INTRODUCTION

If the years between 1965 and 1975--the decade of Kent v. United States, In re Gault, the Juvenile Justice and Delinquency Prevention Act, and Breed v. Jones--wrought a revolution in juvenile law orthodoxy, the 1990s may ultimately be regarded as a classic counter-reformation. Institutional control of juvenile deviancy, though newly constrained by constitutional liberty claims, appears to have reasserted itself with astounding power. Fear of rising juvenile crime, a fear impossible to dismiss in recent years, has produced in the past decade the most remarkable wave of legislation affecting juveniles since the movement to lower the age of majority in the 1970s.

The essence of this new "reform" is simple, and on the surface at least, perfectly compatible with Gault: children who commit serious crimes should be treated virtually the same as adults. As a recent study revealed, since 1992 more than three-quarters of the states have adopted new legislation making it easier to prosecute juveniles in criminal court. In many states this has meant complete loss of juvenile court jurisdiction over all but the very youngest juvenile offenders. Thus, for example, in 1995 Oregon eliminated completely the criminal defense of "[i]ncapacity due to immaturity" for all persons aged twelve or over, and in Kansas children as young as ten years old are now subject to discretionary waiver to adult criminal court for any criminal offense. In addition, many states have abandoned or reduced the traditional discretionary-waiver authority of juvenile courts, and adopted either (1) a variant of the "reverse-waiver" procedure, in which the child is arraigned in adult criminal court but given the right to move for transfer back to juvenile court, or (2) a form of a "mandatory" waiver requirement for certain offenses, in which discretion purportedly plays no part. Once transferred, juveniles now may often be sentenced to imprisonment in adult facilities, though typically with the proviso that they be kept separate from adult inmates until a certain age. Even juveniles who are not waived to adult court increasingly will face out-of-court consequences similar to those suffered by adult convicts: nearly half the states have opened juvenile court hearings to the public, and records of juvenile court adjudications are now widely available to victims, social agencies, and any individuals who can show a legitimate interest in obtaining them.

In 1995 Connecticut adopted a sweeping reform of its juvenile justice laws that may well come to be regarded as the perfect embodiment of this national trend. The new legislation provides for the automatic transfer to criminal court...
court of any juvenile accused of committing a Class A or B felony after her fourteenth birthday. \[*354\] Then, on motion of the prosecutor, and only of the prosecutor, the adult criminal court may transfer back to the juvenile court a child accused of committing a Class B (but not a Class A) felony. \[*FN15\] Meanwhile, a juvenile accused of any lesser felony will be transferred to adult criminal court upon motion of the prosecutor and an ex parte finding of the juvenile court judge that probable cause exists to believe that the offense was committed--whereupon the juvenile may move for a reverse waiver back to juvenile court. \[*FN16\] Even where a juvenile case remains in juvenile court, the records of the proceeding may later be disclosed to public officials "conducting legitimate criminal investigations" and in open court in connection with bail or sentencing reports in a criminal case involving the juvenile. \[*FN17\] Perhaps most tellingly, the law in Connecticut no longer speaks of juveniles "adjudicated" as delinquents but instead as "convicted," \[*FN18\] so that even very young miscreants will bear a label of adult culpability.

Nor is this push for dramatic change confined to the states. For the past several years Congress has been on the brink of very substantial revisions in the federal approach to juvenile crime. In the current session both houses have passed juvenile crime measures \[*FN19\] that would largely track the general trends in state legislation. Thus the Senate Bill would lower the current age for prosecution of juveniles as adults \[*FN20\] from eighteen to fourteen if the youth is accused of having committed a federal felony and the United States Attorney certifies "there is substantial Federal interest in the case" and "the ends of justice so \[*355\] require." \[*FN21\] The harsher language of the House Bill would permit the prosecution of fourteen-year-olds as adults for any federal offense upon certification by the United States Attorney that "the interests of public safety are best served" by such prosecution, \[*FN22\] and would permit as well prosecution of thirteen-year-olds for any "serious violent felony" or "serious drug offense." \[*FN23\] With regard to punishment, the Senate Bill would eliminate the longstanding provision of federal law prohibiting placement of juveniles in facilities where they will have "regular contact with adults," \[*FN24\] and would permit "supervised proximity . . . that is brief and inadvertent, or accidental, in secure areas of a facility that are not dedicated to use by juvenile offenders and that are nonresidential, which may include dining, recreational, educational, vocational, health care, entry areas, and passageways." \[*FN25\] Likewise, both the House and Senate Bills would weaken the mandate of the Juvenile Justice and Delinquency Prevention Act of 1974 that federal funds be withheld from states permitting juveniles to be confined "in any institution in which they have contact with [incarcerated] adult persons." \[*FN26\] Now, under the House Bill, confinement of juvenile offenders would be prohibited only "in any institution in which they have regular contact, or unsupervised incidental contact with [incarcerated] adults;" \[*FN27\] the Senate Bill prohibits only confinement that results in "prohibited physical contact or sustained oral communication with adult inmates." \[*FN28\] To signal the shift in Washington's attitude toward delinquency, both bills provide that the federal Office of Juvenile Justice and Delinquency Prevention is to be renamed the "Office of Juvenile Crime Control and Delinquency Prevention." \[*FN29\]

Punitive though it is, this new legislative willingness to treat juvenile offenders as adults is surprisingly in accord with a growing body of scholarship that favors abolition of the juvenile court altogether. \[*356\] Led by Barry Feld, \[*FN30\] this group of scholars argues that the juvenile court has utterly failed in its goal to provide humane, rehabilitative treatment to children and at the same time, even with the Gault reforms, fails to provide the young procedural rights and protections on a par with the adult criminal system--forcing them to conclude that children would fare better in the regular criminal court, though with special consideration of their youth in sentencing. \[*FN31\] Others have argued that the juvenile court, for all its faults, is far more likely to safeguard children's welfare than even the fairest adult forum. \[*FN32\] Indeed, for all the legislative reforms that facilitated adult treatment of juvenile offenders, and despite the fact that the decade from 1986 to 1995 showed a thirty three percent increase in the number of juvenile cases waived to adult court, \[*FN33\] opponents of outright abolition can still point to the fact that still in 1995 only one percent of petitioned delinquency cases (or about 9700 nationwide) were transferred to criminal court. \[*FN34\] So far, at least, even prosecutors newly armed with discretion to try juveniles as adults have not stampeded in that direction. And it goes without saying, of course, that defense attorneys for juveniles typically fight tooth and nail to keep cases out of adult courts. \[*FN35\]

It was in the midst of this tension among striking legislative change, sharp ideological conflict, and stubborn institutional continuity that the Center for Children and the Family at the Quinnipiac College \[*357\] School of Law--with the co-sponsorship of the American Bar Association's Juvenile Justice Center in Washington, D.C., and of the Juvenile Law Center in Philadelphia--issued a Call for Papers in the fall of 1997, for a conference to be held the following year at our law school's campus in Hamden, Connecticut. \[*FN36\] That gathering, on September 17-18,
1998, brought together forty-five presenters from more than a dozen states and four continents to consider the questions raised by the trend, at least in this country, toward adult treatment of juvenile offenders. This special issue of QLR is devoted to the publication of a selection of the papers presented at the Conference.

As will become apparent in perusing the articles that follow, the tenor of the scholarship at the Conference was decidedly interdisciplinary and international. Drawing the line between childhood and adulthood for purposes of criminal liability and punishment has never been possible for lawyers and judges without the aid of empirical evidence—thus the old infancy defense created, for children aged seven to thirteen, merely a rebuttable presumption that they lacked understanding of the consequences and moral quality of their actions. [FN37] The first four papers presented below in Section One explore the interaction between what we know about children's capacities and the rules of criminal liability and procedure that we have both inherited and attempted to reshape. But just as our legal standards must be measured against the empirical realities of child development, so too must they face comparison with those adopted by other countries confronting essentially the same problems. Five articles in Section Two examine international standards applicable to criminal punishment of minors and describe the diverse approaches to juvenile justice taken by South Africa, the Netherlands, and Australia. Ultimately, though, it is our own *358 exigencies that we must address, and our own national conscience that we must satisfy. Section Three concludes the symposium by turning an empirical lens on the American legal system itself—to examine how the transfer procedures are working in practice and the kinds of special problems that they pose for practicing attorneys and advocates.

I. JUVENILE JUSTICE AND DEVELOPMENTAL REALITIES

Thomas Grisso, whose path-breaking work examining the efficacy of Miranda warnings for juveniles [FN38] launched a whole branch of scientific inquiry into the competence of juveniles within the criminal justice system, was, appropriately, the keynote speaker at the Conference. His remarks, Dealing with Juveniles' Competence to Stand Trial: What We Need to Know, quietly hurled a challenge at the orthodoxies of both Gault-era reformers and the proponents of the new transfer regime. With respect to the former, Grisso reviews the substantial empirical evidence suggesting that juveniles lack the "decisional" component of "adjudicative competence," and so suggests that the simple provision to adolescents of adult procedural rights may in many cases, especially those involving youths with affective disorders or developmental disabilities, be virtually meaningless or even counter-productive. At the same time, of course, these very deficiencies in the competence of youths put on adult trial may well be taken to illuminate the injustice of what he calls the "recent punitive reform in juvenile justice." The harshness of the new transfer regime poses serious dilemmas for attorneys, and Grisso ends his article highlighting the serious costs—especially the possibility of confinement in a locked, potentially dangerous adult psychiatric facility for an extended period, one that could exceed the jail sentence likely to be imposed upon a conviction—that the system may impose on a juvenile whose attorney adopts a strategy of challenging the youth's competence to stand trial.

If Grisso focuses on the questionable ability of many juveniles to participate in the process of determining their guilt or innocence, Jeffrey Fagan addresses the intractable difficulties of providing outcomes from the juvenile justice system that satisfy both the needs of young offenders for treatment and the public's reasonable demands for safety. In Punishment or Treatment for Adolescent Offenders: Therapeutic Integrity and the Paradoxical Effects of Punishment he traces the *359 historical preference for rehabilitation as the primary goal of the juvenile justice system, and shows how—and more to the point, why—that goal has recently given way to a reliance on punishment. Summarizing the literature on the components of effective treatment of juvenile offenders, he analyzes the extent to which such treatment can occur in the context of a punitive institution with limited resources. Ultimately he argues that "[t]reatment need not be relegated to a secondary role when it is well integrated in a theory of behavioral change."

It is precisely the difficulties of developing a useful theory of adolescent behavior that concern Elizabeth Cauffman, Jennifer Woolard, and N. Dickon Repucci in their article, Justice for Juveniles: New Perspectives on Adolescents' Competence and Culpability. Cauffman and her colleagues review the slow and tricky progress through the past two decades of research on how the decision-making of teenagers differs, if at all, from that of adults. They point out the methodological and analytical limitations of much early work on the subject, work compromised in part by unrepresentative samples of adolescents, but more crucially by a singular focus on cognitive capacities as distinguished from "judgment" and "maturity." Mature decision-making, they show, appears to derive

more from such "psychosocial" factors as self-reliance, understanding of the complexity and broader context of a given situation, and the ability to limit impulsivity and act cautiously. Persuasive, if still formative, research suggests that the development of psychosocial maturity continues into late adolescence, which leads Cauffman and her colleagues to question whether either the culpability of adolescents' actions, or their ability to participate meaningfully in their own defense, can be judged without a deeper understanding of developmental differences in decision-making capacities and real personal autonomy.

The question of children's autonomy stands, too, at the heart of Janet Dolgin's article, The Age of Autonomy: Legal Reconceptualizations of Childhood. She provides a striking historical overview of the nineteenth- and early twentieth-century understanding of children as subsumed within a holistic family structure (the "Traditional Model"), and of the rapid redefinition of children during the past few decades as autonomous individuals rather than objects of care and protection (the "Individualist Model"). Of particular importance in this transition, of course is the Supreme Court's decision in In re Gault, which she argues was a holding in favor of a kind of autonomy for children that assumed the continued strength of family and community structures devoted to protecting them (the "Mediating Model"), a view of childhood that is "internally contradictory" and too "inherently fragile" to have more than transitional force. In effect, Dolgin shows, the law largely continues to embody the tension between the two most extreme images of childhood--between the Traditional Model and the Individualist Model. [FN39] By comparing developments in the legal treatment of children seeking to escape dysfunctional families by petitioning to change the identity of their legal parents, and in the treatment of children accused of conduct that is criminal for adults, she argues that the Individualist Model is rapidly gaining hegemony. This triumph may be short-lived, though, for Dolgin concludes that the peculiarly American concept of autonomy for children is itself subject to severe internal tension--between, on the one hand, the desire (reflecting "hope") to give children autonomy so that they can defend themselves against the follies of dysfunctional adults, and, on the other, the impulse (reflecting "despair") to thrust autonomy on children in order to justify harsh repression of their misbehavior.

II. INTERNATIONAL PERSPECTIVES ON JUVENILE OFFENDERS

If anyone needed reminding about the tendency of American law toward peculiarity with respect to treatment of children, five international scholars led off the second day of the Conference by providing eloquent testimony to that fact. Most pointedly, Geraldine Van Bueren delivered a searing indictment of the failure of the United States to conform to international standards of juvenile justice established by the United Nations Convention on the Rights of the Child, a document which this country, almost alone among nations, has refused to ratify. Her article, A Curious Case of Isolationism: America and International Child Criminal Justice, carefully explains the underlying principles of the Convention and of subsequent guidelines regarding juvenile justice developed under its rubric--most particularly the notion that prevention of child crime should rely on direct state coercion only as a last resort. Informal procedures, diversion where possible, reintegration of juvenile offenders into the community, and imprisonment of the young for only the "shortest appropriate time"--all these are hallmarks of the Convention's approach that are in stark contrast with emphasis on procedural regularity and adult standards of punishment that have come to characterize the post- Gault period in American juvenile justice. Van Bueren concludes by mapping out strategies for American lawyers to bring international law norms of child justice into American courts, and by asking, incisively, whether the very use of the term "juveniles" as opposed to "children" with reference to criminal justice for the young has not distorted the debate in English-speaking countries.

The balance of the international presentations were more descriptive in character, each of them focusing on the development of juvenile justice standards in specific nations. Julia Sloth-Nielsen had the happy task, in her article The Juvenile Justice Law Reform Process in South Africa: Can a Children's Rights Approach Carry the Day?, of describing the experience of country that has had the luxury of virtually re-inventing its juvenile justice system in context of dramatic democratic reform. Not that this process has been easy: Sloth-Nielsen vividly recounts the swings of public opinion after the watershed national elections in 1994, which were followed first by sweeping laws requiring release of all children from detention and imprisonment, then by a sharp backlash, and finally by a more measured effort to bring South African law in conformity with the United Nations Convention on the Rights of the Child. Of particular interest is her careful outline of a draft bill produced by a Project Committee of the South African Law Commission, which seeks fully to embody the Convention's mandates without outraging public opinion yet again, and, equally difficult, without over-stretching the fragile governmental resources available in an emerging democracy. Not surprisingly, the toughest, and to-date unresolved, question faced by the framers of the
reform has been the minimum age of criminal responsibility.

Although linked to South Africa by history and settlement, the Netherlands would hardly seem likely to share much of that country's recent experience of instability and experimentation in the field of juvenile justice. Yet as the next two papers make clear, Dutch law in the 1990s has faced sharp challenges to a longstanding orthodoxy of civil, informal, even lenient treatment of juvenile offenders. Paul Vlaardingerbroek, in New Trends in the Juvenile Justice System, describes the rising concern over juvenile violence in the Netherlands during the past decade--though the rates of violent offending among the young, even after doubling in only a few years, remain far below those in the United States. In 1995 a reform of the juvenile justice system brought it squarely within the framework of the criminal law, although the Netherlands retained an extraordinarily flexible approach to sanctions for juvenile misconduct--sanctions which can include, for example, "task penalties" designed to promote a tight fit between the offending conduct and the nature of the juvenile's sentence. In his overview of current Dutch law Vlaardingerbroek cogently demonstrates that juvenile judges there face the same problems of impartiality and role confusion familiar to all judges (and, indeed, attorneys) working within the juvenile justice system in the United States.

Adriaan P. van der Linden, in Juvenile Confinement in the Netherlands and the Legal Position of Adolescents in Juvenile Offenders' Institutions, extends this overview of Dutch juvenile law by focusing on the nature of the system juveniles confront if they are found culpable of the offenses alleged. Along with Vlaardingerbroek he emphasizes the recent transformation of the juvenile justice system from what prior to 1995 was "essentially a child welfare system" into a structure with a "punitive character." Carefully explaining the wide variety of both formal and informal sanctions and placements available to respond to juvenile offending, he gives a particularly detailed account of "detention centers" and "judicial treatment centers," the two types of secure placement available after formal adjudication. Americans who have seen the conditions within our own detention and reform-school facilities will be shocked, or perhaps rather touched, by the remarkable benignity of the system van der Linden describes. The mere fact that secure placements of youths under age eighteen cannot last, on his account, beyond six years in the most severe cases suggests how great is the distance between Dutch and American juvenile law even as the two societies confront very similar social and political pressures.

Americans will likely feel less discomfiture in reading Kenneth S. Levy's article, The Australian Juvenile Justice System, a highly comprehensive overview of a system not drastically different from our own--and derived, of course, from the same English legal traditions. In Levy's account, Australians face not only the same pressures of rising juvenile crime confronting many Western nations but must confront, as must the United States, the special problems arising out of the continued existence of native peoples in a once-colonial society. The federal structure of Australian government, in which juvenile and family matters fall almost entirely under state jurisdiction, will seem familiar, as will the use of Children's Courts to try all but the most serious juvenile offenses. Particularly heinous crimes, such as murder or rape, fall under the jurisdiction of adult criminal courts, and the range of formal and informal sanctions for juvenile misconduct is very similar to that prevailing in most American states. Yet Levy's description of the practice of "conferencing," in which the victim and offender meet, each flanked by "support persons," suggests that Australian juvenile justice has a strongly communitarian component largely missing from the American system. Nor, apparently, is the impetus to adult treatment of all but the most serious juvenile offenders nearly as strong as it is in the United States. His article carefully weights current knowledge about the effectiveness of such informal approaches as "reintegrative shaming," about the role of race and gender in the system, and about the role of straightforward punishment in juvenile justice. He concludes his paper by reviewing the relationship between mental illness and juvenile offending, and by urging that the lessons of medical and social science research be applied to bring greater flexibility in the sanctions and procedures available to the juvenile justice system.

III. THE AMERICAN COUNTER-REFORMATION IN THEORY AND PRACTICE

In the debate in this country over how to treat serious juvenile offenders, of course, the practices and policies of other nations are typically accorded only a minor role. It is a stubborn American habit to hold, as did the Supreme Court in Stanford v. Kentucky while sustaining the constitutionality of the death penalty as applied to sixteen- and seventeen-year-olds, that "it is American conceptions of decency that are dispositive." The final six selections from the Conference provide an overview of current American practices with respect to transfer of juveniles to criminal court, combined with a critique of the consequences, both intended and otherwise, of the
recent wave of reform.

In Juveniles in Criminal Court: Past and Current Research from Florida, Charles Frazier, Donna Bishop, Lonn Lanza-Kaduce, and Amir Marvasti provide a sharp and surprising assessment of the results of *364 Florida's growing experiment, since 1978, with a "direct file" form of transfer in which prosecutors are given power to file criminal charges against juveniles with no prior judicial waiver hearing. Over the past twenty years the Florida legislature has steadily increased this power, and Frazier and his colleagues begin their piece by describing the political history of the initial waiver provisions in the 1970s and the major expansion of direct file authority enacted in 1994. It is this last reform that provides the linchpin of their current research efforts, here described in initial form, which compare transfer statistics compiled in the year before and in the year after the reform. In vivid contrast to the expectations of all concerned, the vast expansion of prosecutorial authority in law produced a small but significant decline in convictions and incarcerations of juveniles in practice. Through interviews with prosecutors and judges Frazier and his colleagues attempt to account for this anomaly while explaining the popularity of the direct file approach. At the same time, they report the results of interviews with two groups of juveniles--one consisting of youths transferred to criminal court, and the other of youths placed within Florida's traditional juvenile justice system. It may come as something of a shock to juvenile court abolitionists-- who usually attack the continued existence of the juvenile system in the name of child advocacy [FN42]--that the youths interviewed expressed a strong preference for both the procedures and the outcomes of the juvenile system. Frazier and his colleagues conclude by recalling the results of previous research showing higher recidivism, and consequently a greater threat to public safety, among juveniles transferred for punishment as adult criminals, and argue that the popular impetus toward easy waiver standards is misguided.

The nuts and bolts of one state's new transfer regime are on view in Once We Know Who, What, and Where, Will We Ask Why?, in which Jan Wheeler, Karen Worthington, Trish McCann, and Debbie Phillips describe the structure and the initial outcomes of Georgia's School Safety and Juvenile Justice Act of 1994, which, like the legislation described by Frazier and his colleagues in Florida, substantially expanded the authority of prosecutors to try juveniles (as young as age thirteen) as adults. Of enormous interest for researchers-- and indeed for government officials charged with reporting responsibilities in the juvenile system--will be the authors' detailed description of how they compiled data on juveniles waived to criminal court from a wide variety *365 of complementary and sometimes conflicting sources. The results they report indicate that, again like the Florida experience, the statutory net-widening in Georgia did not result in an increase in adult proceedings or adult dispositions for juveniles--although Wheeler and her colleagues suggest that this seeming paradox may be explained by the nationwide drop in juvenile crime, including serious crimes, after 1994. [FN43] Among juveniles arrested for transfer-mandated offenses, a surprising number still received juvenile treatment after a form of "reverse waiver," and only a minority of those tracked ended up incarcerated in a correctional facility. Disturbingly, though, their data show the apparently disproportional effect of the new measures on blacks, who comprise thirty-three percent of the juvenile population aged twelve to seventeen, but seventy-nine percent of the juveniles arrested for the designated crimes [FN44]--which is all the more troubling given the Georgia legislature's twin mandates that the minimum sentence to be served for the designated felonies is ten years, and that youths as young as seventeen are to be classified and housed as "adults" within the prison system.

In The Significance of Place in Bringing Juveniles into Criminal Court, Simon I. Singer is also concerned about the fairness of transfer proceedings, but highlights a different source of inequality of treatment--simple geography. Through careful analysis of FBI data, he shows an extraordinarily strong relationship between the "size of place" *366 (population) and the percent of juveniles brought to criminal court. This finding, supported by similar previous findings in statewide studies, [FN45] is central to Singer's effort to distinguish between what he calls "loosely coupled" and "tightly coupled" systems of juvenile justice. The former, which predominate in urban areas, are characterized by an elaborate bureaucratic structure that allows many different officials to affect the outcome of a given case in an idiosyncratic way. Tightly coupled systems, by contrast, involve fewer autonomous decisionmakers-- as in rural areas--and so, he argues, are more likely to be affected quickly by reforms such as the waiver statutes of the last two decades. Singer concludes by reviewing the history of the juvenile court and the inevitable move from a tightly coupled structure dominated by a powerful juvenile court judge to a rather elaborate, and so loosely coupled bureaucracy. Contrary to the claims of waiver proponents that an "offense-based" approach to juvenile justice will tend to eliminate invidious inequalities in the treatment of offenders, his research supports the view that such reforms are likely, at least in the short term, to exacerbate differences between treatment of youths in...
urban and rural areas. In the longer term, Singer argues that the attempt to "reintegrate" the adult and juvenile
criminal justice systems is likely to fail because it does not recognize either the necessary complexity of modern
"expert systems" in responding to offenders nor the inherent impossibility of achieving sufficiently uniform
outcomes of reform in places of widely different sizes.

The wave of legislative reform in the 1990s is not, however, only of interest as it affects juveniles plucked out of
the juvenile system. For what of those who remain within it? How much has the philosophy of the juvenile justice
system been affected in its own right by the successful campaign during the past decade to shrink its domain? In
The Rhetoric of Juvenile Justice Reform, Craig Hemmens, Eric J. Fritsch, and TORY J. Caeti find an interesting angle
from which to tackle that question, by carefully examining and categorizing the language of the "purpose clauses"
that exist in all fifty of the state juvenile justice statutes. Their analysis reveals that less than half the states' purpose
clauses retain what they call the "traditional" rationale for the juvenile *367 system--rehabilitation and treatment.
On the other hand, only one state has adopted a clearly "punitive" rationale in its statutory language, a finding that
may seem unexpected in the wake of clearly punitive reforms of waiver statutes in the vast majority of states. Just as
surprisingly, perhaps, only one state has adopted a purpose clause that embodies the academically fashionable
"balanced approach"--which combines an emphasis on community protection combined with both competency
development and accountability. That leaves a large number of states, as Hemmens, Fritsch, and Caeti show,
"[lacking] a clear set of goals for their juvenile justice system"--at least insofar as the actors in that system look to
statutory language for guidance. The urge to "get tough" on juveniles, they conclude, has translated less into a
clearly punitive philosophy for the juvenile system than into simple confusion about the system's purposes.

Robert E. Shepherd contends that substantial confusion exists, too, in public understanding of the extent and nature
of the juvenile crime problem. In Film at Eleven: The News Media and Juvenile Crime he trenchantly compares the
actual facts of juvenile violence, including a recent and substantial drop in violent offending, with poll results
indicating widespread public beliefs to the contrary. Shepherd accounts for these misapprehensions by examining
the almost obsessive focus of the national and local media on high-profile stories involving youth violence,
especially when contrasted with lack of media interest in such issues as child poverty and the child welfare system.
Nor, he argues, is this media overemphasis on violence harmless, for it has had profound effects on the political
climate that shaped the reforms of the past decade. In a final turn toward optimism, he concludes by reviewing a
variety of efforts within the media to bring greater balance and depth to reporting involving young offenders and
children's issues in general, and urges advocates to assist the media to move further in that direction by providing
accurate information and intelligent, accessible commentary in response to breaking stories.

But effective relationships with the media may be even more important for lawyers defending juvenile clients than
they are for public policy advocates, as Laura Cohen demonstrates in the Symposium's final paper, Kids, Courts, and
Cameras: New Challenges for Juvenile Defenders. An experienced juvenile defender herself, Cohen begins by
reviewing the substantial erosion of the traditional confidentiality rules protecting juvenile proceedings, and the
corrosive effects of media coverage on the present and future welfare of juvenile defendants. *368 While
acknowledging the benefits of media coverage for spurring institutional change and encouraging greater
professionalism in the juvenile courts, she describes the ways in which pre-trial publicity can distort almost every
stage of a high-profile proceeding, from arrest to sentencing. She then reviews and critiques the legal standards
governing access to records and proceedings in the juvenile court, including an overview of the recent trends in state
legislation toward opening up many juvenile proceedings to the public. The final section of her paper presents
practitioners with a thoughtful blueprint for responding to, managing, and in some cases even barring the media in
order to protect a juvenile client's interests--a discussion not least valuable for its sensitive consideration of ethical
obligations and effective client counseling in regard to publicity. It is Cohen's hopeful and--in the face of a decade
of negative publicity and punitive legislation--brave view that advocates for even the most notorious juvenile
offenders can demand and receive fair treatment for their clients, both in and out of court. As the final direction of
the recent reforms in juvenile justice will ultimately be defined in actual proceedings shaped by practicing attorneys,
her advice seems an appropriate place to end the Symposium.

IV. FUTURE DIRECTIONS FOR RESEARCH

No one conference, and certainly not one held so close to the event, can begin to address all the issues that arise
from a phenomenon as complex as the movement we have labeled the Juvenile Justice Counter-Reformation. Future
researchers, for example, will have a greater capacity to analyze whether the huge upsurge in juvenile violence in the late 1980s and early 1990s was the beginning of sharply upward slope, the small crest of an historic peak, or a simply a new plateau. Once juveniles are being sent in large numbers into adult courts and adult correctional systems, it will be possible to judge not simply whether the juvenile system is a failure on its ambitious terms—a fact widely acknowledged in the literature [FN46]—but whether its procedures and treatments compare favorably in outcomes and in fairness with the only alternative currently available, the adult criminal justice system. The preliminary psychological questions—raised here by Thomas Grisso *369 and by Elizabeth Caffman and her colleagues, and in the literature by others [FN47]—about the capacity of adolescents to defend themselves in adult proceedings, and to possess the same mens rea that we recognize in adult criminals, will have more definitive answers. Technical issues about the wording of individual states' transfer statutes will have emerged, as will challenges under both the Federal and individual state constitutions. [FN48] Spillover effects from the transfer statutes, if any, onto the adult criminal system, [FN49] the remaining juvenile justice system, and the general child welfare system will be apparent. Finally, attorneys for juveniles exposed to the "automatic" and "reverse" transfer procedures will have developed clearer strategies for preventing punitive treatment of their clients, whether through preventing the transfer outright, or through innovative tactics in criminal court. [FN50]

For now, though, we are content with the serious, challenging nature of the scholarship presented at the Conference last fall—including many superior presentations not included here. We are grateful, as well, to the American Bar Association's Juvenile Justice *370 Center, [FN51] and the Juvenile Law Center, [FN52] for their co-sponsorship and remarkable assistance. Finally, we acknowledge with gratitude the efforts of the editors of QLR to provide a permanent forum for a representative portion of the Conference's substance. In the end we can only hope that this Symposium will help advance the understanding of one of the most dramatic developments in the law of childhood in our lifetimes.

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[FN5]. Between 1986 and 1995, the period during which nearly all of the reforms which are the subject of this Symposium were adopted, juvenile delinquency cases involving criminal homicide increased 84%, those involving robbery 53%, and those involving aggravated assault 137%. See Melissa Sickmund, U.S. Dep't of Justice, Juvenile Court Statistics--1995, at 5 (1998). For an argument that this seeming epidemic never in fact occurred, and that recent statistics provide no basis for projecting increased juvenile violence in the future, see Franklin E. Zimring, The Youth Violence Epidemic: Myth or Reality, 33 Wake Forest L. Rev. 727 (1998).

[FN6]. Indeed, Justice Black in his concurring opinion in Gault argued that because Gerald Gault was subject to longer confinement as a juvenile delinquent than any term of imprisonment to which an adult could be subjected for the same offense, the case should have been decided on Equal Protection grounds: "it would be a plain denial of equal protection of the laws—an invidious discrimination—to hold that others subject to heavier punishments could, because they are children, be denied these same constitutional safeguards." In re Gault, 387 U.S. at 61. Justice Stewart's dissent took up that argument, pointing out how it could cut as well in favor of eliminating special, humane treatment of juvenile offenders, and could "invite a long step backwards into the nineteenth century." Id. at 79. In light of the dramatic expansion of criminal jurisdiction over juveniles since Gault, Justice Stewart's warnings seem increasingly prescient.


[FN9]. See Kan. Stat. Ann. § § 38-1602a(a), 1636(a)(1) (West 1998). As of the end of the 1997 legislative sessions, some 28 states are reported to have removed certain offenses or age/offense/prior record categories from the juvenile court's jurisdiction. See Griffin, supra note 7, at 8.

[FN10]. See, e.g., Neb. Rev. Stat. § § 29-1816 (1995), § § 43-247, - 261, -276 (1998) (giving prosecutors the option to file charges against juveniles in either criminal or juvenile court, with juvenile retaining the right within 15 days to move for transfer back to juvenile court). For a summary of the now highly variable transfer procedures current in the states, see Griffin et al., supra note 7, at 2-10; Feld, supra note 7, at 208-27.

[FN11]. See, e.g., Ky. Rev. Stat. Ann. § 635.020(4) (Michie 1998) (requiring transfer for adult criminal prosecution where judge finds probable cause that child committed felony in which a firearm was used). In cases where "mandatory-waiver" is possible, of course, the prosecutor retains the discretion as to with which offense to charge the juvenile, and so can spare the youth from an adult proceeding. See United States v. Bland, 472 F.2d 1329, 1335-37 (D.C. Cir. 1973) ("The discretion provided the Attorney General by this section can, of course, result in vastly different consequences for an individual affected by [the prosecutor's choice between a juvenile or criminal proceeding]."). Thus the label "mandatory" as applied to waiver can be misleading even in very serious cases.

[FN12]. See, e.g., Tenn. Code Ann. § 37-1-134(i) (1998) (permitting 16- year-olds to be confined in adult facilities but requiring that they be "housed separate and apart from adult inmates"); see also Torbet et al., supra note 7, at 11-34.

[FN13]. See Torbet et al., supra note 7, at 36-38.


[FN15]. See id.

[FN16]. See id. § 46b-127(b) .

[FN17]. Id. § 46b-124(c) . Delinquency records may also be disclosed to the victim of the crime, see Conn. Gen. Stat. § 46b-124(e) (1997), and much more surprisingly, to "any person who has a legitimate interest in the information." Id. § 46b-124(d).

[FN18]. Id. § 46b-140. This use of language is perfectly in line with the "goals" of the juvenile justice system outlined by the 1995 reform, the first of which is to "hold juveniles accountable for their unlawful behavior." Id. § 46b-121h(1).


of serious offenses, and for 13-year-olds when firearms were used in commission of certain offenses).

[FN21]. S. 254 § 102(a). The proposed revision would permit district court judges to transfer a defendant back to juvenile status after a hearing. See id.

[FN22]. H.R. 1501 § 201. Such certifications are specifically made non-reviewable by any court, and no procedure for transfer back to juvenile status is permitted. See id.

[FN23]. Id.


[FN28]. S. 254 § 301. The bill defines "prohibited physical contact" to exclude the same kinds of "brief" and "inadvertent" contact that are now to be allowed in federal corrections facilities. See supra text accompanying note 22.

[FN29]. S. 254 § 301; H.R. 1501 § 1305(1).


[FN33]. See Sickmund, supra note 5, at 13.

[FN34]. See id.

[FN35]. Indeed, counsel representing a juvenile defendant may well have a professional duty in nearly all cases to oppose transfer. See Patricia Puritz et al., A.B.A. Juv. Just. Ctr., A Call for Justice: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings 34-35 (1995) (reviewing the "enormous" consequences of transfer for juveniles, and concluding that defense counsel should argue that the accused youth is "still a child, [and] would benefit from services in the juvenile system.")

[FN36]. During the past several years a number of conferences and law review symposia have focused on issues closely related to those covered by the Call for Papers, but none have focused specifically on the wave of juvenile-transfer legislation and the effects of that legislation on juvenile offenders and their legal representation. See, e.g., Symposium, Juvenile Justice Reform, 33 Wake Forest L. Rev. 509 (1998); Symposium, The Future of the Juvenile Court, 88 J. Crim. L. & Criminology 1 (1997); Symposium, Juvenile Justice Reform, 1996 Wisc. L. Rev. 375.

that is the subject of current research by one of the authors of this introduction, is whether the infancy defense may be asserted by a transferred child, especially a child under age 14, in the ensuing criminal trial--and in particular whether such a defense must be allowed on substantive due process grounds.


[FN41]. Id. at 368 n.1 (specifically "rejecting the contention ... that the sentencing practices of other countries are relevant"). But see id. at 389-90 (Brennan, J., dissenting) (relying on international law norms to conclude that the death penalty for juveniles under age 18 is "cruel and unusual" punishment).

[FN42]. See, e.g., Hunt Federle, supra note 31.

[FN43]. It is fair, of course, for proponents of the tough juvenile-crime measures adopted across the country in first few years of the 1990s to argue that the drop in juvenile crime after 1994 is explained at least in part by the deterrent effect of those measures. Thus, the argument would continue, those who wish to keep to an absolute minimum the number of juveniles tried as adults for serious crimes should support these tough measures rather than oppose them. This argument largely ignores, however, the wide body of research suggesting that the etiology of serious juvenile offending lies in the family background, the surrounding community, and personal characteristics of the offender rather than in the offender's calculation of legal consequences. See J. David Hawkins et al., A Review of Predictors of Youth Violence, in Serious and Violent Juvenile Offenders 106 (Rolf Loeber & David P. Farrington eds., 1998); Mark W. Lipsey & James H. Derzon, Predictors of Violent or Serious Delinquency in Adolescence and Early Adulthood, in Serious and Violent Juvenile Offenders: Risk Factors and Successful Interventions 86 (Rolf Loeber & David P. Farrington eds., 1998); see also Erik K. Klein, Note, Dennis the Menace or Billy the Kid: An Analysis of the Role of Transfer to Criminal Court in Juvenile Justice, 35 Am. Crim. L. Rev. 371, 410 (1998) ("We have no evidence of any general deterrent effect of transfer.")

[FN44]. This finding is in accord with a recent study in Florida that carefully controlled for other variables, yet found that minority youth are disadvantaged in delinquency and criminal processing. See Donna M. Bishop & Charles E. Frazier, Race Effects in Juvenile Justice Decision-Making: Findings of a Statewide Analysis, 86 J. Crim. L. & Criminology 392 (1996).


(holding statute providing for automatic transfer of certain juvenile offenders to adult court and elimination of juvenile amenability determinations unconstitutional under state and federal equal protection and due process clauses); State v. Mohi, 901 P.2d 991 (Utah 1995) (holding that statute giving prosecutors discretion to prosecute certain juveniles as adults violates state constitutional provision requiring "uniform operation" of the laws). But cf. State v. Robert K. McL., 496 S.E.2d 887 (W. Va. 1997) (reading "automatic transfer" statute as permitting circuit court to consider "personal factors" showing amenability of youth to treatment as juvenile and, in its discretion, to transfer youth to juvenile court).

[FN49]. One obvious potential effect of transferring more juveniles into the adult system could be to exacerbate overcrowding there, which may result in pressure for more generous plea-bargaining with, and earlier release of, adult offenders.

[FN50]. For a discussion of strategies learned through the experience of representing juveniles in the more traditional discretionary transfer proceedings, see Will Rhee, Learning from Tragedy: Representing Children in Discretionary Transfer Hearings, 33 Wake Forest L. Rev. 595 (1998).

[FN51]. Most particularly, to the Center's Director, Patricia Puritz, who gave us early and invaluable advice about the substance of the Conference.

[FN52]. Especially to Robert Schwartz, the Center's Executive Director, without whose early counsel and assistance, and ongoing support, the Conference would never have occurred.

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