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BOOK REVIEW

A DEMOCRATIC SOCIETY'S RESPONSE TO JUVENILE CRIME*

Hon. Michael A. Corriero[†]

AMERICAN YOUTH VIOLENCE, Franklin E. Zimring, New York:
Oxford University Press (1998). 209 pp.

INTRODUCTION

James Hillman, author of *THE SOUL'S CODE*,¹ a book about the development of human personality, once told of an ancient African tradition wherein the elders of a village would look at a child as it entered the world and ask the question: "What is this child's destiny?" The challenge for them was to discover that destiny and then to nurture it—to see to it that each child achieved his potential.

It seems to me that this is the challenge facing us as a society. What is each child's relationship to the community? How can we best nurture and see to it that each child realizes his destiny? A juvenile justice system can play an important role, although not the only role, in helping children find their place in society.

As we enter the twenty-first century, children's issues, especially the treatment of children who violate the law, are at the center of ideological and political debate. It appears we

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¹ JAMES HILLMAN, *THE SOUL'S CODE: IN SEARCH OF CHARACTER AND CALLING* (Warner Books 1996).

have traveled far from the simple agrarian notion that the task of raising the next generation is the highest responsibility of a society. The twentieth century began with the creation and evolution of the juvenile court as a social service, designed to aid in the socialization of our children. At its end, we are witnessing a shift toward a significantly more punitive approach to child offenders.

For example, just in the last decade alone, virtually every state in the United States modified its laws addressing violence by offenders under 18, and both Congress and the executive branch debated far-reaching proposals about juvenile and criminal justice in an effort to respond to increasing levels of youth violence which are viewed by some as a national emergency².

My critique of Frank Zimring's book proved to be more difficult than anticipated, since I found myself in fundamental agreement with his thesis, propositions, and conclusions. Lawyers are trained to unravel errors in argument; this is usually the starting point in a brief or judge's decision. I found no such starting point in my analysis. Indeed, there is not much more to add but that I agree.

The product of a study conducted by the John D. and Catherine T. MacArthur Foundation,³ *AMERICAN YOUTH VIOLENCE* consists of a series of essays written to examine specific current issues concerning the juvenile justice system. These issues include: Whether the juvenile court as an institution should survive, and if so, what should its relationship be with the adult criminal court?; What is the nature of American youth violence?; What fundamental principles should shape an effective juvenile justice system?

Zimring's research and theory are extremely valuable as a framework to assess current responses to the threat of juvenile violence. His critiques of these responses underscore the importance of this book in reassessing the basic assumptions underlying our juvenile justice system. At points the book may seem repetitive, but it was intended to be studied and digested, and

² See FRANKLIN E. ZIMRING, *AMERICAN YOUTH VIOLENCE* xi (Oxford University Press 1998).

³ It should be noted that the reviewer served as a consultant to this study on the issue of prosecuting juveniles as adults.

as such it fulfills its promise to be a thorough exploration of modern juvenile justice issues.

Zimring lays out a thoughtful argument for a compassionate, enlightened, and effective national youth policy—one that is premised on an understanding of the historical perspective of the position of children in our social setting. In doing so, Professor Zimring answers the question: Why are policymakers pushing to increase punishment of youthful offenders, while seeming to ignore the evidence that juvenile crime has been steadily decreasing? (According to recent Justice Department reports, in 1998, juvenile crime was at its lowest level in a decade, and has dropped 30% since 1994.) He unravels the dilemma that despite the fact that there has been a 37% drop in violent crime by juveniles since 1993, and a substantial drop in juvenile homicides, most of the nation believes, or more significantly, its political representatives act as if, there is an unparalled phenomenon of youth violence.⁴ By no means, however, does Zimring downplay the threat of juvenile violence; his work is designed to create a system that deals effectively with such violence while enhancing the interests of children in a democratic society.

Although there is disagreement over why juvenile arrests are falling, some say the trend is due in part to stiffer sentences for repeat violent offenders. Zimring points out, however, that only 17% of juveniles convicted of violent offenses are rearrested for a second violent offense.⁵ Thus, the answer to why the rate of juvenile crime has decreased lies elsewhere.

The book discusses the findings of extensive sociological research and, as such, it provides the factual, statistical, and analytical information necessary to effectively debunk the myths surrounding juvenile violence in America. Those myths include the belief that, in the next century, society will witness an invasion of juvenile delinquents who are "qualitatively" different from delinquents of the past, that the cause of juvenile violence is lenient treatment, that the juvenile court has outlived its usefulness, and that somehow violence by juveniles automatically transforms them into adults for punishment purposes.

⁴ See ZIMRING, *supra* note 2, at 32.

⁵ See *id.* at 166.

The uniqueness of this book is in its authoritative undermining of the arguments and remedies based on common fallacies. It reveals the flaws in the thinking of those who seek "get tough" solutions, and it points out that the planning and responses based on these fallacies result in diversion of much needed resources from the environmental factors that have a legitimate impact on future crime rates, such as education, health, housing, and economic security. Zimring argues for a re-orientation of priorities and a retrenchment from the labeling propaganda of certain policy-makers. Professor Zimring's book is, therefore, a useful tool to shape civic discourse and debate on juvenile justice issues and to formulate an effective national youth policy.

Zimring's work is also a valuable sociological treatise because it may be used as significant authority for the proposition that children should not be characterized as predators in the political maelstrom surrounding violence in America. The heart of Zimring's study is his affirmation of the traditional American view that our children embrace our dreams for a better society.

* * *

America has always stood for compassion for children, at first the children of immigrants, the poor and powerless of other nations, whose fate in those nations was dictated by the class into which they were born. Our juvenile justice process was originally designed to ease the way for the children of the poor into the American Dream. Yet at the end of the twentieth century, we hear the children of the poor and powerless referred to in disturbingly derogatory terms. As we enter the twenty-first century, America faces the daunting challenge of dealing with a new class of poor and powerless, born not in some distant land but within our borders, children born into dysfunctional families, neighborhoods saturated with drugs and guns, failing school systems, and inadequate, declining health programs.

Zimring calls for nothing short of a revolution in popular thinking about the children of the poor and violence in America. He observes that the beginning of the twentieth century witnessed "the most famous episode of nurturance as crime

control in human history—the juvenile court.”⁶ Yet, at its end, we hear the children of the poor and powerless described as “super predator[s]” and “feral pre-social being[s].” “[T]he image of the violent juvenile offender, now and in the future, is that of a dark-skinned stranger.”⁷ Zimring poses the question: “How does it happen that a child-centered and optimistic culture embraces such a narrow and negative view of a future generation in prosperous times?”⁸

Zimring responds to this question and argues for the creation of a more effective juvenile justice system which reflects a proper balance between protecting the public from violent juveniles and enhancing a child’s ability to function as a law-abiding, contributing member of society. He calls for a juvenile justice system that transcends traditional notions of conservative and liberal, that recognizes that basic “get-tough” notions, aside from ignoring the social and economic consequences of such over-simplified reactions, is at odds with human nature and American values.

Zimring cites James Q. Wilson’s early work that points out a well-regarded demographer’s provocative statement: “‘There is a perennial invasion of barbarians who must somehow be civilized . . .’ That ‘invasion’ is the coming of age of a new generation of young people. Every society copes with this enormous socialization process.”⁹ A juvenile justice system can play an important role in that procedure. Problems often arise, however, from the fact that during certain high crime years we added more young persons to our population than we had added in preceding years.

Zimring further states:

Where the current concerns differ from the general run of generational worries is in focusing specifically on crime and in advocating preemptive preparation of countermeasures. It turns out, however, that the evidence in support of the current intergenerational bad

⁶ *Id.* at 193.

⁷ *Id.* at 181.

⁸ *Id.* at 179.

⁹ ZIMRING, *supra* note 2, at 54 (quoting Princeton University’s Norman B. Ryder).

dream is not closely connected to crime rates or to any specific birth cohort among the parade of future adolescent generations in the United States.¹⁰

I. PROFILE OF AMERICAN JUVENILE VIOLENCE

Zimring's vision of an effective national youth policy begins with an accurate portrayal of the character of American youth violence. He points out that the most significant attribute for understanding causality, the "why" of the crime, is group involvement or peer pressure. Zimring states: "The high rate of group involvement provides a different context for youth violence and also suggests that the motives for violent behavior may be different in group settings."¹¹ "Group standing is probably the central concern of the adolescent offender in group crime"¹² That is, "[m]ost adolescent decisions to break the law or not take place on a social stage, where the immediate pressure of peers is the real motive for most teenage crime."¹³ I have found in my experience, as Zimring asserts, that group standing is a predominant motive for most juvenile crimes. "The cold criminological facts are these: The teen years are characterized by what has long been called group offending. No matter the crime"¹⁴ This aspect of adolescent behavior, peer pressure or peer standing, is also important in designing an appropriate sentencing policy. It makes the case for the exercise of discernment—a determination of the nature of the individual child's fault. Zimring discusses this in part when he talks of the doctrine of "diminished responsibility" as applicable across the board to all crimes committed by young people, including homicide.¹⁵

Another imperative to understanding youth crime is an appreciation of the nature of adolescence itself. Over 2,500 years ago in his treatise on *Rhetoric*, Aristotle provided a stereotypical Greek view of young men to aid a speaker in

¹⁰ *Id.* at 184.

¹¹ *Id.* at 29.

¹² *Id.* at 30.

¹³ *Id.* at 78.

¹⁴ ZIMRING, *supra* note 2, at 79.

¹⁵ *See id.* at 75-85.

understanding his youthful audience. He describes young men as "pleasure-loving, impulsive and optimistic."¹⁶

3. In terms of their character, the young are prone to desires and inclined to do whatever they desire 5. And they are impulsive and quick-tempered and inclined to follow up their anger [by action]. And they are unable to resist their impulses; for through love of honor they cannot put up with being belittled but become indignant if they think they are done a wrong. 6. And though they love honor, they love victory more; for youth longs for superiority, and victory is a kind of superiority 8. And [they are] filled with good hopes; for like those drinking wine, the young are heated by their nature, and at the same time [they are filled with hopes]. And they live for the most part in hope; for hope is for the future, and memory is of what has gone by, but for the young the future is long and the past short; for in the dawn of life nothing can be remembered, and everything [can be] hoped for. And they are easily deceived for the reason given; for they easily hope for the best. 9. And they are more courageous [than the other age groups]; for they are impulsive and filled with good hopes, of which the former quality makes them lack fear, and the latter makes them brave; for no one feels fear when angry, and to expect something good is a source of confidence. 10. And they are sensitive to shame; for they have been educated only by convention and do not yet understand fine things. 11. And they are magnanimous; for they have not yet been worn down by life but are inexperienced with constraints, and to think oneself worthy of great things is magnanimity; and this characteristic of a person of good hopes. 12. For they live more by natural character than by calculation, and calculation concerns the advantageous, virtue the honorable. 13. And more than other ages of life they are fond of friends and eager for companions. 14. And all the mistakes they make are in the direction of excess and vehemence, contrary to the maxim of Chilon; for they do "everything too much": they love too much and hate too much and all other things similarly. And they think they know everything and strongly insist on it; for this is the cause of their doing everything too much. 15. And the wrongs they commit come from insolence, not maliciousness. And they are inclined to pity, because of supposing [that] everybody is good or better than average; And they are fond of laughter and, as a result, witty; for wit is cultured insolence. Such, then, is the character of the young.¹⁷

Zimring adds to this traditional view of youth that at no other point in life is violence so common as in adolescence. It

¹⁶ GEORGE A. KENNEDY, *ARISTOTLE—A THEORY OF CIVIC DISCOURSE—OUR RHETORIC* 165-66 (Oxford University Press 1991).

¹⁷ *Id.* at 165-66.

is, for most people, the only time when one acts violently towards another. Thus, to equate violence with maturity for the purpose of prosecuting children as if they were adults, to hold them accountable as adults, is at odds with conventional views of the psychological development of children. The inclination to violence, therefore, should be understood as an aspect of adolescence. Of course, this does not mean that all adolescents are preordained to be violent, or that violence should ever be excused or go uncorrected or go unpunished. However, this interplay between adolescence and violence does require a sentencing policy that is flexible enough to respond effectively to the context of its occurrence.

When there is unavoidable conflict between the objectives of youth policy and the minimum demands for deserved punishment, the *latter* should carry the day. This will not be an unjust result if youth and immaturity have been fully accommodated in the calculation of diminished responsibility, but the outcome in such cases will be a disservice to socially important interests by not allowing young people to fully recover from their adolescent mistakes.¹⁸

Professor Zimring thoroughly refutes the notion that the children of the twenty-first century will be qualitatively different from adolescents or children who violated the law in the past. He argues that violent behavior of children does not and should not result in forfeiture of their status as adolescents with regard to potential punishment. In essence, "[T]he kid is a criminal but the criminal is still a kid."¹⁹

II. MYTHS AND MISCONCEPTIONS

Zimring focuses on several "myths" shaping our views of American youth violence, in particular, the beliefs that current young offenders are qualitatively different from young persons who violated the law in the past, that lenient treatment by the juvenile justice system is a major cause of higher rates of youth crime, and that violence is not a characteristic behavior of childhood—that violence is somehow adult.

¹⁸ ZIMRING, *supra* note 2, at 143.

¹⁹ *Id.* at 142.

A. *The Myth of the "Coming Storm"*

Zimring assesses the claims of certain commentators, and his conclusions are sharply at odds with their findings. Zimring begins his work by examining the interpretations placed on youth population projections, which predict that there will be an approximate 19% expansion in the number of children in their mid-teen years by the year 2010.²⁰ His research reveals that in the 1990s, the writings of certain commentators concerning juvenile justice violence trends were generally accepted without serious analysis by politicians, legislators, and the media. A perception was thus created of a "coming storm" of superpredators, a new breed of vicious and violent juvenile delinquents, qualitatively different from juveniles who committed crimes in the past.²¹ The scenario forecast by the commentators is that of an army of "270,000 juvenile superpredators coming at us in waves" starting in 2010.²²

The calculations upon which these predictions are based, however, do not withstand sociological scrutiny. The flaw Zimring reveals is that these predictions were based on an "extreme version of a deterministic view of the causes of juvenile violence [that] 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"²³ and that there exist "fixed relationships between population characteristics and rates of serious violence."²⁴ Zimring asserts that these conclusions are "irrational to the point of superstition."²⁵ Zimring then concludes that no such generalization about the behavior of the current cohort of youths can be supported by empirical evidence.

Given the questionable forecast that a new breed of juvenile superpredators is on the horizon, Zimring reasons that responses based on this erroneous anticipation are, by extension, similarly flawed. Consequently, instead of focusing our efforts to nurture children to achieve a positive destiny, American

²⁰ See *id.* at 1, 11.

²¹ See *id.* at 3 ("The Perception of a Problem Is a Problem").

²² *Id.* at 11.

²³ ZIMRING, *supra* note 2, at 11.

²⁴ *Id.*

²⁵ *Id.* at 12.

youth policy is shaped by a fear that this cohort of teenagers will harbor an army of violent superpredators bound to threaten the security of our society. The main consequence of this flawed perception is a skewing of priorities and the creation of a youth policy that is centered on the fear of potential criminal behavior as opposed to addressing the social conditions that place children at risk, namely, "[h]ealth problems, education shortfalls, and poor economic prospects."²⁶ Significantly, the insidiousness of this misperception results in instituting responses without identifying real problems. Moreover, the perception that this forecast represents reality has even more dangerous repercussions. That is, if a child's destiny is dictated by fate, if future violence is preordained, and if a fixed number of youth will always be condemned to a destiny of delinquency, then why waste effort and resources trying to prevent it? According to Zimring, these commentators have created the potential of a "Manifesto for Disinvestment"²⁷ in the social conditions that put children at risk.

* * *

Zimring is puzzled, however, by the escalating volume of fatal attacks by juveniles with firearms. He posits that the most important step we can take to reduce juvenile violence in the next century is to develop an effective national gun control policy. "The most alarming statistics about recent American youth violence concern the increasing rate of homicide, which is wholly the result of increasing gun use in assaults."²⁸ He notes, however, that "[g]un control for any target group is difficult to accomplish in an environment where available handguns might exceed 60 million."²⁹

Zimring views adolescent gun use as a public policy problem. He affirms the importance of recent police strategies designed to reduce a youth's accessibility to guns and the removal of prohibited weapons from young people who carry or possess them. He suggests that one way in which we can affect teenage gun use is to recognize the value of social standing among peers to most adolescents. A public campaign to make

²⁶ *Id.* at 188.

²⁷ *Id.* at 64.

²⁸ ZIMRING, *supra* note 2, at 89.

²⁹ *Id.* at 96.

gun possession "unfashionable" can perhaps generate community consciousness. In the end, however, we cannot ignore the American fascination with guns. If adults view gun possession as a sign of maturity, then it will be difficult to persuade children of the inappropriateness of their own possession of guns. Children, after all, want to imitate adults in order to appear mature. Zimring appropriately points out that this problem needs further study. I agree, especially in light of the legal ramifications of an adolescent's possession and use of guns. The long term punitive consequences of gun use amongst adolescents is reflected in New York's proscription against affording youthful offender treatment for young persons who commit *armed felonies*. New York's Criminal Procedure Law specifically excludes from youthful offender eligibility any youth whose conviction is for an armed felony, unless mitigation exists in the manner in which the crime was committed.³⁰ An "armed felony" is defined as "any violent felony offense . . . that includes as an element either (a) possession, being armed with, or causing serious physical injury by means of a deadly weapon, if the weapon is a loaded weapon from which a shot, readily capable of producing death or other serious physical injury may be discharged; or (b) display of what appears to be a pistol, revolver, rifle, shotgun, machine gun, or other firearm."³¹ Thus, according to New York law, an adolescent who possesses or displays a gun during the commission of a crime will almost certainly accrue a felony conviction. Given the limited availability of mitigating circumstances for the gun wielder, the safety valve of youthful offender treatment becomes *increasingly unavailable* with the *increasing use of guns* by children. Thus, Zimring's call for an effective gun control policy should be a priority.

B. *Misplaced Confidence in "Get Tough" Solutions and the Myth of the Adult Nature of Violence*

Zimring explains that integrated into the scenario of a coming "blood bath" produced by a malevolent breed of juveniles is the equally baseless assertion that lenient treatment

³⁰ See N.Y. CRIM. PROC. LAW § 720.10(2)(a)-(3) (McKinney 1992).

³¹ See *id.* §§ 720.10(a), 1.20(41).

by the juvenile justice system is the cause of higher rates of youth crime.³² Consequently, he notes that the most common proposal for reform by those who accept the above scenario is the transfer of more children into the adult criminal court, where they would presumably be subject to and receive more severe punishment. After carefully examining the nature of the cases in the juvenile court, Zimring convincingly explains the viability of the juvenile court as an institution. He concludes that: "Trends in the rate and character of youth violence in the United States provide no reason for a shift in the operating philosophy of the juvenile court in delinquency cases."³³ However, he points out that the continued viability of the juvenile court will depend on its relationship with the criminal court. "If the consequences of transfer to criminal court are to be consistent and severe, only a very few cases of juvenile robbery or assault will demand transfer, and discretionary decisions will be necessary to select the 1 in 100 or the 1 in 25 cases from the others."³⁴

Zimring recognizes that transfer itself is not the ultimate resolution. That is, the criminal court must be able to respond effectively. In addition, if the juvenile court is not permitted to function as a screening device, leaving only the most severe cases of juvenile violence to the jurisdiction of the criminal court, then the criminal court must be invested with the appropriate discretion to deal with the large variations in levels of culpability that characterize adolescent offenders. At present, New York's juvenile offender law embodies a series of graduated punishments, contingent on the seriousness of the crime.³⁵ Judicial discretion is limited to a large degree, however, by the fundamental premise that any child convicted of a juvenile offender ("J.O.") crime should be incarcerated in a secure facility for an indeterminate term, unless that child is eligible for

³² ZIMRING, *supra* note 2, at 50, 63.

³³ *Id.* at 174-75.

³⁴ *Id.* at 125.

³⁵ See N.Y. PENAL LAW §§ 60.02, 60.10, 70.05 (McKinney 1998). The juvenile offender law sets forth the following range of indeterminate terms of imprisonment. For *class A felonies*, the minimum is 5-life and maximum is 9-life; for *class B felonies*, the minimum is 1-3 and the maximum is 3½-10; for *class C felonies*, the minimum is 1-3 and the maximum is 2½-7 and for *class D felonies*, the minimum is 1-3 and the maximum is 1½-4. See Ch. 481 [1978] N.Y. Laws 848 (McKinney).

youthful offender treatment. As Professor Zimring points out, effective juvenile justice policy mandates flexibility. I agree, particularly if jurisdiction rests in the adult court. Judicial discretion must exist to substitute nonincarceratory options where appropriate, and to impose the full range of adult sentencing, should that be necessary.

Zimring observes that the conventional belief about punishment for young killers is that the important decisions have been made once the issue of transfer to criminal court has been decided. Not so. He insightfully notes that "[r]ather than being the end of difficult decisions, the transfer determination should be regarded as requiring a series of factual and legal inquiries as subtle, problematic, and controversial as can be found in the modern criminal law of personal violence."³⁶

Zimring asserts that instead of eliminating the juvenile court as an institution for addressing juvenile violence, a coordinated effort should be developed that can effectively harness both institutions, the juvenile court and the adult criminal court, to a common strategy. Zimring thus concludes that the juvenile court is a viable institution but must be viewed in a modern context as a partner with the criminal court in serving the needs of both juveniles and society. More important than choosing between competing court systems is finding a consensus on common principles, and coordinating the two.

Zimring's conclusions conform to my own experience as a judge sitting in the adult criminal court (Supreme Court) presiding over cases involving 13, 14, and 15 year olds who are prosecuted pursuant to New York's Juvenile Offender Law ("J.O. Law").³⁷ These children are prosecuted in the adult court not as a result of a judicial or prosecutorial decision waiving the case from the jurisdiction of the Family Court, but they are automatically prosecuted in the adult court pursuant to the J.O. Law, if they are charged with a J.O. crime and have reached a threshold age.

Recently, New York's Chief Justice Judith Kaye gave her support to the approach that judges should be active participants in a problem-solving process.³⁸ This is perhaps not the

³⁶ ZIMRING, *supra* note 2, at 156.

³⁷ Ch. 481 [1978] N.Y. Laws 848 (McKinney).

³⁸ See Judith S. Kaye, *Making the Case for Hands-On Courts: Judges are*

traditional view of the judicial role. Nevertheless, Judge Kaye recognized that the judicial role may be viewed to embody three precepts: first, the court believed that the judiciary can and should play a role in trying to solve the problems that are fueling our caseloads; second, that outcomes, not just process and precedent, matter; third, the recognition that the court's coercive power can change people's behavior. Within this atmosphere, individual judges are free to develop their creativity and unleash innovative approaches to decision-making, to hopefully make a difference.³⁹ Professor Zimring similarly states, "A system of transferring young offenders to criminal court can be no better than the quality of the outcomes for these cases."⁴⁰ These outcomes, of course, depend upon the nature of the crime, the potential of the child, and the judicial response.

The vast majority of cases I see involve robberies and, to a lesser degree, assaults—usually involving multiple defendants, multiple levels of maturity, and multiple levels of involvement and culpability. The legislature, in enacting the J.O. Law, authorized the wholesale movement of an entire category of children to the adult court simply on the basis of age and arrest for a J.O. offense, without regard to the individuality or potential of the child. Nevertheless, in order to fulfill my responsibility to the public, which is to deal as effectively as I can with these youthful offenders, I found it necessary to develop a process that enables me to distinguish, as best I can, the malleable child from the incorrigible one—to develop a process that is concerned with outcomes. Professor Zimring recognizes that "whenever a young offender's need for protection, education, and skill development can be accommodated without frustrating community security, there is a government obligation to do so."⁴¹

In accord with Professor Zimring's thesis, an integral part of the adjudicatory process in the Youth Part is the continuing evaluation of a young person's potential. The mechanism of the "deferred sentence" was developed to test the willingness and

Learning That a Problem-Solving Approach Can Stop Cycles of Drug Use and Dysfunction, NEWSWEEK, Oct. 11, 1999, at 13.

³⁹ See Ch. 481 [1978] N.Y. Laws 848 (McKinney).

⁴⁰ ZIMRING, *supra* note 2, at 128.

⁴¹ *Id.* at 144.

ability of the youth to modify his behavior. The process begins with the youth's initial appearance in the Youth Part. An examination is made of the seriousness of the charge, the extent of the youth's involvement, prior delinquency history, and suitability for placement in an alternative-to-incarceration ("ATI") program. The probation department conducts a prepleading investigation to document and verify the youth's social history. Within weeks, a conference is held among the prosecutor, defense counsel, social workers, ATI program representatives, and the court. In many cases, a proposed disposition is reached at this conference, entailing deferring or postponing sentence following a guilty plea, participation of the youth in an ATI program, and weekly monitoring of the youth by the court. The conditional nature of the promised sentence allows the youth to earn probation and youthful offender treatment. That is, if the youth successfully completes the ATI program and regularly attends school, the youth will avoid a felony conviction and receive, instead, a sentence of probation and youthful offender treatment. Noncompliance with the conditions of release and ATI program requirements will likely result in an indeterminate sentence, the parameters of which may actually exceed those originally recommended by the prosecutor and may now include forfeiture of youthful offender adjudication and the imposition of a felony conviction. Deferring a sentence also permits the court to impose intermediate sanctions, should they be necessary, to encourage cooperation and address noncompliance. Thus, the Youth Part attempts, as Zimring recommends, an accommodation of a young offender's need for development, while simultaneously preserving community security. Professor Zimring's thesis and conclusion, as well as his vision for a sounder youth policy, resonate with my experience in the Youth Part. This is so, particularly with regard to his profile of American juvenile violence, his proposed juvenile sentencing policy, and his suggestions as to the appropriate relationship of the juvenile and criminal courts.

III. SENTENCING POLICY

Zimring articulates a valuable insight into the predominant goal of a sentencing policy toward American children. "The principal objective of policy in the adjudication and sen-

tencing of minors is to avoid damaging the young person's development into an adulthood of full potential and free choice; thus, the label for this type of policy is 'room to reform.'"⁴²

Of course this makes economic and social sense. In New York, for example, virtually all children sentenced pursuant to the J.O. Law will return to society by the age of 21, with the exception of those convicted of murder.⁴³ This fact illustrates the need for an effective sentencing policy, not one which "felonizes" children and thereby renders them ineligible for many forms of employment.

In a scene in the much talked about 1930s movie "Boys' Town," Father Flanagan, portrayed by the actor Spencer Tracy, was trying to borrow \$100 from a businessman friend to furnish his orphanage. He told the businessman that he had it on sound authority that every boy who becomes a good American citizen is worth \$10,000 to the state. How much might that figure be today? According to Professor Mark A. Cohen, an economist at Vanderbilt University, preventing an "at-risk" youth from turning into a juvenile delinquent and adult criminal would save society up to \$2 million.

IV. A MODEL JUVENILE JUSTICE SYSTEM

Professor Zimring's thesis and conclusions are in accordance with my experience in the Youth Part which has led me to the view that a model juvenile justice system should strike a balance between protecting the public from violent juveniles and enhancing a child's ability to function as a law-abiding, contributing member of society. There are four steps in this effort, each of which is reflected in Professor Zimring's thesis.

First, we must develop and implement a statutory strategy of prosecution that serves to identify with precision those violent, dangerous, and chronic juvenile offenders.⁴⁴ A judicial waiver or transfer up system, would meet the requirement of that strategy. It is a fairer and more precise way of identifying violent juveniles. It permits a suitable child to remain in the

⁴² *Id.* at 142.

⁴³ See Michael A. Corriero, *Sentencing Children Tried and Convicted as Adults*, 7 NYSBA No. 1, at 49 (Summer 1999).

⁴⁴ See Michael A. Corriero & Mollie Faber, *The Youth Part and Juvenile Justice*, 217 N.Y. L.J. 23 (1997).

Family Court setting where more social services are available, and at the same time permits the adult court to focus on violent juveniles. A judicial waiver process would permit us to effectively utilize the one institution in our community uniquely qualified to identify violent and dangerous juveniles, the Family Court.

The judges of the Family Court have seen many of these children as infants in neglect and abuse proceedings, as persons in need of supervision as they grew older, and as respondents in delinquency petitions for assault and minor thefts before they reach their teens. We cannot afford to bypass the Family Court expertise when dealing with those juveniles most in need of attention. I have previously proposed that the legislature repeal the J.O. Law and replace it with a judicial waiver process which will vest Family Court judges with exclusive authority to determine which children should be prosecuted in the adult court. Children 13, 14, and 15 years old charged with a J.O. offense could be transferred to the adult court after a Family Court determination that such a child is not amenable to the programs or sanctions available in that court, or that the public's interest would be best served by prosecution in the adult court. The judicial waiver process takes into account the malleability of children and the flexibility and specialization of Family Court.

If it is ultimately determined that such a child is dangerous or that the charges are so serious that to prosecute it in the Family Court would undermine confidence in the administration of justice, then we must provide for transfer to the adult court, where appropriate confinement, including the full range of adult sentencing, would be available. The adult court would then be focusing on children who are chronic delinquents, or children whose acts are so brutal, wanton, or reckless that prosecution in the Family Court would be inappropriate.⁴⁵

Second, as Zimring also proposes, punishment of children should be imposed not only for retribution, but as an opportunity to educate and provide skills and services.

Third, the system of prosecution and punishment must be flexible enough to recognize and accommodate juveniles who

⁴⁵ See *id.*

have the capacity to change their behavior by participating in alternative-to-incarceration programs.

Fourth, there must be a mechanism to remove the stigma of conviction from those juveniles who can demonstrate their willingness to conform their behavior to society's standards even after being incarcerated—a process of decriminalization.

CONCLUSION

AMERICAN YOUTH VIOLENCE is a sound, thorough study of the compelling question of what a democratic society's response should be to juvenile violence. A nation's juvenile justice system must reflect the basic values of that society. America has been cited as the best example of a working democracy that the world has ever known because of its commitment to democratic principles. In no other country are the principles of democracy so firmly rooted and the freedom of the individual so deeply cherished. To be sure, there are those who would try to deny these rights to others. But the American people have steadfastly championed these principles in the face of numerous threats.

One columnist recently said that Americans should be considered the number one force of the twentieth century. He said:

Americans have made the theory of democracy a very real thing. We now know there is nothing that can determine where on the social scale greatness will come from. We have had great Americans emerge from everywhere. In the process, many stereotypes have been knocked to their knees . . . There have been the labor movement, the civil rights movement, the women's movement, the ecology movement, every one of them pushing civilized treatment of our citizenry and our environment further up. All those Irish people and Italians and Jews and Negroes and anybody else who could put a shoulder to the wheel or invent new wings to lift the dreams of the nation into the sky, well, they did one hell of a job. We are, of course, far from perfect and will probably never reach anything close to perfection. But this nation is a work in progress, and that work has changed the entire world. It has touched the planet with the ideals of democracy and provided it with some of the best examples humanity has ever had to offer.⁴⁶

⁴⁶ Stanley Crouch, *Americans Lead the Century*, N.Y. DAILY NEWS, Dec. 27, 1999, at 43.

Given this commitment to democracy, it is difficult to imagine how one can fail to see that the labeling of children as some kind of malevolent breed undermines the very foundation of our society.

Frank Zimring's final paragraphs challenge us to engage in the debate over how juveniles who commit crimes should be treated in America. His book is an authoritative, useful treatise which effectively exposes errors in thought and serves as a basis for formulating fair policies for a juvenile justice system that will be a working model for the twenty-first century.

