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# PUNISHING YOUTH HOMICIDE OFFENDERS IN PHILADELPHIA\*

JOEL PETER EIGEN\*\*

## I. INTRODUCTION

Despite the heated rhetoric on both sides of the debate about crime control, there is a surprising dearth of research regarding serious adolescent crime and the courts' prosecution of "mature" delinquents, those beyond the rehabilitative capabilities of juvenile court. This article reports a large Northeastern city's response to violent crime committed by its young. All juveniles arrested in one year under the charge of homicide were included in this study to investigate characteristics of their crime and the dispositional choices made by Philadelphia's Family Court concerning where these juveniles should be tried. The study pays particular attention to two critical points in the processing of juveniles arrested for serious assaultive behavior: waiver to criminal court and the criminal court trial.<sup>1</sup> The inclusion of a sample of adult defendants also charged with homicide allows for a comparison of sentence severity among three offender groups all charged with similar types of killing, but tried under different jurisdictions: juveniles in juvenile court, juveniles in criminal court (certified juveniles), and adults in criminal court.<sup>2</sup>

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<sup>1</sup> Like her sister states, Pennsylvania has a separate juvenile court (the Family Court) charged with adjudicating the state's offenders under age eighteen. Any youth 14 or over can be transferred (waived) to criminal court if the Family Court determines that the youth is "not amenable to rehabilitation," and that the youth's action constitutes a criminal offense. (PA. STAT. ANN. tit. 11 § 50-101 (Purdon) *replaced by* 42 PA. CONS. STAT. ANN. §§ 6302, 6355 (Purdon 1976).

<sup>2</sup> It should be stressed that this is a narrative of a process which, until recently, has received almost no attention by either the sociological or legal community. Hence, there is no

This research originated in an earlier study of the determinants of homicide sentencing in Philadelphia.<sup>3</sup> Of all juveniles arrested in the first 200 homicide events in 1970, exactly half were retained by juvenile court while the other half were transferred to criminal court to be tried as adults. Such an even split is compelling both sociologically and in terms of jurisprudence. A cohort of juveniles, all arrested for the same type of crime—homicide—is parceled out into two justice systems with vastly different capacities to punish. This study investigates how such a selection process is made, how the two groups of juveniles differ from one another, and what consequences accrue from the sorting process.

This narrative of the waiver process and the subsequent impact of the decision to transfer jurisdiction will be presented in three parts. The first part outlines the method of study. This is followed by an analysis of how the Family Court sifts through juvenile homicide events, selecting some youths for transfer to criminal court and retaining custody over the remainder for adjudication as juveniles. The third section compares the conviction rates and sentence severity of juveniles and adults tried in adult court for similar types of homicide.

## II. METHODS AND SAMPLE

The aim of this study was to gather data on juveniles arrested in homicides reported to the police in one year, to follow these cases through the detection, adjudication, and punishment process, and to investigate the process and impact of transfer decisions.<sup>4</sup> The police inves-

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existing theory of prosecutorial decision-making with which to analyze the movement of juveniles through the transfer process. Such a theoretical framework can only be sketched out after one learns how the court presently functions.

<sup>3</sup> Zimring, Eigen & O'Malley, *Punishing Homicide in Philadelphia*, 43 U. CHI. L. REV. 227 (1976).

<sup>4</sup> At the time of this study, Family Court's jurisdiction included juveniles arrested in homicide offenses. A 1972 revision excludes juveniles charged with murder or for summary offenses. Juveniles may be waived to criminal court if the following conditions are met: (1) the youth is at least 14 at the time of the alleged offense; (2) the offense constitutes a criminal offense; and (3) the juvenile court finds that a prima facie case has been established. In the event that the youth is charged with murder, initial processing takes place in criminal court but the juvenile may be remanded to Family Court should he be found to be "really a juvenile." This constitutes a "Section Seven Transfer."

The current practice of excluding murder defendants from juvenile court jurisdiction officially went into effect in 1972. Before this change, all juveniles were processed initially by Family Court. Because data to be presented in this article are confined to 1970 homicide arrests, one might question whether it is possible to explain current court functioning with pre-1972 data. A review of the court's recent history, however, indicates that the Section Seven Transfer is actually a codification of previous procedure. Before 1972, when juvenile court retained original jurisdiction in homicide, the District Attorney's office appears to have selected juveniles for criminal prosecution in an ad hoc form of certification, and the waiver hearing seems to have been little more than a formality. Currently, in a criminal proceeding charging murder, if the court finds the defendant to be a child, the case may be transferred to

tigative report of the homicide event constituted the actual baseline description. These reports provided data on the type of interaction preceeding the killing, choice of weapon, and demographic characteristics of victim and offender. Information found in the police records was supplemented with trial and dispositional data obtained at City Hall and in Philadelphia's Family Court.<sup>5</sup>

The sample consists of 63 separate offenses in which 154 youths were arrested. Almost three-quarters of the victims and over 90 percent of the offenders were black. As in previous studies,<sup>6</sup> homicide continues to be an interracial event with 76 percent of the juvenile homicides taking place between individuals of the same race. When racial lines were crossed, whites were far more likely to be the victims.

A portion of this research was the subject of an earlier study which investigated sentencing determinants in the prosecution of the first 200

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juvenile court. (PA. STAT. ANN. tit. 11 § 50-101 replaced by 42 PA. CONS. STAT. ANN. § 6322 (Purdon 1976). See *Commonwealth v. Pyke*, 462 Pa. 613, 342 A.2d 101 (1975); *Commonwealth v. Barbier*, 418 A.2d 653 (1980).

<sup>5</sup> There are several ways that one could obtain a sample of all juveniles charged and adjudicated for homicide in any one year. One method is simply to record each name listed in the investigation reports filed by the police. Name and age of each offender can then be used to enumerate the universe of defendants and later to determine whether the defendant was tried at Juvenile Court or City Hall. The District Attorney's office in each jurisdiction keeps these dispositional data. Alternatively, one could start at Family Court, using the homicide data files which list each homicide event individually. These files include all youths referred to juvenile authorities regardless of their eventual transfer to criminal court. The disadvantage of this second method is that some juveniles could "fall out" of the system before arriving at Family Court. This attrition is highly unlikely, however, because of the severity of the offense and the desire by the police to retain all possible co-defendants for the purpose of giving evidence against the principal assailant.

Both methods were used to identify the sample for this study. The first two-thirds of the sample consists of juveniles included in an earlier study which investigated the first 200 homicide events in Philadelphia in 1970. See Zimring, Eigen & O'Malley, *supra* note 3. This research revealed all juveniles arrested for the killings and also the breakdown of "certified-not certified." Because these cases were identified in the original police reports and followed to both juvenile court and criminal court, it is unlikely that any juveniles associated with the first 200 homicides escaped inclusion in the sample. The District Attorney's files in juvenile court were used to identify the remainder of the juveniles arrested and prosecuted for homicides in 1970. These offenders were then traced to the police station's homicide report folders to obtain offense descriptions. This procedure was chosen for several reasons. First, a comparison of police reports and juvenile court listings in the original study showed the latter to be not only a reliable listing of the universe of juveniles named in the original police reports, but also provided information on several additional youths not named in the investigation reports. Further, identifying the remaining juveniles would have entailed an investigation of all the subsequent homicide reports for the year after the 200th-plus event which would have likely totaled another 225-250 folders. Therefore, for purposes of expediency and with reasonable assurance that few, if any, juveniles would be lost by using the District Attorney's files, this method was selected.

<sup>6</sup> See L. CURTIS, CRIMINAL VIOLENCE (1974); Block & Zimring, *Homicide in Chicago 1965-70*, 10 J. RESEARCH CRIME & DELINQUENCY 1 (1973).

homicides in Philadelphia in 1970.<sup>7</sup> Adult offenders in that study have been used to augment the scope of the present research by comparing their conviction and sentencing risks with those of certified juveniles. The adult subsample permits a comparison of offense characteristics of the juvenile and adult homicides, characteristics which might aggravate the statutory gravity of the offense and lead to sentencing differentials between convicted offenders, both adult and juvenile.

**TABLE 1**

PRECIPITATING FACTOR TO HOMICIDE FOR JUVENILE AND  
ADULT OFFENSES

| PRECIPITATING FACTOR            | JUVENILES | ADULTS  |
|---------------------------------|-----------|---------|
|                                 | Percent   | Percent |
| Robbery                         | 27%       | 12%     |
| Other Felony                    | 3         | 4       |
| Altercation (including<br>Gang) | 70        | 84      |
| Total                           | 100%      | 100%    |
| N =                             | 63        | 130     |

At the level of offense-description, the adult sample presents several interesting points of comparison with the juvenile group. The data presented in Table 1 indicate a higher incidence of robbery-related killings in the juvenile sample (27 percent) compared with the adult offender group (12 percent). The percentage of robbery associated homicides in the adult sample is close to that found in earlier reports on criminal homicide.<sup>8</sup> The juveniles' greater involvement in robbery killings appears to anticipate the subsequently reported rise in robbery-related homicide. For example, in 1974, four years after these data were recorded, Richard Block found robbery homicide to constitute 22 percent of Chicago's homicide total.<sup>9</sup>

The higher incidence in robbery killings in the juvenile sample is also reflected in patterns of victim-offender relationship. Juvenile offenders and their victims were strangers in 43 percent of the cases while the comparable figure for homicides perpetrated by adults was 22 percent. Again, only the adult sample's percentage is consistent with previous findings concerning victim-offender relationships in violent crime.<sup>10</sup>

<sup>7</sup> See Zimring, Eigen & O'Malley, *supra* note 3.

<sup>8</sup> See R. BLOCK, *VIOLENT CRIME* (1977); Block & Zimring, *supra* note 6.

<sup>9</sup> R. BLOCK, *supra* note 8.

<sup>10</sup> Munford, Kazer, Feldman & Stivers, *Homicide Trends in Atlanta*, 14 *CRIMINOLOGY* 213

## III. CERTIFICATION IN FAMILY COURT

In 1970, 154 juveniles were arrested in 63 police-designated homicides and passed through a sorting process in juvenile court. Of this total, Family Court retained jurisdiction over 79, or 51 percent, and transferred (or certified) the remaining 76 to criminal court. This splitting of a group of offenders all arrested for the same type of crime suggests that there is more than one mystery to be solved in homicide prosecution of juveniles. The added mystery is detecting the factor or set of factors that render half the juveniles "adult," and the other half, delinquent.

A prosecutorial strategy dealing with certification has yet to emerge in the juvenile court literature. Most attempts at studying decision-making in Family Courts have investigated variables accounting for the decision to arrest,<sup>11</sup> the distribution of juvenile court dispositions,<sup>12</sup> and the incidence of commitment to juvenile institutions.<sup>13</sup> These studies yield an array of characteristics which appear to elicit harsh sanctions throughout the juvenile court system: severity of offense, past criminal history, race, age, crime against the person, and low socio-economic status. These characteristics, however, are only marginally helpful in accounting for the sorting process leading to certification because all juveniles in the present sample were arrested for the same offense and 90 percent of the offenders were black.

Typically, prosecutorial decisions are based on several considerations: situational aspects of the offense, offender characteristics, and policy implications. Regarding certification, this strategy aims at identifying juveniles whose actions and past record reveal a maturity or "seriousness" rendering the youth to be, in actuality, an "adult." Situational factors which may affect the seriousness of the killing include felony precipitation and the offender's role in the killing. The offender's role referred to in this study as "degree of participation," is of particular relevance to certification because juvenile offenses usually involve more than one assailant. Is it only the principal assailant, the youth who inflicted the fatal wound, whom the court singles out as "most mature" and thus most deserving of transfer? In addition to aspects of the offense, characteristics of the individual offender will also likely contribute to the decision to certify. Offender characteristics include the juvenile's

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(1976); Voss & Hepburn, *Patterns in Criminal Homicide in Chicago*, 59 J. CRIM. L.C. & P.S. 499 (1968).

<sup>11</sup> See, e.g., M. WOLFGANG, R. FIGLIO & T. SELLIN, *DELINQUENCY IN A BIRTH COHORT* (1972).

<sup>12</sup> Scarpitti & Stephenson, *Juvenile Court Dispositions—Factors in the Decision-Making Process*, 17 CRIME & DELINQUENCY 143 (1971).

<sup>13</sup> See, e.g., Arnold, *Race and Ethnicity Relative to Other Factors*, 77 AM. J. SOC. 211 (1972).

offense record and prior adjudication by the Family Court. Prior adjudications are likely to bear directly on the issue of "maturity" and "amenability to treatment."

The final factor likely to affect prosecutorial strategy is more fundamental: It concerns how Family Court fits into the larger system of a city-wide policy of criminal prosecution. Does Family Court function as a separate, enclosed judicial forum with its own adjudication and punishment rationale, or does it serve to screen potential cases for eventual trial in adult court and thereby insure successful conviction rates for the prosecutor's office? This research was designed to address this question precisely because the waiver process sits at the juncture of civil and criminal jurisdictions.

Several of the offender and offense characteristics whose importance is suggested by the above discussion were isolated to discern their impact on the decision to separate the juvenile sample into juvenile and "adult" defendants. These four variables, or "risk factors" were

- (1) Type of killing; felony or non-felony precipitated;<sup>14</sup>
- (2) Age of offender;
- (3) Degree of participation in the offense (principal assailant or accessory);
- (4) Past juvenile record.

Bivariate crosstabulations revealed that all but one of these four variables were significantly associated with certification ( $\alpha = .05$ ). Because type of killing failed to distinguish between juveniles certified to adult court and juveniles retained by Family Court, an additional variable, race of victim and offender, has been substituted in its place.<sup>15</sup> Ta-

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<sup>14</sup> Homicides in this sample were separated into felony and non-felony related killings by using the police description of the offense. This dichotomy is a tool for the researcher: the District Attorney's office does not designate by charge which killings grew out of an argument and which were precipitated by a robbery or other felony. Although indictments for all killings were returned under the charge of Murder General, Pennsylvania's felony murder rule clearly marks the felony killing for special handling in that premeditation—specific intent to kill—is supplied by the initial felony. Because of this provision, jury trials of felony murder return first degree convictions in almost 90 percent of the cases. In non-felony killings, juries find premeditation in less than 30 percent of the trial. *See*, Zimring, Eigen & O'Malley, *supra* note 3, at 231.

<sup>15</sup> Although these crosstabs did reveal significant associations between the variables age, participation in the killing, and juvenile record, there was considerable within group variation in both juvenile samples. For example, although the certified group contained juveniles with serious offense histories, who were nearing the age limit of Family Court jurisdiction, and who had inflicted the fatal wound, it was also true that a number of juveniles sent to criminal court did not inflict the wound, nor did they have a juvenile record, nor had they reached their 17th birthday. Further, there were juveniles retained by juvenile court who had extensive offense records, were 17 years old, and a minority of whom had inflicted the fatal wound.

So far these data have been analyzed using bivariate tabular analysis and simple test statistics (chi-square). Several multivariate techniques could be used to test for interaction

ble 2 shows the certification risks associated with these four variables. This distribution is in the form of an actuarial table and can be read in the following manner: "of all juveniles with X or with X combination of characteristics, what percent were certified?"

**TABLE 2**  
CERTIFICATION RATE BY PRESENCE OF SELECTED VARIABLES  
FOR JUVENILES

| FACTORS PRESENT                                     | JUVENILES<br>CERTIFIED BY<br>PRESENCE OF<br>VARIABLES |     |
|---|---|-----|
|   | Percent   | N   |
| 0 Factors Present                                   | 12%   | 17  |
| 1 Factor Present                                    | 33  | 67  |
| Criminal Record                                     | 29  | 42  |
| Age 17  | 33  | 6   |
| White Victim-Black Offender                         | 38  | 8   |
| Inflicted Wound                                     | 56  | 9   |
| 2 Factors Present                                   | 61  | 41  |
| Criminal Record + Age 17                            | 50  | 10  |
| White Victim + Criminal Record                      | 72  | 11  |
| Criminal Record + Inflicted Wound                   | 56  | 16  |
| Inflicted Wound + Age 17                            | 100   | 2   |
| 3 Factors Present                                   | 83  | 24  |
| Criminal Record + Inflicted Wound + White<br>Victim | 75  | 4   |
| Criminal Record + Inflicted Wound + Age 17          | 82  | 17  |
| Criminal Record + White Victim + Age 17             | 100   | 4   |
| All 4 Factors Present                               | 100   | 5   |
| Total   | 49  | 154 |

Certification rates increase as the number of risk factors goes from none (12 percent certified) to four (100 percent certified). Examining the factors or combinations of factors individually, Table 2 reveals that with the exception of "inflicted wound," the other three risk factors car-

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effects and factor loadings. One recognizes, however, that the strength of any observed association must be tempered with the size of the sample. Because of the obvious small size of the two juvenile samples, regression analysis was considered to be too powerful a technique to use with these data. An alternative method would be to state the relationship between risk factors and certification in the form of an actuarial table, i.e. Table 2.



ried individual certification risks considerably lower than the overall sample rate: 49 percent. A seventeen-year-old youth who took part in a killing but did not inflict the fatal wound, did not cross racial lines, and did not have a juvenile offense record faced certification risks of 33 percent. The single factor which carried the most significance was the offender's role in the killing, that he inflicted the fatal wound. Over half the juveniles with only this one variable present were certified.

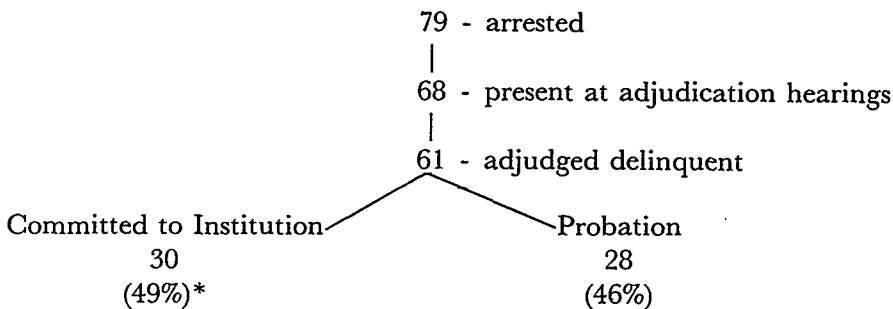
Overall, the array of risk factors shows that the two most potent variables are race of victim and degree of participation in the offense. These figures reveal the continuing impact of race on differential decision-making by the courts. When black youths kill whites, chances of certification begin at 38 percent and jump to at least 72 percent when any additional factor or factors are present.

The danger in presenting certification in such a schematic way is that the decision to transfer jurisdiction appears to reflect a simple formula; as variables are combined, the cumulative percentages "explain" the decision to certify. Although true that juveniles with three and four risk factors faced transfer risks of 75 to 100 percent, this only accounts for 27 of the 75 certified juveniles. The 43 remaining juveniles—60 percent of the entire transfer group—were drawn from risk categories which carried only a 50 percent risk of certification. This is the group for which a formulaic approach to certification would have difficulty predicting certification or retention by the juvenile court. And this is precisely the group which illustrates the range of discretion open to the prosecutor. Why were these juveniles transferred when other juveniles with the same "risk factors" were kept in Family Court? To answer this question, one turns to the third element of prosecutorial concern: policy considerations. Additional determinants of certification are now sought in a larger strategy of prosecuting homicide defendants across juvenile and criminal jurisdictions.

#### IV. JUVENILE HOMICIDE OFFENDERS IN FAMILY COURT

Homicide investigation in Philadelphia receives special attention: no other offense is the subject of such sustained investigatory and prosecutorial interest. Homicides are prosecuted by a separate section of the District Attorney's office. This level of scrutiny is maintained by the prosecutor's office in Family Court as well.

Very few juveniles arrested in homicide events in Philadelphia escape some form of formal processing by the Family Court. Of the 79 juveniles retained by Family Court, 68 eventually reached the adjudicatory hearing stage (comparable to the trial in criminal court). Figure 1 gives the progression of juveniles through Family Court.



\* The percentages total 95% because 3 juveniles received no dispositions.

### FIGURE 1

#### PROGRESSION OF JUVENILE HOMICIDE OFFENDERS THROUGH FAMILY COURT

Of those juveniles who reached the adjudicatory hearing stage, 90 per cent were adjudged delinquent. This rate fluctuates, depending upon the presence of aggravating factors in the offense. The four risk factors used to explain the variance in certification may also be employed as determinants of adjudication and subsequent incarceration in a juvenile facility.<sup>16</sup>

Before assessing the impact of risk factors on juvenile court processing, a word of caution is advised. This is not a "what-if" analysis, that is, what might have happened to the certified juvenile had he not been transferred. This type of analysis is not possible for two reasons. First, juveniles left behind in Family Court are a poor sample from which to predict general confinement risks precisely because they *were* left behind. Had they formed a close approximation to the characteristics of the certified group, they would have been transferred. Second, comparing confinement rates of juvenile and criminal jurisdictions is misleading because the reasons for imprisonment very likely differ. A seventeen-year-old youth in criminal court may receive a harsh sentence because his presence in adult court in light of his age is taken to signify maturity. A seventeen-year-old in juvenile court may receive a lenient sentence because the court realizes it has only a few months to confine him. These different punishment motives prevent an assessment of the certified juvenile's risks of incarceration had he been retained by juvenile court.

<sup>16</sup> J. P. Eigen, *The Borderlands of Juvenile Justice: The Waiver Process in Philadelphia 159-65 (1977)* (unpublished Ph.D thesis in The University of Pennsylvania Library).

TABLE 3

COMMITMENT BY PRECIPITATING FACTORS, JUVENILES  
RETAINED IN FAMILY COURT

| COMBINATIONS OF FACTORS           | COMMITMENTS |    |
|-----------------------------------|-------------|----|
|                                   | Percent     | N  |
| 0 Factors Present                 | 10%         | 10 |
| 1 Factor Present                  | 52          | 31 |
| Age 17                            | 55          | 22 |
| Criminal Record                   | 100         | 1  |
| White Victim-Black Offender       | 33          | 3  |
| Inflicted Wound                   | 40          | 5  |
| 2 Factors Present                 | 67          | 18 |
| Criminal Record + Age 17          | 33          | 3  |
| White Victim + Criminal Record    | 50          | 4  |
| Criminal Record + Inflicted Wound | 80          | 10 |
| Inflicted Wound + Age 17          | 100         | 1  |
| All 3 Factors Present             | 50          | 2  |
| Total                             | 49          | 61 |

Table 3 gives the proportion of juveniles confined to juvenile institutions by single and multiple risk factors. In contrast to Table 2, these data show little additive risk as the number of factors are increased. The reason one fails to see an escalation of a punishment arc with these juveniles is that youths with the "right" combination of risk factors were removed from Family Court jurisdiction and transferred to criminal court. Juveniles left behind appear to be a varied assortment. Some appear to be only "marginally delinquent" and are either dismissed before the adjudicatory hearing or placed on probation following the hearing. Others are in their late teens and probably would have been candidates for certification had the evidence in their cases been strong enough to stand the test of a criminal trial. The reticence on the part of Family Court to incarcerate them at this late stage might reflect recognition of its limited amount of remaining jurisdiction as mentioned above.

The lack of any unified punishment response on the part of Family Court as revealed by these data might also correspond to a strategy of case "management" in which punishment decisions are made at initial stages of screening. Asking "Are we eventually going to punish these youth?" Family Court personnel dismiss some juveniles before the detention hearing, adjudicate others and place them on probation. The Court then turns to those youths whose delinquent history and present offense mandate harsher treatment.

## V. JUVENILE HOMICIDE OFFENDERS IN CRIMINAL COURT

Certification is clearly the most punishing decision available to Family Court and the most momentous in the life of a juvenile offender. In Family Court, the maximum sentence is incarceration until the youth is 21;<sup>17</sup> in criminal court, the maximum sentence is death.<sup>18</sup> Those left behind in Family Court faced a 50 percent incarceration risk, but unlike certification, a cumulative actuarial risk was not in evidence.

Juveniles transferred to criminal court are faced with a second sorting procedure once they enter adult jurisdiction. This additional sorting process suggests a strategy of prosecuting homicide defendants along two tracks: one for felony related killings, and another for deaths which resulted from altercations or gang related deaths. The difference in case management is illustrated in the ratio of jury trials to guilty pleas and in the length of sentence imposed. This is true for both certified juvenile and for adult defendants.

In Philadelphia non-felony killings receive less attention than felony killings from the District Attorney's office for several reasons. Non-felony killings are likely to take place between members of the same race, to be gang related, and to be precipitated by an argument. These deaths often occur between people who know each other and appear to be the unintended result of a street or barroom fight. None of these factors lessens the fact that a purposeful killing took place, nor do the above considerations preclude a finding of premeditation. In Pennsylvania, premeditation is supplied by "specific intent to kill," the presence of a deadly wound.<sup>19</sup> Since at least three-quarters of these victims died because of a gunshot or a knife wound, the inference of specific intent to kill could have been made, regardless of the precipitating event. Yet fewer than five percent of non-felony murder defendants received first degree convictions, suggesting a prosecutorial strategy less rigorous in its treatment of the killing arising out of an argument, often between friends or acquaintances.<sup>20</sup>

Felony related homicides present a different picture to the prosecutor's office and are handled on more of a case by case basis. These killings are much more likely to take place between strangers and are often interracial. Plea bargaining in felony related deaths is held to a mini-

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<sup>17</sup> PA. STAT. ANN. tit. 11, § 50-101 *replaced by* 42 PA. CONS. STAT. ANN. § 6302 (Purdon 1976).

<sup>18</sup> PA. STAT. ANN. tit. 18, §§ 4701, 4702, 4919 (Purdon) *replaced by* 18 PA. CONS. STAT. ANN. § 2502 (Purdon 1976).

<sup>19</sup> Commonwealth v. Ahearn, 421 Pa. 311, 218 A.2d 561 (1966); Commonwealth v. Kirkland, 413 Pa. 48, 195 A.2d 338 (1963); Commonwealth v. Carroll, 412 Pa. 525, 532, 194 A.2d 911, 915 (1963).

<sup>20</sup> See Zimring, Eigen & O'Malley, *supra* note 3, at 238-41.

mum, jury trials appear to be the preferred forum from the prosecutor's perspective. His decision to go to trial is no doubt tempered by the risk of acquittal, but the prosecutor's strategy appears to favor taking this risk rather than relying on an assured conviction and a shorter sentence which would result from a guilty plea to a lesser offense.

The next series of tables compares charge on conviction and range of sentences between felony and non-felony murder defendants, and within these two groups, between juvenile and adult offenders. Table 4 gives data on the final charge. Thirty-six percent of the juvenile defendants compared with forty-two percent of the adults were convicted of first degree murder.

TABLE 4

FINAL VERDICT FOR CONVICTED FELONY MURDER SUSPECTS  
FOR CERTIFIED JUVENILE AND ADULT DEFENDANTS

| Final Verdict                  | CERTIFIED<br>JUVENILES | ADULTS  |
|--------------------------------|------------------------|---------|
|                                | Percent                | Percent |
| First-degree murder            | 36%                    | 42%     |
| Second-degree murder           | 36                     | 42      |
| Voluntary manslaughter         | 18                     | 12      |
| Other felony or<br>misdemeanor | 9                      | 3       |
| Total                          | 99%                    | 99%     |
| N =                            | 22*                    | 33      |

\* Two juveniles were dismissed (not proessed) before trial.

Both offender groups exhibit a surprising degree of variability in final charge for felony murder convictions. Because premeditation, by Pennsylvania statute, is supplied by the initial felony,<sup>21</sup> one might assume that only in the rarest of circumstances would a finding of less-than-first degree be rendered. The range in charge, however, comes as little surprise to those familiar with the patterns in homicide sentencing. Rather than mandate an automatic finding of premeditation, the felony murder rule may actually increase the prosecutor's discretion. Because a guilty verdict for first degree murder carries with it a mandatory minimum life sentence, some defendants may be pressured into either pleading guilty

<sup>21</sup> PA. STAT. ANN. tit. 18, §§ 4701, 4702, 4919 (Purdon) replaced by 18 PA. CONS. STAT. ANN. § 2502 (Purdon 1976). Specific felonies mentioned in the statute include robbery, rape, deviate sexual intercourse by force or threat of force, arson, burglary, kidnapping.

to lesser offenses (voluntary manslaughter, robbery) or waiving their rights to a jury trial. This decrease in the number of defendants permits the prosecutor to concentrate on the few cases he can steer into a jury trial where first degree convictions are likely.<sup>22</sup>

Compared with adult defendants, certified juveniles were only slightly less likely to receive convictions of first or second degree murder. Table 5 reveals that this difference in final charge is partially reflected in minimum sentence. Regardless of their reduced charge on conviction relative to adults, juveniles enjoy relatively little leniency with regard to sentence. And with the exception of two juvenile defendants screened out by the grand jury, all juveniles tried in criminal court for felony killings were convicted and sentenced to prison with a median minimum sentence length of three-to-five years. The fact that no juvenile received probation further underscores the impact of waiver for juveniles arrested in felony murder.

**TABLE 5**  
**MINIMUM SENTENCE FOR CONVICTED FELONY MURDER**  
**SUSPECTS FOR CERTIFIED JUVENILE AND ADULT**  
**DEFENDANTS**

|                   | CERTIFIED<br>JUVENILES | ADULTS                |
|-------------------|------------------------|-----------------------|
|                   | Cumulative<br>Percent  | Cumulative<br>Percent |
| Minimum Sentence  |                        |                       |
| Probation         | 0%                     | 6%                    |
| 1-2 years         | 23                     | 27                    |
| 3-5 years         | 55                     | 42                    |
| 6-8 years         | 64                     | 51                    |
| 9-12 years        | 64                     | 54                    |
| Life Imprisonment | 100                    | 94                    |
| Death Penalty     | 100                    | 100                   |
| N =               | 22                     | 33                    |

As previously mentioned, non-felony killings are prosecuted less rigorously, more with an interest in obtaining a conviction than in imposing a long sentence. Both juvenile and adult defendants tried for non-felony killing find it easier to plead guilty to a lesser charge or stand bench trial than suspects indicted in felony-related killing. More than

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<sup>22</sup> See Zimring, Eigen & O'Malley, *supra* note 3.

half of these killings were disposed of through guilty pleas; less than one-third of the felony killing defendants were able to negotiate a plea.

Juveniles face a conviction rate of 88 percent for non-felony killings compared with the adult defendants' rate of 75 percent. How can one explain the higher proportion? A recent study of criminal prosecution in Los Angeles reveals that the screening of felony cases produces low dismissal rates, above average rates of guilty pleas and higher overall conviction percentages.<sup>23</sup> Similarly, the 75 percent conviction rate for adult defendants in non-felony killings in Philadelphia suggests careful prosecutorial case selection. That the juveniles' rate is even higher leads one to suspect even more efficient screening suggesting a degree of "quality control" in the juvenile court's decision to transfer. This matter will be addressed in the discussion section.

**TABLE 6**

FINAL VERDICT FOR CONVICTED NON-FELONY MURDER  
SUSPECTS FOR CERTIFIED JUVENILE AND ADULT  
DEFENDANTS

|  | CERTIFIED<br>JUVENILES | ADULTS    |
|--|------------------------|-----------|
|  | Percent                | Percent   |
| Final Verdict  |                        |           |
| First-degree murder  | 7%                     | 3%        |
| Second-degree murder                                       | 58                     | 35        |
| Voluntary manslaughter                                     | 24                     | 48        |
| Other felony or misdemeanor<br>of involuntary manslaughter | <u>11</u>              | <u>14</u> |
|  | 100%                   | 100%      |
| N =  | 45*                    | 106       |

\* Two juveniles were dismissed (nol-prossed) before trial, and four were acquitted.

Table 6 presents data on final charge on conviction for juveniles and adults tried for non-felony killings. In contrast to felony murder data, juveniles were convicted of higher degrees of murder than adults for similar types of killing. Of those juveniles convicted in non-felony killing, 65 percent were convicted of either first or second degree murder, compared with 38 percent of the adult defendants.

<sup>23</sup> P. GREENWOOD, S. WILDHORN, E. POGGIO, M. STRUMWASSER & P. DE LEON, PROSECUTION OF ADULT FELONY DEFENDANTS IN LOS ANGELES COUNTY: A POLICY PERSPECTIVE (1973).

**TABLE 7**  
**MINIMUM SENTENCE FOR CONVICTED NON-FELONY MURDER**  
**SUSPECTS FOR CERTIFIED JUVENILE AND ADULT**  
**DEFENDANTS**

|                   | CERTIFIED<br>JUVENILES | ADULTS                |
|-------------------|------------------------|-----------------------|
|                   | Cumulative<br>Percent  | Cumulative<br>Percent |
| Minimum Sentence  |                        |                       |
| Probation         | 16%                    | 27%                   |
| 1-2 years         | 60                     | 78                    |
| 3-5 years         | 88                     | 92                    |
| 6-8 years         | 93                     | 96                    |
| 9-12 years        | 93                     | 98                    |
| Life Imprisonment | 98                     | 101                   |
| Death Penalty     | 100                    | 101                   |
| N =               | 43*                    | 104*                  |

\* Two juveniles and two adults were not sentenced.

These higher degrees of conviction for juveniles translate into more severe sentences as well. Table 7 shows that among non-felony murder suspects, juveniles received fewer probationary sentences and longer prison terms than adults. Juveniles also received proportionately more life sentences and a juvenile was given the only death sentence for a non-felony killing in either sample.

Although approximately half of each group received sentences in the one-to-two year range, juveniles received fewer probationary sentences relative to adults. Consequently, 40 percent of the younger offenders faced prison terms in excess of two years, compared with 23 percent of the adults.

Disparate sentences invite a consideration of the legal and extra-legal factors that tend to influence length of sentence. Although charge on conviction is likely to be the most salient factor in prescribing sentence length, in felony related killings, the juveniles' reduced charge on conviction relative to adults translated only marginally into reduced sentences: 45 percent of the juveniles and 58 percent of the adult defendants received sentences of at least six years in prison.

One factor likely to affect sanctions is previous criminal (or juvenile) record. When severity of punishment is cross-tabulated with number of previous adjudications of delinquency, the most noticeable effect is in the category of probation. Probationary sentences are more



likely to be given to juveniles with no prior record. However, 19 of the 24 juveniles with no record received prison sentences, and one received life. And the four life and death sentences went to juveniles with the least serious history of delinquency involvement.<sup>24</sup> A similar pattern emerges in adult sentences. Probationary sentences most often go to first offenders, but a majority of adults with no previous record of convictions still received prison sentences and one received life. For both sets of offenders, it appears that although previous record may influence the decision to grant probation for a few defendants, there is no direct linear relationship between previous delinquent or criminal involvement and length of sentence.

There is a strong possibility that the difference one sees in charge and sentence between the juvenile and adult populations is due to the race of victim. Only one interracial killing was reported in the adult non-felony murder population; the offender had no record and received probation. Six black juveniles, however, crossed racial lines and these killings resulted in one life and one death sentence. Both of these offenders had a record of one previous adjudication. The four remaining juveniles in these interracial killings received prison sentences.

Race of victim also appears to temper the effect of the degree of offender participation on sentencing. Juveniles who did not inflict the fatal wound were more than twice as likely to receive probation than were their co-offenders who were the principal assailants. But race of victim diminishes the significance of the offender's actual role in the killing. When blacks cross racial lines the principle of accessorial liability is in force. In interracial killings, principal assailants and their co-offenders are sentenced to prison terms of comparable length. No comparable data on the participation variable for adult offenders exists because such offenses were more likely to be single-offender slayings.

The salient factor in increased sentence severity for juveniles is thus the more frequent choice of a white victim. Interracial offenses by blacks elicit harsh sanctions throughout the juvenile and criminal justice systems. Although race is a possible explanation for the disparity in sentencing, one would need to construct a sample to include a higher incidence of adult non-felony interracial killings before a more convincing statement of association can be made. Prospects for securing such a sample are not promising given the current state of relations between the races with regard to acquaintance, friendship, and marital choice. Consequently, black-white killings are much more likely to be precipitated by a felony than by an argument between drinking partners or lovers.

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<sup>24</sup> See J.P. Eigen, *supra* note 16.

Another reason for the difference between juvenile and adult sentences is that one is observing a highly screened sample of juvenile defendants. It comes as little surprise that juvenile conviction rates and sentence length surpass those of the adult defendants; their offenses have been screened for evidentiary rigor. Pursuant to Pennsylvania law a *prima facie* case must be established as a precondition for waiver.<sup>25</sup> The fact that few if any juveniles were *not proessed* by the grand jury suggests that there has been a very careful selection of juvenile homicide defendants for criminal court. Were adult cases similarly screened, one would expect adult defendants to face conviction rates more in line with the juveniles' experience.

An earlier study of sentencing determinants in the prosecution of homicide in Philadelphia paid particular attention to the effect of racial configuration of victim and offender on the two most severe sentences, life and death.<sup>26</sup> Table 8 cross-tabulates race of victim and offender with severity of punishment for black juveniles.

**TABLE 8**

PUNISHMENT BY RACE OF VICTIM FOR BLACK CERTIFIED  
JUVENILES

|                               | <u>White Victim</u> | <u>Black Victim</u> |
|-------------------------------|---------------------|---------------------|
| Felony Killings               |                     |                     |
| Life or Death                 | 8                   | 0                   |
| Other Sentence                | 4                   | 9                   |
| Fisher's Exact Test sig. .002 |                     |                     |
| Non-Felony Killing            |                     |                     |
| Life or Death                 | 2                   | 1                   |
| Other Sentence                | 5                   | 32                  |
| Fisher's Exact Test sig. .07  |                     |                     |

In felony killings, black offenders who crossed racial lines received a sentence of life or death significantly more often than offenders whose victims were black. In non-felony killings, the difference does not attain statistical significance although it approaches the criterion of .05. Like adults, juvenile homicide offenders are not likely to cross racial lines in non-felony killings. When they do, their choice of a white victim is likely to elicit the harshest sanctions available to the court.

These data bring into sharp relief the significance of the certifica-

<sup>25</sup> *In re Gaskins*, 430 Pa. 298, 244 A.2d 662 (1968).

<sup>26</sup> See Zimring, Eigen & O'Malley, *supra* note 3.

tion decision. Almost 90 percent of the juveniles tried in criminal court were sentenced to prison, but less than half of the juveniles tried in juvenile court were incarcerated. Three-quarters of the certified juveniles would remain in prison when the last non-waived juvenile was released. Ten certified juveniles were sentenced to life, one to death. This sharp contrast in sanction between two juvenile groups sharing a considerable overlap in offense and offender characteristics raises several questions. To what extent can one speak of certification as a principled decision, and what is the prosecutor's role in the offense and offender selection process known as case management?

## VI. DISCUSSION

To characterize juvenile court as the victim of its own mixed motives has become commonplace. Juveniles are to be "saved," juvenile crime is to be suppressed. At some point, these motives cross and the retributive function of the juvenile court manifests itself in the decision to seek certification. This research was designed to study how this decision is reached, and what consequences accrue from this jurisdictional transfer. Against the background of these data, three closely related themes are brought into sharp relief: the role of the prosecutor in seeking certification, the discontinuity of sentencing based on any system of age-determinate cut-offs, and the desirability of coordinating the sentencing policies of juvenile and criminal jurisdictions.

Prominently missing in the juvenile justice literature is any discussion of the prosecutor's role in the selection of juvenile offenders for criminal court. Instead, the reader learns of the court's attempt to assess "dangerousness" and "amenability."<sup>27</sup> Doubtless, these are important considerations and carry much weight in the eventual decision. But at the same time juveniles in criminal court are in for a rough experience. With conviction rates of 100 percent and 92 percent for felony murder and non-felony murder respectively, one suspects that more variables are involved in the selection process.

Prosecutors in juvenile court work for a unified District Attorney's office in a way that is not true for the juvenile court judge. True, the judiciary is not completely autonomous in Family Court, but one does not see the continuity (and accountability) of functioning that is apparent when the successful prosecution of juvenile cases in adult court is

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<sup>27</sup> A 1962 study of fifty-two juvenile court judges revealed that the criteria that shaped their decisions to waive jurisdictions were the following: (1) issues of contestable fact which would prolong a juvenile hearing; (2) a serious offense occurring after previous-correctional treatment; (3) "the case is hopeless"; (4) the child needs to be punished because of his attitude; and (5) that the advantages of safety and treatment lie within the criminal court system. *Transfer of Cases Between Juvenile and Criminal Court*, 8 CRIME & DELINQUENCY 5 (1962).

made known. There are no objective reasons why it should be easier to convict a "mature" youth than a "mature" adult, but there are obvious benefits to screening the juvenile's case when it first comes to juvenile court. However this is done (and with the new Juvenile Court Act the sorting is done first by the adult court),<sup>28</sup> these cases have been screened for evidentiary rigor. Weak cases are left in juvenile court where the offender faces a 50-50 risk of incarceration; stronger cases are transferred to criminal court where evidentiary rigor yields high conviction rates and substantial prison terms.

Traditionally, the prosecutor enjoys broad discretionary judgment in selecting cases for trial and in the manner of prosecution he chooses to pursue. His presence in adult court is obvious; his influence in juvenile court has been largely ignored. These data reveal a strategy of selecting juveniles for transfer which eventually yields high conviction rates and sentences as long as those received by adult defendants, and often longer. This obvious coordination of effort between the prosecutor's office in juvenile court and the District Attorney's office in criminal court attests to the role of the prosecutor as the one critical link between the two jurisdictions.

To write that screening was in evidence is not to argue that "prosecutorial worth" was the sole consideration mandating the decision to seek certification. Most of the transferred juveniles presented offense and offender characteristics which likely aggravated the immediate offense rendering the perpetrators probable candidates for certification. Once tried and convicted, these same factors all but ruled out probationary sentences bringing instead full adult sanctions. But a majority of the certified juveniles shared a considerable number of "risk factors" with the non-waived sample which revealed substantial overlap between the two juvenile groups. Given the enormous difference in sentencing power between juvenile and criminal court, one is compelled to look for the principles which guide the court in considering the waiver option.

Certification has traditionally been justified along the lines of amenability: the youth's capacity to respond to the rehabilitative resources of the juvenile court. Because the original mandate for the juvenile court was to assess "condition," it seemed fitting that youths who were really adults by virtue of seriousness of their crime or past criminal involvement were to be excluded from the court's benevolent, child saving jurisdiction. But how does one measure "condition"? A possible factor could be the youth's history of delinquency and previous attempts at correction. Having already passed through the juvenile justice system

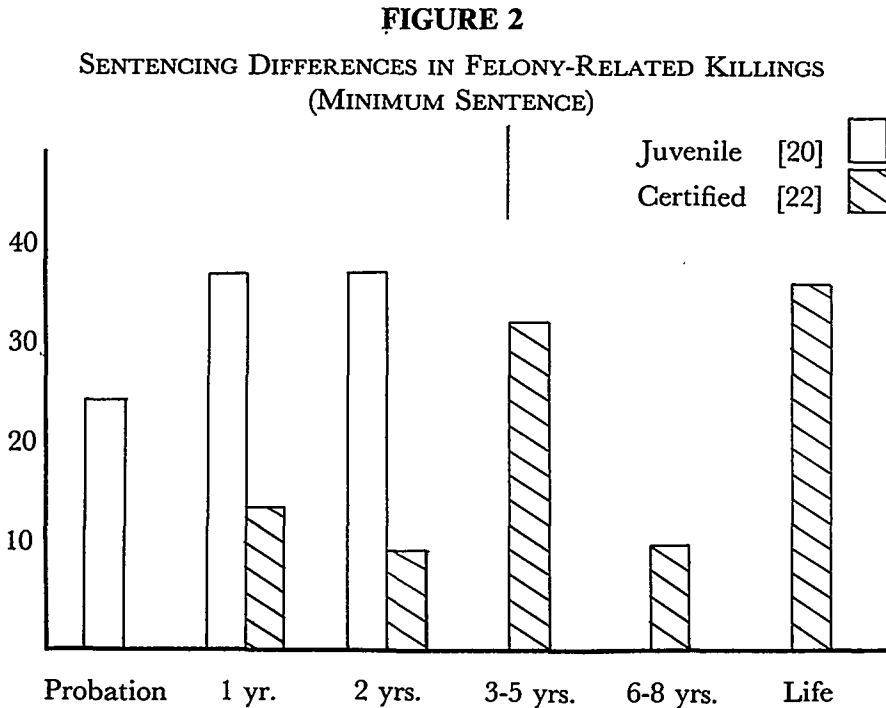
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<sup>28</sup> PA. STAT. ANN. tit. 11, § 50-101 replaced by 42 PA. CONS. STAT. ANN. § 6322. (Purdon 1976).

with its full array of rehabilitative resources, the youth failed to respond and thus presents himself as a poor "condition risk." But how much previous contact is "too much"? If this is the standard which guides certification, one finds it disquieting that there exist so few guidelines to assist the court in determining when a youth is "beyond redemption."

This apparent failure to respond to the juvenile court's helping hand may constitute an additional aggravating factor: "contempt of juvenile court." Not only would this serve as a justifiable reason for transfer, it may also help to explain the disparity in sentencing between juvenile and adult offenders tried for non-felony murder. As a reason for the initial transfer, non-amenability may make some intuitive sense, but why are the consequences so great? Is the presence of past delinquent involvement sufficiently serious to justify the quantum leap in punishment that follows on conviction? If the decision to certify is defended on these grounds the court is saying in effect that past failure to reform can be worth up to 10 years additional imprisonment in the adult system.

The following graph shows the discontinuity in sentencing policy with juvenile offenders arrested for homicide but tried in different jurisdictions.



When the disparities in sentences are revealed, one is compelled to ask: "To what extent could one have designed such a system?" Is this one system of prosecution or two, which happen to interface in a highly accidental way because the two systems meet at the point of waiver, but fail to follow through with a unified sanctioning policy? Again, it is the interface of the two systems at the point of waiver that is problematic. It would not be difficult to defend either the juvenile justice or the criminal justice system in terms of the range in punishment given relative to that jurisdiction's sanctioning philosophy. But justifying both systems' dispositions, while operating within identical offense categories, takes considerable explanation. Part of the explanation can be sought in the extraordinary range of discretion in this selection process. Although a high percentage of certified juveniles were seventeen, the actuarial risk for seventeen-year-olds was the lowest of the four "dangerousness variables." The minimal risk associated with age per se is due to the two systems working on two different theories.

Assuming that a theory of diminished responsibility animates the juvenile court, the shift in sentencing policy appears to be too abrupt. In the position of doing "all or nothing at all," juvenile court's dispositions display a heavy reliance on probation and minimal use of confinement or certification. When these dispositions are compared with sentences received by certified juveniles in adult court, it is clear that the manner in which the prosecutorial system now functions fails to coordinate any rational sentencing policy between the two jurisdictions. It is also apparent that the arbitrariness of any age cut-off will be underscored by a policy which appears to make a substantial investment in its youthful offenders, but later ceases all attention once the juvenile reaches majority. As argued in the report of the Twentieth Century Fund's *Confronting Youth Crime*, the reasons for a doctrine of diminished responsibility based on youth and life experience do not vanish with the youth reaching age 18.<sup>29</sup> Why, then, should they vanish after certification?

As the certification process now operates, age takes on dramatic significance when the two systems meet at the point of waiver and the low incidence of waiver only serves to underscore the shock in sentence severity. If a youth manages to reach his eighteenth birthday without being transferred, he enters the adult court as a first offender, that is, his juvenile record disappears and though he is now fully accountable for his actions, he actually enjoys an extension of the doctrine of diminished responsibility because of his youth. Young adults in criminal court continue to receive light sentences, perhaps due to the court's incomplete

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<sup>29</sup> F. ZIMRING, *CONFRONTING YOUTH CRIME* (1978).

knowledge about prior criminal record.<sup>30</sup>

As the peak age of violent crime arrest continues to drop to the late-to-mid teens, one hears enthusiastic support for lowering the jurisdictional age of juvenile court to sixteen and younger. This would, in essence, constitute "wholesale certification" and would obviously flood the criminal courts already plagued with substantial case backlog. One wonders if this would resolve the question of a unified sentencing policy; should all defendants, regardless of age, be liable for the same sanctions? What would happen if the peak age drops to fifteen; will there be a suggestion to lower jurisdiction again? As revealed by these data, any form of age-determinate prosecution is likely to produce gross disparities in punishment in an all-or-nothing interface between juvenile and criminal jurisdictions.

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<sup>30</sup> See J.P. Eigen, *supra* note 16; Zimring, Eigen & O'Malley, *supra* note 3.