

“Let’s Change the Law”: Arkansas and the Puzzle of Juvenile Justice Reform in the 1990s

DAVID S. TANENHAUS AND ERIC C. NYSTROM

[Governor Tucker] should also propose that juveniles be charged as adults more often. Such laws sound harsh. They are. Right now, they need to be. This is known as protecting the public safety. As deterrence. Until that improbable day when social scientists pinpoint the cause of crime, punishment is the best answer. Sure, swift punishment. Word will get around.

Arkansas Democrat-Gazette, August 10, 1994.

On March 20, 2012, during the oral argument in *Miller v. Alabama*, Associate Justice Samuel Alito pressed the petitioner’s counsel Bryan Stevenson to explain his contention that state legislators did not understand the sentencing consequences of the juvenile transfer laws that they had passed during the 1990s.¹ These laws facilitated the transfer of children’s

1. *Miller v. Alabama*, 2012, 13–14. http://www.supremecourt.gov/oral_arguments/argument_transcripts/10-9646.pdf (May 28, 2015). In the petition for writ of certiorari, filed on March

David S. Tanenhaus is a professor of history and Rogers Professor of History and Law at the William S. Boyd School of Law, University of Nevada, Las Vegas <david.tanenhaus@unlv.edu>. Eric C. Nystrom is an assistant professor of history in the Interdisciplinary Humanities and Communication Faculty, College of Letters and Sciences, Arizona State University <eric.nystrom@asu.edu>. It took a digital village to nurture this article. We owe special thanks to Frank Ziming, Bob Lawless, Jeanne Price, Matthew Wright, and Brett Miller for their vital support during its infancy. Bill Bush, Joseph “Andy” Fry, Mike Green, John Tuman, Rebecca Gill, Marketa Trimble, Ruben Garcia, Charlie Frago, and Michael Schlossman helped it mature. We regret that neither Nigella (2001–15) nor Stella (2003–16) had an opportunity to chew on its findings.

cases from juvenile court into an adult criminal justice system that required mandatory sentences, such as life without the possibility of parole, for many offenses.² The Supreme Court had consolidated the cases of Kuntrell Jackson, an African American teenager, who had been convicted of capital murder in Arkansas, and Evan Miller, a white teenager who had been convicted of murder in an arson case in Alabama. Kuntrell and Evan had both been 14 years old at the time of their crimes, and in both cases, the minimum and maximum sentences were exactly the same: life without the possibility of parole (LWOP). The prosecutor in Miller's case had argued that the teenager deserved to die for his crime but that the Supreme Court had abolished the juvenile death penalty in 2005.³ Five years later, the high court banned LWOP sentences for juveniles convicted of nonhomicidal offenses.⁴ Now Stevenson, the Executive Director of the Equal Justice Initiative, urged the justices to use the Eighth Amendment's ban on cruel and unusual punishments to eliminate all mandatory LWOP sentences for minors.⁵

Alito challenged Stevenson's premise that state legislators did not know what they had done. "You mean," Alito stated, "the legislatures have enacted these laws, but they don't realize that, under these laws, a—person

21, 2011, Stevenson had asserted that "in most states where children fourteen and younger have been sentenced to life without parole, the legislatures have never expressly authorized life without parole sentences for young children; such sentences are a byproduct of legislation expanding the susceptibility of juveniles to adult prosecution (p. 3)." For an overview of juvenile without life parole sentencing, see Ashley Nellis, *A Return to Justice: Rethinking Our Approach to Juveniles in the System* (Lanham, MD: Rowman & Littlefield, 2016), 59–60.

2. Between 1990 and 1996, the District of Columbia and forty states passed laws to make it easier to prosecute minors in adult court. Jeffrey Fagan and Franklin E. Zimring, eds. *The Changing Borders of Juvenile Justice: Transfer of Adolescents to Criminal Court* (Chicago: The University of Chicago Press, 2000), 2; Patricia Torbet, Richard Gable, Hunter Hurst IV, Imogene Montgomery, Linda Szymanski, and Douglas Thomas, *States Responses to Serious and Violent Juvenile Crime: Research Report*. (Washington, DC: National Center for Juvenile Justice, 1996); Shay Bilchik, *Juvenile Justice Reform Initiatives in the States: 1994–1996* (Washington, DC: Office of Juvenile Justice and Delinquency Prevention, 1997); and Patrick Griffin, Patricia Torbet, and Linda Szymanski, *Trying Juveniles in Adult Court: An Analysis of State Transfer Provisions* (Washington, DC: Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, United States Department of Justice, 1998). By 1996, every state had also passed some version of mandatory sentencing. Marc Mauer, "The Causes and Consequences of Prison Growth in the United States," in *Mass Imprisonment: Social Causes and Consequences*, ed. David Garland (London: Sage Publications, 2001), 6.

3. Bryan Stevenson, *Just Mercy: A Story of Justice and Redemption* (New York: Spiegel & Grau, 2014), 265; and *Roper v. Simmons*, 543 U.S. 551 (2005).

4. *Graham v. Florida*, 510 U.S. (2010).

5. Stevenson, *Just Mercy*, 256–274.

under the age of 18 may be sentenced to life imprisonment without parole for— for murder. They don't understand that?" In response, Stevenson clarified his argument: "They—they have not considered that or adopted or endorsed it, would be accurate." Alito responded, "If you think these legislators don't understand what their laws provide, why don't you contact them? And when they—when you tell them, do you realize that in your State a—a 16-year-old or a 17-year-old may be sentenced to life imprisonment without parole for murder, they'll say: Oh, my gosh, I never realized that; let's change the law."⁶

As it turned out, Stevenson did not have to contact state legislators in multiple states because the Roberts Court used *Miller v. Alabama* to ban mandatory LWOP sentences for juvenile offenders.⁷ However, Alito's question about legislative understanding remained unanswered. Scholars of juvenile justice, in fact, are still seeking to explain the legislative frenzy of transfer laws in the 1990s.⁸ And a comprehensive legal history of state-level juvenile justice lawmaking during the late twentieth century remains unwritten.⁹

How do you systematically study a national history that was the product of lawmaking in fifty separate jurisdictions? This "fifty-state problem," compounded by the sheer quantity of juvenile justice laws enacted during the 1990s, suggested why digital tools could help.¹⁰ Historians, we believed, could use computing power to search for interconnections among these many laws. Accordingly, we created a database of all the state session laws from all fifty states (1990–2001) and built digital tools to help us see legislative patterns over time and across space. Our custom search engine

6. *Miller v. Alabama*, 2012, 14–15 (June 2, 1015).

7. *Miller v. Alabama*, 567 U.S. (2012). The Court recently held that this holding is retroactive. *Montgomery v. Louisiana*, 577 U.S. (2015). Justice Alito still rejects these holdings. See Mark Joseph Stern, "Sore Losers: Samuel Alito and Clarence Thomas are Still Trying to Keep Juvenile Offenders Behind Bars for Life," *Slate*, May 23, 2016. http://www.slate.com/articles/news_and_politics/jurisprudence/2016/05/samuel_alito_and_clarence_thomas_are_sore_losers.html (June 17, 2016).

8. Franklin E. Zimring, "The Power Politics of Juvenile Court Transfer in the 1990s," in *Choosing the Future for American Juvenile Justice*, ed. Franklin E. Zimring and David S. Tanenhaus (New York: NYU Press, 2014), 45.

9. For an illuminating case study of juvenile justice lawmaking in Pennsylvania and Washington State during this period, see Michael B. Schlossman and Brandon C. Welsh, "Searching for the Best Mix of Strategies: Delinquency Prevention and the Transformation of Juvenile Justice in the 'Get Tough' Era and Beyond," *Social Service Review* 89 (2015): 622–52.

10. Our conservative estimate is that the fifty states passed between 1,000 and 1,500 juvenile justice laws during the 1990s, Eric C. Nystrom and David S. Tanenhaus, "The Future of Digital Legal History: No Magic, No Silver Bullets," *American Journal of Legal History* 56 (2016): 150–67.

helped us explore the language of the session laws and to look for terms indicative of important juvenile justice concerns, such as the transfer of children into the criminal justice system. From 68 GB of downloaded PDFs, we extracted text from parts of session laws relevant to juvenile justice, ending up with more than 17,000 of these fragments. We compared all of them to each other, using algorithms to measure textual similarity, and plotted the top results as network maps. These maps showed emerging clusters of similar legislation about juvenile runaways, sexual predators, and other topics. We also ranked terms used in these juvenile laws along a spectrum representing rehabilitative or punitive approaches to juvenile justice. We then applied our set of weighted terms to the laws, allowing us to see at a glance whether a particular law, state, or year seemed to embody an approach marked by rehabilitative or punitive language.¹¹ These investigations focused mainly on composing a nation-sized mosaic from tiles representing the text of laws passed by particular states at particular times. As a big-picture endeavor grounded on a rich but frequently challenging data set, we were inspired by the patterns that emerged and heartened that they were largely congruent with the conventional wisdom about what these patterns should look like.

To test, refine, and define the limits of our tools, however, we also needed to conduct a state-level pilot study. Such a study would allow us to analyze the legislative process itself and tell the story of reforming juvenile justice in richer detail than the session laws alone could provide. The pilot study, we believed, might even answer Justice Alito's question about legislative understanding. But where should we begin?

I. Discovering the Natural State

A legal historian does not necessarily need our database and tool kit to determine that juvenile justice reform in Arkansas is a promising place to start. Arkansas was a party to the Supreme Court litigation that culminated in the *Miller* decision. Moreover, Arkansas used a law initially passed in 1989 and then repeatedly revised during the 1990s to prosecute Kuntrell Jackson as an adult for his role in the November 1999 robbery of a video store that led to the murder of Laurie Troup, a store clerk.¹² Alabama, the other state party, had relied on the more traditional practice

11. *Ibid.*

12. *Miller v. Alabama*, 132 S. Ct., 2455, 2461 (2012). See Ark. Code Ann. Sec. 5-4-104(b) (1997).

of judicial waiver and a law established in 1977 to prosecute Miller.¹³ Therefore, it makes contextual sense to begin in Arkansas to answer Justice Alito's question about whether legislators understood the sentencing consequences of making it easier to prosecute adolescents as adults. Such an examination would also help us to learn more about who the key institutional actors were at the state level, and to learn more about the interests that they represented.

The 1992 presidential election of Bill Clinton, who had run as a "New Democrat" and sought to neutralize the Republican political advantage on the issue of crime, generated sustained national interest in how his home state responded to youth violence.¹⁴ Clinton, who had served as governor of Arkansas for almost 12 years, was the third youngest person in the nation's history to be elected president and only the third successful candidate from a small state.¹⁵ Interest in Arkansas, for example, led HBO Documentaries in the 1990s to broadcast films about gang warfare in Little Rock and the trials of three adolescents accused of the ritualistic killing of three young boys in West Memphis.¹⁶ And, in March 1998, the "Jonesboro" school shooting focused international attention on the state's juvenile laws. For contemporaries, Arkansas was a culturally compelling site for studying youth violence and the state's response to it. But was Arkansas's lawmaking representative of national trends or was it an outlier?

In 1996, the National Center for Juvenile Justice had published an extensive report for the Office of Juvenile Justice and Delinquency Prevention (OJJDP) about state responses to serious and violent juvenile crime. The report did include a brief case study of Arkansas, titled "A Rural Response to Violent Crime by Juveniles."¹⁷ The case study was based on a phone conversation with a staff attorney for Arkansas Administrative Office of the Courts and did not address whether the state's experience was representative.¹⁸

13. *Ibid.*, 2462. Ala. Code. Sec. 12-15-34 (1977).

14. See, for example, Erik Eckholm, "Teen Gangs are Inflicting Lethal Violence on Small Cities," *New York Times*, January 31, 1993. On Clinton and crime policy, see Robert Perkinson, *Texas Tough: The Rise of America's Prison Empire* (New York: Metropolitan Books, 2010), 337–40; and Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, Revised ed. (New York: The New Press, 2012), 56–57.

15. Akhil Reed Amar, *America's Constitution: A Biography* (New York: Random House, 2005), 149.

16. *Gang War: Bangin' in Little Rock*, directed by Marc Levin (Home Box Office, 1994) and *Paradise Lost: The Child Murders at Robin Hood Hills*, directed by Joe Berlinger and Bruce Sinofsky (Home Box Office, 1996).

17. Torbet et al., *States Responses to Serious and Violent Juvenile Crime*, 53.

18. *Ibid.*, 53, 58.

Accordingly, we used our data set and digital tools to test our initial assumptions about Arkansas as a promising site for a case study. Our data had shown a spike in punitive language in the years 1993–96 in state session laws concerning juveniles. The Arkansas transfer law was revised in 1991, 1993, 1994, and 1995, years when language in session laws nationwide was most punitive.¹⁹ Moreover, a comparison of the 1997 revised Arkansas law to the entire corpus of laws passed during the 1990s revealed that this legislation was similar to laws passed by Nevada and Arizona in 1997, followed by New York in 1998, and then Maryland in 1999 (Table 1). These findings suggested that we needed to learn more about Arkansas. This more traditional historian's investigation also relied extensively on digital source repositories, including those for law review articles, state cases, Arkansas newspapers, and Arkansas legislative documents.²⁰

Our preliminary investigation revealed that Arkansas unexpectedly needed to create an entirely new juvenile justice system in the late 1980s. The opening of this new system in 1989 was the beginning of a decade-long political struggle between law enforcement officials and the state judiciary over how to handle the cases of adolescents accused of committing serious and violence offenses. This history, we argue, demonstrates that Justice Alito framed his question about legislative understanding too narrowly. In Arkansas, for example, the state supreme court was a significant institutional player. The justices ensured that key provisions of the Arkansas Juvenile Code were quite literally in flux in 1997. The Jonesboro school shooting the following year further complicated matters and ultimately led the General Assembly, in 1999, to reject the idea of mandatory sentencing of juvenile offenders younger than 16 years of age. The answer to Justice Alito's question, at least in Arkansas, came a year after Jonesboro, and well before the United States Supreme Court turned its attention in the twenty-first century to the constitutionality of juvenile LWOP sentences.

We used digital sources to help us locate the site for our historical investigation. Studying this history, in turn, helped us to develop our digital tools. For example, the needs of a case study pointed us toward sharpening the specificity of our tools. We had to learn how to selectively trim our

19. Nystrom and Tanenhaus, "The Future of Digital Legal History."

20. We accessed law review articles through HeinOnline (<http://home.heinonline.org/>), and state cases via LexisNexis (<http://www.lexisnexis.com/>). We accessed the *Arkansas Democrat-Gazette* via NewsBank (<http://infoweb.newsbank.com/>); and the Arkansas state legislative materials at <http://www.arkleg.state.ar.us/assembly/2015/2015R/Pages/Previous%20Legislatures.aspx> (accessed June 23, 2015). We recognize that it is unorthodox to footnote the digital databases from which we accessed digitized copies of published sources, but we do so here to help fully reveal the importance of digital tools in every aspect of our work.

Table 1. Cosine similarity (using 1-term term frequency over inverse document frequency [TFIDF]) between Arkansas' 1997 transfer law (Act 1229) and legislation, 1990–2001.

| Three page chunk (state, year, vol/page, keyword) | Cosine similarity |
|---|-------------------|
| nv_1997_v1_0801-1000--p31-33-juvenile | 0.266756 |
| az_1997_v1_0801-1000--p1-3-juvenile | 0.264008 |
| ny_1998-v3_3071-3270--p169-171-juvenile | 0.261334 |
| md_1999-v6_3955-4100--p112-114-juvenile | 0.252489 |
| il_1996-v3_3325-3524--p172-174-juvenile | 0.244549 |
| az_1995-v1_0001-0200--p82-84-juvenile | 0.24192 |
| oh_1991-1992_v1_0201-0400--p91-93-juvenile | 0.240804 |
| ga_1997_v1_bk2_0925-1124--p145-147-juvenile | 0.23877 |
| id_2000-v1_0203-0402--p31-33-juvenile | 0.23244 |
| nm_1994-v1_0211-0410--p85-87-juvenile | 0.22686 |

results, not only to remove noise at the bottom (i.e., spurious and tenuous connections), but also to ignore stronger results that resulted from phenomena we were not interested in exploring at the moment (such as interstate compacts). The need to know exactly what triggered flags of similarity prompted us to explore the fragments of bill language in close detail, testing our digital tools against our historians' judgment time and again. We also saw, in our case study, areas where our current tools glossed over important details, such as the jurisdictional age limit for juvenile court. Such discoveries helped us to conceptualize important next steps in expanding our tool kit. Accordingly, the history of juvenile justice reform in Arkansas that this article presents is doubly digital. It was shaped by the inquiries our digital tools helped us make, and in turn the history we uncovered helped us further shape the tools themselves.

II. A Fresh Start?

In 1987, the Arkansas Supreme Court declared the state's existing juvenile justice system unconstitutional.²¹ Since 1911, Arkansas had used county

21. *Walker v. Arkansas Department of Human Services*, 291 Ark. 43 (1987). The court overturned its ruling in *Ex Parte King*, 141 Ark. 213 (1919), which held that juvenile courts were a "local concern" because county courts had jurisdiction over child welfare matters. In *Walker*, the Court acknowledged, "Juvenile matters today represent a major field of law with a statewide and nationwide social importance which preclude them from constituting an area of merely 'local concern'"(49). Therefore, Arkansas needed to establish a new constitutional

courts to hear juvenile dependency and delinquency cases. Arkansas Advocates for Children and Families (AACF), an organization co-founded by Hillary Rodham in 1977, had lobbied for a decade to modernize Arkansas's juvenile justice system to "secure due process rights and more standardized procedures." AACF had issued detailed reports that highlighted the inconsistent handling of cases and sentencing.²²

Rodham, who belonged to the first generation of children's rights lawyers, had worked as a staff attorney for the Children's Defense Fund after graduating from Yale Law School in 1973. She eventually moved to Arkansas with her classmate and soon-to-be husband, Bill Clinton. After Clinton was elected governor in 1978, Rodham (who later changed her last name to Clinton) continued to write and speak about children's rights while practicing and teaching law.²³ She also chaired the board of the Children's Defense Fund until 1992.

As the law professor Martin Guggenheim has noted, the United States Supreme Court's *In re Gault* decision (1967) had "created the need for thousands of lawyers to work in a previously nonexistent field" because children accused of being juvenile delinquent now had a "constitutional right to free court-assigned counsel if their parents are too poor to hire a lawyer themselves."²⁴ The *Gault* decision also forced states, including Arkansas, to re-examine their juvenile justice systems.²⁵ In Arkansas, AACF advocated the adoption of an entirely new approach. Its major goal was to remove children's cases from the county court's jurisdiction and establish a modern juvenile court system with original jurisdiction

foundation for its juvenile justice system. For a brilliant analysis of the changing intergovernmental role of welfare administration in the twentieth century, see Karen M. Tani's *States of Dependency: Welfare, Rights, and American Governance, 1935–1972* (New York: Cambridge University Press, 2016).

22. *Due Process Rights and Legal Procedures in Arkansas's Juvenile Court* (1980) and *Arrest and Disposition of Juveniles in Arkansas Circuit Court* (1983). See, e.g., <https://www.ncjrs.gov/pdffiles1/Digitization/118167NCJRS.pdf> (June 23, 2015).

23. Her writings included the important article, "Children Under the Law," *Harvard Educational Review* 43 (1973): 487–514. Also see *Due Process*, Georgetown University Law Library Blog, 2014. <https://blogs.commonstons.georgetown.edu/dueprocess/2014/07/09/1991-oral-history-interview-with-hillary-rodham-clinton-focusing-on-her-career-in-legal-services-now-available-online/> (June 29, 2015); and Hillary Clinton, *Living History* (New York: Scribner, 2003), 62–100.

24. Martin Guggenheim, *What's Wrong with Children's Rights?* (Cambridge, MA: Harvard University Press, 2005), ix.

25. T. James McDonough, "The Juvenile Court and Judicial Reform in Arkansas," *Arkansas Law Review* 22 (1968–69): 17–42; and David S. Tanenhaus, *The Constitutional Rights of Children: In re Gault and Juvenile Justice* (Lawrence: University Press of Kansas, 2011).

and highly qualified judges. The organization also criticized Arkansas's relatively unusual practice (although it was becoming more common in the 1970s) known then as "prosecutor's choice" and now as "direct file."²⁶ Direct file means that prosecutors use their charging decision to prosecute a minor either as a juvenile delinquent in juvenile court or as an adult in circuit (criminal) court. AACF advocated the more traditional practice of judicial waiver, which granted a juvenile court judge the authority to waive jurisdiction over a child's case if the judge determined that the child would not benefit from the court's rehabilitation services.²⁷

AACF's decade-long advocacy set the stage for Deborah Lynn Walker, in 1987, to challenge the constitutionality of county courts trying juvenile cases.²⁸ Walker sued after losing custody of her children whom the Arkansas Department of Human Services had declared "dependent-neglected." The Arkansas Supreme Court held that the General Assembly in 1911 had impermissibly vested county courts with original jurisdiction over dependent, neglected, and delinquent children. Moreover, the state's Juvenile Code, which was enacted in 1975, rested on this unconstitutional foundation. That code had established a system of referees to act as juvenile court judges for the county courts. According to the Supreme Court, the General Assembly had created a new court system but did not have the authority to do so under the Arkansas Constitution. Therefore, the justices declared the state's juvenile justice system unconstitutional.²⁹

Chief Justice Jack Holt, Jr. acknowledged the desirability of making the court's ruling "prospective to allow for a period of transition and the passage of legislation or the possible adoption of a constitutional amendment," but explained "we do not have the power to hold a constitutional mandate in abeyance."³⁰ Arkansas was left, at least temporarily, without a juvenile justice system. Circuit and chancery judges were instructed to handle juvenile proceedings until a constitutional system could be implemented.³¹

The *Walker* decision forced legislative action. By the late 1980s, almost every nation used specialized juvenile courts to try cases of juvenile delinquency and youth crime.³² The Scandinavian (Nordic) nations of Sweden,

26. Wallace J. Mlyniec, "Juvenile Delinquent or Adult Convict—The Prosecutor's Choice," *The American Criminal Law Review* 14 (1976–77): 32.

27. Don Crary, "A New System of Juvenile Justice," *Arkansas Lawyer* 20 (1986): 176.

28. *Walker v. Arkansas Department of Human Services*, 291 Ark. 43 (1987).

29. *Ibid.*

30. *Ibid.*, 51

31. Chief Justice Jack Holt, Jr., "Major Developments Fiscal Years, 1987–1988," 4 <https://www.ncjrs.gov/pdffiles1/Digitization/115505NCJRS.pdf> (June 23, 2015).

32. Franklin E. Zimring, Máximo Langer, and David S. Tanenhaus, eds. *Juvenile Justice in Global Perspective* (New York: NYU Press, 2015).

Denmark, Finland, Norway, and Iceland were the major exceptions. They never established separate juvenile courts and instead used the child welfare system to handle all cases involving children under the age of 15.³³ Although China did not have a national juvenile justice system, the largest cities, beginning with Shanghai in 1984, began operating juvenile courts.³⁴ Therefore, it was unthinkable at this time in world history that Arkansas would not establish a new juvenile justice system, especially considering that political scientists have noted the state's propensity in the late twentieth century to adopt modern social services.³⁵ The state, for example, participated in federally funded programs, including ones related to delinquency prevention, which provided more than \$13,000,000 annually for social services for Arkansas children and their families.³⁶

In his concurring opinion, Justice Darrell Hickman predicted: "When the smoke settles from our decision, two things will become obvious. Our legal decision is right, and it will not, or should not, disrupt the legal process in Arkansas. It will only strengthen it."³⁷ Governor Clinton appointed a twenty-one-member Commission on Juvenile Justice, chaired by State Senator Wayne Dowd, a Democrat from Texarkana, to help secure passage of a constitutional amendment in November 1988. Adoption of this amendment would allow the General Assembly, when it next met in 1989, to enact the legislation required to establish a modern juvenile court system. As Dowd explained, "I think that we've got a golden opportunity to do something that could be a national model in this state."³⁸

The commission appointed Little Rock lawyer Donna Gay to serve as its Executive Director, obtained \$168,950 in Title XX grant funds, hired a staff person, and opened an office at the University of Arkansas's Law School. From the summer of 1987 through the fall of 1988, the commission consulted with a wide range of stakeholders that included "circuit and chancery judges, juvenile referees or masters, intake officers, probation officers, court clerks, foster parents, parents of children involved with the

33. Tapio Lappi-Seppälä, "Juvenile Justice without a Juvenile Court," in *Juvenile Justice in Global Perspective*, ed. Franklin E. Zimring, Máximo Langer, and David S. Tanenhaus (New York: NYU Press, 2015), 63–117.

34. Weijian Gao, "The Development and Prospect of Juvenile Justice in the People's Republic of China," in *Juvenile Justice in Global Perspective*, 121–144.

35. Diane D. Blair and Jay Barth, *Arkansas Politics and Government: Do the People Rule?* 2nd ed. (Lincoln: University of Nebraska Press, 2005).

36. *Walker v. Arkansas*, 50. In *States of Dependency*, Tani analyzes how the New Deal triggered the intergovernmental restructuring of the logic and administration of social services.

37. *Walker v. Arkansas*, 52.

38. Quoted in Donna L. Gay, "Juvenile Justice: Starting with a Clean Page," *Arkansas Lawyer* 22 (1988): 203.

juvenile court system, teachers, school principals, juvenile defense counsel, Legal Services lawyers, mental health professionals who work with juveniles, and contract providers.”³⁹ Although the commission’s report acknowledged “that the system envisioned will necessitate the full participation of prosecuting or deputy prosecuting attorneys in juvenile courts throughout the states,” it did not mention any meetings with them.

The commission secured \$35,000 from Rockefeller Foundation to hire the National Center for Juvenile Justice (NCJJ), the research division of the National Council of Juvenile and Family Court Judges, to conduct a comprehensive study of juvenile justice that would include a comparative analysis of other states’ laws. Several years earlier, the NCJJ had completed a report on children being jailed in eastern Arkansas, and had recommended how the state could remedy this situation.⁴⁰ The NCJJ agreed now to craft a juvenile code for Arkansas. Its Executive Director Hunter Hurst and consultant Robert Dawson traveled to Little Rock to meet with the commission’s subcommittees on court structure and code drafting.

Other national experts on juvenile justice including Ted Rubin of the Institute for Court Management of the National Center for State Courts, Mark Hardin for the American Bar Association, and Robert Schwartz of the Juvenile Law Center, also provided input. Ira Schwartz, the Director of the Center for the Study of Youth Policy at the University of Michigan, even arranged for five commissioners to travel to Utah to observe Salt Lake City’s juvenile justice system, which had been recently overhauled to limit the number of children in secure confinement and to provide more social services to children and their families.⁴¹

Meanwhile, the Arkansas Judicial Department, which had had difficulties for years in compiling accurate juvenile court statistics from the county courts, conducted a statewide manual audit of juvenile proceedings in all the state’s courthouses. They discovered that during fiscal year 1987–88, 7,015 individual juveniles had been charged with criminal offenses (3,468 felonies and 6,464 misdemeanors).⁴² This audit revealed 3,000 more cases than had been previously reported. These findings highlighted Arkansas’

39. Arkansas Commission on Juvenile Justice, *Juvenile Courts in Arkansas: Report and Recommendations* (Little Rock, Ark.: The Commission, 1989), 8 (photocopy in authors’ possession).

40. Patricia McFall, “A Study of Regional Juvenile Detention Needs in Phillips, Monroe and Lee Counties, Arkansas,” prepared for the Multi-Jail Commission, January, 1983. http://www.ncjj.org/pdf/McFall_Study.pdf (June 23, 2015).

41. Arkansas Commission on Juvenile Justice, *Juvenile Courts in Arkansas*, 19.

42. Holt, “Major Fiscal Developments,” 4–5.

decidedly decentralized juvenile justice system and confirmed the AACF's longstanding complaint that children's cases were handled inconsistently.⁴³

According to Gay, the Arkansas Juvenile Justice Commission had to first build public support for Amendment 2 before devising a specific legislative plan.⁴⁴ Hillary Clinton and Donna McLarty co-chaired the campaign responsible for educating voters about "why the state needs the amendment" and "what the amendment will authorize." They secured \$13,104 from the National Council of Juvenile and Family Court Judges to cover the costs of printing brochures, running advertisements in the *Arkansas Gazette* and *Arkansas Democrat*, and broadcasting radio spots. Clinton and McLarty also raised \$16,000 in private money to fund a lobbying campaign in the final days leading up to the election.⁴⁵ Ultimately, their efforts proved successful when the amendment passed with 62% of the vote.⁴⁶

The commission then worked to finalize its report to the General Assembly, which would include a proposed juvenile code. To save time and money, the commissioners drafted the code themselves instead of paying for NCJJ to do so.⁴⁷ The commission recommended placing "the jurisdiction for juvenile matters in chancery court" because this option would be much cheaper than establishing an entirely separate juvenile justice system as Utah had done.⁴⁸

The commission's report revealed how the *Gault* revolution had created great expectations for the administration of juvenile justice. Prior to *Gault*, non-lawyers often served as a juvenile court judges and referees.⁴⁹ The Arkansas commission first and foremost sought to professionalize matters by recommending that juvenile court judges be elected and should have the same qualifications as circuit and chancery judges. These qualified judges, the commission contended, should also have exclusive authority to make the critical decision about juvenile transfer. The commission called for the elimination of direct file because this practice would no longer be needed. This practice had made sense under the former county court system because a prosecuting attorney may have been the only lawyer involved in a case.

43. Gay, "Juvenile Justice," 203.

44. *Ibid.*, 203.

45. Arkansas Commission on Juvenile Justice, *Juvenile Courts in Arkansas*, 10.

46. Kay Goss, *The Arkansas State Constitution* (New York: Oxford University Press, 2011), 239.

47. Arkansas Commission on Juvenile Justice, *Juvenile Courts in Arkansas*, 24, 32–34.

48. *Ibid.*

49. Daniel L. Sklor and Charles W. Tenney, "Attorney Representation in Juvenile Court," *Journal of Family Law* 4 (1964): 77–98.

The commission contended that eliminating direct file would benefit prosecutors by shielding them from community pressure in high profile cases.⁵⁰

Although the General Assembly followed the commission's recommendations for judicial qualifications and elections, it did not eliminate direct file. Instead, Arkansas established a system of direct file and reverse judicial waiver. Prosecutors could file charges in circuit court against 14- and 15-year-olds, if they decided to charge the juvenile with capital murder; murder in the first degree; murder in the second degree; kidnapping in the first degree; or aggravated robbery, rape, or battery in the first degree.⁵¹ The circuit court in such cases had to hold a reverse transfer hearing within 90 days to determine whether to retain jurisdiction or send the case to juvenile court.⁵² In cases involving 16- and 17-year-olds, the prosecutor could either file charges in circuit court for any "alleged act" that "would constitute a felony if committed by an adult" or proceed in juvenile court.⁵³ Either party could, however, request a transfer hearing to move the case to another court having jurisdiction (i.e., either from juvenile court to circuit court, or vice versa). The legislature also included several criteria that courts had to consider in their transfer decisions.⁵⁴

Some of the core concepts in this new juvenile code, such as categorizing juveniles by age and alleged offense, had been part of Arkansas' prior law, which had its roots in English common law.⁵⁵ Anglo-American court had used a tripartite system to distinguish children from adults in determining their culpability for crime, which determined that children under the age of 7 were incapable by nature of being able to form the necessary intent to commit a felony. Children from 7 to 14 years of age were presumed to

50. Arkansas Commission on Juvenile Justice, *Juvenile Courts in Arkansas*, 30. Also see Allison Boyce, "Choosing the Forum: Prosecutorial Discretion and *Walker v. State*," *Arkansas Law Review* 46 (1993-94): 989-990.

51. Ark. Code Ann. Sec. 9-27-318(b)(1) (Michie Supp. 1991).

52. On reverse transfer, see Barry C. Feld, "Legislative Exclusion of Offenses from Juvenile Court Jurisdiction: A History and Critique," in *The Changing Borders of Juvenile Justice*, 120-22.

53. *Ibid.*

54. These were: the seriousness of the offense, and whether violence was employed by the juvenile in the commission of the offense; whether the offense was part of a repetitive pattern of adjudicated offenses that would lead to the determination that the juvenile was beyond rehabilitation under existing rehabilitation programs, as evidenced by past efforts to treat and rehabilitate the juvenile and the response to such efforts; and the prior history, character, traits, mental maturity, and any other factor that would reflect on the juvenile's prospects for rehabilitation.

55. See, for example, Holly Brewer, *By Birth or Consent: Children, Law, and the Anglo-American Revolution in Authority* (Chapel Hill: University of North Carolina Press, 2005), 181-229.

be incapable of forming intent but the state could rebut this presumption.⁵⁶ Children older than 14 were prosecuted as adults. More recently, in 1988, the United States Supreme Court had declared that executing children for crimes that they had committed before their 16th birthdays violated the Eighth Amendment's ban on cruel and unusual punishments.⁵⁷ The following year, however, the high court upheld the constitutionality of the juvenile death penalty for 16 and 17-year olds who had committed capital offenses.⁵⁸ This history may explain why Arkansas handled the cases of 14- and 15-year-olds differently from those of 16- and 17-year olds.

The age classifications and specific offenses that the legislature adopted in 1989 generally followed earlier Arkansas practices, including maintaining the minimum age of 10 for juvenile court eligibility. Other sections of the Juvenile Code, such as the criteria for transfer decisions, were entirely new. So where did this new language come from, and who drafted it? The state had established a Bureau of Legislative Research in 1947, which subsequently assisted legislators in researching and drafting bills.⁵⁹ Did these drafters create something new, or did they draw on pre-existing laws from other states, or perhaps model codes developed by national organizations? These are difficult questions to answer because from 1955 until quite recently, Arkansas did not publish "committee reports, committee prints, floor debate, or the minutes of senate and house proceedings."⁶⁰

We used our digital tools to search for likely connections. Because the Arkansas law was enacted in 1989 and our data set for this pilot study begins only in 1990, we could not run comparisons with earlier laws. We could test for similarities going forward, however. First, we looked for similarities based on having five-word-long sequences in common. In principle, documents sharing long phrases would almost certainly contain text copied from a common source. When testing the 1991 Arkansas law with this method, we found few promising results.⁶¹ Next, we tested the 1991 Arkansas law against the rest of our data set using a different

56. David S. Tanenhaus, "The Evolution of Waiver out of the Juvenile Court," in *The Changing Border of Juvenile Justice*, 13–14.

57. *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

58. *Stanford v. Kentucky*, 492 U.S. 361 (1989).

59. Bureau of Legislative Research, 2014. http://www.dfa.arkansas.gov/offices/budget/budgetRequests/0011_blr.pdf (July 1, 2015).

60. Kathryn C. Fitzhugh, Arkansas Legislative History Research Guide, 2001. <http://www.aallnet.org/chapter/swall/bulletin/fall01/arkleghistory.html> (June 25, 2015).

61. We used the Jaccard similarity method to compare pairs of documents based on five word overlapping phrases (shingles). See Nystrom and Tanenhaus, "The Future of Digital Legal History" for further technical details. All comparison pairs scored rather low in this test; the top scores among them, which resulted from comparisons of the 1991 Arkansas

Table 2. Cosine similarity (using 1-term frequency over inverse document frequency [TFIDF]) between Arkansas' 1991 transfer law and legislation, 1990–2001.

| Three page chunk (state, year, vol/page, keyword) | Cosine similarity |
|---|-------------------|
| va_1994-v2_1211-1410--p184-186-juvenile | 0.364035 |
| co_1996-v2_1601-1800--p43-45-juvenile | 0.328927 |
| va_1997_v2_2235-2434--p70-72-juvenile | 0.316152 |
| hi_1997_0601-0800--p157-159-juvenile | 0.313336 |
| sc_1995-v1_0001-0200--p61-63-juvenile | 0.307595 |
| va_1994-v2_1411-1610--p193-195-juvenile | 0.305162 |
| wv_1995_v1_0201-0400--p112-114-juvenile | 0.30384 |
| va_1994-v2_1211-1410--p196-198-juvenile | 0.302774 |
| ms_1994-v2_0863-1062--p160-162-juvenile | 0.302344 |
| hi_1999_0401-0600--p49-51-juvenile | 0.300807 |

technique. Instead of using phrases, we examined the frequency of individual words. We also weighted the importance of the words, so that words that were common in one document but rare in the corpus as a whole would count for more in the final calculation.⁶² With this measure, it is difficult to say whether language may have been borrowed directly; however, it gives a clearer picture of common ideas and terms. We found that the Arkansas 1991 bill bore similarity to many of the transfer laws passed during the mid-1990s, particularly legislation from Virginia. The top result, four out of the top ten, and eight out of the top twenty, were from Virginia (Table 2).⁶³

Subsequent research revealed that the State of Virginia later reassessed the effectiveness and unintended consequences of this legislation from

language with several laws passed by the state of Tennessee, had seized upon language of “severability” inserted by both states in their respective laws.

62. Specifically, we weighted single word terms using the term frequency over inverse document frequency (TFIDF) measure and then compared the documents using the cosine similarity technique. Our corpus, in this case, was all three page chunks from all states in the years 1990–2001 that contained the term “juvenile.”

63. Later we also ran a preliminary comparison of the 1991 Arkansas law with session laws from 1985–1989, which had been downloaded but not controlled for quality and were, therefore, not part of our data set. This preliminary comparison (a single term TFIDF cosine comparison) highlighted some similarities with laws passed in Ohio in 1985 and 1991, in Colorado in 1987, and in Mississippi in 1986. Manual examination of these earlier laws suggests that the Arkansas's 1991 law contained both substantive and procedural similarities about the prosecution of adolescent offenders in criminal court. These laws, we suspect, foreshadowed the avalanche of transfer legislation during the peak years of 1993–1996. We need, however, to do more research to test this proposition more fully.

the 1990s, which had enhanced the power of prosecutors to use the threat of transfer to secure plea deals from juveniles.⁶⁴ Scholars have noted, in broad terms, the increasing role played by prosecutorial interests in framing juvenile justice legislation.⁶⁵ A case study of Arkansas might, therefore, shed light on the role of prosecutors.

The Arkansas Juvenile Justice commission had noted the *Walker* case (1987) “was the precipitating factor” in the creation of the new juvenile code but that many of its members had “been working in various ways for much longer than that to improve the system.”⁶⁶ However, the new system that they helped to launch still allowed for prosecutorial choice. And, as we discovered, prosecutorial discretion continued to be a controversial subject in Arkansas throughout the 1990s, and into the new century.

III. Interpreting the New Juvenile Code

American juvenile justice has been a work in progress since the creation of the world’s first juvenile court in Chicago at the turn of the twentieth century.⁶⁷ At century’s end, in Arkansas, this historical process of trial and error continued.

This history began with the killing of an African American man by a 14-year-old, white teenager. On June 24, 1990, Robert Christian Walker, who was hanging out with his friends at a pond near Jacksonville, fired a shot that killed Edward C. Cooper who was fishing nearby with his family. Walker had borrowed the rifle from another teenager, Aaron Lyman, who was hunting snakes with a friend. Lyman testified that Walker cocked and aimed the rifle at Cooper before declaring, “I’m going to shoot me a nigger.” He then fired the fatal shot.

Walker provided a different account. He said that Lyman told him that there was only one bullet in the gun. Walker explained: “So I shot it, and then afterwards Chris Sinkey said look at those niggers down there. He said let’s shoot

64. See, for example, The Report of the Virginia State Crime Commission, 2008. [http://leg2.state.va.us/dls/h&sdocs.nsf/By+Year/HD122009/\\$file/HD12.pdf](http://leg2.state.va.us/dls/h&sdocs.nsf/By+Year/HD122009/$file/HD12.pdf) (January 28, 2016).

65. Jonathan Simon, *Governing Through Crime: How the War on Crime Transformed American Democracy and Created a Culture of Fear* (New York: Oxford University Press, 2007). Franklin E. Zimring, “The Power Politics of Juvenile Court Transfer in the 1990s,” *Choosing the Future for American Juvenile Justice* ed. by Franklin E. Zimring and David S. Tanenhaus (New York: NYU Press, 2014), 45–47. Also see Angela J. Davis, *Arbitrary Justice: The Power of the American Prosecutor* (New York: Oxford University Press, 2009).

66. Arkansas Commission on Juvenile Justice, “Juvenile Courts in Arkansas,” 38.

67. David S. Tanenhaus, *Juvenile Justice in the Making* (New York: Oxford University Press, 2004).

us a nigger. And I didn't think anything about it, and I just had the gun sitting beside my waist, and I pointed it in that direction and shot the—pulled the trigger. And it went off, and when it went off, I dropped the gun.”⁶⁸

An expert marksman testified that because of the distance (approximately 162 meters) and weather conditions, “if Walker had aimed directly at Cooper he would have missed. To hit Cooper, the gun would have to have been aimed over the victim’s head.”⁶⁹

The prosecuting attorney charged Walker with first degree murder in circuit court, and Walker then requested a reverse transfer hearing.⁷⁰ As the law professor Barry Feld has noted, Arkansas had created a presumption of “unfitness,” and Walker had to prove that he belonged in juvenile court.⁷¹ The hearing tested the new criteria for determining whether a child belonged in either juvenile or circuit court. The criteria included 1) the seriousness of the offense (including whether violence was employed), 2) whether the offense was part of a repetitive pattern, and 3) how “prior history, character traits, mental maturity, and any other factor which reflects upon the juvenile’s prospect for rehabilitation.” Character witnesses testified that Walker was an ordinary teenager who lived in a mixed-race neighborhood and had no prior history of either violence or racial hatred. Therefore, Walker argued that he belonged in juvenile court. The prosecuting attorney presented only “information,” the official document that Arkansas prosecutors filed in criminal cases.⁷²

The judge based his decision on the seriousness of the crime as outlined by the prosecutor’s paperwork and denied Walker’s transfer motion. Walker appealed the decision to the Arkansas Supreme Court, but the high court determined that the prosecutor’s information provided clear and convincing evidence that the case belonged in adult court. The Arkansas Supreme Court also held that the trial court judge did not have to give equal weight to all three criteria in the juvenile court. The high court also rejected a second petition that Walker filed for a rehearing.⁷³

The trial of Walker for first degree murder exposed a jurisdictional tension in the state’s new juvenile code. At the end of the trial, the judge instructed the jury on murder in the first degree, murder in the second degree, manslaughter, and negligent homicide. The jury found him guilty of the lesser offense of manslaughter, and the judge sentenced him to 10 years’

68. *Walker v. State*, 309 Arkansas 23 (1992), 24.

69. *Ibid.*, 25.

70. “Choosing the Forum,” 992–993.

71. Feld, “Legislative Exclusion of Offenses,” 120.

72. For the current version of the form, see State of Arkansas Criminal Information, 2007. https://courts.arkansas.gov/system/files/chacov_fdf.pdf (June 29, 2015).

73. “Choosing the Forum,” 994.

imprisonment. There was a problem, however. If the prosecutor had initially charged Walker with manslaughter, then the 14-year-old would have been automatically tried in juvenile court. Under the new juvenile court law, 14- and 15-year-olds could only be prosecuted as adults for one of six enumerated crimes. Manslaughter was not on that list.

Walker appealed his conviction to the Arkansas Supreme Court on the grounds that only the juvenile court had the jurisdiction to convict and punish a 14-year-old for the crime of manslaughter. Justice David Newbern noted that courts in Colorado, Maryland, Mississippi, Nevada, and Georgia had resolved this same issue by determining that once a criminal court acquired jurisdiction over a juvenile's case, the criminal court also acquired jurisdiction over lesser charges.⁷⁴ Newbern also pointed out that Massachusetts had adopted a different approach that involved filing a postconviction petition in juvenile court.⁷⁵ The juvenile court judge would then impose a delinquency sentence. Arkansas's new code expressly prohibited this approach because it violated the principle of double jeopardy. Even though Walker's attorney asked for this option, the Arkansas Supreme Court rejected this plea.

Ultimately, the Arkansas Supreme Court followed the majority practice of other state courts and held that once the circuit court had acquired jurisdiction over a juvenile case, it retained jurisdiction to convict and sentence the juvenile for lesser included offenses.⁷⁶ Part of court's rationale for adopting this rule was that Arkansas circuit court judges had the power to reduce sentences imposed by a jury. The court quoted from a Mississippi decision, which noted that this mitigating option allowed a criminal court judge to act more like a juvenile court judge.⁷⁷ Significantly, in her majority opinion for the United States Supreme Court in *Miller v. Alabama*, Justice Elena Kagan emphasized how mandatory sentencing schemes in capital cases prevented judges from taking youth into account during sentencing.⁷⁸ Thus, the Arkansas Supreme

74. He cited *People v. Davenport*, 43 Colo. App. 41, 602 P. 2d 871 (1979); *Gray v. State*, 6 Md. App. 677, 253 A. 2d, 395 (1969); *Williams v. State*, 459 So. 2d. 777 (Miss. 1984); *Dicus v. Second Judicial Dist. Court, Etc.*, 97 Nev. 273, 625 P. 2d 1175 (1981); and *Worthy v. State*, 253 Ga. 661, 324 S.E. 2d 431 (1985).

75. *Metcalf v. Commonwealth*, 156 N.E. 2d 649 (Mass. 1959).

76. *Walker v. State*, 24.

77. *Ibid.*, 29.

78. Kagan wrote, "But the mandatory penalty schemes at issue here prevent the sentencer from taking account of these central considerations. By removing youth from the balance—by subjecting a juvenile to the same life-without-parole sentence applicable to an adult—these laws prohibit a sentencing authority from assessing whether the law's harshest term of imprisonment proportionately punishes a juvenile offender." *Miller v. Alabama*, 132 S. Ct. 2455, 2466.

Court in 1992 and the United States Supreme Court 20 years later both emphasized the importance of criminal court judges having discretion in their sentencing of minors.

Justice Newbern used the conclusion of his opinion to warn prosecutors not to overcharge juveniles to defeat the jurisdiction of the juvenile court. He reminded them of the first principle inscribed in Arkansas's Model Rule of Professional Conduct 3.8(a): "refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause."⁷⁹ After stating that the court did not expect prosecutors to "flout the jurisdiction of" of the juvenile court, he declared: "Even if one of them were so disposed, we doubt he or she would be willing to run the risk of being found guilty of an ethical violation under the Rule."⁸⁰

Justice Donald Corbin, a newly elected member of the court, supported the majority's legal reasoning, but still dissented. His sparse dissent warned that the juvenile court itself was in danger. He explained:

I dissent because I believe the result we reach goes against the strong public policy envisioned at the time of the proposal and the acceptance of the new juvenile court system by the people of the State of Arkansas. I would follow the Massachusetts rule mentioned in the majority opinion. I would do so for reasons of strong public policy. I admit that this is judicial activism, but the situation deserves this attention unless we are to make a mockery out of our juvenile court system.⁸¹

As Newbern's warning to prosecutors and Corbin's dissent demonstrated, the judiciary was concerned that the power of prosecutors could undermine the new juvenile code.

The Arkansas General Assembly did not share these concerns. During the 1990s, the bicameral legislature, with its 35 senators and 100 representatives, met biennially in odd numbered years (1991, 1993, 1995, 1997, and 1999). Like clockwork, the legislature increased the number of enumerated excluded offenses for 14- and 15-year-olds and thus further expanded the charging power of prosecutors.⁸² For example, Arkansas added aggravated robbery, rape, or burglary in the first degree in 1991.⁸³

79. *Walker v. State*, 30. Also see Arkansas Judiciary, Special Responsibilities of a Prosecutor, 2016. <https://courts.arkansas.gov/rules-and-administrative-orders/court-rules/rule-38-special-responsibilities-prosecutor-0> (June 29, 2015).

80. *Walker v. State*, 30. In Arkansas, prosecutors have rarely been disciplined. See, for example, this September 11, 2014, article in the *Arkansas Times* <http://www.arktimes.com/arkansas/prosecutors-have-all-the-power/Content?oid=3452595> (June 29, 2015).

81. *Walker v. State*, 30.

82. Feld, "Legislative Exclusion of Offenses," 114.

83. House Bill 1755, March 15, 1991. <http://www.arkleg.state.ar.us/assembly/1991/R/Acts/903.pdf> (June 30, 2015).

As Frank Zimring has noted, this legislative recidivism required minimal drafting, and produced symbolic capital for legislators who needed to appear tough on crime.⁸⁴ Because of the *Walker* decision, Arkansas prosecutors knew that the information they filed in circuit court determined the outcome in reverse transfer hearings.

IV. Legislating during a Moral Panic

The moral panic in Arkansas about youth violence reached new heights after the general assembly completed its regular session in 1993, and Governor Jim Guy Tucker called the legislature into a special session in August 1994 to address juvenile crime.⁸⁵ The *Arkansas Democrat-Gazette*, based in Little Rock and the most influential paper in the state, had used its editorial page and reporting to encourage Tucker call a special legislative session to “get tough” on juvenile crime.

The *Arkansas Democrat-Gazette*'s coverage of youth crime supports David Garland's argument that media in the late twentieth century “tapped into, then dramatized and reinforced, a new public experience, an experience with profound psychological resonance—and in doing so it has *institutionalized* that experience.” “This institutionalization,” he explained, “increases the salience of crime in everyday life. It also attunes the public's response not to crime itself, or even to the officially recorded rates, but to the media through which crime is typically represented and the collective representations that these media establish over time.”⁸⁶ The *Democrat-Gazette* helped shape the cultural context for the special legislative session.⁸⁷

84. Zimring, “American Youth Violence,” 12.

85. Jay Barth, “Arkansas' Juvenile Crime Special Session: An Election Season Success with Forewarning for Arkansas Politics,” *Comparative State Politics* 15 (1994): 19–27. For analysis of the history and use of the sociological concept of a “moral panic,” see Kenneth Thompson, *Moral Panics* (London: Routledge, 1998); and Stanley Cohen, *Folk Devils and Moral Panics* 3rd ed. (London: Routledge, 2002). In *Rethinking Juvenile Justice* (Cambridge, MA: Harvard University Press, 2008), 10, Elizabeth S. Scott and Laurence Steinberg classified juvenile crime policy during the 1990s as a moral panic because “politicians, the media, and the public reinforce[d] each other in an escalating pattern of alarmed response to a perceived social threat.”

86. David Garland, *The Culture of Control: Crime and Social Order in Contemporary Society* (Chicago: University of Chicago Press, 2001), 158.

87. For an introduction to the literature on the role of the news media in shaping racialized perceptions of youth crime during the 1980s and 1990s, see Perry L. Moriearty, “Framing Justice: Media, Bias, and Legal Decisionmaking,” *Maryland Law Review* 69 (2010): 850–909.

Beginning in February 1994, the paper ran a series of articles that highlighted how Colorado's Governor Roy Romer, a Democrat running for re-election, called a special legislative session to crack down on youth crime after a "summer of violence." That session saw the passage of new laws that criminalized youth handgun possession, incarcerated some juveniles in the adult prison system, and made juvenile records public.⁸⁸

The articles about Colorado's special session framed the *Democrat-Gazette's* two part, front page feature about "efforts nationally to battle juvenile crime." The feature began with an article titled "The Kids Think the System is a Joke: With Youth Crime Rising, States Put Juvenile Justice System Under the Microscope" and concluded with an article, published on Valentine's Day, titled "Youth Crime Grows into National Terror."⁸⁹

To provide "a glimpse at the people behind the juvenile crime statistics," the reporters profiled "Jim" a 15-year-old, self-described gang member who had been in trouble with the law since he was 9 years of age. He had been committed to state training schools four times previously and was now held at Pulaski County Juvenile Detention Center, awaiting a juvenile court hearing. He had been arrested for a stealing a car. He told the reporters that detention was "a spank on the hand, then you go home." The reporters included Jim's perspective as well as that of former gang members. They quoted, for example, a 16-year-old former gang member, who had testified at a December hearing of the state's Youth Gang Task Force. He stated, "Y'all are just now deciding to do something, and it's almost too late. We're not here asking for sympathy. We're here asking for help. And we're talking about help now—not tomorrow, not a year later, not two. We're talking about now."⁹⁰

The reporters also provided a brief history of the development of Arkansas' modern juvenile justice system and quoted national experts who applauded Arkansas for establishing a Division of Youth Services and replacing the state's largest juvenile facility with smaller regional wilderness camps. The reporters also noted that "critics of the current system, including a number of law enforcement officers and prosecutors"

88. See, for example, Terry Lemons and Jane Fullerton, "'The Kids Have the Hammer Hanging Over Their Head': Colorado Targets Violent Offenders with New Tougher Laws," *Arkansas Democrat-Gazette*, February 13, 1994, 1A. In 1997, the Office of Juvenile Justice and Delinquency Prevention published a case study of Colorado's reforms, see Bilchik, *Juvenile Justice Reform Initiatives in the States, 1994–1996*, 51–58.

89. Jane Fullerton and Terry Lemons, "The Kids Think the System is a Joke: With Youth Crime Rising, State Puts Juvenile Justice System Under the Microscope," *Arkansas Democrat-Gazette*, February 13, 1994, 1A; and Jane Fullerton and Terry Lemons, "Youth Crime Grows into National Terror," *Arkansas Democrat-Gazette*, February 14, 1994, 1A.

90. Fullerton and Lemons, "The Kids Think the System is a Joke."

complained that the juvenile justice system was “too lax on violent and habitual offenders, allows too much time to elapse between arrests and hearings, and doesn’t provide enough detention space.” Pulaski County Prosecuting Attorney Mark Stodola stated, “The Arkansas juvenile code is a handcuff on police and a handcuff on prosecutors. We’ve got to give a higher priority to juvenile crime.”⁹¹

The article mentioned that several legislators were advocating for Arkansas hold a special legislative session devoted to juvenile crime, but as Arkansas had just made changes to their judicial code during the 1993 session, other legislators advocated for giving “those changes time to be implemented.” Governor Tucker would not rule out a special session, but emphasized that it would require “substantial preparation.” The article observed that the legislature would probably not tackle further juvenile justice reform until 1995.⁹²

Significantly, the article emphasized that youth violence was getting worse in Arkansas. The authors provided statistics about the dramatic rise in juvenile crime, including murder, from 1979 to 1992. They also pointed out that “A cycle of violence has rippled across the state in recent months—a high school athlete allegedly killed by gang members at Sherwood, a 3-year-old girl injured by a stray bullet at Little Rock, a trio of West Memphis teen-agers accused of brutally murdering three 8-year-old boys.”⁹³ The last case they cited was becoming one of the iconic cases that symbolized the so-called immorality of American teenagers in the 1990s. Prosecutors accused the teenagers of killing the young children as part of a satanic ritual. The case of the West Memphis Three, it should be noted, later became internationally known as an example of prosecutorial misconduct and wrongful conviction.⁹⁴

Whereas the first article focused on the situation in Arkansas, the sequel “Youth Crime Grows into National Terror” pointed out that “public opinion polls show that crime—including acts by and against children—tops the economy and health care as the No. 1 issue concerning Americans.” The article provided an overview of national trends that included imposing curfews for minors and installing metal detectors in schools. The reporters also spoke with law professor and juvenile justice expert Barry Feld, who explained that the problem of juvenile crime would be compounded by

91. *Ibid.*

92. *Ibid.*

93. *Ibid.*

94. Mara Leveritt, “Are ‘Voices for Justice’ Heard?: A Star-Studded Rally on Behalf of the West Memphis Three Prompts the Delicate Question,” *University of Arkansas Law Review* 33 (2010–11): 137–60; and Mara Leveritt, *Devil’s Knot: The True Story of the West Memphis Three* (New York: Atria Paperback, 2002).

demographic trends. He explained, "Unless we start implementing programs that are going to improve their life circumstances, we are guaranteed—just based on demographics—a significant increase in youth crime during the next 10 to 15 years." Feld added, "It's ultimately cheaper to invest in human capital now than it is to try to warehouse the results of neglect later," but worried that "a get-tough-and-throw-away-the-key policy may be a politically attractive, short-term answer that demagogues can rally around." Feld was right to worry.⁹⁵

In April, Governor Tucker, a Democrat who had replaced Clinton during his presidential campaign, was running for a 4 year term. Sheffield Nelson, the Republican challenger, repeatedly criticized Tucker for the state's failure to address its crime problem. Tucker, who had used his position as a prosecutor in the early 1970s to launch his political career, appointed an eighteen member task force of police officers to prepare juvenile justice reforms proposals that would be evaluated during a 3 day law enforcement summit to be held at the Criminal Justice Institute at the University of Arkansas at Little Rock in July. The governor's office would use the recommendations from law enforcement officials to prepare legislation for the General Assembly to consider if the governor convened a special legislation.

Tucker explained that he selected police officers to serve on the task force because they were usually "the last ones we ask." He added, "Usually politicians get an idea in the middle of the night, but law enforcement live it all day, every day."⁹⁶ Wayne Dowd, who had chaired the Arkansas Juvenile Justice Commission and helped write the state's modern juvenile code in 1989, was skeptical. On the eve of the law enforcement summit, he stated, "I'm somewhat dubious that law enforcement is going to come up with a magical solution to juvenile crime."⁹⁷

As the chairman of the Senate's powerful Judiciary Committee, Dowd would play a vital role in shaping or stopping legislation.⁹⁸ Political scientists who studied juvenile justice reform in the 1960s and 1970s theorized that such reform is generally incremental and controlled by a subset of the legislature, such as Dowd's committee, which had expertise in this area of

95. Fullerton and Lemons, "Youth Crime Grows into National Terror," 1A.

96. Mike Rodman, "Youth Crime a Siren's Song for Legislators School Fund Formula Can Wait, Tucker Say," *Arkansas Democrat-Gazette*, June 7, 1994, 1A.

97. Rachel O'Neal, "Crime Summit Gives Officers Voice in Debate," *Arkansas Democrat-Gazette*, July 6, 1994, 1B.

98. Noel Oman, "Judiciary Panels Get Head Start on Session," *Arkansas Democrat-Gazette*, August 16, 1994, 8A; and Noel Oman, "Crime War at Capitol Hits Week 2," *Arkansas Democrat-Gazette*, August 22, 1994, 1A.

law.⁹⁹ Fundamental change, on the other hand, occurs only when juvenile justice became a major political issue that attracts public interest.¹⁰⁰ Under these circumstances, experts can lose control of the legislative process and radical change can happen suddenly. Juvenile justice reform in New York during the 1970s followed this pattern, which resulted in the state ignoring its own experts and passing the nation's toughest juvenile law in 1978.¹⁰¹ The moral panic about youth crime suggested that states, such as Arkansas, might enact even more radical laws in 1994. Dowd, who had helped to write the state's juvenile code, could prevent this from happening.

The *Arkansas Democrat-Gazette* reported, "in what at times sounded like a campaign speech," Governor Tucker told the attendees of the law enforcement summit that, "We must make strategic decisions now. One of those strategic decisions should be to do what no other state has been able to do—free our citizens from crime and the fear of crime and provide true domestic tranquility." Tucker acknowledged that there was not time to create a new juvenile code during a special session. He explained, "If they recommend a comprehensive revision of the juvenile code, that can't be done between now and Aug. 15. It is too complex. If they recommend some specific...changes on which there is a pretty good consensus, that's another matter."¹⁰² The governor's concession that there was not enough time to create a new juvenile code helped ensure that the legislature tinkered within the existing framework.

During the 3 day summit at the Criminal Justice Institute at the University of Arkansas at Little Rock, law enforcement officers were divided into twenty groups to address specific issues and each group produced recommendations. These included implementing a statewide curfew for teenagers, building more prisons, buying an automated fingerprint identification system, requiring background checks for all public and private school employees, establishing a statewide minimum wage for police officers, holding annual crime summits, and commissioning a study "on the three-strikes-and-you're-out concept for violent offenders" that included

99. Edmund F. McGarrell reviews the "open system" literature in *Juvenile Correctional Reform: Two Decades of Policy and Procedural Change* (Albany, NY: State University of New York Press, 1988).

100. Scholars have described the history of juvenile justice in cyclical terms. See, for example, Thomas J. Bernard and Megan C. Kurlychek, *The Cycle of Juvenile Justice*, 2nd ed. (New York: Oxford University Press, 2010).

101. McGarrell, *Juvenile Correctional Reform*, 97–134; Simon Singer, *Recriminalizing Delinquency: Violent Juvenile Crime and Juvenile Justice Reform* (New York: Cambridge University Press, 1996), 46–74; and Fox Butterfield's *All God's Children: The Bosket Family and the American Tradition of Violence* (New York: Alfred A. Knopf, 1995), 226–27.

102. O'Neal, "Crime Summit," 1B.

“life prison sentences for those convicted of three violent offenses.”¹⁰³ Tucker’s staff used these recommendations to prepare materials for legislators to discuss the feasibility of holding a special session.

Meanwhile, on July 31, the *Arkansas Democrat Gazette* published a front page article that encapsulated white fears about “predatory” black youth taking over formerly “safe” neighborhoods.¹⁰⁴ The article began with the 911 transcript of a phone call from 48-year-old Susan R. Harris, who had been shot during an apparent burglary and died later that night at the hospital. The article stated that the responding police officers said that Harris told them, “Two young niggers came in on me and shot me.” The police later arrested four black teenagers: two were 15 years old, one was 14 years old, and another was only 12 years old. The detectives quoted in the article said that the 14-year-old was lucky that he had just celebrated his birthday because “if he had been 14 when the crime was committed, he would have been charged as an adult.” As the article explained, anyone younger than 14 “must be tried in juvenile court, where the harshest penalty is confinement in a Department of Human Services facility until age 18.”¹⁰⁵

This shooting helped prompt Alderman Cary Gaines, executive director of the Arkansas Sheriffs Association, to introduce a resolution on behalf of the North Little Rock City Council that implored Governor Tucker to call a special session. The council passed the resolution unanimously and the alderman promised to lobby for expanding the number of excluded offenses, lowering the age at which juveniles could be prosecuted as adults,

103. Rachel O’Neal, “Summit-Goers Concoct ‘Rich Brew’ of Crime-Fighting Suggestions,” *Arkansas Democrat-Gazette*, July 9, 1994, 1B.

104. There is an extensive literature about the creation of the image of the black criminal and urban history, see, for example, Khalil Gibran Muhammad, *The Condemnation of Blackness: Race, Crime, and the Making of Urban America* (Cambridge, MA: Harvard University Press, 2011). For studies that examine how conceptions of blackness affected the history of American juvenile justice, see Feld, *Bad Kids* (New York: Oxford University Press, 1999); William S. Bush, *Who Gets a Childhood? Race and Juvenile Justice in Twentieth-Century Texas* (Athens: University of Georgia Press, 2010); Victor Rios, *Punished: Policing the Lives of Black and Latino Boys* (New York: NYU Press, 2011); Geoff K. Ward, *The Black Child Savers: Racial Democracy and Juvenile Justice* (Chicago: University of Chicago Press, 2012); and Miroslava Chávez-García, *States of Delinquency: Race and Science in the Making of California’s Juvenile Justice System* (Berkeley: University of California Press, 2012). For an analysis of media coverage of these issues in the 1990s, see Steve Macek, *Urban Nightmares: The Media, The Right, and the Moral Panic over the City* (Minneapolis: University of Minnesota Press, 2006); and Perry L. Moriarty and William Carson, “Cognitive Warfare and Young Black Males in America,” *Journal of Gender, Race & Justice* 15 (2012): 281–313.

105. Jim Brooks and Jim Kordsmeier, “I’ve Been Shot,” Caller Told Police,” *Arkansas Democrat-Gazette* July 31, 1994, A1.

transferring incorrigible violent offenders to adult prison, and building a new prison for violent youth. Alderman Martin Gipson observed that many of these proposals had been introduced in the past, but had failed to pass.¹⁰⁶

The same day that Tucker announced that he was convening a special legislative session to address youth crime the *Arkansas Democrat-Gazette* published photos of forty-one people who had been murdered in Little Rock, and editorialized for “more and tougher laws against crime.” They were blunt. “Until it’s known for sure what brings people, especially young people, to kill, to rob, to vandalize, to threaten, the only sure way to respond is *to respond*. To arrest the criminals and put them where they can’t add to the crime stats. That means more and tougher laws against crime.” The editorial concluded, “The state’s attention is all yours, Governor. Lead on.”¹⁰⁷ The paper also kept its readers abreast of developments in other states such as North Carolina, which had held a special legislative session in March to address crime, and considered several hundred bills and ultimately ratified twenty-eight that included mandating the prosecution as adults of 13-year-olds charged with first degree murder and providing judges with the discretion to try 13-year-old felony suspect as adults.¹⁰⁸

Governor Tucker’s proposal to the legislature, however, did not call for lowering the age of criminal responsibility. Instead, he called for expanding the list of excluded offenses for 14- and 15-year olds; making juvenile records available to prosecutors, school superintendents, victims, and their families; detaining more juveniles for longer periods of time; lowering the evidentiary standard to revoke parole; and allowing for courts to order juveniles and their parents to pay higher restitution amounts.¹⁰⁹ After children’s advocates complained that the proposal did not include preventative programs, the governor agreed to include more funding for such programs.¹¹⁰

The most vocal critics of the special legislative session were members of the state’s black caucus and children’s rights activists. Representative Jimmie Wilson from Lexa in the Arkansas Delta declared that the

106. Brenda C. Bankston, “NLR Council to Lobby for Tougher Laws on Youth Crime,” *Arkansas Democrat-Gazette*, August 9, 1994, 5B.

107. “Welcome Special Session, Act Against Crime Now,” *Arkansas Democrat-Gazette*, August 10, 1994, 8B.

108. Elizabeth Caldwell, “N.C. Crime Session Focused on Prevention,” *Arkansas Democrat-Gazette*, August 15, 1994, 7A.

109. “24 Points in Tucker’s Call for Special Legislative Session,” *Arkansas Democrat-Gazette*, August 10, 1994, 10A.

110. Elizabeth Caldwell, “Tucker Adding Prevention to Session’s Agenda,” *Arkansas Democrat-Gazette*, August 12, 1994, 1B.

legislative package had “racial overtones” and that the bills’ authors “don’t know anything about the practice of criminal law. All you have is people trying to out-posture each other. . . .Some people do not want to have to live next to a black person, and some of those people are voting on this legislation. . . .There is a hatred here of young African-Americans, a fear that has grown into hysteria.” He added, “We’re pushing toward armed conflict between young people and police,” and that you would eventually have more “African-American Arkansans in prison than in high school.”¹¹¹ Wilson and Amy Rossi, the executive director of AACF, also objected to proposals to allow juveniles to be questioned without their parents’ knowledge. Wilson “likened the proposed police authority to that of South Africa officials under apartheid.”¹¹²

When the Senate voted to add additional crimes to the list of excluded offenses for 14-and 15-year-olds, the only senator to vote against the measure was Senate President Pro Tempore Jerry Jewell, a member of the black caucus from Little Rock. He asked Senator Steve Bell, a sponsor of the bill from Bateville, “Would you agree we’re trying to make men out of boys?” Bell replied, “This is not trying to make men out of anybody. This is trying to punish people who commit very serious crimes.” The bill, which passed 33 to 1, added the following crimes to the list of excluded offenses: second degree battery, terroristic acts, unlawful discharge of firearms from a vehicle, felonies committed with firearms, soliciting minors to join gangs, and the criminal use of prohibited weapons.¹¹³ Cary Gaines declared, “From a sheriff’s perspective, this is the best legislative session for law enforcement ever.”¹¹⁴

The session expanded the powers of police officers and prosecutors. For example, police could now jail a juvenile who illegally possessed a firearm, and the prosecutor could use forfeiture proceedings to confiscate it. Moreover, if the juvenile had been in a motor vehicle at the time of arrest, then the prosecutor could also petition to confiscate the motor vehicle.¹¹⁵ This ten page act was five times longer than the entire transfer section of

111. Meredith Oakley, “Lawmaker Sees Racism in Session,” *Arkansas Democrat-Gazette*, August 17, 1994, 11B.

112. Elizabeth Caldwell and Rachael O’Neal, “Bill Cuts Parental Strings on Police,” *Arkansas Democrat-Gazette*, August 18, 1994, 1A. Also see Diane D. Blair and Jay Barth, *Arkansas Politics and Government*, 2nd ed. (Lincoln: University of Nebraska Press, 2005), 207.

113. Rachel O’Neal, “Senate Lowers Age to 14 for Nine Adult Crimes,” *Arkansas Democrat-Gazette*, August 19, 1994, 1A.

114. Noel Oman, “Crime War at Capitol Hits Week 2,” *Arkansas Democrat-Gazette*, August 22, 1994, 1A.

115. Senate Bill 5, August 16, 1994, <http://www.arkleg.state.ar.us/assembly/1993/S2/Acts/56.pdf> (July 1, 2015).

the juvenile code, which itself had grown in length. The legislature used the special session to add nine more excluded offenses for 14- and 15-year-olds, and added that prosecutors could file charges against anyone “at least fourteen (14) years old when he engaged in conduct that constitutes a felony” under Arkansas’s Code.¹¹⁶

However, the Arkansas General Assembly had neither lowered the age of criminal responsibility (which remained at 10) nor the juvenile court’s upper jurisdictional age limit (which remained at 18). Instead, the legislature gave prosecutors more power to determine on a case-by-case basis how to proceed against 14- and 15-year-olds. The subtitle of the legislation—“TO INCLUDE ADDITIONAL OFFENSES FOR WHICH A PROSECUTING ATTORNEY MAY CHARGE A FOURTEEN- OR FIFTEEN-YEAR-OLD JUVENILE IN CIRCUIT COURT”—made this abundantly clear.¹¹⁷

After the session concluded, the *Arkansas Democrat-Gazette* editorialized that it was a “fine start toward a safe state.” The paper lauded legislators for avoiding grandstanding and partisanship and pointed out that “by the end of the eight-day session, Republican senators praised the agenda of a Democratic governor—in an election year.” They added, “to quote Mike Huckabee, the state’s Republican lieutenant governor: ‘It’s almost like a Republican package.’” The editorial board explained, “That may not be what the Democratic governor wanted to hear, but he asked for it. And he got it.” The paper acknowledged that “locking up kids with adults is not a palatable prospect, but if they’re going to break adult laws, they need to know that they will face adult punishment.” Plus, “some of these defendants are “kids” only chronologically. The time has passed when novels like *Lord of the Flies* can shock by displaying the human species’ capacity for wanton brutality at an early age. Just look in Little Rock’s jails, or, worse, on its streets for examples of teen killers, and victims. It’s time deterrence made a comeback, permissiveness hasn’t worked.” They further noted, “You asked for it, Guv, you got it: Tougher laws on juvenile crime.”¹¹⁸

116. These new excluded offenses were: kidnapping; battery in the second degree; possession of a handgun on school property; aggravated assault; terroristic acts; unlawful discharge of a firearm from a vehicle; any felony committed with a firearm; soliciting a minor to join a criminal street gang; criminal use of a prohibited weapon; or a felony attempt, solicitation, or conspiracy; or conspiracy to commit any of the offenses that were already excluded. <http://www.arkleg.state.ar.us/assembly/1993/S2/Acts/40.pdf> (July 1, 2015).

117. House Bill 1019, August 24, 1994. <http://www.arkleg.state.ar.us/assembly/1993/S2/Acts/40.pdf> (July 1, 2015).

118. “Grading the Session: A Fine Start Toward a Safer State,” *Arkansas Democrat-Gazette*, August 29, 1994, 4B.

By 1996, criminologists knew that juvenile crime had already begun to decline precipitously. This drop began just as states, such as Arkansas, continued to revise their juvenile codes during the height of the moral panic.¹¹⁹ While criminologists debated the causes of this crime drop, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) reported, “criminal justice prognosticators are warning that the downturn could merely be a lull before the next storm of juvenile violence.” The report credited John J. DiIulio, Jr., a professor of politics and public affairs at Princeton University, and James Alan Fox, a professor of criminal justice at Northeastern University, for being “the most vocal espousers of this theory.” They quoted Fox’s warning that “given the trends, we may face a bloodbath that makes the 1990s look like the good old days.”¹²⁰ DiIulio, with William Bennett and John Walters, popularized the term “super-predators” to describe in racially charged language these teenagers who would soon trigger the blood bath.¹²¹

The OJJDP report included a section—“A Dissenting Voice”—that described Frank Zimring’s critique of the prognosticators’ assumptions and methods. And, as Zimring has more recently pointed out, the demographic time bomb that Fox and DiIulio predicted turned into “the most sustained and substantial decline in youth homicide in modern US history.”¹²² The falling juvenile crime rate later played a role in Arkansas’ reconsideration of its juvenile code.

V. Judicial Second Thoughts

While the Arkansas General Assembly continued to expand the power of prosecutors, the Arkansas Supreme Court grew concerned that reverse transfer hearings did not serve as a judicial check on prosecutorial overcharging of minors. In *Sanders v. State* (1996), a decision that affirmed a circuit court judge’s denial of 17-year-old Christopher Sanders’ appeal to be transferred to juvenile court, Justice Robert H. Dudley stated that the case “was a catalyst for discussion on the need to review our past interpretation of parts of the juvenile code.” He explained why. “This case

119. See, for example, Bilchik, *Juvenile Justice Reform Initiatives in the States, 1994–1996*.

120. *Ibid.*, 6–7.

121. William J. Bennett, John J. DiIulio, Jr., and John P. Walters, *Body Count: Moral Poverty ... and How to Win America’s War Against Crime and Drugs* (New York: Simon and Schuster, 1997).

122. Franklin E. Zimring, “American Youth Violence: A Cautionary Tale,” in *Choosing the Future for American Juvenile Justice*, 19.

exemplifies the fact that, under our current interpretations of the code, prosecuting attorneys can file a serious charge against a juvenile in circuit court and do nothing more. It may be that there is no substantial evidence to support the charge, and a transfer may be denied.” In this particular case, the prosecutor charged Sanders, who was accused of putting a knife to the throat of a 9-year-old and threatening to kill him, with aggravated assault and terroristic threatening in the first degree. Justice Dudley highlighted that “the trial judge was apparently frustrated by a total lack of proof by the State. He even inquired whether the knife alleged to have been used was a butter knife or a butcher knife, and the State did not know.”¹²³

Justice Dudley concluded that the high court was changing its mind about reverse transfer hearings. He stated, “The type of proceeding was not envisioned by the drafts of the juvenile code, and we did not intend for our interpretations to do away with the need for a meaningful hearing. As a result, we issue a caveat that in juvenile transfer cases tried after this date, we will consider anew our interpretation of the juvenile code when the issues are fully developed and briefed.”¹²⁴

This decision to make a later decision prompted Representative Jimmy Jeffress, a school teacher and Democrat from Crossett, to introduce House Bill 1154, “AN ACT TO AMEND ARKANSAS CODE 9-27-318 TO PROVIDE THAT A DELINQUENCY PETITION OR AN INFORMATION ALONE IS SUFFICIENT PROOF THAT AN OFFENSE IS SERIOUS AND VIOLENCE WAS EMPLOYED IN ITS COMMISSION FOR PURPOSES OF DETERMINING WHETHER A JUVENILE CAN BE TRIED AS AN ADULT; AND FOR OTHER PURPOSES.”¹²⁵ The bill acknowledged that the Arkansas Supreme Court had not yet overruled *Walker* and later precedents, but cautioned that “the Court has repeatedly retreated from its holding.” Therefore, the bill stated: “It is the express intent of this act to reinstate the holding of *Walker* and make it clear that the charge filed by a prosecutor alone is sufficient to establish that an offense is serious and that the juvenile employed violence in its commission.”¹²⁶ This preventive legislation died that May in committee.

Jeffress and several colleagues also unsuccessfully attempted in 1997 to lower the age of criminal responsibility from 10 to 8, and to lower the transfer age in the juvenile code from 14 to 12.¹²⁷ The General

123. *Sanders v. State*, 423.

124. *Ibid.*

125. House Bill 1554, 1997. [ftp://www.arkleg.state.ar.us/bills/1997/HTM/HB1554.pdf](http://www.arkleg.state.ar.us/bills/1997/HTM/HB1554.pdf) (June 26, 2015).

126. *Ibid.*

127. House Bill 1556, 1997. <http://www.arkleg.state.ar.us/assembly/1997/R/Bills/HB1556.pdf> (July 1, 2015).

Assembly, however, retained the juvenile code's age structure and added only the crimes of escape from a correctional institution and attempted battery to the list of excluded offenses.¹²⁸ Arkansas later used this revised 1997 transfer law as the basis for the prosecution of Kentrull Jackson.¹²⁹

In light of state's extensive record of expanding the list of excluded offenses from 1991 to 1997, the Arkansas General Assembly clearly condoned prosecuting and imprisoning 14- and 15-year olds, and some of its members, such as Jeffress, were ready to throw away the key; however, this legislative history also needs to include the judiciary because the Arkansas Supreme Court reasserted its responsibility to interpret the state's juvenile code.

On December 11, 1997, the high court announced its decision in *Thompson v. State*, which overturned *Walker* and its progeny of cases.¹³⁰ The Pulaski County prosecutor's office had charged Djuane Thompson, who was 16, with armed robbery of a taxi driver and another person. Thompson requested a reverse transfer hearing. At the hearing, the deputy prosecutor presented only a charging document. The defense had Thompson's mother testify on her son's behalf; however, Pulaski County Circuit Judge Langston relied solely on the prosecutor's paperwork (and no additional evidence) to deny Thompson's petition to be transferred to juvenile court. Although Senior Prosecuting Attorney John Johnson stated that his staff keep up "with where the Supreme Court's going and what they're going to be requiring for these hearings," he acknowledged that his staff attorney in this case had failed to do so.¹³¹

In its 5 to 2 decision, the Supreme Court held that "from the date of this opinion forward, there must be some evidence to substantiate the serious and violent nature of the charges contained in the information. Accordingly, all prior decisions inconsistent with this opinion are hereby overruled." The court ordered that Thompson's case be transferred to juvenile court. Justice Annabelle Clinton Imber's majority opinion did not, however, determine whether the juvenile or the state bore the burden of proof in the hearing, because neither party had raised that issue. In a concurring opinion, Justice Newbern argued that the court should "not duck the issue, and we should not create a hybrid, unclear situation that we or

128. House Bill 1343, 1997. <http://www.arkleg.state.ar.us/assembly/1997/R/Acts/1229.pdf> (July 1, 2015).

129. *Miller v. Alabama*, 132 S. Ct., 2445, 2461 (2012).

130. *Thompson v. State*, 330 Ark. 746 (1997).

131. Elizabeth McFarland, "High Court Gives Ruling on Juveniles: Make a Case for Children in Adult Court, Justices Say," *Arkansas Democrat-Gazette*, December 12, 1997, B1.

the General Assembly will have to undo later.”¹³² The dissenters agreed that prosecutors should have to “offer some proof of the crime itself to meet the seriousness-and-violence criterion,” while contending that the burden of proof should remain with the juvenile. They objected to the court’s holding that Thompson’s case should be heard in juvenile court, especially as the court’s decision overturned nineteen prior cases holding that “a criminal information is sufficient to meet the seriousness-and-violence factor.”¹³³ They concluded that Thompson’s case should be remanded to the circuit court, which could then conduct another reverse transfer hearing in which the judge evaluated actual evidence.

The meaning of the Arkansas Juvenile Code in 1997 was, therefore, in flux at year’s end, and the General Assembly was not scheduled to meet again until 1999.¹³⁴ As a result, the legislative history of juvenile justice reform in Arkansas from 1989 to 1997 does not provide a clear answer to Justice Alito’s question. However, there was more history to be made before the decade and century ended.

VI. Jonesboro and Extended Jurisdiction

During the legislative interregnum, 13-year-old Mitchell Johnson and 11-year-old Andrew Golden stockpiled rifles and ammunition. On March 24, 1998, they ambushed and killed four classmates and a teacher at Westside Middle School, about two miles (3.2 km) from Jonesboro.¹³⁵ They also wounded ten other students. The “Jonesboro” school shooting, as it became known locally and nationally, was the third high profile school shooting in the United States in 6 months. How the state of Arkansas responded to this case provided a more definitive to answer to Justice Alito’s question.

In the wake of Jonesboro, Donna Gay, who had served as executive director of the Arkansas Juvenile Justice Commission in the late 1980s, stated, “Everybody is going to be looking at everything right now because it is so high profile. I mean, the whole country is looking at it.” The *Arkansas Democrat-Gazette* editorialized about Jonesboro very differently than it had about youth violence in 1994. The editorial board noted:

132. *Ibid.*, 753.

133. *Ibid.*

134. In 2008, Arkansas amended its constitution to provide for annual legislative sessions.

135. Westside School Shooting, *The Encyclopedia of Arkansas History & Culture*, 2016. <http://www.encyclopediaofarkansas.net/encyclopedia/entry-detail.aspx?entryID=3717> (June 25, 2015).

The rule in this business is that, if there is nothing to say in an editorial, then don't say it. But there comes a time to break that rule, too. We cannot think of anything to add this morning to the sick feeling, the tears, the grief that is like fear, which all of Arkansas feels now. We are so, so sorry. So mystified. We cannot even think of what to pray, except "Oh, God!" We look at the bank of televisions in the newsroom and see our own children's faces in the place of those on the screen, and are wordless. We have nothing to say and yet to Jonesboro, to the families, to the teachers, we desperately want to say ... something. Consider this a long silent hug.¹³⁶

This mournful language about seeing "our own children's faces" suggested that the children of Jonesboro, both the victims and implicitly their killers, were different from the African-American children who had been cast by so many commentators as feral "super-predators."¹³⁷

Mike Huckabee, who had become governor following Tucker's resignation after a felony conviction for fraud, announced that he was putting together a task force to rewrite the state's juvenile justice code but "stopped short of calling for lawmakers to lower the age at which children may be tried as adults." He explained, "The parent side of me says yes, I would do it in a minute. But there is the governor's side of me that has to look at this long term and ask, 'Do we want to put a 10-year-old-child in prison for life or put him to death?'" He added, "If the crime is that horrendous, maybe we have to start looking at those things. But we should never do it with a spirit of comfort. We should do it with an extraordinary sense of caution and deep thought."¹³⁸

Some commentators, such as Pennsylvania lawyer Linda Collier, used Jonesboro to rally national support for the abolition of juvenile courts' jurisdiction over all cases of serious and violent crime.¹³⁹ Attorney General Janet Reno even investigated the possibility of charging Johnson and Golden with a federal crime, so that they could be imprisoned beyond their eighteenth birthdays.¹⁴⁰ Under Arkansas's Juvenile Code, the teens could be held in a juvenile facility until they turned 18, but they would then have to be released, because Arkansas did not have a

136. "What is there to Say? The Shootings at Jonesboro," *Arkansas Democrat-Gazette*, March 25, 1998, B10.

137. For an analysis of the rise and impact of racialized media coverage of youth crime during this period, see Perry Moriearty, "Framing Justice: Media, Bias, and Legal Decisionmaking," *Maryland Law Review* 69 (2010): 850–909.

138. Michael Whitely and Rachel O'Neal, "Huckabee to Create Task Force to Revise Juvenile Justice Code," *Arkansas Democrat-Gazette*, March 26, 1998, A1.

139. Linda Collier, "Adult Crime, Adult Time; Outdated Juvenile Laws Thwart Justice," *Washington Post*, March 29, 1998, C1.

140. Jane Fullerton, "Justice Department Eyes Charging 2 Arkansas Boys," *Arkansas Democrat-Gazette*, March 27, 1998, A1.

facility to incarcerate juvenile offenders between the ages of 18 and 21.¹⁴¹ Others, such as Paul Kelly, a senior program coordinator for AACF, worried because the people in Arkansas were talking about “frying” the Jonesboro shooters, “and anyone else like them.”¹⁴² Representative Jeffress, who had unsuccessfully sought to lower the state’s age of criminal responsibility, now proposed giving prosecuting attorneys the power to charge any juvenile as an adult “no matter the age.”¹⁴³

Arkansas’s legislative response to the Jonesboro shooting surprised many. Governor Huckabee, who was running for re-election that fall, did not call for a special legislative session. He did, however, publish a book on June 1, 1998, titled *Kids That Kill*, which used both the “super-predator” thesis and the Jonesboro school shooting to frame his analysis of the nation’s so-called spiritual crisis.¹⁴⁴

Several legislative committees held a joint meeting to seek advice from state experts about what the legislature should do about juvenile justice reform during its next regular session in 1999. The consensus of these experts was to avoid over-reacting. In her testimony, Ami Rossi, the Director of AACF, emphasized that violent juvenile crime had been decreasing since 1993. She and other witnesses stressed that Jonesboro was an aberration. Larry Norris, director of the state’s Department of Corrections, told the legislators that his agency did not want to incarcerate children with adults because it endangered the children. “We are not your solution,” he testified.¹⁴⁵ Representative James Luker, a Democrat from Wynne, observed, “It’s probably good that we have so long before the next session. If this had happened 30 days before a session, there’s no telling what we would have seen.”¹⁴⁶

Huckabee, unlike Tucker, did not ask law enforcement officials to propose legislative solutions to the problem of youth violence. Instead, he appointed a task force—known as the Governor’s Working Group

141. Kenneth Heard, “Governor Pitches Changing Laws, Campaigning in Jonesboro, He Vows Rules on Releasing Youth Offenders,” *Arkansas Democrat-Gazette*, April 29, 1998, B3.

142. David Firestone, “Arkansas Tempers a Law on Violence by Children: A Moderate Response to Schoolyard Killings,” *New York Times*, April 11, 1999, 20.

143. Noel Oman, “Nation to Train Its Eyes on State’s Juvenile Justice System,” *Arkansas Democrat-Gazette*, March 26, 1998, A14.

144. Mike Huckabee, *Kids That Kill* (Nashville, TN: Broadman & Holman, 1998). When Huckabee later ran for president in 2008, his critics questioned the appropriateness of a state governor profiting from a local tragedy. See, for example, Richard A. Serrano, “Huckabee Book Deal After School Tragedy Still Rankles,” *Los Angeles Times*, January 26, 2008. <http://articles.latimes.com/2008/jan/26/nation/na-huckabee26>. (July 2, 2015).

145. Ray Pierce, “Go Slow on Juvenile Justice Legislation, Experts Tell Panel,” *Arkansas Democrat-Gazette*, April 2, 1998, B3.

146. *Ibid.*

on Juvenile Justice—which was similar in its composition and in its approach to the commission that Clinton had appointed in 1987.¹⁴⁷ Like that earlier commission, this working group consulted with national experts in the field of juvenile justice such as Laurence Steinberg, a specialist in adolescent psychology and the director of the newly established MacArthur Foundation's Research Network on Adolescent Development and Juvenile Justice. Steinberg echoed the sentiments of local experts who cautioned against over-reacting to what had happened in Jonesboro. He explained, "Making huge changes in our laws in response to a small number of extensively publicized incidents is letting a very small tail wag a very large dog. Outrage is an understandable emotion, but it is not a good backdrop against which to make sensible public policy."¹⁴⁸ Steinberg cautioned against lowering the age at which a child could be prosecuted as an adult and also against putting children into adult prisons. Both legal responses to youth crime, he cautioned, would make matters worse in the long run. Instead, he recommended extending the jurisdiction of the juvenile court over such children until they turned 25.

Law enforcement officials did serve on and testify before the task force, but this time they were only one of many groups in the process. Pine Bluff Prosecuting Attorney Betty Dickey, the first woman to be elected a prosecutor in Arkansas, who was running for attorney general, testified that prosecutors required more discretion to charge children who were younger than 14 years old as adults.¹⁴⁹ Ouachita County Sheriff Ben Garner, who served on the task force, similarly provided his colleagues with the results of a survey of sheriffs that asked "what age a child should be required to stand trial in adult court." Garner reported that sheriffs' responses varied "from the age of 8 to 12." He also supported giving law enforcement access to juvenile records, so they could start tracking certain youth sooner.¹⁵⁰ For Arkansas' juvenile court judges extended sentencing could serve as their pathway to securing judicial waiver.

147. The working group included two juvenile court judges, one juvenile probation officer, one prosecuting attorney, one sheriff, and one police chief. Other members included representatives from the fields of counseling, education, law, social services, and medicine. Rachel O'Neal, "25 Chose to Review State Laws on Juveniles," *Arkansas Democrat-Gazette*, March 27, 1998, A10.

148. Rachel O'Neal, "Extending Adult Penalties to Young Criminals Bad Idea, Experts Tell Panel," *Arkansas Democrat-Gazette*, August 20, 1998, B1.

149. Ray Pierce, "Code Needs Teeth to Hold Juveniles Accountable, Dickey Says," *Arkansas Democrat-Gazette*, May 21, 1998, B5.

150. Linda Satter, "Making the Time Fit the Crime," *Arkansas Democrat-Gazette*, June 29, 1998, A1.

This time the state's juvenile court judges played a more prominent role in the process. They supported a "blended" or "extended jurisdiction" that would allow them to retain jurisdiction over juveniles' past their eighteenth birthdays. This approach had become popular in the mid-1990s because it appealed to children's advocates as well as prosecutorial interests. For children's advocates, blended sentencing promised to provide more due process protections for juveniles in juvenile court and to postpone fateful sentencing decisions until adolescents became adults. For prosecutors, blended sentencing schemes promised to expand their power within the juvenile court and to prosecute younger children as adults.¹⁵¹

Slightly a year after the Jonesboro school shooting, the Arkansas General Assembly passed and Governor Huckabee signed "the Extended Juvenile Jurisdiction Act."¹⁵² Reporting on the adoption of the state's "Extended Juvenile Jurisdiction Act," the *New York Times* announced that "Arkansas Tempers a Law on Violence by Children: A Moderate Response to Schoolyard Killings."¹⁵³ The article summarized the effects of the law as lifting a barrier to prosecuting children young than 14 years old as adults, while simultaneously imposing a major burden on prosecuting attorneys. The *Times* quoted Didi Sallings, Executive Director of the Arkansas Public Defender Commission, whom the State Senate had commissioned to write the psychological sections of the act. She stated, "They've really put some good protections in there for younger children. It will be a rare kid who can pass the competency test and be tried as an adult, which is just the way I intended it." Brent Davis, who had prosecuted the Jonesboro case in juvenile court, criticized the new law. "I pity the prosecutor who has to try and figure out this law," he stated. He added, "It started out as a good effort, but then they let all these people from the criminal defense bar work on it to make it a consensus bill, and they loaded it up with all this psychobabble. There's no real likelihood this law could be used."¹⁵⁴

A broad coalition of interest groups had drafted the Extended Jurisdiction Act; however, the law still placed enormous discretionary power in the hands of prosecuting attorneys. Although it would be difficult to prosecute a child younger than 13 years old for capital murder or murder

151. For a contemporary assessment of the scholarly debate over the costs and benefits of blended sentencing, see *The Changing Borders of Juvenile Justice*, 45–82, 145–80, 407–23.

152. Act 1192 of 1999. <http://www.arkleg.state.ar.us/assembly/1999/R/Acts/Act1192.pdf> (July 2, 2015).

153. David Firestone, "Arkansas Tempers a Law on Violence by Children," *New York Times*, April 11, 1999. <http://www.nytimes.com/1999/04/11/us/arkansas-tempers-a-law-on-violence-by-children.html?pagewanted=all> (January 6, 2016).

154. *Ibid.*

in the first degree because the state had to “overcome presumptions of lack of fitness to proceed and lack of capacity,” the presumption shifted from the state to the juvenile, if the juvenile was 13 years old at the time of the alleged offense. Prosecuting attorneys could also now request extended jurisdiction in all cases involving 14- and 15-year-olds who committed an “excluded offense.” Once a juvenile was serving an extended sentence, the state could petition the juvenile court at any time to impose an adult sentence.

An extended sentence, in effect, postponed the final verdict in a juvenile’s case. Six months prior to the juvenile’s eighteenth birthday, if no earlier hearings had been held to modify the initial juvenile sentence, the juvenile court would hold a hearing to determine “whether to release the juvenile, amend or add any juvenile disposition, or impose an adult sentence.” The adult sentence could be for up to 40 years in prison, but could include “any term up to and including life” for “juveniles adjudicated for capital murder and murder in the first degree.” The length of such sentences, critics contend, undermines the core mission of the entire juvenile justice system.

The Extended Jurisdiction Act also did not eliminate the Juvenile Code’s transfer provisions for 14- and 15-year-olds. Instead, the new law substituted judicial waiver hearings in juvenile court in place of reverse transfer hearings in circuit court. The procedural change promised to provide a more meaningful hearing, because the judge had to “make written findings” and consider *all* of the factors listed in the new law. The law still required that the judge apply a “clear and convincing” standard. Arkansas had finally granted juvenile court judges the authority to make transfer decisions. However, as subsequent empirical research has demonstrated, extended or blending sentencing schemes had “net-widening” effects that led to more juveniles being sentenced and incarcerated as adults.¹⁵⁵ Therefore, the Arkansas Extended Jurisdiction Act may simply have been another chapter in a larger cautionary tale about the unintended consequences of juvenile justice reform during the 1990s.

VII. Conclusion

Arkansas’ history of juvenile justice reform is especially interesting because Hillary Rodham and Bill Clinton, who helped to build the state’s

155. Marcy R. Podkopacz and Barry C. Feld, “The Back-Door to Prison: Waiver Reform, Blended Sentencing, and the Law of Unintended Consequences,” *Journal of Criminal Law & Criminology* 91 (2000–2001): 997–1072.

new system of juvenile justice at the end of the 1980s, became dominant historical actors on the national and international stage in the 1990s.¹⁵⁶ Although it is tempting to follow the Clintons to the White House and write the history of juvenile justice reform in the 1990s as a beltway story, scholars instead should strongly consider studying the interstate diffusion of transfer laws because state and local actors make the critical decisions about how these systems operate.¹⁵⁷ Digital tools may help historians to piece together this complicated history.

As this article has demonstrated, historians can create digital archives of legislation and then use the power of digital tools to interrogate them from many starting points, searching for promising spots to dig deeper. Digging deeper, zeroing in on a single state set in broader context then changed our working environment, challenging us to adjust and encouraging us to rethink the suitability of our tools and create new ones for this different sort of work. For future digital legal history topics, we expect this dance to continue: our digital tools and sources point us to fresh ground, which we need new tools to fully plow, and which tools in turn we place in our expanding tool kit for possible use on the next fresh topic. This process of digital discovery and refinement has gotten us closer to answering questions about the spread of legislation from state to state, for example, and has helped us think about the evolution of court precedent.

We plan to employ ever-more-sophisticated digital tools and increasingly comprehensive data sets to discover and analyze historical phenomena currently just out of reach. Digital legal history—the combination of digital computing with careful qualitative analysis and interpretation—is rapidly advancing, drawing models and ideas not only from digital history and the digital humanities, but also from computational legal studies and the important role played within the legal profession by digitized documents in legal education and practice. For example, it may be possible to use digital computing techniques to isolate substantive changes in juvenile laws that fundamentally affected the administration of justice systems from the thousands of largely symbolic legislative tweaks that did not.¹⁵⁸ Perhaps digital tools could also make it possible to undercover the role that national organizations and associations play in the drafting of local

156. For an overview of President Clinton's efforts to use federal legislation to crack down on youth crime, see Nellis, *A Return to Justice*, 52–53.

157. Zimring and Tanenhaus, *Choosing the Future*, 216–33.

158. Researchers, for example, have used regression analysis to isolate specific changes in the state laws, which have affected juvenile incarceration rates: National Juvenile Justice Network, "The Comeback States: Reducing Youth Incarceration in the United States", 2016. <http://www.njjn.org/our-work/the-comeback-states-reducing-youth-incarceration-in-the-united-states> (January 6, 2016).

and state laws by drafting and promoting model language in multiple jurisdictions.¹⁵⁹ They might even help to explain what happened at the state level after the moral panic of the mid-1990s subsided and before the United States Supreme Court's newfound interest in American juvenile justice developed.

Our next steps for our ongoing digital legal history project will consist, we suspect, of three interrelated efforts: to improve the resolution of our sources, to search for connections and similarities, and to analyze legal language from a distance. Improving our sources means expanding the breadth of our data, by digitizing or downloading more of it, improving the accuracy of results through correcting text recognition errors, and, perhaps most importantly, dividing our data into increasingly meaningful sub-documents.¹⁶⁰ Our search for connections and similarities will include broadening our application of methods that we have already used, such as Jaccard, Sørensen, and cosine similarity measures, as well as finding other techniques pioneered by scholars in information retrieval and other fields. We also plan to further explore similarities based on particular significant elements of laws that we might be able to extract using natural language-processing techniques, such as ages for punishment, sentencing guidelines, distinctive court structures, and particular offenses. Finally, we will increase our efforts to analyze legal language computationally, using techniques derived from and inspired by "distant reading" in the digital humanities, but with special recognition of the opportunities and challenges posed by the repetition and specific vocabulary found in laws and other legal documents. One such example is our ranking of laws based on where their language falls on a spectrum of rehabilitation to punishment, but others might include attention paid to incremental versus sweeping change, or the creation and evolving missions of administrative divisions.

Fulfilling even a portion of the promise of digital legal history, however, will be a challenge, for our project as well as for the field more broadly. Even if better digital tools are invented or further adapted to the purposes and methods of historians, digital legal historians must attempt to understand these tools, in their often-opaque computational complexity. This might be accomplished through curricular innovations at the graduate school level, one-time or ongoing partnerships between legal historians

159. See, for example, the Big Data for Social Good project, 2015. <http://dssg.uchicago.edu/lid/> (January 6, 2016).

160. For example, creating individual bills as units of analysis, instead of the multipage chunks of text we used here, will require tedious tuning of the splitting algorithm to account for a wide range of printing styles found in session laws; however, if this is done, it will permit us to speak meaningfully about the number of relevant bills passed in any given year.

and technologists, training aimed at practicing legal historians, or a combination of all three.¹⁶¹ Acquiring the technological competency needed to execute and analyze digital legal history is a necessary first step.

A second challenge is even more serious: the ability to obtain open data sets of source material, of sufficient size and coverage, to enable broad-based analysis using computational methods. Much valuable work might be possible using already developed digital tools, if only appropriate data were available in digital form in bulk. The sort of digital access appropriate for a traditional user, including limitations posed by the quantity of material available, the size and format of permitted downloads, the ease of machine interaction with the download interface, and the cost of licensing, can be a stumbling block for legal historians who want to conduct additional computational analysis. Here is a small but telling example: in writing this piece, after relying on the Arkansas newspapers in constructing the narrative at the heart of this essay, we attempted to download the newspaper articles systematically from a subscription-based library database, by hand, to analyze their text computationally. We were stymied after downloading only 18 months' worth, however, by automatically triggered access blocks. Some crucial efforts have already been made to make bulk data freely available to researchers and the public, such as Carl Malamud's public.resource.org non-profit, and the recently announced partnership of Harvard Law School Library and Ravel Law, appropriately termed "Free the Law."¹⁶² Digital legal historians focused on the last two decades or thereabouts can also take advantage of born-digital source repositories, such as the venerable thomas.loc.gov site (making Congressional documents available since 1995), although in many cases it is necessary to "scrape" such sites with external tools before data can be used in bulk.¹⁶³ But even with these important efforts

161. The peer-reviewed tutorials at *The Programming Historian* site are an exemplary example of training produced by technologically minded historians for their non-technical peers. <http://programminghistorian.org> (January 21, 2016).

162. "About Public.Resource.Org," 2016. <https://public.resource.org/about> (January 21, 2016); Erik Eckholm, "Harvard Law Library Readies Trove of Decisions for Digital Age," *New York Times*, October 29, 2015, A15; "Harvard Law School launches 'Free the Law' Project with Ravel Law to Digitize US Case Law, Provide Free Access," *Harvard Law Today*, October 29, 2015. <http://today.law.harvard.edu/harvard-law-school-launches-free-the-law-project-with-ravel-law-to-digitize-us-case-law-provide-free-access/> (January 21, 2016).

163. <http://thomas.loc.gov> (January 21, 2016), which has now been superseded by <http://congress.gov>. On scraping federal sites such as thomas.loc.gov, see Eric Mill, "A Modern Approach to Open Data," August 20, 2013. <http://sunlightfoundation.com/blog/2013/08/20/a-modern-approach-to-open-data/> (January 21, 2016). Note, however, that although some similar state level efforts exist, they can be more sporadic and uneven with regard to availability and coverage.

beginning to bear fruit, much important and useful data remain inaccessible from a bulk-computational point of view.

This article has highlighted our use of digital computing primarily as a discovery tool. It helped us get to Arkansas to partially answer the question about legislative understanding that Justice Alito posed to Bryan Stevenson. The promise of digital legal history extends far beyond the borders of a single state and the field of juvenile justice. For example, scholars will ultimately be able to use our database and digital tools to analyze any type of legislation enacted by states during the 1990s. Our explorations in Arkansas convinced us that legal historians should assemble more large datasets and develop more digital tools to ask big questions that computational analysis can help them to answer.