% and others at a rate of 77.4%.
By grade 5, blacks were passing at a rate 35.8%, hispanics at a rate of 37%, whites at a rate of 73% and others at a rate of 77.4%.
By grade 7, blacks were passing at the rate of 29.2%, hispanics at 31.2%, whites at 62.1% and others at 64.5%.
By grade 9, blacks passed at a rate of 24.2%, hispanics at a rate of 27.2%, whites at 62.1% and others at 64.5%.
The following charts the differentials between the ethnicities using black pass rate as the base rate.

<table>
<thead>
<tr>
<th></th>
<th>Grade 3</th>
<th>Grade 5</th>
<th>Grade 7</th>
<th>Grade 9</th>
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</thead>
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<tr>
<td>Blacks (Base Rate)</td>
<td>56.0</td>
<td>35.8</td>
<td>29.2</td>
<td>24.2</td>
</tr>
<tr>
<td>Hispanics</td>
<td>-1.8</td>
<td>1.2</td>
<td>2.0</td>
<td>3.0</td>
</tr>
<tr>
<td>White</td>
<td>24.9</td>
<td>37.3</td>
<td>42.0</td>
<td>37.9</td>
</tr>
<tr>
<td>Other</td>
<td>21.4</td>
<td>36.9</td>
<td>44.9</td>
<td>40.3</td>
</tr>
</tbody>
</table>

Id.

742 Morganfield, supra note 739, at 8.

743 Id.

744 Id.

745 Id.

746 Id.

747 Id.

748 Madeline Lacovara & Laura Merrill, Getting it Straight 16 HUM.RTS. 14, 16 (1989).

749 Id.

750 Id.

751 Id.

752 Ruttenberg, supra note 573, at 1886.
Id. at 1898.

Id.

Id.

Id.

Id.

Id.

Id.

Pauline Arrillaga, *Study links drug use and young offenders*, HOUS.CHRON., March 18, 1995, at 28A.

Id.

Id.

Id.

Id.

Id.

Id.

Id.

Id.

Id.

772  Id.


774  Id.

775  *Id.* at 640-41.

776  *Id.* at 641.

777  *Id.*

778  Lacovara & Merrill, *supra* note 748, at 15.

779  Arrillaga, *supra* note 760, at 28A.

780  *Id.*

781  *Id.*


783  *Id.*

784  *Id.*

785  *Id.*

786  *Id.*

787  *Id.* at 48.

788  *Id.*

789  *Id.*

790  *Id.*

791  *Id.*

*Id.*

*Id.*

*Id.* at 587-88.

*Id.*

*Id.*

*Id.*

*Id.*

*Id.*

*Id.* at 595.

*Id.*


*See Ruttenberg, supra* note 573.

*Id.*

*Id.*

*Id.* at 1892-93.

*Id.* at 1893.


*Id.*

Lenhart, *supra* note 809, at 12.
830  *Id.*
831  *Id.*
832  Lenhart, *supra* note 809, at 12.
833  *Id.*
834  *Id.*
835  *Id.*
836  *Id.*
837  Suffredini, *supra* note 813, at 899.
838  *Id.* at 898, 900.
839  *Id.* at 900.
840  Ruttenberg, *supra* note 573, at 1893.
841  *Id.*
843  *Id.* at 20.
844  *Id.* at 19.
See Dailard, supra note 842.

Id. at 23.

Id.

Id. at 25 (citing 139 CONG.REC. S612 (daily ed. Jan. 21, 1993)).

Id.

John Williams, Dallas tops Houston in crime rate decline, HOUS.CHRON., March 27, 1994, at 1A, 20A.

U.S. CONST. amend. II.

Kopel, supra note 845, 422 n. 1.

See generally Kopel, supra note 845.

Id.


Kopel, supra note 845, at 292.

Id.

Id. at 293.

Id.

Id. at 294.

See generally id. at 289-92. Kopel discusses the issue of handgun density and handgun homicide. But note that his analysis is based on handgun prohibition only. Shotguns and other arms would still exist under Kopel’s analysis, while they would be eliminated under this proposal. Presumably, this would serve to tilt the scales toward crime reduction—at least a reduction in homicide. Consequently, even this action would be only one of the steps needed to eliminate crime in America.
865  Id. at 905.

866  Id.

867  Id.

868  Id.


870  Id. at 418 (citing A. ARNOLD, VIOLENCE AND YOUR CHILD 15 (1969), and Bennetts, Do the Arts Inspire Violence in Real Life? N.Y. TIMES, Apr. 26, 1981, at 1).

871  Campbell, supra note 869, at 414 n. 4. “[B]ecause of its similarity to reality, television has become a special concern.” Id. (citing G. CHENEY, TELEVISION IN AMERICAN SOCIETY 2 (1983)).


873  Id. (citing a study by the Annenberg School of Communications at the Univ. of Penn.), noted in Marilyn Gardner, Turning Down the Volume on TV Violence, CHRISTIAN SCI. MONITOR, Feb. 6, 1990, at 18.


876  See BINDER, supra note 638.

877  Id.

878  Id.

879  Id.


881  Id.
See id. (where Jonathan Freedman is interviewed).


Id.

Id. at 422.

Id. at 426. For example, in one study, experimenters used dolls which were commonly sold in stores as punching bags, arguably provoking aggressive responses to the doll which would occur whether or not a violent film or television show had been viewed.

Id.

Id. at 425 (citing Bandura et al., Imitation of Film-Mediated Aggressive Models, 66 J.ABNORM. & SOC.PSYCHOL. 3 (1963)). Experimenter demands lead subjects to comply with what they perceive to be the desired result of the experiment.

Id. at 425-26.

Id. at 431.

Id.

Id.

Id. at 434.

Id. at 435.

Culture of Violence, supra note 880.

Campbell, supra note 869, at 422, (citing N.I.M.H., supra note 884, at 6). It is important to note that “it was claimed that the 1982 NIMH report was based on over 2,500 studies, and this figure is vastly inaccurate.... Studies on television violence realistically number no more than 200.” Id.

Id. at 435 (citing SURGEON GENERAL’S SCIENTIFIC ADVISORY COMMITTEE ON TELEVISION AND SOCIAL BEHAVIOR, TELEVISION AND GROWING UP: THE IMPACT OF TELEVISED VIOLENCE, at 5 (1971)).

Just what the juvenile justice system can do to help meet society’s goal of eliminating crime is discussed later in this Report where I discuss expanding the juvenile justice system beyond the issue of delinquency and courts.

Id. at 408; the Court held:
In the opinion of the Court, the legislation and histories of the times, and the language used in the Declaration of Independence, show, that neither the class of persons who had been imported as slaves, nor their descendants, whether they had become free or not, were than acknowledged as a part of the people, nor intended to be included in the general words used in that memorable instrument. Id.

Id. at 410; the Court stated:
But it is too clear for dispute, that the enslaved African race were not intended to be included, and formed no part of the people who framed and adopted this declaration; for if the language, as understood in that day, would embrace them, the conduct of the distinguished men who framed the Declaration of Independence would have been utterly and flagrantly inconsistent with the principles they asserted; and instead of the sympathy of mankind, to which they so confidently appealed, they would have deserved and received universal rebuke and reprobation. Id.

Id.; the Court stated:
Yet the men who framed this declaration were great men—high in literary acquirements—high in their sense of honor, and incapable of asserting principles inconsistent with those on which they were acting. They perfectly understood the meaning of the language they used, and how it would be understood by others; and they knew that it would not in any part of the civilized world be supposed to embrace the negro race, which, by common consent, had been excluded from civilized Governments and the family of nations, and doomed to slavery. They spoke and acted according to the then established doctrines and principles, and in the ordinary language of the day, and no one misunderstood them. The unhappy black race were separated from the white by indelible marks, and laws long before established, and were never thought of or spoken of except as property, and when the claims of the owner or the profit of the trader were supposed to need protection. Id.

Id. at 410.

Id.

See generally Dred Scott, 60 U.S. (19 How.) 393.

Id. at 411; the Court notes:
But there are two clauses in the Constitution which point directly and specifically to the negro race as a separate class of persons, and show clearly that they were not regarded as a portion of the people or citizens of the Government then formed. One of these clauses reserves to each of the thirteen States the right to import slaves until the year 1808, if it thinks proper. And the importation which it thus sanctions was unquestionably of persons of the race of which we are speaking, as the traffic in slaves in the United States had always been confined to them. And by the other provision the States pledge themselves to each other to maintain the right of property of the master, by delivering up to him any slave who may have escaped from his service, and be found within their respective territories. By the first above-mentioned clause, therefore, the right to purchase and hold this property is directly sanctioned and authorized for twenty years by the people who framed the Constitution. And by the second, they pledge themselves to maintain and uphold the right of the master in the manner specified, as long as the Government they then formed should endure. And these two provisions show, conclusively, that neither the description of persons therein referred to, nor their descendants, were embraced in any of the other provisions of the Constitution; for certainly these two clauses were not intended to confer on them or their posterity the blessings of liberty, or any of the personal rights so carefully provided for the citizen. No one of that race had ever migrated to the United States voluntarily; all of them had been brought here as articles of merchandise. The number that had been emancipated at that time were but few in comparison with those held in slavery; and they were identified in
the public mind with the race to which they belonged, and regarded as a part of the slave population rather than the free. It is obvious that they were not even in the minds of the framers of the Constitution when they were conferring special rights and privileges upon the citizens of a State in every other part of the Union.

Id. at 411-12.

See Jody D. Armour, Race Ipsi Loquitur: Of Reasonable Racists, Intelligent Bayesians, and Involuntary Negrophobes, 46 STAN. L. REV. 781 (1994) (wherein professor Armour discusses the reasonableness of fear of the criminal predisposition of Black men in light of statistics which show that Blacks disproportionately commit crimes). For example, see id. at 791 (statistics show that while Blacks constitute about 12% of the population, they are arrested for 62% of armed robberies. Notwithstanding these statistics, “blacks arrested for violent crimes comprised less than one percent of the black population in 1991, and less than 1.7 percent of the black male population, making the odds that any black person will commit a violent crime very long indeed.”); see also Paul Finkelman, The Crime of Color, 67 TULL. REV. 2063 (1993). Professor Finkelman notes that criminal statistics are maintained and recorded differently among the various states. Id. at 2064 n. 1. He also notes that the Bureau of Justice statistics did not provide information on Hispanics and crime, and that Hispanics were evidentially subsumed under the categories “white” and “other.” Id. at 2065 n. 5.

Far more events of crime occur than are subject to arrest. See WILSON & HERRNSTEIN, supra note 768.

See Johnson, supra note 683.

Id. at 644.


[I]f blacks happen to commit in disproportionate numbers those crimes that are more likely to be punished by imprisonment, they will be found in disproportionate numbers among the imprisoned. Thus, for example, black street-criminals who rob the local convenience store may receive prison sentences while white professionals who embezzle from their corporations receive sentences of probation, if legislatures perceive the former crime as a greater threat to society than the latter.

Id.; See Joseph F. Shaley, Structural Influences on the Problem of Race, Crime, and Criminal Justice Discrimination, 67 TULL. REV. 2273, 2275 (1993). Professor Shaley asks:

Are African Americans overtly represented in this country’s criminal population? The answer depends on the crimes to which we refer. If we focus on “white collar” offenses—stock-market fraud, price fixing, maintenance of unsafe working conditions, for instance, African Americans are underrepresented. Examining the race profile of offenders who occupy middle-management employment positions discloses that European Americans are overrepresented by a factor of about 2.7 to 1. Anthony Harris argues persuasively that white overrepresentation in “white collar” crime is at least equal of African American overrepresentation in street crime.

Id. at 2275.

See Myers, supra note 910 (discussing the inherence of racial disparities in both determinate and indeterminate sentencing guidelines). See also Placido G. Gomez, the Dilemma of Difference: Race as a Sentencing Factor, 24 GOLDEN GATE U.L.REV. 357 (1994).

See Finkelman, supra note 906, at 2063.

Sarah Glazer, Juvenile Justice, 4 CQ RESEARCHER 171, 175 (1994).
A military graduate is guaranteed several years of employment, education, and housing once he or she completes military training. \textit{Id.}

\textit{See id.}

\textit{Id.} at 181 (citing DORIS LAYTON MACKENZIE ET AL., AN EVALUATION OF SHOCK INCARCERATION IN LOUISIANA, NAT’L INST. OF JUST.RES. IN BRIEF 4 (1993)).

\textit{Id.} (citing Doris Layton MacKenzie and James W. Shaw, \textit{The Impact of Shock Incarceration on Technical Violations and New Criminal Activities}, JUST.Q. 463-86 (1993)).

\textit{Id.} at 186.

933  Id. at Executive Summary.
934  Id.
935  Id.
936  See Glazer, supra note 913, at 186-87.
937  Id. at 186; see also Sarah Glazar, Head Start, 3 CQ RESEARCHER, 291, 291-307 (1993) [hereinafter Head Start].
938  Glazer, supra note 913, at 186-87.
939  Id. at 187.
940  Id. at 175. (citing Mark W. Lipsey, Juvenile Delinquent Treatment: A Meta-Analytic Inquiry into the Variability of Effects, in META-ANALYSIS FOR EXPLANATION 83-126 (Thomas D. Cook et al. eds., 1992)).
941  Id.
942  Id.
943  Id.
944  Id. at 171. Violent crime among youth began its meteoric rise in 1988. Experts blame the rise on two main sources: guns and [drugs]. The unprecedented surge in violent youth crime coincided with a dramatic increase—over 700% in the juvenile heroin and cocaine arrest rate during the 1980s, according to the Justice Department. The past decade also saw a 79 increase in the number of juveniles who committed murder with guns. Nearly three out of four murders by 10-to-17-year old are committed with guns. Id.
945  Id. at 171-72. In a 1972 study of chronic offenders in Philadelphia, results showed that “only 18% of the delinquents ... committed 71% of the homicides, 73% of the rapes, 82% of the robberies, and 69% of the aggravated assaults.” Id. at 188 n. 6.
947  Id.
949  Id.
See id.

See id.

Id.

Id.

Id.

Id.


Id.

Id.

Id.


Id.

Id.

Id.

Id.

Id.

Id.

See generally Glazer, supra note 913.

See supra note 880 at 399.

In re Gault, 387 U.S. 1, 16 (1967).


*Id.* at 4-5 (quoting William Galston, Domestic Policy Advisor to President Clinton).

*Id.* at 4.

*Id.*

*Id.*

*See* Merry Morash with Lila Rucker, *An Exploratory Study of the Connection of Mother’s Age at Childbearing to Her Children’s Delinquency in Four Data Sets*, 35 CRIME AND DELINQUENCY 45, 45-93 (1989); *see also* James W. Marquart et al., *Crime, Families, Children—Texas Has to Get It All Into Focus*, HOUS.CHRON., Mar. 13, 1994, at E1.

*Supra* note 971.

*See* Marquart, *supra* note 977.


Marquart, *supra* note 977.

*See supra* note 971.

*Id.*

*Id.*

*Id.* at 47 (quoting Mary McLeod Bethune).

Lenhart, *supra* note 971.
Eleven states surveyed in 1990 had spent at least twenty-four times more on prisons than on preschool care and education.”

(Quoting Sociologist David Benson of Houston’s Northeast Adolescent Program).

Lenhart, supra note 971.

BELL, supra note 982, at 31 (quoting Martin Delany).

TEXAS COMMISSION ON CHILDREN AND YOUTH, SAFEGUARDING OUR FUTURE: CHILDREN & FAMILIES FIRST 44 (1994) [hereinafter SAFEGUARDING OUR FUTURE].

Id.; see also Roseanne Hardin, Juvenile Justice in Idaho ... Everyone’s Responsibility, 37 ADVOC. 10, 10 (1994).

CHILDREN’S DIVISION, AMERICAN HUMANE ASSOCIATION, CHILD ABUSE AND NEGLECT FACT SHEET #1, at 1 (1995).

The “Other” category includes abandonment, educational neglect, dependency and other unspecified categories. Id.

NATIONAL COMMITTEE TO PREVENT CHILD ABUSE, THINK YOU KNOW SOMETHING ABOUT CHILD ABUSE?, QUESTIONS & ANSWERS (1993).

See Lenhart, supra note 971.

See Lenhart, supra note 971, at 5 (quoting Joy Byers, an abuse expert with the National Committee to Prevent Child Abuse).

See Janet Reno, Ensuring Justice for all People, 8 CRIM.JUST. 33, 35 (Winter 1994).

Solutions on Teen-age Violence, supra note 948 (quoting Joe Marshall, paraphrasing an ancient African proverb).


*Id.*

*Id.*

*Id.* (paraphrasing Roynell Young and Mike Anderson, founders of Pro-Vision, a men’s volunteer group).

His Excellency Jerry Rollins, President of Ghana, address during the celebration of the 50th anniversary of the birth of the United Nations, Houston, Texas (Oct., 1995).


*Id.* at 8-9.


*Id.*


*Id.*

*Id.* at 43.

There are many reasons this disparity may exist. Police agencies may focus their attention on certain profiles who are more likely to be violent or drug offenders. Society may be more interested in punishing the blue collar offender than the white collar offender. White collar crimes may be more offensive to our judicial sensibilities than are white collar crimes. White collar offenders may have more resources with which to buy more justice. White collar offenders may have more to risk than blue collar offenders and therefore are more cautious in selecting the crime(s) to participate in. The more educated offenders may be more able to allude capture. There are all kinds of plausible and not so plausible explanations for the disparity.

*See* CENSUS BUREAU, U.S. DEP’T OF COMMERCE, STATISTICAL BRIEF 91-4, DOES EDUCATION PAY OFF? (1991), which reports that “[e]arnings vary sharply with educational attainment.” In 1987, average monthly earnings were:
No high school diploma $452

High school graduates (no college) $921

Vocational degree holders and those with some college $1,088

Associate degree holders $1,458
Bachelor’s degree holders $1,829
Master’s degree holders $2,378
Doctorate degree holders $3,637
Professional degree holders $4,003

*Id.; see also* CENSUS BUREAU, U.S. DEP’T OF COMMERCE, STATISTICAL BRIEF 94-17, MORE EDUCATION MEANS HIGHER CAREER EARNINGS (1994), which reports that estimates of worklife earnings range from $609,000 for a person not holding a high school diploma to over $3,000,000 for a person with a professional degree. It also reports that the 1992 consumer price index was 2.5 times what it was in 1975. “This means that the earnings of high school dropouts did not even keep up with inflation, and high school graduates just barely managed to keep pace. Real wages rose only for persons with education beyond the high school level.” *Id.*


*Id.*

TAX RESEARCH ASS’N OF HOUSTON AND HARRIS COUNTY & ACRES HOME CITIZENS CHAMBER OF COMMERCE, A CITIZEN’S WORKBOOK FOR SCHOOL DISTRICT ACCOUNTABILITY vol. 1, at 3 (1995) [hereinafter CITIZEN’S WORKBOOK].

*CENSUS BUREAU, U.S. DEP’T. OF COMMERCE, STATISTICAL BRIEF 94-25, OUR SCHOLASTIC SOCIETY (1994).*

*Id.*

*Id.*

*Id.*

*Head Start, supra* note 937.


Compare TEX.EDUC.CODE § 37.008 with § 37.012.

TEX.EDUC.CODE ANN. § 37.010 (West Supp.1996); TEX.FAM.CODE ANN. § 52.041 (West 1996).


Glazer, supra note 913, at 180-81.


Interview with Howard Jefferson, supra note 1029.

Id.

GENERAL ACCOUNTING OFFICE, TRANSITION FROM SCHOOL TO WORK: STATES ARE DEVELOPING NEW STRATEGIES TO PREPARE STUDENTS FOR JOBS 1 (1993).

Id.

Id. at 3.

Id.

Id.

BELL, supra note 972, at 57 (quoting Benjamin E. Mays).

See generally Culture of Violence, supra note 880.

U.S. CONST. pmb.

Id.


Id. at 3.

Id.

Id.

Id. at 4-5.

Id. at 4-8.

Id. at 4, 11-12.

Id. at 11-12.

Id. at 14.

Id.

Id. at 16.

Id. at 16-17.

Id. at 17-21.

BELL, supra note 982, at 41 (quoting Kwame Nkrumah).

Hon. John C. Vehlow, Juvenile Courts Need More Resources and Programs, 37 ADVOC. 19, 20 (1994).

WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 1228 (1976).

Tinkler, supra note 31, at 474.
SAFEGUARDING OUR FUTURE, supra note 994, at 1 (quoting Abraham Lincoln).


Id. at 2.

Id. at 2-3. It is important to note that the Office of Justice Programs reported that “[t]he serious and violent crime rate among juveniles has increased sharply in the past few years. Juveniles account for an increasing share of all violent crimes in the United States.” JOHN J. WILSON ET AL., U.S. DEP’T OF JUSTICE, COMPREHENSIVE STRATEGY FOR SERIOUS, VIOLENT, AND CHRONIC JUVENILE OFFENDERS 1 (1994). The report notes, however, “[a] small portion of juvenile offenders account for the bulk of all serious and violent juvenile crime.” WILSON, supra. The report by the NCCD is based on Justice Department’s records. See generally IMAGES AND REALITY, supra note 1069.

Dale, supra note 1068, at 205.

Id.

Id. It should be noted that Texas is considered to have a generous family code which provides enhanced protections for children. However, even in Texas, children can be arrested without a warrant in situations where a warrant would be required if this person were an adult. Irene Merker Rosenberg, Leaving Bad Enough Alone: A Response to the Juvenile Court Abolitionists, 1993 WIS.L.REV. 163, 171 (1993).

See generally supra note 1074.

See N.Y.PENAL LAW § 10.00 (18) (Mckinney 1996).


KNIPPS, supra note 1077, at 464.

Id.

Id.
It is estimated that states in the United States spend between $35,000 and $60,000 per year to imprison one child in a state training school. Id. at 29.

Id. at 6.

Id. at 30.

Id. (citing Barry Krisberg et al., The Incarceration of Minority Youth, 33 CRIME AND DELINQUENCY 173-205 (1987)).

Id. at 30-31.

Id. at 31.

Id. (citing M. Jones and B. Krisberg, NATIONAL COUNCIL ON CRIME AND DELINQUENCY, Detention Utilization: Case Level Data and Projections, 1993)).

BELL, supra note 972, at 52 (quoting Chinua Achebe).


1102 See Moore, supra note 1092.

17 WTLR 713