

AFFIDAVIT OF FRANKLIN E. ZIMRING

1. My name is Franklin E. Zimring. This affidavit is made of my own personal knowledge. If called to testify, I would be competent to do so and would testify to the facts, conclusions and opinions set forth herein.

Professional Background

2. I am currently the William G. Simon Professor of Law and the Wolfen Distinguished Scholar at the Institute for Legal Research at Boalt Hall School of Law, University of California, Berkeley. Prior to this position, I served as Director of the Earl Warren Legal Institute, University of California, Berkeley (1983-2002). Before joining the faculty at Berkeley, I was a member of the faculty of law at the University of Chicago, between 1967 and 1985. During this time I also served as the Karl N. Llewellyn Professor of Jurisprudence (1982-85) and the Director of the Center for Studies in Criminal Justice (1975-85). Further, I was a Member of the MacArthur Foundation Research Program on Adolescent Development and Juvenile Justice (1997-2007) and a Fellow at the Center for Advanced Studies in the Behavioral Sciences, Stanford, California (1979-80).

3. I have a J.D. from the University of Chicago (1967). My major fields of interest are criminal justice and family law, with special emphasis on the use of empirical research to inform legal policy. I have also conducted several studies of the determinants of the death rate from violent attacks; the impact of pretrial diversion from the criminal justice system; and criminal sanctions.

4. I am the author of numerous books, articles, and reports to governmental agencies, many of which are directly relevant to the issue of recidivism among juvenile sex offenders, and the extent to which registration requirements effectively limit the risk of recidivist behavior. A list of my publications is contained in my curriculum vitae, a copy of which is attached to this affidavit. Among my publications most relevant to this case are the following:

BOOKS

- A. Criminal Law and the Regulation of Vice, American Casebook Series, St. Paul: Thompson/West Publishers (2007) (with Bernard E. Harcourt).
- B. The Great American Crime Decline, New York: Oxford University Press (2006).
- C. American Juvenile Justice, New York: Oxford University Press (2005).
- D. An American Tragedy: Legal Responses to Adolescent Sexual Offending, Chicago: University of Chicago Press (2004).
- E. A Century of Juvenile Justice, Chicago: University of Chicago Press (2002) (with Margaret Rosenheim, David Tanenhaus, and Bernardine Dohrn, eds.).
- F. American Youth Violence, New York: Oxford University Press (1998); paperback edition (2000).
- G. The Changing Legal World of Adolescence, New York: The Free Press (1982); paperback edition (1985).
- H. The Criminal Justice System: Materials on the Administration and Reform of the Criminal Law, Boston: Little, Brown and Company (1980) (with Richard Frase).

ARTICLES

- A. Public Sentiment, Political Action, and Governmental Crime Policy—On the Origins and Significance of Mixed Feelings, *Criminology and Public Policy* 7:467 (August 2008).
- B. Sexual Delinquency in Racine: Does Early Sex Offending Predict Later Sex Offending in Youth and Young Adulthood? *Criminology and Public Policy* 6:507 (August 2007) (with Alex Piquero and Wesley Jennings).
- C. Penal Proportionality and the Young Offender: Notes on Immaturity, Capacity, and Diminished Responsibility, in Thomas Grisso and Robert G. Schwartz, eds., *Youth on Trial*, Chicago: University of Chicago Press (2000).
- D. The 1990s Assault on Juvenile Justice: Notes from an Ideological Battleground, *Federal Sentencing Reporter* 11:260 (1999).

REPORTS TO GOVERNMENTAL AGENCIES

- A. One More Chance: The Pursuit of Promising Intervention Strategies for Chronic Juvenile Offenders, Rand Corporation (1985) (with Peter W. Greenwood).
- B. The Transition From Juvenile to Adult Court, Rand Corporation (1984) (with Peter W. Greenwood and Marvin Lavin).

Research and Findings

5. Based on my own research and my familiarity with the research of others, if called to testify, I would swear to the truth of the following:

Introduction

6. Recent research reveals that juvenile sex offenders have low rates of sexual reoffending as juveniles and adults and are not specialized in sexual offenses in their later careers. Multiple research studies indicate that juveniles with sexually-based police contacts have a low instance of sexual recidivism during childhood and an even lower likelihood of continuing their sexual offending behavior into adulthood.¹ The consistent findings of these studies support the view that juvenile sex offenders, like other delinquents, present no pronounced tendencies for sexual specialization as adults.

¹ Waite, D., Keller, A., McGarvey, E.L., Wieckowski, E., Pinkerton, R., & Brown, G.L., "Juvenile sex offender re-arrest rates for sexual, violent non-sexual, and property crimes: A ten-year follow-up," *Sexual Abuse: A Journal of Research and Treatment*, 17, 313-331 (2005); Vandiver, D. M., "A prospective analysis of juvenile male sex offenders: Characteristics and recidivism rates as adults," *Journal of Interpersonal Violence*, 21, 673-688 (2006); Meloy, M. L., "The sex offender next door: An analysis of recidivism, risk factors, and deterrence of sex offenders on probation," *Criminal Justice Policy Review*, 16, 211-236 (2005); Miethe, T. D., Olson, J., & Mitchell, O., "Specialization and persistence in the arrest histories of sex offenders: A comparative analysis of alternative measures and offense types," *Journal of Research in Crime and Delinquency*, 43, 204-229 (2006); Zimring, F. E., Piquero, A. R., & Jennings, W. G., "Sexual delinquency in Racine: Does early sex offending predict later sex offending in youth and young adulthood," *Criminology and Public Policy*, 6, 507-534 (2007).

7. Given these findings, applying potentially damaging registration requirements is, at best, a highly suspect approach to the goal of reducing recidivism among individuals who have committed sex offenses as juveniles. The damaging collateral consequences of registering as a sex offender include social stigmatization, loss of jobs, homes and interpersonal relationships, and harassment. Recent research indicates that some of these adverse outcomes may affect a former offender's ability to rehabilitate and reintegrate into society.²

Research Studies of Juvenile Sex Offender Continuity

8. Over the last three years, I have supervised two studies of large, community-based samples of male and female birth cohorts to examine the issue of juvenile sex offender continuity. The results of both studies indicate that juvenile sex offenders pose little risk of recidivism in adulthood.

9. In 2007, my colleagues and I examined patterns of juvenile-to-adult sex offending and its implications for current sex offender public policy. We studied data from three birth cohorts from Racine, Wisconsin, of youth born in 1942, 1949, and 1955. The population consisted of more than 6,000 boys and girls. The data considered included the frequency of juvenile sex offense police contacts as well as the date, location, and contact number. Juvenile and adult police contact information came from the files of the Records Division of the Racine Police Department and Juvenile Bureau.

10. Based on the data collected, we found that there was little correlation between having committed a sex offense as a juvenile and having committed a sex offense as an adult. Only 8.5% of males with juvenile sex offense police contact had adult sex offense police contact.³ In comparison, 6.2% of males with juvenile non-sex offense police contact had adult sex offense police contact. Because juvenile sex offenders were not significantly more likely than juvenile non-sex offenders to commit an adult sex offense, juvenile sex offending did not predict adult sex offending.⁴

11. In 2008, my colleagues and I examined data from the 1958 Second Philadelphia Birth Cohort in order to examine patterns of juvenile-to-adult sex offending. The 1958 Second Philadelphia Birth Cohort contained data on 13,160 males and 14,000 females from birth through age 26. Criminal backgrounds and investigation reports were provided by the Juvenile Division of

² Tewksbury, R., "Experiences and attitudes of female sex offenders," *Federal Probation*, 68, 30-33 (2004); Tewksbury, R., "Collateral consequences of sex offender registration," *Journal of Contemporary Criminal Justice*, 21, 67-81 (2005); Tewksbury, R., & Lees, M., "Perceptions of sex offender registration: Collateral consequences and community experiences," *Sociological Spectrum*, 26, 309-334 (2006); Mustaine, E., Tewksbury, R., & Stengel, K., "Residential location and mobility of registered sex offenders," *Deviant Behavior*, 27, 177-192 (2006).

³ Zimring, F.E., Piquero, A.R., & Jennings, W.G., "Sexual Delinquency in Racine: Does Early Sex Offending Predict Later Sex Offending in Youth and Young Adulthood?," *Criminology and Public Policy*, 6, 507-534 (2007).

⁴ *Id.*

the Philadelphia Police Department and the adult information was provided by the Philadelphia Police Department.

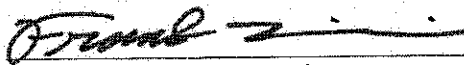
12. As in our Racine study, the Philadelphia study revealed a very low association between juvenile sex offending and adult sex offending. Of this group of 27,160 people, 204 males and 17 females had police contacts for sex offenses during the years prior to age 18. Of these 221 individuals, only one in ten of the male juvenile sex offenders and none of the female juvenile sex offenders had a sex-related offense during the first eight years of adulthood. The results from a series of multinomial logistic regression models demonstrate that neither having committed a sex offense as a juvenile nor the frequency of juvenile sex offending significantly increased the likelihood that an individual would commit a sex offense as an adult. The results further indicated that a history of juvenile sex offending contributed virtually nothing to predicting membership in any adult offender group, particularly in the adult sex offender group.

13. The results of this study further revealed that juvenile sex offender registration requirements fail to provide law enforcement with a predictive tool or with a group of potential suspects for adult sex offenses. If all of the juveniles in this study who committed sex offenses were required to register, more than 92% of actual adult sex offenders in the cohort would not have been on the registry. The results of the study showed that a prediction made about adult sex offense recidivism risk would be wrong about 98% of the time.

Summary

14. Based upon my knowledge and experience as a professor, researcher, and author, it is my opinion that the empirical research to date supports the conclusion that juvenile sex offenders are not significantly more likely than juvenile non-sex offenders to commit sex offenses as adults and, in fact, juvenile sex offenders pose little to no risk of sexual recidivism in adulthood. Given the growing evidence supporting the lack of continuity of juvenile sex offending into adulthood, juvenile sex offenders should not be unduly stigmatized by being required to register as sex offenders. Registry data is not likely to inform the public and law enforcement about who is actually likely to commit a sex offense as an adult. Juveniles who are required to register as sex offenders are subjected to stigma and harm, despite the fact that predictions about the risk of adult sex offending based on juvenile sex offending may be wrong about 98% of the time.

Further Affiant sayeth not.



Franklin E. Zimring

VERIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, 735 ILCS 5/1-109, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters stated therein to be on information and belief, and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.


Franklin E. Zimring

Dated: February 19, 2009