

4-15-1996

Framing the Juvenile Justice Problem: The Reality Behind the Problem

Robert M. Figlio

Lois Haight

Malcolm W. Klein

Sharon Kalemkiarian

Follow this and additional works at: <http://digitalcommons.pepperdine.edu/plr>



Part of the [Criminal Law Commons](#), and the [Juveniles Commons](#)

Recommended Citation

Robert M. Figlio, Lois Haight, Malcolm W. Klein, and Sharon Kalemkiarian *Framing the Juvenile Justice Problem: The Reality Behind the Problem*, 23 Pepp. L. Rev. 3 (1996)

Available at: <http://digitalcommons.pepperdine.edu/plr/vol23/iss3/4>

This Symposium is brought to you for free and open access by the School of Law at Pepperdine Digital Commons. It has been accepted for inclusion in Pepperdine Law Review by an authorized administrator of Pepperdine Digital Commons. For more information, please contact Kevin.Miller3@pepperdine.edu.

PANEL ONE

*Framing the Juvenile Justice Problem:
The Reality Behind the Problem**

ROBERT M. FIGLIO, PH.D.

Robert Figlio is a professor of sociology at the University of California, Riverside. Professor Figlio is co-author, along with Marvin Wolfgang, of one of the most important longitudinal birth cohort studies on criminal justice published to date. Professor Figlio's publications include DELINQUENCY IN A BIRTH COHORT; FROM BOY TO MAN: FROM DELINQUENCY TO CRIME; and DELINQUENCY CAREERS IN TWO BIRTH COHORTS.

THE CONTINUATION OF JUVENILE DELINQUENCY INTO ADULT CRIMINALITY:
SOME FINDINGS FROM INTERVIEWS OF MEMBERS OF
THE 1958 BIRTH COHORT

INTRODUCTION

The findings from the first Philadelphia birth cohort study of some 10,000 boys who were born in 1945 and grew up in that city were published in 1972.¹ A few years later, that research was continued by following up and interviewing a sample of that cohort. In 1990, findings were reported from a longitudinal study of over 27,000 individuals born in 1958 who also lived in Philadelphia through their juvenile years.² Herein we offer data developed from an interview of a sample of 777 males and females drawn from the 1958 cohort when they were thirty-years-old. Additionally, the officially recorded criminal histories of these

* Special thanks to Meldie Malone, Deputy District Attorney, Juvenile Division, Orange, California for her participation as a moderator for this panel and her contribution in making this symposium a success.

1. See generally MARVIN E. WOLFGANG ET AL., *DELINQUENCY IN A BIRTH COHORT* (1972) (reporting the study); MARVIN E. WOLFGANG ET AL., *FROM BOY TO MAN—FROM DELINQUENCY TO CRIME* (1988) (same).

2. See generally PAUL E. TRACY ET AL., *DELINQUENCY CAREERS IN TWO BIRTH COHORTS* (1990) (reporting the study and finding that chronic offenders commit the most serious crimes).

sample participants were tracked to age thirty at both local and national levels. To ensure that out-migration from Philadelphia of cohort members would not have any significant effect on the completeness of adult criminal records and comparability with the earlier juvenile offense data, sample members were traced and contacted, if possible, throughout the United States.

The interview component of this research included a wide range of theoretical concerns for the study of delinquency and the transition to adult criminality or desistance such as: family structure, peer group relationships, educational and employment experience, abusive environments, victimization experiences, head injuries, reported neurological impairments and physical handicaps, alcohol and drug use, and a variety of self-reported activities as they relate to the police recordings of criminal actions attributable to the members of this sample.

THE PROBLEM

Historically, the discrepancies which have been observed to exist between self-reports and police recordings of criminal offenses have been the subject of a voluminous literature ranging from methodological critiques to ideological assertions concerning the acceptability of these two crime indicators for testing theory and guiding social policy. In several instances attempts have been made to reconcile and, to some extent, "explain away" the observed divergences. Others have argued that one or the other measurement technique is so flawed by methodological shortcomings and politically driven systemic biases that the employment of one or the other measure would inflict a fatal blow to the truth. A review of that literature is not the purpose of this paper. Yet, officially recorded data from longitudinal cohort studies, including those above, have been utilized recently to buttress arguments which reflect fundamental differences of opinion regarding the propensity to violate the law and the appropriateness of presently accepted research agenda.³ These discussions center around the career criminal perspective and its corresponding crime control implications. Embedded within this discussion are assumptions regarding the distributions of age at onset, persistence in offending behavior and desistance or dropping out

3. See MICHAEL GOTTFREDSON & TRAVIS HIRSCHI, *A GENERAL THEORY OF CRIME* (1990); Arnold Barnett et al., *Not All Criminal Careers Models are Equally Valid*, 30 *CRIMINOLOGY* 133-40 (1992); Alfred Blumstein et al., *Delinquency Careers: Innocents, Desisters, and Persisters*, in 6 *CRIMES AND JUSTICE, AN ANNUAL REVIEW OF RESEARCH* (Michael H. Tonry and Norval Morris eds., 1993); David F. Greenberg, *Modeling Criminal Careers*, 29 *CRIMINOLOGY* 17-45 (1992); *Comparing Criminal Career Models*, 30 *CRIMINOLOGY* 141-47 (1992).

of criminal activities.⁴ The important and perhaps most relevant considerations are the shapes of the various delinquent-criminal offense and offender distributions over age because these distributions essentially determine our conclusions and affect the nature and stability of that position. Of course, if self and official reports produce distributions of different shapes then the issue reduces, at least at the outset, to one of data adequacy and validity. The data presented here address this concern about age-related criminality in a preliminary, descriptive manner by displaying the aggregated self and officially reported criminal behaviors from this 1958 cohort sample.

THE METHOD

The population of the 1958 Philadelphia birth cohort was stratified five ways: by sex, ethnicity, socioeconomic status, offense history (0, 1, 2-4 and 5 or more offenses) and juvenile "status" offense classification (an offense applicable only to individuals less than eighteen years of age). From that frame, a sample of 777 individuals were interviewed over an eighteen-month period.

As part of the interview process, respondents were asked to report how many times during four time periods (elementary school years, up to and including age eleven; high school, twelve to eighteen; post high school, nineteen to twenty-four, and recently, twenty-five to twenty-nine) they remembered having committed the crimes enumerated by the interviewer. The offenses were presented on flash cards while the respondent filled in the form so that confidentiality was maintained in the interview setting. Although telescoping, lack of recall, and candor are all possible in this "retrospective" response technique, there was, in this study, no way to tap contemporaneous self-reports, as is possible with prospective designs. Yet, as the following data will indicate, response profiles varied by offense type both in offense rates and offender participation in a manner not reflecting a uniform telescoping bias.⁵

4. See generally Blumstein et al., *supra* note 3 (discussing these assumptions).

5. If telescoping or the placing of self-reported offenses from a previous time period into a later time category were occurring in these data, as a general effect we would expect to see similar inflations in later time periods across the data set. Such is not the case. Several offense categories exhibit similar time trends for both self and officially reported data. That is not to say that some telescoping is not affecting these data; however, the observed trends do not appear to favor the later recalling of offenses at the expense of earlier delinquent activities.

Officially recorded offenses were obtained through a file search of the Philadelphia police and the FBI. Thus, for each sample member, there exists an official offense record, if any recordings appeared in the files available, and a self-report schedule including all of the FBI Part I Crimes of homicide, rape, robbery, aggravated assault, burglary, larceny, auto theft and a wide variety of other crimes including drug-related behavior.

In addition, the sample members were asked for each time period and offense if they had been contacted by the police, appeared before a judge, and/or had been incarcerated for each offense they reported having committed. Subject to the limitations of the methodology noted above, this data set includes an extensive self-report offense list, a comprehensive official record of offenses, and the frequency of self-reported police, judicial and prison contacts.

THE DATA

For all offense types aggregated, the police contact rate displays the now familiar and widely reported trend of low delinquency involvement during childhood (8.37), followed by the peak during the teen years (184.47), somewhat of a decline to age twenty-four (149.66) and a drop-off to age thirty (69.5). The self-report rates for these age periods are significantly different—instead of dropping off with age, the rates increase from 221.58 during childhood to 935.91 during the twenty-five to twenty-nine reporting period. It is possible that this increase with age is a function of “telescoping” or reporting events occurring in a more distant time period as having occurred more recently. With the exception of drug offenses, that trend does not appear in the other offense type categories.

Further, because the “All Offenses” category includes a wide variety of criminal behavior, including white collar, fraud, and corruption, the replacement of offenders and/or offenses of the more traditional “street crimes” by occupational crime or the addition of offenders and/or offenses from these categories could produce an increase in self-reported offense rates with age that would not necessarily be reflected in the official police records. That is, the type of criminal activity could be shifting, as well as increasing, with age into those areas less visible to the police. Thus, official records could be producing the appearance of reduction in crime rates and offender involvement with age, while in reality, the official mechanisms actually are unresponsive to these shifting criminal modalities.

It is also noteworthy that the respondents reported police contact rates about one-tenth the size of their offense rates and generally quite lower than the actual official records indicate, except for the twenty-

five to twenty-nine age group. The self-reported offense rate is about ten times greater than the self-reported police contact rate, which, in turn, is substantially lower than that reported by the police for these individuals. Further, less than one-half of these self-reported police contacts ever resulted in a court appearance and, of those, the incarceration rate is only one-quarter as large.

Homicides

Self-reported homicide rates by age are generally lower than those noted by the police. A rate of 0.21 was self-reported for the age group 0-11 while a zero rate appeared in the police records. That low rate incident resulted in a self-reported police contact, appearance before the court and incarceration, even though no police recording was evident. On the other hand, the homicides reported by the police produced no self-reported police contacts and court appearances, no incarcerations. These rates represent only one or two events and are certainly susceptible to doubt regarding the veracity of the self-reports.

Rape

Self-reported rape rates increase with age and are significantly higher than those reported by the police. Indeed, the self-reported rape rates jump from 4.78 for high school students to 16.3 among young adults to 14.16 for adults. The official police contact data for these age groups range from 2.57 to 4.41 to 1.29 over the same time periods. Additionally, court appearances and incarcerations are essentially nonexistent for the rapists in this sample. The data indicate a self-reported rape rate eleven times that indicated by police records for adults twenty-five to twenty-nine years of age, along with an incarceration rate fifty-four times smaller than the self-reported offense rate for this crime. These self-report rape data paint an extremely divergent picture from that produced by the police records for that offense, indicating that rapists continue their crimes into adulthood at frequencies much higher than those reported in official documents. These findings have obvious policy relevance regarding the arrest and control of violent sex offenders.

Robbery and Aggravated Assault

These two violent crimes, which often occur together, appear at marginally higher rates for the nineteen to twenty-four, compared to the twelve to eighteen age groups as reported by the police. The differences, although in the same direction, are markedly larger in the self-re-

ports. For the offense of robbery, the self-report rate is noteworthy for the twenty-five to twenty-nine age category of 31.66, compared to the police rate of only 2.57. This difference of twelve times suggests that this violent crime continues well into adulthood at a rate considerably above that discovered and reported by the police. Further, these offenders acknowledge only a fraction of the actual arrests or contacts recorded by the police.

Self-reported rates for aggravated assault display a pattern similar to robbery. Yet, offenders admit to about one-half of the actual arrests and considerably higher court appearance rates, between 3.5 and 5 by age category, compared to about one for robbery. As with robbery, the self-report rate for the nineteen to twenty-four age group is considerably greater, 60.27 for aggravated assault and 71.86 for robbery than that for the other age categories, both self and officially reported. Offenders admit that they were arrested at about one-half the official police report rate.

Young self-reported burglars, up to age eleven, performed their acts at a rate about twenty-one times greater than the police data would indicate, 26.6 compared to 1.29, and these thieves acknowledged an even smaller arrest rate than reported by the police, 0.21, or about one police contact for every 127 burglaries.

Larcenies, which include shoplifting, were also reported in the youngest age category at a rate far in excess of that reported by the police, 48.26 compared to 5.15, a nine times ratio. The ratios between self-reported and police data for the two middle age groups are smaller. For the twelve to eighteen category, 108.84 for self-reported and 60.27 for police data, a 1.8 ratio; and, for the nineteen to twenty-four group, 63.49 for self-reported data and 44.13 for police data, a 1.4 ratio. The adults, twenty-five to twenty-nine, reported a much higher level of larcenous activity (86.23) than police reports (12.87) indicated, almost a seven-times greater rate. The rates of court appearances and incarcerations were close to zero.

Such is not the case with older burglars. Unlike the experience reported by this group when they were children, teenage and adult burglary offenders were much more likely to report being arrested and to have appeared before a judge and/or been incarcerated. In fact, for the nineteen to twenty-four age group, the self-report police contact rate is actually higher, 28.1, than that reported by the police, 19.67. Perhaps some respondents were reporting contacts which were not actually arrests in this category.

Regardless of the various internal differences in these burglary and larceny data, the overall distributional shapes are similar to those generally found in these kinds of data for both self and officially reported offense rates.

Simple Assault

Simple assaults occur very frequently, especially among children and teenagers, and, as this table displays, most of this behavior is unknown to the police. Sample members reported a rate of 121.84 for the years up to age eleven, compared to a police rate of 1.07, a ratio of about 114 to 1. These numbers increased to 317.89 for self-reports during the twelve to eighteen period, compared to the police figure of 33.46, or a ratio of 9.5 to 1; to 182.97 and 27.58 or a ratio of 6.6 to 1 for the nineteen to twenty-four age group and 132.3 versus 19.31, a ratio of 6.8 for the adults. Self-report rates providing a base, young and older adults were more likely to appear before a judge for these offenses than were children and teens. The police were much more likely to be involved with assaultive behavior as age increased, an expected finding given the definition of simple assault as pushing and shoving or aggression which does not result in serious bodily injury, which is typical of childhood behavior and not acceptable among adults. Nonetheless, youths and adults do appear before the bench and are imprisoned for nonserious assaultive behavior, as the self-reported data indicate.

Drug Offenses

Self-reported drug violations increased dramatically as the cohort aged. Although this cohort experienced its childhood during the 1960s, drug usage among the under twelve age group was low, compared to reported involvement with assaults, larcenies and burglaries. As the cohort grew older, however, drug involvement escalated from a rate of 116.38 for the twelve to eighteen year-old group to 419.35 for the nineteen, to twenty-four group to 614.41 in the adults. Further, the official police data also exhibit an increasing rate (0.0, 2.79, 13.97, 10.30), which is a fraction of the self-report values. In fact, for the adult age group of twenty-five to twenty-nine, the self-reported rate was 1.5 times greater than that reported for the previous years of ages nineteen to twenty-four, while the official data actually declined by 26 percent. The adults also reported a six times higher police contact rate for drug offenses than the official records indicated. In the later years, appearance before a judge increased, while incarcerations remained at low levels, 0.64 for the nineteen to twenty-four and 0.77 for the twenty-five to twenty-nine reporting ages.

Some of the dramatic growth of drug usage is probably attributable to a period effect in that this cohort grew up during the years of expanding drug use. Yet, these activities have profoundly altered the

overall self-reported offense rates while having only a minor effect on the rate trends observed in the officially recorded data both for drugs and the aggregate all offenses rate.

CONCLUSION, OFFENSE RATES

Although the trends in offense rate data are reflected in longitudinal studies, self-reported rates are substantially greater than officially derived estimates, especially for older offenders. In these data, rates for drugs and all offenses aggregated actually indicate a much greater involvement of adults in criminal behavior than that reported for earlier age periods. It is possible that some of this increased activity in the adult age group is produced by telescoping or recall as discussed earlier; however, the remaining offense types examined here did not produce that upward trend. In fact, most of these other offense rate trends follow roughly the same patterns as those recorded in official records, albeit at higher incidence levels. Nonetheless, for all offenses aggregated, larceny, rape, and drugs, adults in this cohort sample reported increasing involvement with criminal behavior that was not apparent in the official recordings.

Offender Involvement: Prevalence Proportions

Studies reflect the proportions of the cohort sample involved in various offensive behaviors by age group and by age at onset for both self and officially recorded events.

For offense types exhibit age—group prevalence rates from official statistics typical for these kinds of data—peak in prevalence in the twelve to eighteen years category, followed by a decline during the years nineteen to twenty-four and a sharp drop from twenty-five through age twenty-nine. Conversely, the self-report data display a markedly different pattern of criminal involvement rising from 0.11 during childhood to 0.28 in the teen years to 0.27 in young adulthood and remaining at that level, 0.27, through age twenty-nine.

This pattern of uniform involvement by cohort sample members obtains for robbery and aggravated assault as well, although the overall self-reported robbery value is below that of the official one. Drug prevalence dramatically increases from a self-report level of 0.004 for the childhood years to 0.03 for twelve to eighteen, 0.07 for nineteen to twenty-four to 0.10 for the adult age category. It is apparent in these data that offender involvement in criminal activity, including serious violent robbery and assault continue at levels equal to that of the teen years into the adult years, while drug prevalence actually increases, at least as reported by this sample of cohort respondents.

In the all offense category, offenders reported a much higher age at onset involvement rate during childhood than the police records indi-

cate, 0.11 compared to 0.03. Conversely, during the age period twelve to eighteen, police records display a greater onset rate, 0.32 compared to 0.24. Yet, age at onset rates for aggravated assault and drug crimes are notably higher during the adult years, according to the self-reports: 0.04 for self-reported aggravated assault, compared to 0.004 in the police records; 0.06 and 0.007 respectively for drug offenses. Thus, the self-reported age at onset indicates that adults are entering the serious assaultive, drug-related and all other criminal groups at rates considerably above those indicated by official recordings and that a greater proportion of the cohort began delinquency at an earlier age than previously noted with police data.

The self-reported onset prevalence rate for robbery is below that indicated by official records for all age categories with the exception of the twenty-five to twenty-nine. In this group, no new offenders joined the population of assaulters, while the self-report rate was 0.02. The deflation in the nineteen to twenty-four age group of self-reported onset rates for robbery, aggravated assault and drugs and the increase for those onset rates in those offenses in the twenty-five to twenty-nine age group may be due, in part, to a telescoping effect of recalling an event which occurred during ages nineteen to twenty-four as having happened during the period twenty-five to twenty-nine. Yet, this effect does not appear in the aggregate category, "all offenses."

Although the proportion of the sample taking part in each type of criminal activity is greater as self-reported compared to officially labeled, in the offense of robbery the total participation rate is substantially lower between the two measures: 0.065, self-reported; 0.123, officially recorded. Further, both self-reported prevalence and incidence rates are notably lower than the official records indicate. These data do not offer any explanation for these differences, which are at variance with the other crime types reported. Whatever reporting bias or artifact is providing this difference, the adult category still displays an increasing prevalence, as with the other offense type self-reports.

COMMENTS AND CONCLUSIONS

Much of the current thinking in research on criminal careers is based upon the age-specific offense distributions produced by longitudinal studies during the last twenty years. Those distributions, primarily derived from official records of delinquency and criminality, typically take the form, in the aggregate, of the onset of delinquency beginning in late childhood, ages ten to thirteen, escalating rapidly to a peak during mid-adolescence, sixteen to eighteen years of age, followed by a drop in

the late teens and early twenties, and then a steeper fall-off into adulthood.

Hypotheses attempting to explain this distribution have taken two major perspectives. One is that a population consisting of occasional offenders, persistent offenders and desisters who, following the observed trends by age of onset, persistence and desistence probabilities produce the commonly observed pattern. The other position argues that the population is really a mix of individuals of varying degrees of crime propensity, who by their age distributions in a particular population structure produce the observed age-related trends, and that these propensities are constants over age.⁶

The data presented here are derived from a self-report retrospective response to an interview schedule which attempted to link delinquency and criminal involvements to significant life transition times or events, thus, hopefully reducing recall errors and their associated compression or telescoping biases.

The comparison of self-reported recollections to official recordings of police contacts for the same individuals over the same time periods produces some expected and some unexpected overall conclusions:

- (1) That police data seriously undercount crime and delinquency involvement for most types of offenses.
- (2) Offense rates over age for self and official reports are generally of the same shape, although official reports proportionately underestimate adult involvement.
- (3) Adult (ages twenty-five to twenty-nine) drug and "all" offense rates are greater than those of any other age category.
- (4) Offender or prevalence rates peak during the teen years, twelve to nineteen, and continue unabated through age twenty-nine in the self-report records as opposed to police data, which exhibit the commonly observed decline into adulthood.
- (5) Significant numbers of adults enter the offending group as "new" offenders, although with the exception of robbery, total participation rates are not markedly different between self-reports and official reports.

These self-report distributions have implications for age-crime hypotheses. If desistance really is simply "shifting," if adults are as criminally inclined as juveniles are delinquently involved; if drug usage is actually driving these data; then the support for presently derived explanations will have been displaced and some reassessment would need to follow.

6. It is not the intent here to vulgarize by oversimplification, only to mention these positions for expository purposes.

THE HONORABLE LOIS HAIGHT

The Honorable Lois Haight received her A.B. degree in Political Science from the University of California, Davis, and her J.D. and LL.B. degrees from Hastings College of Law. She currently sits as a Superior Court Judge in Contra Costa County, California. Judge Haight's background includes service as Assistant Attorney General of the United States. She has acted as the Chairperson of numerous panels and organizations, including the White House Conference for a Drug Free America, the President's Task Force on Victims of Crime, and the National Crime Prevention Coalition. During her tenure as Assistant Attorney General, Judge Haight created and coordinated the Attorney General's Task Force on Family Violence and served as the coordinator and member of the President's Child Safety Partnership.

Judge Haight was selected as a United States Delegate to the United Nations Conference on Crime, the United Nations Conference on Victims of Crime, and to the United Nations Conference on Illicit Drugs. She has participated on numerous boards and commissions in the field of criminal justice and continues to do so today.

I want to thank Pepperdine for hosting this symposium today on juvenile justice. It is a very important field and I am pleased to see so many people here who care and are interested.

We have some real leaders present and I congratulate Pepperdine for gathering such a prestigious group. Ralph Rossum is a nationally recognized leader in criminal justice statistics and research. Attorney General Meese is with us today as well; I don't know of anyone who has done more to put justice back into the criminal justice system. We have Justice Nicholson who you will find out for yourself is one of the most articulate spokespersons and leading advocates for balancing our criminal justice system by supporting victims rights. This is a very exciting group and I am looking forward to listening to everybody.

I am going to give you a brief overview of the juvenile justice system. The purpose of juvenile court law in the United States is to provide for the protection and safety of the public and each minor under the jurisdiction of the juvenile court and to preserve and strengthen the minor's family ties whenever possible, removing the minor from the custody of his or her parents only when necessary for his or her welfare or for the safety and protection of the public.

Minors under the jurisdiction of the juvenile court, who are in need of protective services shall receive care, treatment and guidance

consistent with their best interest and the best interest of the public. This is known as dependency court. Minors under the jurisdiction of the juvenile court as a consequence of delinquent conduct¹ shall, in conformity with the interests of public safety and protection, receive care, treatment and guidance which is consistent with their best interest, which holds them accountable for their behavior, and which is appropriate for their circumstances. Such guidance may include punishment that is consistent with rehabilitative objectives. Juvenile court shall consider the safety and protection of the public and the best interest of the minor in all deliberations.

The juvenile court concept is unique, joining traditional legal powers with purposes and functions inherently social in nature, designed to promote individualization of justice through evaluation and treatment.

JURISDICTIONAL PROVISIONS

The juvenile court has jurisdiction over any person under the age of eighteen years in thirty-eight states, under age seventeen in eight states, under age sixteen in three states, and one state uses age nineteen.

It is the intent in dependency court to provide maximum protection for children who are currently being physically, sexually, or emotionally abused, being neglected or exploited, and to protect children who are at risk of that harm.

The changes in dependency court law have been enormous. The number of new dependency child maltreatment cases in the United States has risen dramatically. In California, new cases have increased approximately 100% in the last ten years.

The basic functions of the dependency court have also expanded. In the 1970s, the role of the dependency court was limited to determining the validity of child maltreatment allegations and then deciding whether the child needed to be placed in foster care or under agency (social services department) supervision in the home. In the mid and late 1970s, this role expanded, recognizing the harm to a child left 'adrift' in unplanned foster care—courts then began to look beyond ensuring the child's immediate safety by also focusing on achieving stable and permanent placement for dependent children.

Therefore, the issues the court must determine have grown.

1. A delinquency offense is an act committed by a juvenile for which as an adult he could be prosecuted in criminal court.

In 1975, the court determined:

- Validity of allegations
- Custody, if allegations proved

In 1996, the court must determine:

- Need for emergency placement
- Sufficiency of efforts to prevent parents' custody
- Necessity of emergency relief other than placement (e.g., removal of perpetrator)
- Validity of allegations
- Custody, if allegations are proved
- Adequacy of reunification plan
- Sufficiency of efforts to implement case plan (e.g., were reasonable services provided or offered)
- Child's long-term legal status (periodic review)
- Long term foster care of guardianship
- Termination of parental rights
- Review sufficiency of efforts to place child for adoption
- Final adoption

The participants in dependency court have grown also.

In 1975, the participants were:

- Social service worker
- Custodial parent

In 1996, the participants are:

- Social service worker
- Custodial parent(s)
- Attorney for each parent
- Noncustodial or putative parent(s)
- Attorney for each
- Child's attorney and/or attorney serving as guardian ad litem
- Non-attorney serving as court appointed special advocate
- Foster parents
- De facto parents
- Attorney for de facto parents
- County counsel

It doesn't take an accountant to figure out how enormous the cost is for the increased number of children in the system, services for families, and participants in the process; and its not getting smaller. Almost every participant is supported at some juncture at public expense.

I would like for a moment to give you a snapshot of what I see as the beginnings for abuse and crime—the "use" of illegal drugs.

Everyday in my courtroom, as in others across the United States, illegal drugs erode the foundation of our society. Drug-addicted parents breed drug-addicted babies who often grow up severely handicapped, both physically and emotionally. As the influence of drugs reduces inhibitions, undermines judgment, clouds perceptions, and eliminates conscience, these children often become drug addicted and/or violent juveniles who commit serious violent crimes.

Since most drug users are in child bearing years, the cycle continues and drug compromised adults face the crucial job of child rearing while at the same time dealing with the consequences and the side effects of hallucinations, anxiety, paranoia, physical aggression, impulsive behavior, memory loss and depression. These factors preclude good parenting. Drug using parents who come before me are routinely diagnosed as having "amphetamine or cocaine induced delusional disorders," as being "gravely disabled," or unable to provide for themselves and their family with food and clothing. They are a danger to themselves and others.

The description of cocaine or methamphetamine addicted babies most often reads something like this: "incessant crying, respiratory breathing problems, rigidity of limbs, lack of muscle control, inability to sit up or crawl, developmentally disabled, and sometimes blindness and retardation." I have watched these children go back and forth between the homes of addict parents and new foster homes where they try to care for the severely handicapped child and often give up. How does this child then grow up when he or she is returned to the addicted parental home?—abused, molested, neglected. Is it any wonder these youngsters turn to drugs and crime? Without values, without consistency of love and care, they have learned to use drugs and they have learned how to abuse, and we know children mimic what they learn.

Approximately eighty percent of abused, neglected, abandoned, and molested children in Los Angeles alone are the result of substance abuse. My county estimates the same. These are dysfunctional families in the real meaning of the word. I brought a case that I presided over recently in my court, but the names are protected. The mother is seeking eventual reunification with the children. She has five children. The father doesn't expect to be part of the family. They are not married. Miss Smith and Mr. John recently completed jail terms for child endangerment and drug offenses. They're back. This is the reason they're back. The removal of the children occurred after a police drug raid where substantial amounts of cocaine were found. The drug raid revealed the family living in horrendous unsanitary conditions; garbage, rotting food and feces were found strewn about the residence. The plumbing was reported to not be working, creating an atmosphere described in the police report as beyond horrible and nauseating to the officers, to the extent that they called upon the fire department for

assistance in cleaning and ventilating the premises. The children were found filthy and covered with feces. The two younger boys were found locked in a barren bedroom, naked and soiled. The family had previously been involved with the juvenile court in 1987, when X was born with amphetamines in his system, and again in 1989, when Y was born with amphetamines in his system.

I see this almost every single day. How do you expect these children to grow up? What do you think they have learned? They have learned to use, and they have learned to abuse. I had an abuse case this past week where I actually had to go off the bench for a few minutes. I had to compose myself before I came back to court. It made one want to weep to know the mother was under the influence of drugs at the time of the abuse; that was her excuse. She can't remember exactly what she did, but the bite marks she left on her child were evidence, and so were the choking marks on her neck and the burns on her baby's body. These acts were committed under the influence of drugs. I had a very savage carjacking the other day in my court where the woman was mercilessly beaten. The excuse that was he had been on crank and, as he called it, "cranked up for three days." And the other coparticipant had been using marijuana for twenty-four hours. These are the excuses that we, in court, hear daily for why offenses have occurred.

This is a phenomenon that we as a civilized society can't afford. People who use drugs undermine not just their own lives and their children, but make victims of us all, as they not only destroy future generations, but create incredible violent predators.

If I might just take a moment to discuss illegal drugs. We have laws to ensure some minimum level of behavior that is universally recognized as being essential for a civilized society. It is a futile exercise to suggest that crime can somehow be eliminated or the behavior of a user changed by redefining it as legal—as if a criminal act had no inherent danger other than the fact it's been placed in the law books of our nation. Legalization of drugs is wrong because drugs are wrong. To legalize behavior is to condone it and indisputably increase the behavior. This we cannot tolerate! Most importantly, laws are the reflection of the values of a society. The seriousness with which we hold those values is measured by the penalty imposed when those values are violated. Therefore, I ask you, how do we value our children when illegal drug use is not viewed as the destroyer it is? When the penalties for drug use are insignificant? How can we expect a minimum level of

behavior in our children when we send the message that drug use is not harmful or wrong?

Drug treatment has not been a panacea with less than a twenty-five percent success rate. We must do everything in our power to prevent and deter the use of drugs because the high is extremely powerful and the addiction almost impossible to stop. We must make it difficult to use!

There must be a down side to drug use. We must always consider and encourage treatment and recovery, but sanctions should be commensurate with and reflect the harm drug use does to society. We live in a democracy with freedom to make a choice and freedom to choose consequences. Those who use drugs make their own choice. For some, the choices are more difficult than for others, but there are many free-will choices made before one becomes an addict. There must be sanctions for drug use. When people are considering that choice—considering giving their lives over to drugs—the penalties for use must have a significant impact on that decision.

Drug use is clearly the beginning of crime for our youth. They see it and they are subjected to the most horrible acts because of it and they become the next generation of users and abusers. Stop the use of illegal drugs, and I believe we will stop much of the crime in society.

The nexus between a dependent child and delinquent minor is very clear. Total juvenile crime is not on the rise in the United States, but violent juvenile crime is. For a short discussion of juvenile delinquency, the last major study showed that our juvenile courts handled approximately 1,300,000 cases a year—one-half of those were handled informally. Approximately 650,000 minors were arrested for violent and property crimes in 1992.

Approximately three percent of all juvenile delinquent cases are transferred to adult court and although the mechanisms for transfer may vary in states (i.e., by the district attorney alone, by legislative waiver or by both the district attorney and the discretion of the juvenile court), almost all have similar criteria for transfer:

1. Circumstances and gravity of offense
2. Degree of criminal sophistication
3. Previous delinquent history
4. Success of previous attempts at rehabilitation by juvenile system
5. Whether the minor can be rehabilitated prior to expiration of juvenile court jurisdiction

Most courts use one, two, three, or all of these as yardsticks for transfer. The average age of most transfers from juvenile to adult court is between ages sixteen and seventeen. This is composed mostly of males—since eighty percent of delinquent cases are committed by

young males. We have come a long way from the original concepts of juvenile court.

I know there will be a great deal of discussion in the next panels on the causes of juvenile crime, prevention, and our handling of delinquents. I have stated unequivocally that I believe the use of illegal drugs is the number one problem—the biggest difference between our society in 1950 and 1996 is cocaine, crack, methamphetamines, LSD, PCP, heroin, and marijuana. The breakdown of the family is a further problem. Not all the disintegration of the family is because of illegal drug use. Our family values and structures have changed and we also have grown increasingly transient. The average American family moves every five years, which means uprooting traditional support systems of extended family, neighborhood, community, and church.

There has been a dramatic increase in the craven violence that the young are exposed to in movies, television, and music. This had led to a desensitization of the young to violent acts of shootings, stabbings, and senseless severe beatings. We have also glamorized gangs.

Finally, we must focus on our equivocation regarding our views of holding people accountable for illegal and harmful conduct. We have developed an overall cultural tolerance that is very destructive. We can perhaps understand why some people do horrible acts, but understanding it, excusing it, and holding people accountable are separate issues. Just because we understand doesn't necessarily mean we excuse the conduct—balance is important.

We have a better chance to rehabilitate youngsters than we do adults. The young are more malleable and open to redirection. When we have that chance we certainly owe it to ourselves and our children to pursue it. But when we fail at rehabilitation, we should acknowledge that we have failed and continue to protect the public. The failure of the criminal justice system to protect innocent victims has caused strong public reaction.

Lastly, society is obligated to help monitor our young and help them learn values, self discipline, respect, and responsibility. It is a hard job conveying these values. Until our society can again become firmly grounded in values that we all say are important, and mean it and work hard to live those values in our lives and pass them on to our children, we will continue to have generations of dangerous children and we will shortchange ourselves and our future.

DR. MALCOLM W. KLEIN

Dr. Klein received his Bachelor of Arts in Psychology from Reed College, and his M.S. and Ph.D. in Social Psychology from Boston University. He is presently a Professor of Sociology and Director of the Social Science Research Institute at the University of Southern California. Dr. Klein served as Chairman of the Sociology Department at the University of Southern California for thirteen years, founded U.S.C.'s Social Science Research Institute, and received the University's Raubenheimer Award. Additionally, Dr. Klein has served as President of the Association for Criminal Justice Research (California) and as Chairman of NIMH Crime and Delinquency Review Committee. Dr. Klein has collaborated on numerous national advisory panels and committees and has been elected to Fellow Status in four professional associations.

In 1990, Dr. Klein received the E.H. Sutherland Award, the highest honor of the American Society of Criminology. Additionally, in 1995 he received the Paul Tappan Award from the Western Society of Criminology. He is the author or editor of eleven books and over seventy articles dealing with a broad range of areas such as street gangs, diversion, deinstitutionalization, criminal justice planning, police handling of juvenile offenders, and comparative justice systems. Dr. Klein's latest book is THE AMERICAN STREET GANG (Oxford University Press 1995).

STREET GANGS AND THE JUVENILE JUSTICE SYSTEM
IN THE 1990S

My perspective today is somewhat different—that is, to deal with the degree to which the juvenile justice system is geared up to respond to street gangs. As you can see from the notes in the program, my feeling is that the juvenile justice system is not well geared up to do this. The system's best chance is to get out of the gang business and turn the gang business over to the communities. The only problem with that statement is that the communities do not know how to handle gangs and we do not know how to help the communities do that. Nonetheless, it's worth a shot.

I want to talk about three areas: issues for the juvenile justice system presented by gangs, the institutional responses that the system has made over the last fifteen or twenty years, and finally, a set of dualities which I think help to focus the issues involved to some extent.

As to issues created by gangs, the first and foremost that the state must face is the enormous proliferation of gangs across the country. By the 1960s, there were about fifty-four jurisdictions which had a gang

problem. That number is higher than we thought it was. We used to think just New York, Chicago, Boston and a few other cities including Los Angeles and San Francisco had gang problems. There were, in fact, about fifty-four to fifty-five cities dealing with gangs. By 1970 that number was up to about ninety. By 1980 the number was up to 170, and by 1992 the number was over 800.

This increase in the number of gangs has presented the juvenile justice system with a problem that it has no idea how to handle because it does not know enough about gangs. In my estimate, there were about one-half million street gang members around the nation in 1992 and that is a very rough estimate because it depends upon how police identify or define gang members. One hundred fifty thousand of those reportedly are in Los Angeles County. One hundred fifty thousand out of five hundred thousand nationwide gang members indicates that Los Angeles once again is the leader in the nation.

There were about 2200 gang related homicides reported in the nation in 1991, and of those approximately 800 took place in Los Angeles County. Again, Los Angeles is clearly the leader. This is an enormous problem for Los Angeles County. To deal with this problem, Los Angeles established a special unit in the District Attorney's Office in the early 1980s called the hardcore prosecution unit. It was designed to deal with cases involving gang leaders charged with homicide. In a few years they found they no longer could deal with cases involving gang leaders and that they could only deal with a proportion of the cases involving gang homicides because gang homicides jumped from 200 to 800 per year. No unit in the D.A.'s office can handle that kind of load. Those facts provide a sense of how the proliferation and the increase in gang membership has affected the system.

The increase in other gang violence has also been remarkable. There are many cities which do not have much gang violence, but there are a number of cities where the violence has increased in the same way that the number of gang members has increased. The increase in violence is primarily a function of gang rivalries. In a city where there are many gangs, there is more rivalry between gangs and those rivalries trigger a great deal of violence. More of the gang violence is committed against other gangs than it is against anyone else. Thus, I happen to stand here as one of those definitely in favor of any kind of gun control anytime, anywhere, because I know too many people who have been affected by guns in the streets. We know that gun control is essential when dealing with gangs.

The violence among gangs is not a function of drugs. This is where I have an enormous argument with my friends from the FBI, DOJ, ATF, LAPD and some other jurisdictions who find the connection between drugs and gangs very strong. I am going to come back to that in a little while. We have done fairly extensive research in Los Angeles City and County, Pasadena and Pomona. Using the data from those police departments, we found that the drug connection to street gangs has been vastly overstated and overrated. When we do research across the country we find that the connection is even lower in general in those jurisdictions than it is in Los Angeles. There are magnificent examples of exceptions, like Detroit and Atlanta or D.C., but even those jurisdictions have a lower problem with gangs and drugs than Los Angeles.

Another issue is the confusion regarding types of gang structures. Most people seem to think about gangs in a simple way. In fact, research has identified five different, quite separate street gang structures across the nation. On one hand, we have the traditional gangs who were in existence in the 1940s, 50s, and 60s. These have an average size of 182 according to our most recent data.

On the other hand, the specialty gangs include drug gangs, burglary gangs, and so on, and average twenty-four in size. There is an enormous difference between 24 gang members and 182 gang members. Those differences apply to a lot of other things as well. One of the problems that the justice system has is trying to differentiate between traditional gangs, those we call compressed gangs, and specialty gangs. To treat them all the same is literally to shoot oneself in the foot because one will be using the wrong modalities of treatment, of control, and of intervention by applying to all gangs what might apply to only one of the types. This is particularly true of suppression procedures, so I will be coming back to suppression.

Another issue that is presented by the gangs is the most important from my point of view, and that is the nature of gangs themselves. Gangs are not simply groups. We all join groups in order to increase our productivity and self-sense, and the more cohesive the group gets, the better we think the product will be. Therefore, we think grouping is a good thing, and we focus on groups, teams, and seminars; we have faculties, court retreats, and symposia. The street gang is a different kind of group. It is a group that has grown in opposition to other gangs, in opposition to authority, in opposition to school authorities, in opposition to teachers, the police and the juvenile justice system. This means that whatever we do to, for, and at gangs, whether it be by social intervention programs, law enforcement, or courts of the juvenile justice system, is in all likelihood going to increase their cohesiveness rather than decrease it. The more we do, the more we give them attention and status, the stronger the bonds between them become. That's why they go into gangs in the first place—not to be criminal, not to be violent,

but to be with each other, to gather the status and identity that comes from gang membership.

The more we do to gangs, the more we increase the monster we are trying to reduce. That notion becomes very important because what we get is a boomerang effect. Every time we try to do something to, for, or at gangs, we increase the problem. So what do we do when we see that our effects are not very good? We keep doing what we were trained to do and what we believe is right. We take as evidence all those things that reinforce our views and we get rid of the contrary information that suggests we are not doing as good a job as we want to do. This is the conceit of the practitioner who will not stop practicing what he or she has learned in graduate school.

The institutional responses I am going to talk about are primarily suppressive and that has been true since the 1970s, and especially since 1980. The epitome of police crackdowns was called "Operation Hammer" in Los Angeles. When first run, it was a sweep of South Central Los Angeles by approximately 1000 officers of the Los Angeles Police Department on a Friday or Saturday night. By Saturday night everybody in South Central knew that they were coming back because all the Saturday morning papers were full of it. The only guys who got swept up on Saturday night were the guys who wanted to challenge the sweep operation, which is the gang mentality. Out of the several hundred that were arrested on warrants during sweeps, for giving hand signals to the cops as they drove by and so on, there were approximately twenty resulting convictions. I would only ask you to think about the gang member who has been swept on Friday and taken to a booking trailer at the Los Angeles Coliseum. Because there were so many expected to be swept up, the police could not handle them in the normal way so they set up a mobile booking operation in trailers outside the Coliseum. Imagine your young sixteen-year-old gang member being swept up for giving hand signals or doing whatever he was doing that night. He is brought into this mobile booking situation, along with a whole bunch of others who are going in and out, and he is quickly booked and released, and he goes back to his corner. What does he say to his homies back on the corner? Does he say, "Oh my goodness gracious. I have been deterred," or does he say, if you will pardon the language, "Motherfuckers couldn't hold the homey." Of course, he says the latter. The gang member uses what happens to him and perverts the message sent to him to meet his own needs and to meet his group affiliation. This serves to increase the bond between the members, rather than to loosen those bonds. Police crackdowns have continued for a long time in various

forms and I am very much afraid they will have this same effect on increasing, rather than decreasing, gang cohesiveness.

The correctional crackdowns are very similar. Probation and parole have special gang units which have lowered caseloads. Special case loads may be only 40 instead of 175 or 500. The purpose of those special gang caseloads is not to arrange for tutoring, help with the family, or find jobs, vocations or anything like that. The purpose is to increase surveillance as much as possible in order catch those violating their probation and parole and send them back to the courts and back behind the gates. This kind of crackdown may indeed get some people off the street, but what it does for the gang members is to remind them how special they are to need a special program to deal with them. I believe it increases their special status and the cohesiveness.

Those of you who are oriented toward legislation will know that there is special gang legislation, the most famous of which is the STEP Act—Street Terrorism Enforcement and Prevention.¹ I do not know what the word prevention is doing in the title. It has absolutely no purpose in there whatsoever. This is a special California statute, copied by many states, which carefully defines what is called a criminal street gang and lays out a set of serious offenses that are thought to typify gangs. The statute makes it possible to get an injunction against the gang or set of gang members, warning them that if they have joined this group for the purpose of, or with the knowledge that, certain kinds of criminal activities are going to take place and they are arrested and convicted of those kinds of offenses, they can get sentence enhancements up to several years. The statute basically admonishes that, "If you are one of these gang members, we are now notifying you on paper that you are at risk in a way that you have never been before."

The first difficulty with the statute is that it deliberately perverts the meaning of street gang. It defines the criminal street gang as any group of three or more. No gang researcher I have ever talked to in my life has ever known of a three-person street gang. They do not exist. The definition is there, not because it reflects reality, but because it allows certain leeway for the prosecution to do what it wants to do in whatever case in court. Also, the statute specifies particularly serious offenses that are stereotypical of gang members, but, of course, it ignores all the others. It ignores all of the other felonies and misdemeanors that are committed. As a result, police are not recording all of the offenses that gang members commit. They are only recording and reporting the serious offenses. Therefore, we get this distorted picture of what ganging is all about. What is being recorded is a small portion of all the gang crimes that could be recorded. In a sense, they are losing a

1. CAL. PENAL CODE §§ 186.20-186.28 (West Supp. 1996).

lot of data that the police and the prosecution really would like to have because they are concentrating only on the crimes that the STEP Act sets out.

Other kinds of legislation also call for enhancements of various sorts for gang members, and there are the civil injunctions, which are now very popular in Los Angeles. One such injunction is now before the California Supreme Court. This case involves a San Jose decision in which gang members are notified, similar to the STEP Act, that there are certain behaviors in which they may not participate, including carrying beepers, screwdrivers, slim jims, peering on the roof of a house, being out after nine o'clock at night, associating with certain people, being in a particular park, and other ordinarily legal activities. Again, my feeling is that this has the effect for most gangs, especially street gangs, of reinforcing their cohesiveness once again. Usually drug gangs suffer civil injunctions.

I have played expert witness in a number of cases and I have found, without exception, that the defense is highly, highly undermanned in gang cases. In gang cases, there is always a gang expert for the prosecution; he is a police officer, or he is a gang unit member, whether it is LAPD or LASD or what have you. If the defense brings in an expert witness who knows something about gangs, almost invariably that defense expert is considered not appropriate for that particular case, either because he does not know that particular gang and only has generic knowledge, which is just a little strange because there is an appellate decision somewhere which says that generic knowledge is the more appropriate, or this is not really a gang case because it was two guys killing each other within the same gang and all gang cases are really intergang. This is a whole series of misunderstandings on the part of the court about what gangs are all about, so it leads to a very unfair expert balance in these cases. I would add one other thing. I cannot think of a single piece of legislation over the past three or four years that has been defense oriented. All of it is prosecution oriented without exception. You might challenge me with an exception and I would love it if you did. It's very clear that the direction that we are going is to bring into the court prosecutorial advantage against gangs, but no defense advantage for gang members. Do not misunderstand me; I am not pro-gang. I know some young men who are dead and I personally do not like that. I have had my house burglarized eight times. That's how I keep off the jury all the time.

Finally, some dualities that help spell out some of the issues. Juvenile versus adult—this is a juvenile panel that we are involved in today.

Street gangs of course are not just juvenile; they are juvenile and adult. In most of the new cities they are more juvenile. In most of the older gang cities they may be more adult, but it does affect the way in which we deal with them. The difficulty is that many in the forefront feel that if it is a gang member, it must be adult-like, and therefore we will handle it adult-like regardless of the age or the sophistication, or lack of sophistication, of the gang member.

Adolescence versus conspiracy—an awful lot of gang activity is adolescent activity. It is kids fooling around, trying out the limits, testing who and what they are, and our tendency, especially out of law enforcement, is to treat all gangs as conspiracies. The STEP Act stresses conspiracy. Most gang activity is not really very conspiratorial. It is impulsive. It is stupid. It is dumb, young behavior, but it is responded to as if it were conspiratorial. Again, to cite another trend the FBI is used to dealing with conspiracies. That is what they understand. So, when the FBI gets into the gang business, certainly when it first got into the gang business a couple of years ago, it felt that street gangs must be what it was familiar with, conspiratorial groups, and therefore those procedures could be applied to street gangs and all the rest. It is simply not true in so many cases.

Local versus federal—again street gangs are primarily a local affair. Most of the 800 cities that have street gangs across the country have local, home grown, indigenous groups. It is not the case that the Crips and Bloods have invaded and created gang problems throughout our 800 cities, or the Latin Kings and the Disciples from Chicago have done the same thing for the midwest. Most of those gangs are indigenous.

Oppositional cultures versus suppression—the gang is an oppositional culture. If you have that oppositional culture, suppression is going to increase that opposition.

Street gangs versus drug gangs—the most important thing I can say is that those are two rather different kinds of groups. The street gang is larger, less cohesive, poorly led with a great deal of turnover, territorial in the sense of residentially territorial, and very versatile in its crime pattern. They are into everything. We call them cafeteria style gangs.

Drug gangs are much smaller, more cohesive, with strong leadership, and have much stronger senses of loyalty because they are in business. They can not afford disloyalty in the group. They are market oriented. Their violence is much more instrumental than the street gang. The failure to distinguish between drug gangs and street gangs leads, I'm afraid, to a great deal of misapplication of enforcement, legislation, and court procedures to street gangs and exacerbates the problem with street gangs.

Finally, deterrence theory versus deterrence reality—anybody who truly believes that our juvenile justice system deters does not understand deterrence theory, does not understand certainty, severity and celerity of punishment. Furthermore, those people do not understand that if deterrence is going to work, it has to be carried out by people with credibility to the people being deterred. They have to believe that the police, the courts, and the probation and parole officers are credible sanctioners. Most gang members will question that credibility very, very seriously. Without that credibility, the deterrence property simply doesn't connect very effectively. Never mind the absence of certainty and severity and so on. Secondly, with respect to deterrence, psychological learning theory states that you sanction behavior because you want to stop it. The little mouse running through the maze can be sanctioned for going into the wrong pathway of the maze. But, if you do not reward him for going into the appropriate pathway in the maze, he will not learn from the punishment. We punish, but we do not suggest what the alternatives are. Our prisons, our detention camps, our police officers, counseling—none of these put stress on what the alternative behaviors are in which gang members might engage rather than continuing the behavior that they are engaged in now. Until we get to the alternative behaviors our punishment behaviors are not going to be useful. It is a simple psychological principle.

Finally, what do I conclude? What I would like the juvenile justice system to do is to respond to gang members as individual crime participants. You did the crime; you have laws for that; you have procedures for that. For heaven's sakes, catch that little bastard that burglarized my house, please, and deal with him. Eight burglaries and I have gotten back one broken typewriter. Please help me. But deal with that individual; do not deal with him as a group member, because of the reasons I have already given you on cohesiveness. Do not deal with the gang per se; do not deal with the street gang per se; deal with the individuals who are in it and avoid this paradox of making worse the situation that you are trying to curb.

Secondly, and this is easier said than done, communities, communities, communities, communities. Gangs are spawned in communities. The community is the only place to control gangs. Those are their kids. I would get the juvenile justice system out of the gang business as much as possible and get the community back into it. Now that is terribly difficult to do because many of the communities that spawn gangs are disorganized. Many of the people who could deal with this have moved out into the suburbs. Civil rights legislation has been very ef-

fective in allowing an awful lot of middle class minority people to move out. What is left are those who have not been able to move out, who have high unemployment and high rates of various kinds of social ills. Yet, what I am saying is, please, we have got to get those communities back in control. Informal social control and formal social control of their own situation will take years. But, if you give me my 10 billion dollars that I keep asking for, I won't give it to law enforcement, I won't give it to gang street programs, and I won't give it to rehabilitation programs. I will give it to the people who have learned how to help the community reorganize itself to deal with its own problems, gangs and others. Gangs are a by-product of those communities. If you hit the by-product, you have missed the point. You have got to hit the spawning grounds for the gangs.

PROFESSOR SHARON KALEMKIARIAN

Ms. Kalemkiarian graduated magna cum laude from Princeton with a Bachelor of Arts in History, and received her J.D. from the University of San Diego School of Law, where she graduated magna cum laude and was a member of the San Diego Law Review. She is presently a Professor at the University of San Diego School of Law and also serves as the Supervising Attorney of its Child Advocacy Clinic, which is affiliated with the Children's Advocacy Institute and funded by a grant from the Federal Department of Education.

You know I teach law, but once a week I volunteer at our children's elementary school, and I read for a kindergarten/first grade bilingual class in the morning as a volunteer. What I do with them is make them stand up and shake themselves out, and I am tempted to do that with all of you who have been sitting for an hour. I won't burden you with a rendition of Raffi's song "Shake Your Sillies Out"; many of you I am sure know it. So bear with me and I will try and make this as lively as I can and keep all of you awake for the next twenty minutes.

I was a community organizer and a lobbyist for ten years before I went to law school. I went to law school because I was sick and tired of people in Sacramento and Washington, D.C. looking at me like I was a nice young woman with a lot of passion who did not know what I was talking about because I did not have a law degree. Now, when I am an advocate and I go to Sacramento and I do policy work—and I do a lot of that—they do not look at me as a silly young woman who doesn't have a law degree. They look at me as a woman who has a lot of passion with a law degree and still can't get what she wants. What I am going to try and help you do today as lawyers and judges and prospective lawyers, and I know we have some service providers here, is to get

you to stretch a little bit, to think beyond just the legal issues that you traditionally have been trained to think about. That is because I want to make the argument to you that there are two things that are the most powerful forces in the outcome of any juvenile dependency or delinquency case. One of those powers is the power of the judge. A power greatly underused, and I think Judge Haight and Judge Manoukian would second that. Juvenile court judges could be doing a far greater job of asserting authority as they do in other types of cases, to bring about better outcomes. What is the other most important power? It is not the attorneys. I do not believe it is any of the other individuals in the case. I do not even believe it is the law. I think it is money. And I think it is money that we spend in many different levels of government trying to intervene, trying to control the outcome of a case. And that is the one influence in any individual case that those of you who practice in the courts and who make decisions from the bench don't really understand. You understand it from your paycheck, but I'm talking about a whole different pot of money. I want to try in twenty minutes to give you enough information to become interested in wanting to make this a part of your study, especially if I can challenge you to become advocates, which is really my goal overall.

Let me start with a "dicho." Those of you who speak Spanish will know that "dichos" are sayings and proverbs that are very popular in Mexico. This "dicho" states: "It is not the same to talk about the bulls, as to get in the ring with them."

What I want to show you is what it means when we get into the ring. If you take a look at the juvenile justice system, which we have talked about at some levels, this is a basic chart that was done by the legislative analyst's office in a very good report that they publish.¹ We start out with a big group of kids who are the kids at risk. How do we know they are at risk? School failure, dysfunctions, substance abuse, mental disorder, emotional problems, etc. They have committed crimes. They get into the system initially maybe informally or through some school problems—and then they get in deeper and deeper and the numbers get smaller and smaller. We have this group over here that gets diverted into other services, prevention and prevention services offered in the community. The links, obviously, between dependency and delinquency here, which Judge Haight referred to, are very prominent, as are

1. See Chart A.

the kinds of community based interventions that were mentioned by Professor Klein.

What I want to point out to you is where money affects the system. Money is not even talked about on this chart, and yet it is the most important thing that is going to determine what happens to those kids. Money. School failures, school expulsions, school services: California is fiftieth, *fiftieth*, in its spending for kids. Actually, we are in the middle when it comes to class size. We used to be at the top. Money has an effect on what is going to happen at these levels. Money is also going to have an effect on where the kids go. Let me give you an example. You start with a kid who is at risk. You're talking about whether you're going to get them down through this system, of course, based upon the severity of their crimes. Let's say you want to divert the kid over here and you want to say, "I am going to use a community based service. I am going to try and get some help in their neighborhood." Who is paying for this? How much of those services are available? When the judge orders at this level some kind of a diversion, the judge usually has a list of services, and the judge says, "I want you to go, and I want you to get some drug treatment. I want you to get some counseling." A few years ago I represented a kid who had been accused of a pizza store parking lot car break-in, and he was ordered in his mountain community, as a condition of probation, to go get some counseling. Well, it so happened that in this mountain community the counseling funds had just been cut by the County of San Diego. It was going to take him three months to get an appointment and he was supposed to have done that within the first two weeks. Is this a legal problem? It is a very legal problem for him, because he is not going to be able to show he met the conditions of his probation. But, it is a funding problem when we look at how the system works.

It is also a funding problem with public officials when they talk about what they are going to do with juvenile delinquents. This chart, is from the legislative analyst's report, *Juvenile Crime: The Outlook for California*.² It looks at the average cost of corrections compared to other things in the State of California. Now, there's a lot we can say about these numbers. We can talk about this for more than twenty minutes. The general fund costs, which means what the state pays out of its own dollars, are about \$32,000 a year to put a kid in the youth authority. Now, if you're looking at it as a social issue of how we spend our monies, look at the comparative amounts we spend on other things— \$32,000 to incarcerate kids, \$2530 total that's state money, \$4200 a kid on education. There is a very funny slide that shows UC San Quentin—we are going to be spending a lot more on prisons and

2. See Chart B.

incarceration than on putting kids in colleges, and community colleges. You know, I often think that when a kid gets sent to the youth authority or to a group home—group homes or foster care will cost about \$40,000 a year—we could buy two parents to pay full time attention to that child instead of putting them into a residential facility. So, the cost becomes extremely important and drives public policy decisions.

Let's take a look at how they drive the decisions. First, you've got to keep in mind that there are many levels of funding, but the three most significant are the federal, state, and county funding systems. It's very simple at first. You have federal dollars coming into the system from many different sources. You have state dollars, which are your tax dollars, your general fund dollars. And you have county dollars that counties have to spend. Most of the action, in terms of how funding determines outcome, is county wealth. So, those of you who want to influence the outcome in the case have to keep your eyes on county decisionmakers and county budgets. Let me give you an example of the problems that counties are facing because of the way services are funded. The federal government has funded a program called, Title IV(A) Emergency Assistance. That money was to go to counties and localities to help them deal with removal of kids who needed to be placed somewhere. Well, when you are at the state or the county level you are always looking for federal money that you can spend on anything, especially if you don't have to match it with your own money. So, counties all over the State of California, and I think probably Oklahoma too, because Jerry Regier is shaking his head, are figuring out ways to take this big pot of federal emergency money and spend it on delinquent kids. They have been doing that for a number of years since the program was started.

Last September, the federal government told the counties and the state, "We no longer think that you should be spending this money on delinquent kids." Now, keep in mind that the Feds have been approving plans from states for years that included spending that money. They knew that it was being spent on delinquent children. All of a sudden they said, "No, you can't do that anymore." For the County of Los Angeles last year, that means a loss of \$57 million in funds. Now, put that in some perspective. For those of you who are from L.A. County, there was recently a lot of news coverage of a lawsuit that was filed by the probation officers against the federal government on this issue, but there is also some scrambling to fund the probation camps. There was a lot of lobbying in Sacramento to get Governor Wilson to give more money to the probation camps. In an exchange, the Governor said—this

is very interesting—"I will do that if the legislature gives me a cut in welfare benefits." Pretty direct correlation, in his mind, at least, so he approved it. Now, the county put a lot of effort into getting that money for probation camps. It was only \$17 million. That is a third of the money that they lost in one decision from the federal government. Fifty-seven million dollars in one stroke of the pen from the Feds. Seventeen million dollars which took a lot of lobbying in Sacramento. So, the importance of understanding where money is coming from, and how as advocates for children we get the money we need from a local perspective, is absolutely a critical question. You have to be thinking the way the policymakers are thinking about it.

The first important thing that you have to keep your eye on is how much are we spending. Now, in the current climate we don't like to talk about this because we are supposed to spend less. What are we being told from Washington and from Sacramento? There is plenty of money in the system, we just have to spend it more wisely. So let me show you what the C.Y.A. is spending. We have, I hate to say it because I don't want to sound like an old time liberal—I am really trying to catch up—but we do have an objective problem. How much you spend does make a difference, and this chart illustrates it. This is from our publication at the Children's Advocacy Institute, the California Children's Budget.³ It is a study of California State spending. It is a very complicated chart, and I don't want to go over all of it, but what we did was track spending. The Department of the Youth Authority is one of the lines. We tracked about seventy of them from 1989 to 1995-96. This is last year's proposed budget. Let's take institutions and camps: the spending of C.Y.A.'s institutions starts at \$274 million, goes up to \$334 million in the proposed budget for 1995-96. Now, we are just looking at dollars. That's an 18% increase from 1989 to 1994. Well, that sounds pretty good for institutions and camps. We know we are spending more in incarcerations; they've got more money. That's okay. They needed it. But, well we'll talk about prevention later, but if you look at how much they got when you adjust for inflation and caseload—the number of kids who need services per capita is not the same as the '89, as of '94 necessarily, and you've got to make those adjustments which the governor doesn't do—the adjusted total for institutions and camps actually decreased by eight percent. So, we are concerned about overcrowding and we are concerned about not being able to deal with special education needs. We are concerned about after care, we are concerned about all types of other things going on in the institutions and camps. This is very important information. When the policymakers say, "What, but we are giving you more" or, "We are giving you enough," you need to know how that

3. See Chart C.

looks relative to what your need is. So you have to look at the amounts.

Let me give you another example. To talk about substance abuse—I could go on about this and we have some students working on this problem—you have got to deal with the judges. Alcohol is the number one substance abuse by youth. It is not drugs; it is alcohol. The Alcohol Beverage and Control Board, which is the main regulatory body, said that we have to prevent sales to minors. Twenty years ago they had 209 investigators who covered 51,500 outlets. We now have, in 1993-1994, 142 investigators covering 72,000 outlets. Now, any way you cut that, that's a problem if you are trying to regulate control of sales. We can't ignore that, so just keep that in mind.

Now, the second thing I want you to think about is not just how much is being funded, but how the source of the funding makes a difference in decisions that are made at the county level. I'll give you a couple of examples. Right now, all of the money for drug treatment and for drug prevention and drug education—anything that relates to that area, goes through the Department of Health Services. At the county level, the Department of Health spends that money. Where are the kids that we are concerned about using, dependents, delinquents, and their parents. They are over in social services or in probation. Social services and probation, because of the way money comes, has no control over how money gets spent over in Health Services. So, what do you get? You get a need for juvenile treatment or juvenile education programs, and you have the least amount being spent on that by Health Services for a lot of other political reasons. You get referrals from a dependency court on a sheet of paper to programs that we don't even know have vacancies, because there is no institutional or monetary financial connection between those two departments. This is a complex concept, but if you are informed on how programs are funded, we have to understand how those funding arrangements affect programs at the local level.

Another example of how funding influences the outcomes of a juvenile case. There is currently a debate in many counties over how to handle commitment costs of minors to county juvenile ranches or camps versus to the California Youth Authority. A C.Y.A. commitment in 1994 would cost a county twenty-five dollars a month because the state pays for that commitment—a state dollars out of the state budget. How much does a ranch commitment cost? Sending a kid to the ranch, for the county, starts at around a thousand dollars a month. So, if you are a county decisionmaker, and you're sending not so subtle messages

through your probation department and through the D.A.'s office as to what the recommendation should be, and your budget is starting to dry up, where are you going to send those kids? You are going to make C.Y.A. recommendations. Now, there is disagreement in the field, because we can't prove that's happening. No county decisionmaker is going to stand up and say, "Oh yeah, we're shifting our kids up to the state camp, trying to get them off our docket." But I'll give you another example, which makes it all so clear how the shifting of cost goes on. I got a call from a parent, she was hysterical. She's a foster parent of a dependent child. She's had this kid for six years with his sister in the home. This kid's had a stable situation. He's got mental health problems, a lot of emotional difficulties, he's starting to pop off, starting to do odd things at home. And what does the kid do? Predictably, he commits a petty theft, and he commits a residential burglary. No personal violence was involved, but he gets caught. They haul him off to the hall and she thinks, "I'm going to teach him a lesson, I'm going to let him sit there for a little while before I get him." What happens to the kid? He's got demonstrable mental health needs. There's no question about that. He sits in the hall for sixty days, on detention, awaiting adjudication. Why is he sitting there? He's got two attorneys. He's got a delinquency attorney that's been appointed, because he's been detained, and he's got a dependency attorney because he's a dependent child. There is a D.A. on the case and a county counsel. He sits for sixty days because neither department will take responsibility for his mental health needs. Why won't they take responsibility? Because it costs money, and it costs money that they don't have, because they lost their Title IV(A) Emergency Assistance Funds. They don't have the mental health service they used to have. She finally gets the kid evaluated by a psychologist who said he's manic depressive and needs meds. It takes another week to get him meds because they don't have a psychiatrist full-time at the hall anymore. Now, sixty days in the hall for a kid with emotional mental health needs is incredibly destructive. We know that. He's not learning anything sitting there.

The first psychiatrist I told this story to at County Mental Health—he's a good friend of mine and we work on a lot of projects—said, "Just as well that he sat in the hall, it could be therapeutic for the child." Therapy had nothing to do with this. This was purely a fiscal decision. Again, understanding that is absolutely critical to deciding how we reform the system to improve it. I am not suggesting that each of you are going to become budget analysts or join me in the very confusing and challenging way of making policy in the current environment, having such funding restrictions and these many streams of money at the federal, state and county level. But if you don't challenge yourself to get some understanding of it, you cannot complain about

what is happening in the courts, because you won't be able to do anything about it.

Now, let me suggest in my last few minutes a few thoughts about the future of funding issues and how we need to be thinking about our work in the counties and in the states. First, the structure of the funding, meaning that federal, state and county relationship that I've highlighted, is likely to change very, very dramatically over the next two years. We don't know how dramatically, but part of the Contract with America and part of the Republican control of the Congress, and even of President Clinton's emerging thinking, is to give so-called block grant funds, which means they are going to be sent in a big bag to the State of California, or wherever else you are from. Then the State is going to decide to send them to the county, at least in California, and then the county is going to figure out how to spend it. What does that mean? It means that those of us who have been advocates, or those of us who have fought for programs, are now going to have to fight in a different place politically, because we are no longer going to be able to depend on either the Children's Defense Fund and the Office of Juvenile Justice Planning to lead some of the arguments or set policies. The policy is going to be made at the county level or the state level. So if you don't know who your Board of Supervisors are, and, if you have never met them or gone to a community meeting to talk to them about juvenile justice issues, you are not a player. And I want to get you to be players, so you need to be there. You need to be talking to them about what you know from practicing or from beginning to practice in the juvenile courts.

Second, the block granting means that we have some opportunities. I stand somewhat isolated among my friends in the advocacy community, because I actually think we could do a lot more if we get some control of the money and can make some decisions. That means that at the local level, we have to be pushing policymakers and pushing the department staff. Make no mistake, if you don't push, it won't happen. The department staffs are too hide-bound in how they spend their money. Only the very creative ones would stop to think, "Well, if this kid's sitting in the hall for sixty days, where can I get a private HMO to come in and do some services and figure out how we can do that with Medical billings, or where can I get county mental health to come in and help me." In some large counties like Los Angeles, that happens, but you've got to make it happen constantly and it takes some pushing from the outside.

Lastly, the amount of funding is not going to grow. If that seems a foregone conclusion, I have decided that it is, because foreign children and black and brown children and Asian children and their dysfunctional parents, and even their functional parents, do not have any political power. So, we are not going to get more money for these problems, except for incarceration. What we have to do is take the money we have and figure out better ways to spend it. There—I really sound like Governor Wilson, and I don't disagree with him about everything, but I think that some of the things that were mentioned by Professor Klein, such as looking at ways to demonstrate that positive reinforcement works better than sanction, and that building communities does make a demonstrable difference in how kids behave. We have to be willing to spend money on that, and we are going to have to fight the fight at the local level to get the money put there. But it is a political fight. It is not a fight that will happen because judges are making different kinds of orders in the court. If we start making that fight at the local level and winning it, we can begin to see a difference.

I try to be an optimist. We have had a morning of a lot of bad news, and I hope that we will get some good news this afternoon from the panelists, who are going to talk about solutions. This money fight requires a lot of optimism. Things do move in cycles. Judge Manoukian and I were talking about that yesterday. I hope we are entering a new cycle where we are going to be willing to spend some money on children. But, even if we are not, we have to fight that battle at the local level to make sure funds are spent properly and understand what the bureaucrats and the policymakers are dealing with.

I want to leave you with a poem, trying to set a positive tone for the afternoon, from Langston Hughes. If you are not familiar with this book, *The Dreamkeeper*, which is a book of poetry for children, you should become familiar with it. It's a wonderful book. But I often feel discouraged when I am working on juvenile justice issues, like some of the stories Judge Haight was telling us about this morning. The poem is called "Walkers with the Dawn," and I think to fight these fights we have got to become very optimistic and be willing to follow his advice.

Being walkers with the dawn and morning,
Walkers with the sun and morning,
We are not afraid of night,
Nor days of gloom,
Nor darkness—
Being walkers with the sun and morning.

I think you would not be here Saturday morning if you were not going to try to walk the walk. Thank you.



Juvenile Crime: Outlook for California

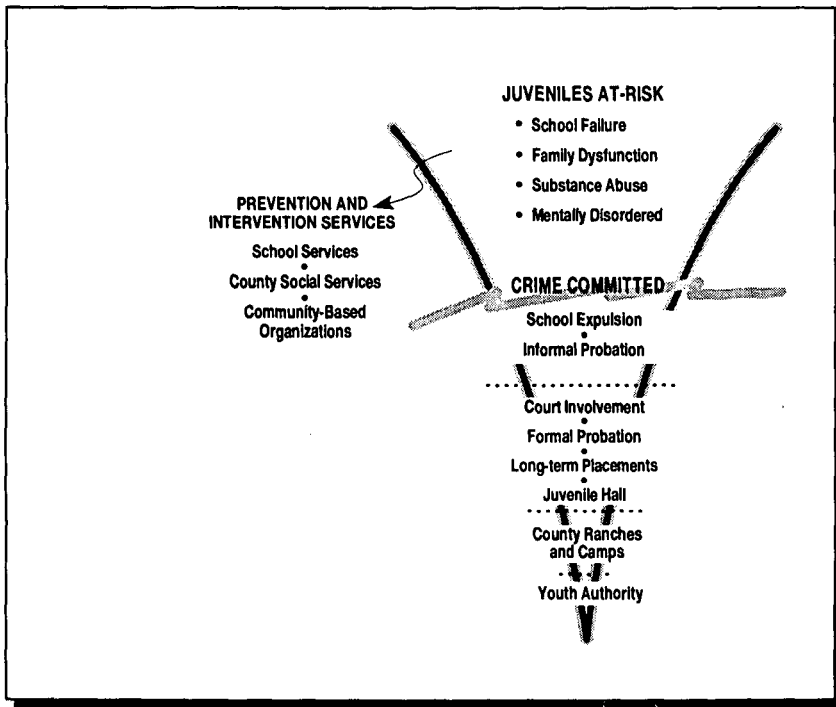
The enclosed report, *Juvenile Crime: Outlook for California*, was published by the Legislative Analyst's Office (LAO) on May 18, 1995. The report attempts to place the current debate on juvenile crime in California in perspective for the Legislature. The report addresses several key questions, including:

- What is juvenile crime?
- How much juvenile crime is there in California?
- What are the trends in juvenile crime in California?
- How does juvenile crime vary among states and within California?
- What risk factors are identified with juvenile crime?
- Who is being victimized by crime?
- How does California's juvenile justice system work?
- How much does juvenile crime cost?
- What are the policy implications?

Although the report is not designed to present comprehensive answers to all of these questions, it does provide basic information on these issues. It is a "quick reference" document that relies heavily on charts to present information. The report is available through the World Wide Web via the LAO's home page at <http://www.lao.ca.gov/>.

This report was prepared by Clifton Curry of the LAO's Criminal Justice and State Administration Section. For information about this report call Mr. Curry at (916) 445-4660. For additional copies, contact the LAO, State of California, 925 L Street, Suite 1000, Sacramento, California 95814, (916) 445-2375.

The Legislative Analyst's Office. Established in 1941, the LAO provides *nonpartisan* analysis and advice to the California Legislature on fiscal and policy issues. The LAO advises the Legislature on the state budget, prepares reports and policy briefs on selected issues, responds to inquiries for information from members of the Legislature, and writes analyses of all measures that appear on the statewide ballot.



California Children's Budget 1995-96

Chart B

All dollar amounts are in \$1,000s unless otherwise noted.

PROGRAM Dept. of Youth Authority	BUDGET YEAR							Proposed 1995-96	Percent Change	
	1989-90	1990-91	1991-92	1992-93	1993-94	1994-95	'89 to '94		'94 to '95	
Total DYA (\$460)	\$375,689	\$379,185	\$338,487	\$338,118	\$398,063	\$395,700	\$389,143	5.3%	-1.7%	
GF	\$364,127	\$345,271	\$323,643	\$309,118	\$356,145	\$361,858	\$357,906	-0.6%	-1.1%	
Federal	\$985	\$1,070	\$1,310	\$1,617	\$1,433	\$1,854	\$1,853	88.2%	-0.1%	
Federal share of spending	0.3%	0.3%	0.4%	0.5%	0.4%	0.5%	0.5%			
Adjusted Total	\$375,689	\$359,977	\$301,399	\$288,300	\$316,678	\$305,285	\$283,549	-18.7%	-7.1%	
Institutions & Camps (-20)	\$274,279	\$286,564	\$301,822	\$290,804	\$306,525	\$324,468	\$334,382	18.3%	3.1%	
GF	\$254,002	\$265,798	\$280,512	\$270,383	\$282,722	\$303,335	\$314,757	19.4%	3.8%	
Adjusted I & C	\$274,279	\$272,048	\$268,752	\$247,957	\$250,139	\$250,329	\$243,647	-8.7%	-2.7%	
Parole & Community Corrections* (-30)	N/A	N/A	\$55,830	\$47,034	\$81,289	\$70,895	\$54,444		-23.2%	
a. Parole Services (-30.10)	\$37,289	\$39,557	\$46,157	\$43,438	\$76,427	\$64,539	\$48,088	73.1%	-25.5%	
Adjusted Parole Svcs	\$37,289	\$37,553	\$41,100	\$37,038	\$62,368	\$49,792	\$35,039	33.5%	-29.6%	
b. Off. Prev. & Victim Svcs (-30.20)*	\$83,508	\$52,848	\$9,673	\$3,596	\$4,862	\$6,356	\$6,356	-92.4%	0.0%	
Adjusted Prev. & Victim Svcs	\$83,508	\$50,171	\$8,613	\$3,066	\$3,968	\$4,904	\$4,631	-94.1%	-5.6%	

* Through 1990-1, part of Section 10, Prevention & Community Corrections
Adjusted to deflator & age 0-17 population.
Sources: Governor's Budgets

TABLE 8-A. California Youth Authority (\$460)

Chart C
Juvenile Crime—Outlook for California

**State Incarceration of Juveniles
 Has the Highest Per Capita Cost**
 1994-95

	Number of Participants (In Millions)	Average Cost per Participant	
		General Fund	Total Government
Corrections—inmates and wards			
Youth Authority	0.01	\$32,000	\$32,000
Prison	0.1	20,900	20,900
Education—students^a			
K-12	5.2	\$2,530	\$4,200
UC	0.2	11,800	11,800
CSU	0.2	6,038	6,038
Community Colleges	0.9	1,054	2,811
Health and Welfare—beneficiaries			
Medi-Cal	5.4	\$1,500	\$2,300
AFDC	2.6	1,100	2,200
SSI/SSP	1.0	2,100	5,300

^a Does not include federal funds or lottery funds.

- ◆ Youth Authority wards have the highest cost but are the least numerous. For example, it costs \$32,000 to house a Youth Authority ward in 1994-95, but \$4,200 to educate a student in K-12 school.
- ◆ The costs shown are averages. The range of individual costs is especially large in the Medi-Cal Program. Nursing home patients in the Medi-Cal Program, for example, cost about \$25,000 annually to support.

Legislative Analyst's Office