BOOK REVIEW

CHARTING A NEW COURSE FOR JUVENILE JUSTICE: LISTENING TO OUTSIDERS

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I. INTRODUCTION

We have spent a lot of time in the Cook County Juvenile Court defending young people charged with serious crimes. Like many lawyers who do this work, we have struggled to understand and to comprehend the larger phenomenon of serious crime committed by children in order to understand the dimensions of this work better and to be a better advocate for children. Is there an increase or decrease in serious crime committed by juveniles? Are the children we now see in juvenile and adult court different or the same as the children we saw when we first became lawyers—almost thirty years ago for one of us and nearly fifteen years for the other? Are children at risk of engaging in delinquent behavior different than those who were at risk when we began practicing law? Are our young clients in fact more predisposed to lawbreaking and less likely to be rehabilitated than the children we represented in the past? We have also struggled to understand the dynamics that all too frequently place children at risk of lengthy incarceration. Are the children we see in juvenile court and criminal court now less

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likely to have a traditional family in place to support them? If that is true, what can be said about the prospects of those children for safe, happy, and productive lives?

These are questions that we lawyers representing children, as well as prosecutors, judges, and legislators should have tried more energetically to answer with the help of those, like the authors whose work is reviewed here, who have the expertise to help us. Our juvenile justice system has suffered as a result. Decision making is too often based upon intuition. Policies are too often dictated by the aberrational case and controlled by the quick fixes that prosecutors and politicians propose in order to get themselves re-elected rather than upon non-political solutions supported by research. As a consequence of political, rather than research-based responses, we increasingly try children as adults, impose harsh prison sentences upon children, and commit ourselves to supporting the lengthy prison sentences that will inevitably produce even more dangerous and incapacitated adults for us to worry about and care for in the future.

The blame for this sad state of affairs rests squarely on the shoulders of all who work in the juvenile justice system—judges, prosecutors, defense lawyers, as well as the legislators who provide the legal framework that guides our work. Each of these groups is motivated by different pressures that prevent them from basing decisions and policies upon the facts. Prosecutors and legislators ignore merit- and research-based solutions because they must get themselves elected. As will be demonstrated below, the facts are complex and the solutions involve a good deal of trial and error. Judges are less blameworthy because their duty is to follow the law that prosecutors and legislators move through the legislative process. However, the failing of judges is their reticence to speak out and propose thoughtful solutions based on what they see on a daily basis—the senseless injustices done to children. While a few judges are sympathetic to the new draconian approaches to juvenile justice, and so do not speak out because they support "get tough" policies, other judges fail to speak out because they believe that by doing so they will inevitably become involved in the political process, vio-
lating the Code of Judicial Conduct's prohibition against judges becoming involved in political activity and creating the impression that they lack impartiality. But judges are permitted to speak out on subjects which will advance the cause of justice, and juvenile court judges have, perhaps, the best overview of the problems that our juvenile justice system faces.¹ Their voices must be heard if rational juvenile justice policies are to emerge.

Lawyers for children are at fault because they have failed to lead. Their failure is all the more egregious because they know their clients best and should have organized to tell their stories more effectively. Lawyers who represent children should be the leaders in juvenile justice matters. They should bring new information, strategies, and analysis of trends in the population they represent to leaders of the judiciary and to legislatures. Unfortunately, we who represent children in juvenile court have been the least organized among the groups who work in juvenile court to advocate together for improvements in the systems of representation, judicial and agency decision making, and dispositional alternatives. Only now are children's lawyers beginning to organize to provide more effective service and to tell the stories of their clients more compellingly. The American Bar Association, several law schools, and children's rights organizations have, for the past three years, sponsored a National Defender Leadership Summit. This annual conference, attended by at least one children's lawyer from each state, has the potential to be a constructive force in bringing the children's defender community together as a credible and knowledgeable group.

The most effective and sensible advocates for change have been those who are not bound up in the day-to-day operation of the juvenile justice system. The press can be one such force. Until recently, few cases involving children accused of crime re-

ceived publicity. Now, newspaper stories and editorials on juvenile justice abound. Most of the press's work is supportive of the preservation of the original rehabilitative ideals of the juvenile court, although their very accounts of violence committed by children may spur prosecutors and legislators to enact even more "get tough" measures.

Beginning in the early 1990s, there was an alarming increase in the number of violent crimes committed by juveniles, particularly homicides. Before thoughtful scholars had the opportunity to examine these trends, however, some of their colleagues made sweeping unsubstantiated predictions of continued increases in juvenile violence, using inflammatory rhetoric to describe the juvenile offenders of the day. In November 1995, John Dilulio, a Princeton professor, in an article in The Weekly Standard, coined the word "superpredator" to describe a coming army of "morally impoverished" youths who "for as long as their youthful energies hold out... will do what comes 'naturally': murder, rape, rob, assault, burglarize, deal deadly drugs and get high." James Alan Fox, a criminology professor at Northeastern University in Boston and the President of the American Society of Criminology, engaged in similar sloganeering, warning of a "coming 'bloodbath'" committed by the "young and the ruthless."

The mainstream press repeated their words incessantly. The Chicago Tribune reprinted Dilulio's Weekly Standard article in full, devoting its entire editorial page to his article. The Los Angeles Times carried an article in its influential Sunday Opinion section with the title "The Coming Mayhem" quoting Dilulio's mentor, U.C.L.A. criminologist James Q. Wilson, as predicting a crime-wave committed by the "[r]emorseless, va-

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5 Moral Poverty, supra note 3, at 31.
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cant-eyed, sullen—and very young.” Time Magazine quoted both Dilulio and Fox in its January 15, 1996 article entitled “Now for the Bad News: A Teenage Time Bomb.” Even widely read syndicated columnists like the Tribune’s Bob Greene latched on to the word “superpredator” and accepted Dilulio’s predictions as the gospel truth.

Capitalizing on this hysteria, politicians began proposing laws that radically transformed the nation’s juvenile justice systems. In 1996, Bill McCollum, a United States Congressman from Florida, introduced the “Violent Youth Predator Act” in the House of Representatives. He raised the rhetoric to another level, saying, in reference to today’s youth, “[t]hey’re the predators out there. They’re the most violent criminals on the face of the Earth.” Although McCollum’s bill has yet to be enacted into federal law, state legislators responded to his call for more punitive laws. Between 1992 and 1997, forty states had already passed laws making it easier to try children as adults.

Since 1995, the vast majority of states have tinkered with their juvenile laws even further, making it even easier to try juveniles as adults, eliminating confidentiality, and even changing the language of their juvenile codes to make punishment a priority over rehabilitation.

The community of scholars who have studied juvenile justice trends and who have written about children’s mental health and the effectiveness of various psycho-social-educational interventions is a constructive and vital resource. Until recently, however, there was relatively little publicity regarding juvenile

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8 Bob Greene, When Right and Wrong are Words Without Meaning, Cm. TI., Apr. 29, 1996, Tempo Section, at 1.
9 Krajicek, supra note 4, at 1.
10 Interview with Bill McCollum, United States Representative from Florida, (National Public Radio Broadcast, June 25, 1996, Transcript # 1897-3).
justice policy emanating from this group, or about books that discussed or should have informed juvenile justice policy. Although many effective and dedicated researchers wrote articles and books about crime trends among young people, the studies they produced never seemed to make it into the mainstream of literature read by the public or by lawyers involved in the juvenile justice process. This has, thankfully, changed because of the public attention juvenile justice policy now receives and because several of our most knowledgeable experts in juvenile justice and in the provision of services to children have chosen to write books accessible to the generalists—lawyers and members of the public concerned about the future of juvenile courts.

The books reviewed in this essay, Superpredators: the Demonization of Our Children by the Law, by Peter Elikann, American Youth Violence, by Franklin E. Zimring, and Forensic Evaluation of Juveniles, by Thomas Grisso, are examples of recent books which provide information upon which sensible juvenile justice policy should be based. These books were chosen for review because together they represent a combination of approaches to knowledge about juvenile justice that should inform the juvenile courts of the twenty-first century.

Superpredators, written for both popular and professional consumption, provides a useful overview of facts and figures concerning juvenile justice, the research on the causes of juvenile crime and suggestions for how to confront the issues that produce the problem. The book contains lively descriptions and analysis of individual cases and of systemic problems. It

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16 Other books that fall into this category include: James Gilligan, M.D., Violence (1996); Governing Childhood, (Anne McGillivray ed., 1997); Susan Guarino-Ghezzi & Edward J. Loughran, Balancing Juvenile Justice (1996); Mike A. Males, Framing Youth: Ten Myths About the Next Generation (1999); Marc Mauer, Race to Incarcerate (1999); Serious and Violent Juvenile Offenders: Risk Factors and Successful Interventions (Rolf Loeber & David P. Farrington eds., 1998); John C. Watkins, Jr., The Juvenile Justice Century: A Sociolegal Commentary on American Juvenile Courts (1998).
17 Elikann, supra note 13.
makes sensible suggestions about programming interventions, focusing on the need to replace broken family structures with effective community programs. *American Youth Violence* is a careful analysis of youth crime trends that should provide juvenile justice policy makers with the true story regarding the incidence of juvenile crime among various segments of the population. *Forensic Evaluation of Juveniles* is a guidebook for experts who work in juvenile courts, and is useful for assessing young people for competence to stand trial, for evaluating claims of insanity or diminished capacity at the time of the offense, and for preparing reports designed to diagnose mental and emotional problems. In addition, Professor Grisso's book is a guide to professionals who are responsible for recommending psycho-social interventions into the lives of children who appear in juvenile court. Professor Grisso's book also suggests a framework for setting up and implementing sound clinical services within the juvenile court system.

In this essay, we describe the contents of these books in substantial detail. By providing this detail, especially with respect to *American Youth Violence* and *Forensic Evaluation of Juveniles*, we hope to give the reader a sense of the richness of the information contained in these two books, the complexity of the issues that Professors Zimring and Grisso address, and to encourage the many professionals who labor hard and long in and outside of juvenile courts to read these important books, especially as they prepare to construct juvenile justice systems for the next century.

II. THE BOOKS

A. SUPERPREDATORS

*Superpredators* debunks the popular notion that we must live in fear of our children. The dire predictions of a wave of youth violence are belied by the fact that violent juvenile crime

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18 ZIMRING, supra note 14.
19 GRISSO, supra note 15.
20 ELIKANN, supra note 13.
has begun to drop from record levels in 1995.\textsuperscript{21} However, this does not mean that there is no problem of violence among youth or that the problems that create the relatively rare outbreak of violence are susceptible to easy solutions. There are no easy solutions to these problems because of the impossibility of stereotyping youngsters who commit violent crimes (they are from the Bible Belt, from the suburbs, and from the inner city). However, because politicians harp on bad numbers and misleading stereotypes, misguided policy-making is the result; as Professor Elikann points out, "[r]ather than go after the root sources of what causes children to finally engage in crime—things that they may not have created such as the disintegration of the family, poverty, our disinvestment in children, the media—we just wait for them to get in trouble and then go after the kids."\textsuperscript{22}

We know some of the root causes of violence among children. Families do not provide the stability they once provided; there are more poor children than ever;\textsuperscript{23} and violence-laden media glorify violent behavior. Put such children-at-risk together with the availability of guns, and you have an explanation for the relatively few, but lethal, highly publicized, and tragic acts of young people. As Professor Elikann suggests, "[w]e cannot ignore the . . . fact that the skyrocketing of murders committed by juveniles from the mid-1980s to the mid-1990s was attributable entirely to guns. Gun homicides tripled while the rate of homicides by all other methods stayed flat."\textsuperscript{24}

In light of all of the above, our efforts to address the problems of troubled youth, such as the tragedy and inefficiency of treating and incarcerating children as adults, are misguided: "For most of the children who are given up on and are sent into the crime schools that are adult prisons the result is a big spending program which ultimately endangers the public."\textsuperscript{25}

\textsuperscript{21} Id. at 8-9.
\textsuperscript{22} Id. at 40.
\textsuperscript{23} Id. at 50.
\textsuperscript{24} Id. at 106.
\textsuperscript{25} Id. at 159.
B. AMERICAN YOUTH VIOLENCE

American Youth Violence responds to juvenile justice policies produced by political grandstanding rather than reliance upon analyses of the hard data regarding juvenile crime trends and the demographics of the youthful population at risk of offending. Representative Bill McCollom’s testimony in 1996 before the House Committee on Early Childhood, Youth, and Families is an example of the antithesis of Professor Zimring’s approach to the many complex problems that the juvenile justice system is called upon to solve:

This nation will soon have more teenagers than it has had in decades . . . . This is ominous news, given that most violent crime is committed by older juveniles (those fifteen to nineteen years of age) than by any other age group. More of these youths will come from fatherless homes than ever before, at the same time that youth drug use is taking a sharp turn for the worse. Put those demographic facts together and brace yourself for the coming generation of “super-predators.”

Professor Zimring demonstrates that Representative McCollom’s prediction is a wholly unsatisfactory basis for informing juvenile justice policy. First, the violent crime rate among juveniles has been declining since 1995. Second, according to Professor Zimring:

only a rather extreme version of a deterministic view of the causes of juvenile violence can give support to the notion that homicide rates fifteen years in the future can be predicted for a group of children currently between 2 and 4 years old. So talk about “270,000 juvenile superpredators coming at us in waves” in 2010 depends on a belief in fixed relationships between population characteristics and rates of serious violence.

Professor Zimring’s profile of youth violence demonstrates that although we should be concerned about youth violence, the profile of this phenomenon is much more complex than the headlines proclaim. Homicide and rape, two crimes that capture the public’s attention, represent a very small percentage of

26 ZIMRING, supra note 14.
27 Id. at 4 (quoting testimony of Rep. Bill McCollum before the House Committee on Early Childhood, Youth, and Families) (emphasis in original).
28 ELLIANN, supra note 13, at 8-9.
29 ZIMRING, supra note 14, at 11.
crime committed by youth under 18—fewer than 2%. Homicide and rape account for a slightly higher percentage (under 5%) among the 18- to 20-year-old population. More than half of the offenses committed by the under-18 age group are for non-serious offenses. Aggravated assaults and robberies account for less than 40% of the offenses committed by this age group. Because of the myriad of circumstances involved in the crimes committed by the latter group, it is impossible to know how “serious” these offenses really are.

As far as demographics are concerned, males dominate violent crime. The arrest rates for African-American youth are substantially higher than for non-African-American youth, particularly in the 13- to 17-year-old group. The highest rates of participation in violence are among adolescent boys, 16- to 19-years-old. However, the death rate from this violence among young people is lower than it is among adults. Another important characteristic of violence committed by youth is group involvement. Professor Zimring notes: “most 14 and 15 year-old law violators, no matter what their crime, are committing the offense with others.”

Is there an American youth violence epidemic? During the period of 1984 to 1993, the homicide and aggravated assault rates for juveniles more than doubled, but then decreased sharply. Still, the 1996 rate of arrests for homicide and aggravated assault was 34% above the rate in 1980. However, the rates for other serious offenses, such as rape and robbery,

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50 Id. at 21.  
51 Id.  
52 Id. at 20-21.  
53 Id. at 20.  
54 Id. at 22.  
55 Id. at 24-25.  
56 Id. at 27.  
57 Id. at 28.  
58 Id. at 30. “This group context is frequently the most important element in explaining the nature of a particular offense and why a particular offender is involved. The immediate motive for criminal involvement is group standing. The participant is showing off, living up to group expectations, pressing to avoid being ridiculed.” Id.  
59 Id. at 32.  
60 Id.
showed less significant increases. Professor Zimring demonstrates that these rates have been volatile during recent years, making the task of predicting the future error-prone.

A central feature of Professor Zimring’s statistical analysis of the claimed “youth violence epidemic” is his comparison of patterns of youth homicide to aggravated assault levels. The increase in homicide committed by youth since 1980, coupled with the finding that increases in homicide rates are attributable to access to guns supports a central thesis of Professor Zimring’s book:

Every time there is an increase in youth violence, there is worry that a new, more vicious type of juvenile offender is the cause. The guns only pattern . . . is quite strong circumstantial evidence against the proposition that a violent new breed is a general phenomenon for three reasons. First, the sharp increase in gun use provides a clear alternative explanation for the higher number of killings by youths. It has long been thought that greater use of firearms in attacks can increase the death rate from violence independent of variations in intent because guns are more dangerous. This so-called instrumentality effect would explain a substantial increase in homicide without resort to changes in the motivations or scruples of young offenders if they are willing to use guns in attacks.

While the increase in homicide rates among youth is attributable to the availability of guns, Professor Zimring notes that it is more difficult to explain the increase in assaults without guns: “Because the growth of homicides was restricted to gun cases, there is no reason to expect a large increase in the volume of aggravated assault cases over the years when homicides increased.” Professor Zimring attributes the increase in the volume of assault cases to shifting standards in “recording and upgrading assaults.” The significance of distinguishing between the causes of increases in the homicide rate (attributed to the availability of guns) and that of assault (attributable to trends in police reporting) is that future crime control policy should be informed by careful analysis rather than by assump-

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41 Id. at 33.
42 Id. at 35.
43 Id. at 37.
44 Id. at 38.
45 Id. at 41.
tions about the nature and causes of statistical trends. The kind of careful statistical analysis that Professor Zimring performs also makes the problem more complex: "the future trend in youth gun homicide is anybody's guess."

Professor Zimring next tackles the assertion that we are about to experience a proportionately larger population of juveniles with a propensity to commit violent crime. He asserts that "[t]he social scientific evidence for the current argument that a fixed percentage of a population of males will constitute a predatory menace in the year 2010 is a classic case study of compounded distortion." In addition to identifying the methodological flaws in work by such authors as James Q. Wilson and John J. Dilulio, Jr., Professor Zimring asserts:

The reason we cannot currently estimate the volume of juvenile homicide in the United States in 2010 is not merely that we lack an appropriate technology or sufficiently fancy social science. Prediction is beyond our capacity because the conditions that will influence the homicide rates among children now 4 years old when they turn 17 have not yet been determined.

The second part of Professor Zimring's book applies the facts previously developed to forward looking and empirically based policy formulation. In this part, Professor Zimring explores the tension between crime control policy and youth development policy, finding a useful analytical tool in the distinction between the concept of diminished responsibility and special efforts "designed to give young offenders room to reform in the course of adolescence." Key to understanding the responsibility of young people who commit violent crimes is the phenomenon of "group offending": "[n]o fact of adolescent

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46 Professor Zimring states:

The procedural lesson to be learned from the recent past is that patterns of arrest should be carefully examined one at a time rather than aggregated into a single arrest index. The substantive conclusion is that no generalization about the behavior of the current cohort of youths can be factually supported. The absence of any discernible growth trend in non-firearms homicide, in robbery, and in rape arrests just does not fit generalizations about a more violent cohort, about superpredators, and the like.

Id. at 45.

47 Id. at 46.

48 Id. at 50.

49 Id. at 60.

50 Id. at 63.

51 Id. at 75.
criminality is more important than what sociologists call its group context." What is the consequence of the fact that youth often lack true criminal intent even when they commit serious offenses? Is punishment always suspect? Professor Zimring responds: "There may be circumstances in which drastic punishment is required, but it always violates important elements of youth development policy and can be tolerated rarely and only in cases of proven need. In this view, punishment is suspect when it compromises the long-term interests of the targeted young offender." Should there be an exception to this policy for children who commit violent crime? The answer to this question is informed by a number of factors, including our inconsistent gun policies:

The legal regulation of youth violence becomes incoherent when the age-specific prohibition on guns is justified because of immaturity but the claim is then made that the 15-year-old who gets hold of a gun and then uses it in a robbery should be punished to the same extent as a fully responsible adult for the same offense."

Professor Zimring then moves on to a discussion of how our legal system should provide justice to youth who commit serious crimes. The discussion centers around the choice between trying children charged with serious crimes as juveniles or adults. In this section of the book, Professor Zimring analyzes the implications of choices between trying children as adults and as children, as well as the various methods for making those choices. He seems to see both sides of the question of whether judges or prosecutors should make transfer decisions, depending on whether one views transfer decisions as offender-based or crime-based. For those children transferred to adult court, he stresses the importance of keeping the focus on the proper role of retribution in cases involving children. He is not opposed to systems of transfer for serious offenses so long as there are quality outcomes for the juveniles involved.

Professor Zimring next considers the "substantive principles that should govern the punishment of adolescents who kill."
He argues that "[t]here is a lack of theory concerning the principles that should govern the punishment of adolescent killers." Professor Zimring concludes that "[w]hen there is unavoidable conflict between the objectives of youth policy and the minimum demands for deserved punishment, the latter should carry the day," with the caveat that the "value of promoting normal adolescent development can properly influence the amount of punishment selected within the confines of an already established desert range . . ." Professor Zimring does not favor a "youth discount" based upon existing sentencing ranges applicable to adults. Rather, he advocates "independent calculation of sanctions for young homicide offenders [that] more accurately reflects both the nonquantifiable nature of criminal punishments and the large variation in levels of culpability that characterizes adolescent offenders" and recognition of the special circumstances of the least culpable members of groups that commit crimes.

Finally, Professor Zimring assesses the rationality and effectiveness of policies which keep juvenile courts guessing about their proper role. Should juvenile courts continue to have jurisdiction over the most violent offenders? Professor Zimring lets us know where he is going:

To put the issue in the kind of round numbers that should warn readers about guesswork in progress, between 90 percent and 95 percent of all juveniles arrested for offenses of violence do not substantially diverge from the types of youths and crimes that can be processed and sanctioned by the modern American juvenile court. But about 5 percent to 10 percent of those juveniles arrested for offenses of violence do put special pressure on the principles and processes of juvenile court, usually because of the seriousness of the injuries inflicted by the crime.

Should compromises such as blended sentencing be employed to bridge the gap between juvenile and adult systems? Professor Zimring worries that such schemes could jeopardize

\[55\] Id. at 137.
\[56\] Id. at 143.
\[57\] Id.
\[58\] Id. at 150.
\[59\] Id. at 68.
the future of juvenile courts, perhaps even more seriously than the transfer of serious offenders out of the court:

The largest risk concerns the juvenile court itself. If the principles of blended jurisdiction are inconsistent with the operational philosophy of the juvenile court, bringing blended jurisdiction into the court introduces a competing set of principles for all cases. To the extent that ideologies depend on internal consistency, the introduction of competitive principles into juvenile court may be its undoing.  

C. FORENSIC EVALUATION OF JUVENILES

In *Forensic Evaluation of Juveniles*, Thomas Grisso provides a guide written for mental health professionals for the evaluation of children for capacity to waive *Miranda* rights, competence to stand trial, sanity at the time of the offense, and risk of harm to others; evaluations for determining appropriate treatment strategies; and evaluations for waiver to criminal court. In addition, Professor Grisso sets forth professional guidelines for ethical practice for mental health professionals who provide forensic services.

The first chapter of the book is designed to give mental health professionals an overview of the juvenile justice system, the kind of overview that we lawyers who practice in juvenile court should have regarding the services provided by mental health professionals and organizations. The description is straightforward and designed to provide very basic information about the functioning of the juvenile justice system. The importance of this section of the book rests on a proposition that Professor Grisso makes repeatedly during his book—the substance and form of any forensic evaluation of a child in the justice system should be informed by the "referral question": what is the purpose of the evaluation?

Professor Grisso goes on to describe the most common forms of adolescent psycho-pathology, noting that specialized knowledge is needed for the diagnosis of disorders among juveniles, especially to avoid over-reliance on the diagnosis of conduct disorder:

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60 *Id.* at 174.
61 *Grisso*, *supra* note 15.
Some clinicians have a tendency to stop the diagnostic process when they find that the youth meets the formal criteria for Conduct Disorder (which consist primarily of the presence of a variety of delinquent behaviors in the youth's past history). This ignores the fact that Conduct Disorder is often comorbid with one or more other psychiatric disorders. The job is not to find "a diagnosis" but to discover and describe the youth's psychological condition. Rarely is this job completed by establishing a diagnosis of Conduct Disorder.

The requirements for forensic evaluations of juveniles include specialized knowledge concerning child development, knowledge of the juvenile court system, and a willingness to keep current on developments in these areas.

Professor Grisso's chapter on evaluation of juveniles for capacity to waive Miranda rights is a wonderful guide to the criteria that should be considered by lawyers and judges who grapple with whether statements of children should be admissible against them. The focus should be on the individual's capacity as measured by his intellect, experience, and response to stressful situations. Measuring these factors requires an intimate knowledge of the child's psychological, social, and educational history. The forensic examiner must also obtain a detailed account of the arrest and interrogation process, focusing on facts as well as the perceptions of those involved in the interrogation. The examiner must be cognizant of the skill that it takes to obtain relevant facts from children, who are often unable or unwilling to provide coherent narratives at the first attempt. Psychological testing is, of course, part of any thorough forensic evaluation. Professor Grisso describes the common tests, providing the basis for conclusions about their appropriateness depending on the circumstances. Grisso, himself, has developed tests specific to a child's comprehension of Miranda rights. The results of these tests have been quantified, demonstrating that youth 14-years-old and younger performed more poorly than 15- and 16-year-olds and young adults. I.Q. testing is also

62 Id. at 33.
63 The tests are entitled: The Comprehension of Miranda Rights, Comprehension of Miranda Rights-Recognition, Comprehension of Miranda Vocabulary, and Function of Rights in Interrogation. Id. at 66.
64 Id. at 68.
part of this process as well as objective personality measures. In making the evaluation, the examiner's evaluation of the child, including observation, historical data, and the results of testing, are put into the mix. The examiner then faces the difficult and complex task of determining what weight should be given to each factor. Professor Grisso provides a useful outline for reports. In addition, he provides a short analysis of how this kind of expert testimony fits into the analysis of *Daubert v. Merrell Dow Pharmaceutical Inc.*

In his conclusion to the chapter on capacity to waive *Miranda* rights, Professor Grisso addresses the important question of what the content of the expert's opinion should be—a question which is common to all of the areas (insanity, waiver to criminal court) that he addresses in his book. Should the expert give an "up or down" opinion on whether the child understood and could knowingly waive his *Miranda* rights? Or, should the expert give an opinion about the child's "capacities" that are relevant for deciding the validity of his waiver of rights? Professor Grisso recommends the latter approach, noting the professional limitations of experts in this area, arguing that it is for the judge, not the expert, to make the final decision.

Professor Grisso's chapter on juveniles' competence to stand trial employs the same careful analysis of the expert's function and task as that contained in the chapter on waiver of *Miranda* rights. Specialized knowledge is required to conduct such evaluations. A mix of factors must be taken into account to determine if a child is competent. It is particularly important that the clinician break down the elements of the traditional competency test—the ability to understand the nature and purpose of the proceedings and to cooperate with counsel—into their component parts. Professor Grisso notes that the thresh-

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66 GRISSO, supra note 15, at 82.
67 Professor Grisso states:

Competence to stand trial inquiries focus on cognitive abilities (a) to understand information that is provided to defendants regarding the trial process and (b) to reason with the information that they acquire or bring to the situation. Developmental theory and relevant research tell us these capacities are still developing in most youths prior to age 14. In general, however, "average" adolescents at around age 14 and above are no less capable than "average" adults in their ability to understand matters pertaining to trials or to per-
old for juvenile competence may be lower than that for adults, given the special role and protections involved in the juvenile justice system. Professor Grisso goes on to provide a guide for assessing competence noting the importance of reliance upon cognitive, developmental, and emotional limitations. Since the law provides that defendants in criminal and juvenile cases may be "restored" to competence through treatment or simply the passage of time, it is important to know how remediation can affect the various causes of unfitness.

Clinicians are often called upon to assess a juvenile’s risk of harming others. This opinion is sought in different contexts: detention hearings, dispositional hearings after findings of delinquency, transfer or waiver hearings, and hearings to determine whether the juvenile court should continue to exert jurisdiction over a child. Professor Grisso urges caution here, both with respect to the nature of opinions to be given and the need to pay particular attention to the characteristics of individual youth. Professor Grisso urges that clinicians give “risk estimates” rather than “predictions.” It is also important to remember that violent behavior usually ceases after adolescence and that there are identifiable “risk factors” that clinicians can use to make risk estimates. Considering and investigating these risk factors is key to making a knowledgeable assessment.

Clinicians are also called upon to make “rehabilitation evaluations.” As risk evaluations, predictions of future behavior are always fraught with peril. In this chapter, Professor Grisso explores, among other issues, the question of how to confront the chronic problem of shortages of appropriate interventions. For example, what recommendation should a clinician make about a disposition if an intervention can be identified but if that intervention is not available? In many cases, for example, a child might best be treated in a state-of-the-art adolescent

form the mental processes that are required when one engages in decisionmaking about trial-related options.

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Id. at 96-97.

68 Id. at 130.

69 These factors include past behavior, substance use, peers and community, family conflict and aggression, social stressors and supports, personality traits, mental disorders, opportunity, and future residence. Id. at 183.
treatment program. However, funding for such a program might not be available. Should the clinician then recommend a correctional setting as the only alternative? A prerequisite for confronting this dilemma is knowledge of the system's resources, something clinicians and lawyers often lack. Professor Grisso suggests that "[r]ecommendations to juvenile courts for rehabilitation interventions must be made with a realistic view of the resources of the juvenile justice system."70 He provides a useful structure for rehabilitation assessments, noting that these assessments must take into account both character-based and social-circumstances-based theories of delinquency. He notes that "virtually every case will require an explanation for the youth's delinquency that draws from both perspectives."71

Although automatic transfer has deprived juvenile courts of authority to decide whether to transfer youth accused of the most serious crimes, discretionary transfer hearings are still utilized for children, normally younger children, accused of violent felonies. Clinicians play a significant role in assisting the transfer judge to determine whether the various transfer criteria are met, particularly the questions of whether the child is amenable to treatment and the availability of treatment alternatives within the juvenile system appropriate for the child. In this arena, clinicians are called upon to apply statutory criteria to the child's past behavior and prospects for change. Evaluation of children in this context presents all of the problems with making predictions about future behavior. The availability of services is also an issue. If a child could be rehabilitated given state-of-the-art intervention, but that intervention is not available to the child, how should the clinician react? As with opinions regarding competence, sanity, and treatment plans, Professor Grisso recommends an opinion that defines the likelihood for successful intervention as when such intervention produces "a substantial reduction in the likelihood of recidivism or of serious harm to others in the future . . . ."72

70 Id. at 165.
71 Id. at 184.
72 Id. at 215-16.
The final chapter of *Forensic Evaluation of Juveniles* discusses professional and ethical practice. The subject covered in this chapter includes the "nuts and bolts" of contractual arrangements with individuals and courts as well as the key point of understanding the referral question. The clinician and the attorney both must understand the legal and the clinical issues in the case and thus together define the scope of the evaluation. Clinicians must understand privilege and confidentiality issues and the different rules involved depending on the source of the referral, i.e., attorney requested or court ordered. Finally, in order to be professional, ethical, and credible, the expert must take account of her role in a juvenile court setting. Professor Grisso states: "Not to draw too extreme an analogy, but being a clinician in a juvenile court can be like finding a very important role and function within a foreign culture where one will never be a 'native' but may find satisfaction in the work and be appreciated for one's efforts." Finally, the ethical dilemma of providing opinions, not treatment is discussed. Professor Grisso believes "one can construct a professional ethic that will permit clinicians to participate in societally approved, legally sanctioned proceedings that may result in harm to some youthful defendants."

III. A Vision for The Future

Together, these books provide a framework for considering the future of juvenile courts. *Superpredators* provides the perspective of one concerned about the effects of popular opinion and culture on the nature of the problems we face when trying to formulate rational youth policy. *American Youth Violence* is a scientific approach to the problem of youth violence and the future of juvenile courts. *Forensic Evaluation of Juveniles* assumes a vibrant and committed juvenile court and describes the "best practices" of a key component of juvenile courts, the provision of forensic clinical services.

What do these books say about the ways in which juvenile courts and juvenile justice policy should be formulated? First,
each author believes in the desirability of improving the capacities of juvenile courts, although Professor Zimring seems willing to exclude the most serious offenders from its jurisdiction in order to preserve the essential features of the court. Professor Zimring bases this preference on the difficulties involved in dealing with such youth effectively in the juvenile justice system and upon the hope that criminal courts will take into account the distinctive developmental attributes of youth. Respectfully, Professor Zimring is too optimistic about the capacity of criminal courts to be flexible. Most criminal courts are not set up to take the youth/adult distinction into account both because of a lack of inclination and knowledge and because legislators do not appear ready to allow such distinctions to be made in criminal court. We do not quarrel with Professor Zimring's proposition that such a criminal court system would be desirable if it could be fashioned, but our experience tells us that we are not likely to see such an enlightened criminal justice system in the near future. If our pessimism about the potential of the criminal justice system to accommodate the needs of young violent offenders or of society's interest in their long-term welfare is well-founded, then every effort should be made to accommodate as many young people in juvenile court as possible, including even the most troublesome youth. Professor Grisso's splendid book raises the hope that with proper resources and training, psycho-social services departments of juvenile courts could be empowered to provide more effective treatment to even violent offenders thereby protecting the public for the long haul.

We also have a small bone to pick with Professor Grisso. This has to do with his recommendation regarding how clinicians should address the problem of shortages of appropriate services for youth. Professor Grisso suggests that clinicians should tailor their recommendations regarding dispositions in delinquency and transfer cases to services that are in fact available even when there is a service that ought to be available that could properly address the child's needs. Thus, it is conceivable under Professor Grisso's analysis that a clinician would recommend that a youth, who could be treated in a less restrictive, but
unavailable, setting be sent to a department of corrections even when a less restrictive setting was usually appropriate. Tailoring recommendations for treatment or placement to the availability of services has the undesirable effect of supporting the continuation of inadequate programming, one of the key deficits in our juvenile justice system. We recognize that clinicians are not advocates for the children that lawyers are, and that clinicians may be pressed by judges and lawyers to make recommendations based upon available services when there are no good alternatives. At a minimum, clinicians should let their dissatisfaction with the lack of availability of appropriate services be known, even as they are testifying in court. They, after all, are the only participants in the juvenile justice system who can speak with authority on such issues. And in fairness to Professor Grisso on this point, his book is a partial answer to this dilemma. His book is an implicit challenge, because of the high standards of practice that it describes, to all concerned in the juvenile justice system to put in place diagnostic and treatment programs that will address the needs of as many delinquent children as possible.

Each book stresses the need to strive for fact-based solutions that focus as much as possible upon the specific problem and the individual child, rather than upon stereotypes of problems and youth. These books make it very apparent that there are no easy answers to any systemic problem/crisis or individual case that the juvenile justice system confronts, and that the key to our juvenile justice system's preservation and empowerment may be a public recognition of that fact. Hopefully, public recognition of the complexity of the issues facing juvenile justice professionals will result in a more patient and tolerant attitude among the legislators who make juvenile justice policy. The model of progress in juvenile justice should be one of continuing inquiry, such as those which characterize on-going projects to eradicate disease, rather than a retribution-based approach.

What specific, concrete lessons can those of us who practice in juvenile court take from these books? The message sent by each of these books is that our system needs to be changed based upon the needs of the children whose problems the juve-
nile justice system attempts to address. Professors Elikann, Zim-
ring, and Grisso challenge those of us who practice in juvenile
court to make changes in the way we visualize the "big picture"
of juvenile justice, how we represent children, and how our ju-
venile courts and associated child welfare, treatment, and cor-
rectional systems operate. What processes could we employ to
make these changes and what are the outlines of the changes
that should be made?

Promoting change in court systems and state child welfare
and correctional agencies is a difficult business. There are
many constituencies whose interests must be addressed, first
among them the children and families these systems are man-
dated to serve. One suggestion is that we put this constituency
first—that we create a process that is designed to listen to our
clients, our wards, and to the children and families whose lives
the system impacts so drastically. Relatively little attention is
paid to the articulated interests of this most important group.
Instead, we seem to listen most carefully to those who run large
systems, judges, prosecutors, public defenders, and agency ad-
ministrators.

Second, we must design ways of changing that will listen
carefully to the merit-based insights of people like Professors
Elikann, Zimring, and Grisso. This is no easy task. The political
influence of politicians who seek re-election and those who have
a vested stake in business-as-usual in the juvenile justice system is
difficult to confront and to overcome. One solution would be
to insulate as much as possible the juvenile justice process from
politics—to carve out a "child welfare" exception to excessive
political control of the way in which we attempt to do justice to
children. This could be explained by the need of the system to
have some degree of autonomy in order to take the risks in-
volved in developing new and creative approaches to problem
solving. Of course, there must always be accountability to the
popularly elected government by courts, which must follow the
law, and by agencies, which receive their funding from the tax-
payers. But in the juvenile justice/child welfare area, the prin-
ciple of public accountability does not seem to have produced
many constructive changes. We need to work on ways of making the system innovative and accountable at the same time.

There are a number of ways to promote more merit-based change that the books reviewed here call out for. First, political leaders can be educated to allow those knowledgeable about crime trends, adolescent development, and administration of courts and child welfare agencies to take a “first crack” at writing new juvenile justice legislation and in planning for the delivery of legal, social, and medical services to children and families enmeshed in our juvenile justice system. We need to ask experts like the authors whose work is reviewed here to participate in the process of convincing legislators and bureaucrats to employ new approaches. For example, rarely in Illinois do we see sociologists and psychiatrists testifying at hearings at which new juvenile justice legislation is being considered. Rather, we hear from the “usual suspects”—prosecutors who argue that the juvenile court’s jurisdiction should be curtailed and more options should be created for incarcerating youth, and lawyers for children who argue that the laws as they stand are too punitive. This debate is usually won by the prosecutors, in part because the only new facts introduced are those that seem to support the proposition that crime committed by children is ever-increasing and that the only solutions involve building more prisons. The information possessed by experts like Professors Elikann, Grisso, and Zimring could provide legislators with fresh perspectives.

If direct participation in the legislative process, even by experts of the stature of the authors whose work is reviewed here, will not prove fruitful, there are other strategies that could be employed. There is a real need for a model juvenile court act that takes into account the interdisciplinary information discussed in this review. State legislatures may not be ready to undertake the task of writing such a model act. However, there is tremendous interest among community groups and among local and national foundations in making our juvenile justice systems take into account the information possessed by experts. A national collaboration among community groups and foundations to write a model juvenile court act with an underlying in-
A NEW COURSE FOR JUVENILE JUSTICE

terdisciplinary focus could start the ball rolling in the right direction.

IV. CONCLUSION

On July 28, 1998, the body of eleven-year-old Ryan Harris was discovered in some tall weeds not far from her godmother's Chicago home where Ryan had been staying for the summer. Ryan had been beaten about the head and the face with a blunt object, her underpants had been removed and stuffed in her mouth in an apparent attempt to gag her, and there was evidence she had been sexually assaulted. On August 10, 1998, the Chicago police announced that they had made an arrest in Ryan's case. Two small boys, aged seven and eight, had been charged with Ryan's murder based on inculpatory statements they had given to Chicago detectives.

The boys' arrest quickly made national headlines. The stage was set for a new round of handwringing about the savagery of today's children. Although some of this occurred, first the Chicago press, led by the Chicago Tribune, and then the national press, took a different tack. Instead of lumping these boys in with the so-called superpredators from the outset, the Tribune probed more complicated questions like: how do seven and eight year olds understand death, can they form criminal intent, do they understand their Miranda rights, and are they competent to stand trial. The Tribune sought out experts like Thomas Grisso and Frank Zimring for answers to these questions.

Led by a strong group of defense attorneys, questions were also raised about the case brought by police and prosecutors, a

76 Donato, supra note 74, at 1; Kotlowitz, supra note 75, at 45.
77 Kotlowitz, supra note 75, at 42.
78 Id.
case based exclusively on oral statements obtained from the boys outside of the presence of their parents or relatives. The press also raised questions about the propriety of interrogating young children without their parents and called into question the reliability of any statements taken from children in this manner. Even before the charges were dropped, calls for several reforms were made in the press, including greater oversight by prosecutors over charging decisions in juvenile cases and videotaping of interrogations and confessions of suspects.

In many ways, the Ryan Harris case exemplifies the kind of thoughtful response to juvenile crime for which we are advocating and which is exemplified in the work of Professors Grisso, Zimring, and Elikann. In the days following the boys’ arrest, academics, criminologists, psychologists and the press all banded together to provide a context to the horrible crime and to give easily digestible information for the public to use in trying to understand it. In the process, the public learned many of the lessons taught in the works of Professors Grisso, Zimring, and Elikann, including that America is not in the midst of a juvenile crime epidemic, that murders involving very young children are exceedingly rare, that children process the world very differently than do adults, and that as a result, their understanding of their constitutional rights and the court process differs markedly from adults’ comprehension. Once the charges were dropped, the public learned that children need special protection in our police stations and in our courthouses to safeguard them against their immaturity, ignorance, and poor judgment.

In the wake of the Ryan Harris case, legislative committees and task force in Illinois have been formed and have sought out the advice of experts to provide greater protections for children in the stationhouse. Several juvenile justice reforms have been

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80 Kotlowitz, supra note 75, at 48-52.
82 Maurice Possley & Steve Mills, Rules Not the Same When Suspect’s a Kid, CHI. TRIB., Aug. 28, 1998, News Section, at 1; Judy Peres & Abdon M. Pallasch, Confession Debate: To Tape or Not?: City Bucks National Trend of Recording Police Interviews, CHI. TRIB., Aug. 20, 1998, News Section, at 1.
enacted and others are still being considered by policymakers. In the past, Illinois legislators rarely considered expert testimony before passing punitive juvenile justice laws. Laws were often passed in response to a high profile juvenile crime in an environment where rhetoric, rather than reason or research, prevailed. While it is too early to tell what the juvenile justice landscape in Illinois will look like once the dust settles from the Ryan Harris case. At least, in Illinois, we can point to an example of one effort to develop juvenile justice policy based on empirical data and research. We hope that the legacy of the Ryan Harris case will be many more such examples in the future.
