SJC-09805
IN THE SUPREME JUDICIAL COURT OF MASSACHUSETTS

COMMONWEALTH,
Respondent

v.

GUTHRIE G., A JUVENILE
Appellant

ON FURTHER APPELLATE REVIEW FROM THE APPEALS COURT OF THE COMMONWEALTH OF MASSACHUSETTS

Brief of the Juvenile Law Center, Children and Family Justice Center, Center for Children's Law and Policy, Children's Law Center of Massachusetts, Children's Law Center of Minnesota, Juvenile Justice Project of Louisiana, Juvenile Rights Advocacy Project, National Center for Youth Law, New England Juvenile Defender Center, Inc., Northeast Regional Juvenile Defender Center, Office of the Juvenile Defender, Pacific Juvenile Defender Center, San Francisco Public Defender's Office, Southern Juvenile Defender Center, and Professor Barry Feld as *AMICI CURIAE* In Support of Appellant Guthrie G.

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INTEREST OF THE *AMICI*[1]

The organizations and individuals submitting this brief work with and on behalf of adolescents in a variety of settings. Some provide direct representation to minors who become involved in the juvenile justice and child welfare systems. Some work to create laws and policies that promote the fair treatment and well-being of youth in these systems. Others are psychologists, psychiatrists, and law professors with expertise in adolescent development and its relevance to the law. They join in this brief to assert that given what we now know about adolescent development and decision-making, the Commonwealth in this case did not sustain its heavy burden of proving that that Guthrie voluntarily consented to the search of his home, which revealed a gun, or that he voluntary and knowingly waived his right to remain silent prior to giving statements at the police station

[1] *Amici* file this brief conditionally and accompanied by a motion pursuant to Mass. R. App. Proc. 17 respectfully requesting leave of this court to file the brief.

IDENTITY OF THE *AMICI*[2]

Juvenile Law Center; Children and Family Justice Center; Center for Children's Law and Policy; Children's Law Center of Massachusetts; Children's Law Center of Minnesota; Juvenile Justice Project of Louisiana; Juvenile Rights Advocacy Project; National Center for Youth Law; New England Juvenile Defender Center, Inc.; Northeast Regional Juvenile Defender Center; Office of the Juvenile Defender; Pacific Juvenile Defender Center; San Francisco Public Defender's Office; Southern Juvenile Defender Center; and Professor Barry Feld.

[2] A brief description of each of the organizations and individuals listed herein appears at Appendix A.

STATEMENT OF ISSUES PRESENTED

Amici adopt the statement of issues presented as articulated in the main brief of Appellant, Guthrie G.[3]

STATEMENT OF FACTS

Amici adopt the statement of the case as articulated in the brief of Guthrie G.

[3] Guthrie G. is a pseudonym that was assigned to the Appellant by the Appeals Court.

SUMMARY OF ARGUMENT

The trial court in the instant case correctly ruled that the Commonwealth did not sustain its heavy burden of proving that Guthrie voluntarily consented to the search of his home or that he voluntary and knowingly waived his right to remain silent prior to giving statements at the police station. The trial court's ruling is consistent with a long line of United States Supreme Court cases that recognizes the developmental differences between minors and adults in articulating and defining the scope of their constitutional rights. *See* Part I, *infra*. In the Fifth Amendment context, this Court's requirement that special precautions and procedures adhere when minors are interrogated is based squarely on its findings that minors are generally less mature, more submissive in the face of police authority, and lack critical knowledge and experience, as compared to adults. Under the Fourth Amendment, minors' rights have been diminished as this Court has pronounced that minors are "always in some form of custody"and they lack the right to come and go at will.

Indeed, this honorable court has also cited to the distinct developmental status of youth in defining their rights in situations of

search, seizure and interrogation. This honorable court, recognizing that they are less mature than adults and generally lack the capacity to appreciate the consequences of their actions, has enacted safeguards to protect youth from the possible outcomes of their immaturity and cautions that judges must take extra care when assessing whether a youth voluntarily consented to a search, or whether a youth made a voluntary, knowing and intelligent waiver of his right to remain. *See* Part II, *infra.* The trial court's ruling in the instant case fits squarely within this jurisprudential framework.

Social science and biomedical research on adolescent development confirms the developmental and social differences upon which these longstanding legal distinctions are made. This scholarship tells us that a number of "psychosocial factors" impact adolescent perceptions, judgment and decision-making and limit their capacity for autonomous choice. These psychosocial factors include present-oriented thinking, egocentrism, less experience and greater vulnerability to stress and fear than adults, and greater conformity to authority figures. More recent research into the structure and function of the adolescent brain further supports these findings. Together, the

psychological and neurological research support the trial court's ruling in this case.

I. UNITED STATES SUPREME COURT JURISPRUDENCE CONSISTENTLY TAKES ACCOUNT OF THE DEVELOPMENTAL DIFFERENCES BETWEEN MINORS AND ADULTS IN DETERMINING MINORS' CONSTITUTIONAL RIGHTS

That minors are "different" is a principle that permeates our law. As Justice Frankfurter so aptly articulated, "[C]hildren have a very special place in life which law should reflect. Legal theories and their phrasing in other cases readily lead to fallacious reasoning if uncritically transferred to determination of a state's duty towards children." *May v. Anderson*, 345 U.S. 528, 536 (1953) (Frankfurter, J., concurring). Accordingly, the United States Supreme Court has consistently considered the developmental and social differences of youth in measuring the scope and breadth of minors' constitutional rights for the last sixty years, as most recently demonstrated in the Court's decision in *Roper v. Simmons*, 543 U.S. 551 (2005). The trial court's ruling in the instant case – that the Commonwealth did not fulfill its burdens of proving that Guthrie voluntarily consented to the search of his home, which revealed a gun, or that he voluntary and knowingly waived his right to remain silent prior to giving statements at the police station – falls squarely within this jurisprudential

framework.

For example, the United States Supreme Court has demarcated a legal distinction between minors and adults for the purpose of determining the voluntariness of juvenile confessions during custodial interrogation. Thus, the Court has recognized that minors are generally less mature than adults and, therefore, are more vulnerable to coercive interrogation tactics. As the Court first recognized in *Haley v. Ohio*, 332 U.S. 596 (1948), in suppressing the statement of a fifteen-year old defendant taken outside of the presence of his parents, a teenager

> cannot be judged by the more exacting standards of maturity. *That which would leave a man cold and unimpressed can overawe and overwhelm a lad*… [W]e cannot believe that a lad of tender years is a match for the police in such a contest. He needs counsel and support if he is not to become the victim first of fear, then of panic. He needs someone on whom to lean lest the overpowering presence of the law, as he knows it, may not crush him.

Haley at 599-600 (emphasis added).

The Court also has noted that minors generally lack critical knowledge and experience, and have a lesser capacity to understand, much less exercise, their rights when they are "made accessible only

to the police." *Gallegos v. Colorado*, 370 U.S. 49, 54 (1962) (finding statement taken from a 14 year-old boy outside of his parent's presence to be involuntary.) And in *In re Gault,* 387 U. S. 1, 55 (1967), where the Court extended many key constitutional rights to minors subject to delinquency proceedings in juvenile court, the Court reiterated its earlier concerns about youth's special vulnerability: "The greatest care must be taken to assure that [a minor's] confession was voluntary, in the sense that it was not coerced or suggested, but also that it was not the product of ignorance of rights or of adolescent fantasy, fright or despair."

In the Court's *per curiam* decision in *Kaupp v. Texas*, 538 U.S. 626, where it held a 17-year-old's confession must be suppressed following an illegal arrest (absent undisclosed intervening evidence in the record) under the Fourth and Fourteenth Amendments, this Court applied earlier precedents in considering the defendant's status as a 17-year-old in its analysis:

> A *17-year-old boy* was awakened in his bedroom at three in the morning by at least three police officers, one of whom stated "we need to go and talk." .... [The boy's] 'Okay' in response to Pinkins's statement is no showing of consent under the circumstances. *Pinkins offered [the*

> *boy] no choice, and a group of police officers rousing an adolescent out of bed in the middle of the night with the words 'we need to go and talk' presents no option but 'to go.'* There is no reason to think [the boy's] answer was anything more than 'a mere submission to a claim of lawful authority.'

538 U.S. at 631 (emphasis added)(citations omitted).[4]

The Court's holdings in the above-cited cases that minors, in comparison with adults, are generally less mature, more submissive in the face of police authority, and lack critical knowledge and experience, presage the trial court's conclusion in the instant case that the prosecution did not sustain its burden of showing that Guthrie voluntary consented to the search of his home or that Guthrie made a voluntary and knowing waiver of his right to remain silent once at the police station.

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[4] *Yarborough v. Alvarado*, 124 S.Ct. 2140 (2004) is not to the contrary. There, the Court held only that youth was not a vital consideration when determining whether an individual is in custody for purposes of triggering *Miranda* warnings prior to interrogation. But *Alvarado* did not disturb this Court's prior precedents that youth is an important factor in assessing the voluntariness of a confession under the due process clause. Moreover, *Alvarado* reached the Court by way of a habeas petition; and pursuant to the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), the Court, therefore, only analyzed whether the state court's interpretation of the law in *Alvarado* was reasonable, not whether it was correct. 124 S.Ct. at 2149.

The Court's more protective stance toward youth in confession cases parallels its stance with respect to other juvenile justice issues. For example, the Court has emphasized the juvenile court's core principles of individualized rehabilitation and treatment, noting that youth, because they are still malleable and in development, are more amenable to such rehabilitative interventions than adults. *See McKeiver v Pennsylvania*, 403 U.S. 528, 539-40 (1971); *Gault*, 387 U.S. at 15-16. [5]

Elsewhere in criminal procedure, the Court's recognition of the differences between youth and adults has led it to uphold practices directed at youth that it would not countenance if directed at adults. For instance, the Court has repeatedly held that the Fourth

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[5] *See also* Barry C. Feld, BAD KIDS: RACE AND THE TRANSFORMATION OF THE JUVENILE COURT 92 (1999) (noting that the malleability of youth is central to the rehabilitative model of the juvenile court). The Court's premises with respect to malleability finds ample support in the developmental literature. *See* Laurence Steinberg & Robert G. Schwartz, *Developmental Psychology Goes to Court* in YOUTH ON TRIAL: A DEVELOPMENTAL PERSPECTIVE ON JUVENILE JUSTICE 9, 23 (Thomas Grisso and Robert Schwartz eds., 2000) (noting that adolescence is a period of "tremendous malleability" and "tremendous plasticity in response to features of the environment.") [hereinafter Steinberg and Schwartz, Developmental Psychology] .

Amendment strictures may be relaxed when dealing with youth in public schools because youth as a class are in need of adult guidance and control. Accordingly, the Court has upheld the constitutionality of warrantless searches by school officials of students' belongings upon reasonable suspicion that a student has violated school rules or the law, *New Jersey v.T.L.O.*, 469 U.S. 325, 341-42 (1985); upheld random, suspicionless drug testing of student athletes, *Vernonia Sch. Dist. v. Acton*, 515 U.S. 646, 664-65 (1995); and upheld random, suspicionless drug testing of students engaged in extracurricular activities, *Board of Ed. of Ind. Sch. Dist. No. 92 of Pottawatomie Cnty. v. Earls*, 536 U.S. 822, 838 (2002).

In support of these Fourth Amendment rulings, the Court has noted, "[t]raditionally at common law, and still today, *unemancipated minors lack some of the most fundamental rights of self-determination* – including even the right of liberty in its narrow sense, *i.e., the right to come and go at will. They are subject, even as to their physical freedom, to the control of their parents or guardians.*" *Vernonia*, 515 U.S. at 654 (emphasis added) (citation omitted). This echoes the Court's earlier declaration in *Schall v. Martin*, 467 U.S. 253, 265

(1984), in explaining the rejection of a constitutional challenge to the preventive detention of juveniles charged with delinquent acts, that *"juveniles, unlike adults, are always in some form of custody.* Children, by definition, are not assumed to have the capacity to care for themselves. They are assumed to be subject to the control of their parents, and if parental control falters, the State must play its part as *parens patriae*..." (emphasis added) (citations omitted). *Cf. Vernonia*, 515 U.S. at 655 (when parents place their children in school they delegate custodial power to the latter, permitting the school a degree of supervision and control over their children that could not be exercised over free adults); *T.L.O.*, 469 U.S. at 339 (same).

Decisions regarding constitutional provisions other than the Fourth and Fifth Amendments likewise demonstrate the United States Supreme Court's persistent view that children are simply different than adults under the United States Constitution. Thus, for example, in a series of cases involving state restrictions on minors' abortion rights, the Court has also made legal distinctions between minors and adults, and found that "during the formative years of childhood and adolescence, *minors often lack . . . experience, perspective, and*

judgment," *Bellotti v. Baird*, 443 U.S. 622, 635 (1979) (emphasis added), as well as "the ability to make fully informed choices that take account of both immediate and long-range consequences." *Id.* at 640; *see also Hodgson v. Minnesota*, 497 U.S. 417, 444 (1990) ("The State has a strong and legitimate interest in the welfare of its young citizens, whose *immaturity, inexperience, and lack of judgment* may sometimes impair their ability to exercise their rights wisely.") (emphasis added). For this reason, the Court has held that states may choose to require that minors consult with their parents before obtaining an abortion. *See Hodgson*, 497 U.S. at 458 (O'Connor, J., concurring in part) (noting that liberty interest of minor deciding to bear child can be limited by parental notice requirement, given that immature minors often lack ability to make fully informed decisions); *Bellotti*, 443 U.S. at 640 (noting that because minors often lack capacity to make fully informed choices, the state may reasonably determine that parental consent is desirable).[6]

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[6] The Court has held, however, that state legislatures may not enact statutes giving parents an absolute veto power over a minor's decision to obtain an abortion. *Planned Parenthood v. Danforth*, 428 U.S. 52, 74 (1976) (invalidating state statute requiring that unmarried minors obtain parental consent for abortions). A state statutory scheme also

The Court also has curtailed the liberty interests of minors in other settings. Particularly illustrative is *Parham v. J.R.*, 442 U.S. 584 (1979), where the Court rejected a constitutional challenge to Georgia's civil commitment scheme that authorized parents and other third parties to involuntarily commit children under the age of eighteen. In curtailing children's liberty interests in this context, the Court noted that "[m]ost children, even in adolescence, simply are not able to make sound judgments concerning many decisions...." *Id.* at 603.

The United States Supreme Court also has distinguished children from adults under the First Amendment. In *Ashcroft v. American Civil Liberties Union*, 542 U.S. 656 (2004), the Court

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must provide an alternative procedure which allows the juvenile to procure authorization for the abortion from the State without complying with the parental-notification and/or consent requirements, upon a showing that she is mature and informed enough to make the decision regarding the abortion independently from and without the consent of her parents. *Bellotti,* 443 U.S at 642-44. Alternatively, the court may find that the abortion is in the minor's best interest even if she is not able to make an independent decision. *Id.*

recognized that protecting minors from harmful images on the Internet, due to their immaturity, is a compelling government interest. *Id.* at 661; *id.* at 683 (Breyer, J., dissenting).[7] And in *Ginsburg v. New York*, 390 U.S. 629, 637 (1968), the Court upheld a state statute restricting the sale of obscene material to minors. Such a restriction was permissible for youth, as compared to adults, because "*a child – like someone in a captive audience – is not possessed of that full capacity for individual choice* which is the presupposition of First Amendment guarantees." *Id.* at 649-50 (Stewart, J., concurring) (footnotes omitted) (emphasis added). *See also Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 273 (1988) (holding that public school authorities may censor school-sponsored publications). Similarly, the Court has upheld a state's right to restrict when a minor can work, on the premise that "[t]he state's authority over children's activities is broader than over the actions of adults." *Prince v. Massachusetts*, 321 U.S. 158, 168 (1944).

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[7] The Court split only on whether the Child Online Protection Act used the least restrictive means, consistent with adults' First Amendment freedoms, for achieving that end. *Id.* at 673; *id.* at 675 (Stevens, J., concurring); *id.* at 676 (Scalia, J., dissenting); *id.* at 677 (Breyer, J., dissenting).

These themes are echoed in the Court's public school prayer decisions. In holding that prayers delivered by clergy at public high school graduation ceremonies violate the Establishment Clause of the First Amendment, the Court in *Lee v. Weisman*, 505 U.S. 577 (1992), placed great emphasis on the "public pressure, as well as peer pressure," that such state-sanctioned religious practices impose on impressionable students. *Id*. at 593. The Court admonished that "[f]inding no violation under these circumstances would place objectors in the dilemma of participating [in the prayer], with all that implies, or protesting." *Id*. Of particular relevance to this case, the Court stated it was not addressing whether the government could put citizens to such a choice when those "affected . . . are mature adults," rather than "primary and secondary school children," who are "often susceptible to pressure from their peers towards conformity . . . in matters of social convention." *Id*. Similarly, in *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000), the Court held that prayers authorized by a vote of the student body and delivered by a student prior to the start of public high school football games violated the Establishment Clause. The Court stressed "the immense social

pressure" on students "to be involved in the extracurricular event that is American high school football." *Id*. at 311. As the Court described it, "the choice between attending these games and avoiding personally offensive religious rituals is in no practical sense an easy one," *id*. at 312, and, in the high school setting, "the delivery of a pregame prayer has the improper effect of coercing those present to participate in an act of religious worship." *Id*. By contrast, the Court has upheld against an Establishment Clause challenge the delivery of prayers at the start of legislative sessions, where the audience that is present invariably is made up almost exclusively of adults who would not be subject to the same pressures to conform as would youth. *Marsh v. Chambers*, 463 U.S. 783 (1983). *See Lee*, 505 U.S. at 597 (distinguishing between "atmosphere" at legislative sessions and public high schools).

Most recently, in the United States Supreme Court's landmark decision in *Roper v. Simmons*, 543 U.S. 551, 569-72 (2005), the Court relied in part on social science research on the developmental differences of adolescents to hold that imposition of the death penalty on those who committed their offenses when under the age of 18

constitutes cruel and unusual punishment. Specifically, the Court noted that studies confirm that "`a lack of maturity and an underdeveloped sense of responsibility are found in youth more than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions.'" *Id.* at 569 (quoting *Johnson v. Texas*, 509 U.S. 350, 367 (1993)). Additionally, the Court noted that youth have less control over their own environment. *Id.* at 569 (citing Laurence Steinberg and Elizabeth Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility and the Juvenile Death Penalty*, 58 AM. PSYCHOLOGIST 1009, 1014 (2003) [hereinafter Steinberg & Scott, *Developmental Immaturity*]).

In sum, in an unbroken line of decisions extending more than half a century, the United States Supreme Court has distinguished minors from adults under the law, noting that minors are, *inter alia*, (1) always in someone's custody and not at liberty to come and go at will; (2) less mature; (3) deficient in judgment and perspective; (4) more susceptible to the appearance or assertion of authority; (5) less able to think rationally in stressful situations; (6) less experienced and

thus less knowledgeable; and (7) more malleable.

The Court's findings with respect to the developmental differences of teenagers in the critical realms of decision-making and judgment, in turn, are well-supported by a wide body of social science and medical research, as discussed in detail in Part II, *infra*. This same research supports the trial court's suppression of the tangible evidence and statements in this case.

II. SOCIAL SCIENCE RESEARCH SUPPORTS THE TRIAL COURT'S RULING THAT THE PROSECUTION DID NOT PROVE THAT GUTHRIE VOLUNTARILY CONSENTED TO THE SEARCH OF HIS BEDROOM OR MADE A VOLUNTARY, KNOWING AND INTELLIGENT WAIVER OF HIS RIGHT AGAINST SELF-INCRIMINATION

In the instant case, Guthrie, who was home alone, opened his front door to find three uniformed police officers standing in the doorway. Guthrie didn't ask the police why they were there or what they wanted and, instead, simply let them in. Once inside the living room/kitchen area, Guthrie immediately responded to one officer's questions about a gun. Guthrie denied knowledge of a gun but said he had a BB gun. After the officer asked to see the gun, Guthrie

promptly went to his bedroom to retrieve it. Without obtaining Guthrie's consent, and certainly without informing Guthrie that he did not have to comply with the officer's wishes, the officer followed Guthrie into his bedroom and a second officer positioned himself at the threshold of the room; the third officer remained in the living room/kitchen area. At the behest of police, Guthrie recovered a gun from his bedroom. The police additionally seized gun parts from a trash basket in the bedroom and from under a bed. Consequently, the police took Guthrie to the police station. When Guthrie's father later arrived at the station, the police read Guthrie and his father the *Miranda* rights. Guthrie's father did not talk to his son nor ask the police any questions before he, and not Guthrie, promptly signed a form waiving Guthrie's rights. After witnessing his father give up his right to remain silent and consult with counsel, Guthrie told police that he had found the gun two days before on the side of the road and that he did not know it had been stolen. *Trial Ct. Op.*, dated October 29, 2003, at 2-3.

Because the police did not have a warrant to search Guthrie's home, the Commonwealth bears the burden of proving under the

totality of the circumstances that Guthrie voluntarily consented to the search. *United States v. Mendenhall*, 446 U.S. 544, 557 (1980); *Schneckloth v. Bustamonte*, 412 U.S. 218, 227 (1973); *Commonwealth v. Phillips*, 413 Mass. 50, 55 (1992); *Com. v. Aguiar*, 370 Mass. 490, 496 (1976). "This burden cannot be discharged by showing no more than acquiescence to a claim of lawful authority." *Bumper v. North Carolina*, 391 U.S. 543, 548-49 (1968). *See also Com. v. Voisine*, 414 Mass. 772, 783 (1993). And "[i]n meeting its burden of establishing voluntary consent to enter, the Commonwealth must provide [the court] with more than an ambiguous set of facts that leaves [the court] guessing about the meaning of [the] interaction and, ultimately, the occupant's words or actions." *Com. v. Rogers*, 444 Mass. 234, 238 (2005).

With respect to the statements he made at the police station, the Commonwealth also bears the burden of demonstrating that Guthrie made a knowing, intelligent and voluntary waiver of his right to remain silent. *Com. v. Magee*, 423 Mass. 381, 386 (1996). In determining whether the Commonwealth has carried its burden with respect to the *Miranda* waiver, *see Miranda v. Arizona*, 384 U.S. 436

(1966), the court must take into account, *inter alia*, whether Guthrie was given the opportunity to *meaningfully* consult with a parent or interested adult who was informed of and understood those rights prior to Guthrie waiving them. *Com. v. McCra*, 427 Mass. 564, 567 (1998); *Com. v. Berry*, 410 Mass. 31, 34 (1991). Where there was no meaningful opportunity for consultation, a youth's statement should be suppressed unless the circumstances demonstrate a high degree of intelligence, experience, knowledge, or sophistication on the part of the juvenile. *Com. v. A Juvenile*, 389 Mass. 128, 134 (1983). As this honorable court has noted,

> These added protections are consistent with our legal system's traditional policy which affords minors a unique and protected status. The law presumes different levels of responsibility for juveniles and adults and, realizing that juveniles frequently lack the capacity to appreciate the consequences of their actions, seeks to protect them from the possible consequences of their immaturity. Moreover, by providing the juvenile with the opportunity for meaningful consultation with an informed adult, these procedures prevent the warnings from becoming merely a ritualistic recitation wherein the effect of the actual comprehension by the juvenile is ignored.

Com. v. A Juvenile, 389 Mass. at 132 (citation omitted). "The ultimate question is whether the juvenile has understood his rights and the potential consequences of waiving them before talking to police."

Com. v. MacNeill, 399 Mass. 71, 79 (1987).

Amici respectfully submit that the trial court's ruling in the instant case – that the Commonwealth failed in its heavy burden to demonstrate that Guthrie voluntarily consented to a search of his bedroom, and that he voluntarily, knowingly and intelligently waived his *Miranda* rights prior to his statements at the police station – is consistent with settled research that children and adolescents are developmentally distinct from adults in critical areas pertinent to these inquiries.

Developmental psychologists have long recognized that adolescence is a period of major development across many domains, including the realm of cognition. During the teenage years, youth begin to develop the abilities to abstract, to think of the possible (including alternative possibilities) and not just the real, and to form and test hypotheses about the world around them. Stanley I. Greenspan & John F. Curry, *Extending Piaget's Approach to Intellectual Functioning*, in 1 COMPREHENSIVE TEXTBOOK OF PSYCHIATRY 402, 406-07 (Harold I. Kaplan & Benjamin J. Sadock eds., 7th ed. 2000) (providing an overview of Jean Piaget's cognitive

development model, which remains an important theoretical work in the child development field).[8] These cognitive capacities progressively become part of an adolescent's repertoire; however, this development rarely follows a straight line during adolescence, as periods of progress alternate with periods of regression. Steinberg & Schwartz, *Developmental Psychology* at 24.

Developmental psychologists also recognize that adolescents do not utilize these developing cognitive capacities consistently over time or across a variety of situations. Other non-cognitive, "psychosocial factors," including the external environment, impact adolescent perceptions, judgment and decision-making and limit their capacity for autonomous choice. Elizabeth Cauffman and Laurence Steinberg, *Researching Adolescents' Judgment and Culpability*, in YOUTH ON

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[8] *See also* KIDS ARE DIFFERENT: HOW KNOWLEDGE OF ADOLESCENT DEVELOPMENT THEORY CAN AID DECISION-MAKING IN COURT 7 (L. Rosado ed., 2000) [hereinafter KIDS ARE DIFFERENT]; Elizabeth S. Scott & Thomas Grisso, *The Evolution of Adolescence: A Developmental Perspective on Juvenile Justice Reform*, 88 J. CRIM. L. & CRIMINOLOGY 137, 157 (1997) [hereinafter Scott & Grisso, *The Evolution of Adolescence*]; R. Murray Thomas, COMPARING THEORIES OF CHILD DEVELOPMENT 273-318 (3d ed. 1992); Committee on Child Psychiatry, Group for the Advancement of Psychiatry, *How Old is Old Enough? The Ages of Rights and Responsibilities* 20-35 (1989) [hereinafter *GAP*].

TRIAL: A DEVELOPMENTAL PERSPECTIVE ON JUVENILE JUSTICE 325, 327-29 (Thomas Grisso & Robert G. Schwartz eds., 2000).[9] As one developmental psychologist has observed, "During the time these processes are developing, it doesn't make sense to ask the average adolescent to think or act like the average adult, because he or she can't – any more than a six-year-old child can learn calculus." Laurence Steinberg, *Juveniles on Trial*, 18 CRIM. JUST. 20, 22 (Fall 2003). These psychosocial factors, described in more detail below, explain why Guthrie's actions, and inactions, in his dealings with the police were a mere acquiescence to police authority and not the result of voluntary and informed choices.

To begin, adolescents have a different perception of time as compared to adults. Adolescents exhibit present-oriented thinking and have difficulty thinking beyond the present. Generally, they seem

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[9] *See also* KIDS ARE DIFFERENT at 8-10; Scott & Grisso, *The Evolution of Adolescence* at 157, 161-64; Laurence Steinberg & Elizabeth Cauffman, *Maturity of Judgment in Adolescence: Psychosocial Factors in Adolescent Decision-Making*, 20 LAW & HUM. BEHAV. 249, 250 (1996) [hereinafter Steinberg & Cauffman, *Maturity of Judgment*); Elizabeth S. Scott *et al.*, *Evaluating Adolescent Decision Making in Legal Contexts*, 19 LAW & HUM. BEHAV. 221, 222-23 (1995) [hereinafter Scott, *Evaluating Adolescent Decision Making]; GAP* at 28 .

unable to think about the future or they discount it. Marty Beyer, *Recognizing the Child in the Delinquent*, 7 KY. CHILD. RTS. J. 16, 17 (Summer 1999) [hereinafter Beyer, *Recognizing the Child*].[10] They focus more on the short-term results, and less on the future consequences, of any given action as compared to adults. Scott, *Evaluating Adolescent Decision Making* at 233; Steinberg & Cauffman, *Maturity of Judgment* at 759. Youth as compared to adults are weaker at accurately weighing the risks and benefits of their choices. Lita Furby & Ruth Beyth-Maron, *Risk Taking in Adolescence: A Decision-Making Perspective*, 12 DEVELOPMENTAL REV. 1, 17 (1992); Steinberg & Scott, *Developmental Immaturity* at 1012. Another aspect of adolescent thinking is egocentrism, which is an intense self-consciousness that leads teenagers to believe that others are constantly watching and evaluating them. David Elkind, *Egocentrism in Adolescence*, 38 CHILD. DEV. 1025, 1029-30 (1967); KIDS ARE DIFFERENT at 9. Egocentrism interacts with an adolescent's present-oriented thinking to lead an adolescent to only see the difficult

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[10] *See also* KIDS ARE DIFFERENT at 9; Elizabeth S. Scott, *The Legal Construction of Adolescence*, 29 HOFSTRA L. REV. 547, 591-92 (2000); Scott & Grisso, *The Evolution of Adolescence* at 164.

circumstances which s/he is currently facing and not see beyond into the future. KIDS ARE DIFFERENT at 9. Consequently, a youth in Guthrie G.'s shoes, alone with three uniformed police officers in his home, would likely feel the scrutiny of the police officers more intensely than an adult, and put more value on ending the situation as quickly as possible rather than thinking of the possible long-term outcome of complying with the police, i.e., that he would be charged with possession of a stolen gun.

Moreover, it cannot be emphasized enough that the utilization of cognitive skills is context-specific during adolescence. Kurt W. Fischer *et al.*, *The Development of Abstractions in Adolescence and Adulthood*, in BEYOND FORMAL OPERATIONS: LATE ADOLESCENT AND ADULT COGNITIVE DEVELOPMENT 43, 57 (Michael L. Commons *et al.* eds., 1984); *GAP* at 34. For example, stress and fear greatly impact adolescent cognition; in stressful situations, adolescents often will not use the highest level of cognitive reasoning of which they may be capable in non-stressful scenarios. Patricia Spear, *The Adolescent Brain and Age-Related Behavioral Manifestations*, 24 NEUROSCIENCE & BIOBEHAV. REVS. 417, 423 (2000); Marty Beyer, *Immaturity,*

Culpability & Competency in Juveniles: A Study of 17 Cases, 15 CRIM. JUST. 27, 27 (Summer 2000) [hereinafter Beyer, *Immaturity*]; Furby & Beyth-Maron at 22.[11] Youth simply have less experience, including interpersonal experience, to draw on than adults, and so on average they have a lesser capacity to respond and react in new and stressful situations. Steinberg & Schwartz, *Developmental Psychology* at 26.[12] Adolescents also generally process information less effectively than adults and instead exhibit "either-or" thinking, again particularly when under stress. Adolescents will typically perceive only one option when adults in similar situations would see multiple possibilities. Beyer, *Immaturity* at 27; Beyer, *Recognizing the Child* at 17-18.

This tendency to engage in either-or thinking also affects adolescents' interactions with others. An important developmental "task" of adolescence is "negotiating about power and control in the context of changing relationships with peers and parents." Scott,

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[11] *See also Kids are Different* at 10; Fischer at 70.

[12] *See also* Scott & Grisso, *The Evolution of Adolescence* at 164; Scott, *Evaluating Adolescent Decision Making* at 224-27; *GAP* at 30.

Evaluating Adolescent Decision Making at 230 (citations omitted). But in the process of forming more complex relationships with adults, adolescents regress; teenagers will "polarize" their characterization of adults, or overgeneralize or stereotype a trait in a particular person, instead of seeing people as having mixed motives or agendas. Howard Lerner, *Psychodynamic Models* in HANDBOOK OF ADOLESCENT PSYCHOLOGY 53, 66 (Vincent B. Van Hasselt & Michel Hersen eds., 1987) (citation omitted); Robert L. Selman, THE GROWTH OF INTERPERSONAL UNDERSTANDING: DEVELOPMENTAL AND CLINICAL ANALYSES 134 (1980); Peter Blos, THE ADOLESCENT PASSAGE: DEVELOPMENTAL ISSUES 152, 156 (1979). Thus, a 14 year-old alone in his house with three uniformed police officers who never asked permission to search his home, nor told him that he had the right to refuse his consent for the search and demand that they obtain a warrant, would likely view those officers in "polarized terms," i.e., as authority figures who have the power to search his home and direct his actions. In this stressful situation and given a lack of experience and critical knowledge, a youth like Guthrie is more likely to see only one option – submitting to the police's authority – instead of

conceiving of other possibilities, i.e., that he does not have to comply with the police's directions. This court has held in adult search cases that while the fact that the suspect was not informed that he could demand that police obtain a warrant is not determinative, "it is relevant with regard to the voluntariness of the consent." *Com. v. Krisco Corp.*, 421 Mass. 37, 46 (1995) (citations omitted). *Amici* respectfully submit that, given what we know about how adolescents think and react, the fact that police did not give that information to a 14 year-old is *even more* relevant to assessing whether the youth voluntarily gave consent for a search.

Scholarship on moral development in adolescence also explains why a juvenile would be more inclined than an adult to acquiesce to a police officer's demands. Adolescence is marked by "conventional morality" – "conforming to and upholding the rules and expectations and conventions of society or authority just because they are society's rules, expectations, or conventions." Lawrence Kohlberg, THE PSYCHOLOGY OF MORAL DEVELOPMENT: THE NATURE AND VALIDITY OF MORAL STAGES 172-73 (1984). Most people who reach the "postconventional level of morality" – where they grapple with the

moral principles underlying these rules before deciding to accept them as their own values – only do so in their twenties. *Id*. at 172-73. The conformity characteristic of adolescence means that teenagers in general are more compliant when confronted by authority figures.

Adolescence is a time when the gradual transition to becoming a self-governing, autonomous individual begins. KIDS ARE DIFFERENT at 16. But adolescents remain emotionally dependent on other people, specifically their parents and peers, throughout this development process; they are thus less capable of independent, self-directed action than adults who have achieved a greater sense of identity and autonomy. They are vulnerable to influences from both peers and parents. *Id*. at 16-17.[13] "[A]dolescents are not fully formed persons in many regards; they continue to be dependent on their parents and on society..." Scott, *Legal Construction of Adolescence* at 555. In the instant case, Guthrie witnessed his father do exactly what he did earlier when he was alone with the three uniformed officers in his

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[13] *See also* Laurence Steinberg *et al.*, *The Vicissitudes of Autonomy in Early Adolescence*, 57 CHILD DEVELOPMENT 841, 848 (1986); Steinberg & Schwartz, *Developmental Psychology* at 23 (noting that adolescence is a period of "tremendous malleability" and "tremendous plasticity in response to features of the environment.")

home – submit to the police's show of authority. Guthrie's father did not question the police or try to pause any of the proceedings and instead immediately waived Guthrie's rights to remain silent. Guthrie saw that his father, another authority figure, did not challenge the police in any way, thus reinforcing Guthrie's belief that he had no choice but to answer the police's questions about the gun.

Most recently, an unprecedented study on the competence of juveniles as trial defendants made several findings that are directly relevant to the issues before this court, namely whether the prosecution proved that Guthrie voluntarily consented to the search of his bedroom, as opposed to merely acquiescing to a show of police authority, and whether Guthrie made a voluntary and knowing waiver of his *Miranda* rights prior to making admissions at the police station. The study, conducted by social scientists under the auspices of the MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice [hereinafter the Research Network], used measures of both trial-related abilities and developmental maturity to assess the adjudicative competence of 927 adolescents ages 11-17 from detention facilities and communities in four locations

across the United States, as compared to 466 young adults ages 18-24 in jails and in the community. Thomas Grisso *et al., Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants*, 27 LAW & HUM. BEHAV. 333, 337-38 (2003) [hereinafter Grisso, *Juveniles' Competence*]. *See also* MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice, *Issue Brief 1: Adolescent Competence in Court* [hereinafter *Adolescent Competence Issue Brief*] available at www.adjj.org.

By using the MacArthur Competence Assessment Tool-Criminal Adjudication, the researchers first gauged the three specific functional abilities that undergird the legal concept of competence: (1) basic comprehension of the purpose and nature of the trial process (understanding): (2) the capacity to provide relevant information to counsel and process information (reasoning); and (3) the ability to apply information to one's situation in a non-distorted, rational manner (appreciation). Grisso, *Juveniles' Competence* at 335-36. Researchers found that on the scales that measure understanding and reasoning that nearly one-third of 11-13 year-olds and one-fifth of

14-15 year olds had deficits that seriously call into question their ability to proceed as trial defendants. *Id.* at 344. Moreover, the researchers confirmed earlier findings that youth in the justice system score lower on intelligence tests, and found that two-thirds of the detained youth in the study aged 15 and younger had IQ scores associated with a significant risk of being incompetent to stand trial because of impaired understanding and/or reasoning abilities. *Id.* at 349-50.

The Research Network's findings with respect to functional capacity are also consistent with the results of earlier studies on youths' capacities in other legal contexts. Notably, "in a study of youths' abilities to understand and appreciate *Miranda* warnings, [Thomas] Grisso found that `understanding...was significantly poorer among juveniles who were 14 years of age or younger than among 15-16 year-old juveniles or adult offenders,' and that those deficits were even more pronounced among youths with low IQ scores, including youths who were 15 and 16 years of age." *Id.* at 356 (citing and quoting Thomas Grisso, JUVENILES' WAIVER OF RIGHTS: LEGAL AND PSYCHOLOGICAL COMPETENCE 192 (1981)). Indeed, this honorable

court, in holding that courts must exercise extra caution in evaluating a juvenile's waiver of his constitutional rights, has cited to the Grisso study because it demonstrates that "most juveniles do not understand the significance and protection of these rights...." *Com. v. A Juvenile*, 389 Mass. at 131 (citing Thomas Grisso, *Juveniles Capacities to Waive Miranda Rights: An Empirical Analysis,* 68 CAL. L. REV. 1134 (1980)). *See also* Barry C. Feld, *Competence, Culpability, and Punishment: Implications of Atkins for Executing and Sentencing Adolescents,* 32 Hofstra L. Rev. 463, 526-527(2004) (noting that youths' lower social status *vis-a-vis* their adult interrogators, societal expectations that they respect authority, and their naivete, also may make them more likely to comply with the demands of their interrogators).

The Research Network did not end their inquiry at measuring youths' basic understanding and reasoning capabilities, because the Network recognized that youths'

> "`decisional competence' *may be significant in cases in which defendants must make important decisions about the waiver of constitutional rights*. A potentially important difference between adolescents and adults in this regard involves maturity of judgment. Differences between adolescents and adults not only are cognitive,

> but also involve aspects of psychosocial maturation that include progress toward greater future orientation, better risk perception, and less susceptibility to peer influence."

Grisso, *Juveniles' Competence* at 335 (emphasis added) (citations omitted). Thus, to examine the potential relationship between immaturity and the choices that youth make in the course of a criminal or delinquency case, researchers developed the MacArthur Judgment Evaluation tool. *Id.* at 336. This instrument uses three vignettes – responding to police interrogation, disclosing information to one's defense counsel, and responding to a deal for a plea agreement whereby consequences are lessened in exchange for a guilty plea and testifying against others – and structured interviewing to examine certain psychosocial factors that influence the choices that youth make. *Id.* at 340. Specifically, the researchers assessed different aspects of decisional maturity: risk appraisal, future orientation, peer influence and conformity to authority figures. *Adolescent Competence Issue Brief* at 2.

Significant age differences were found in the interrogation and plea bargaining scenarios. The proportion of individuals choosing confession decreased from about one half of the 11-13 year olds and

40% of 14-15 year olds, to one fifth of the young adults 18-24. Grisso, *Juveniles' Competence* at 351-52. Similarly, the percentage of individuals accepting the plea agreement declined from 74% among 11-13 year olds and 70% of 14-15 year olds to 50% of young adults. *Id.* at 351-52.

Particularly relevant to the case at hand are the Research Network's findings with respect to youths' compliance with authorities, and the assessment of risk likelihood and risk impact. In each vignette, one decision choice represented compliance with authority, and researchers found significant differences by age. Specifically, the 11-13 year olds and 14-15 year olds were similarly more compliant with authority than the older individuals. *Id.* at 353-54. With respect to risk appraisal, the young adults ages 18-24 reported a significantly higher likelihood of risk than the youth under age 18, and youth 11-15 scored lower on assessing risk impact than those 16 and older. *Id.* at 354. These empirical findings of youth's decisional competence demonstrate that for a court to find that Guthrie voluntarily consented to a search of his home and waived his *Miranda* rights would require evidence more extensive and definitive

than was presented in the instant case.

Finally, new research into the structure and function of the teenage brain also suggests that immature brain development among adolescents may disadvantage them when dealing with the police. This research, made possible by new technologies such as magnetic resonance imaging (MRI) that allow scientists to study images of the brain, suggest that the teenage brain does not fully develop until the early 20's. Most importantly, the research suggests that the last areas of the brain to develop are the frontal lobes, specifically the pre-frontal cortex, which govern decision-making, judgment, and impulse control. *See* Nitin Gogtay *et al.*, *Dynamic Mapping of Human Cortical Development During Childhood Through Early Adulthood*, 101 PROC. NAT'L ACAD. SCI. 8174, 8177 (2004); Elkhonon Goldberg, THE EXECUTIVE BRAIN: FRONTAL LOBES AND THE CIVILIZED MINDS 23-24 (2001); Marsel Mesalum, *Behavioral Neuroanatomy* in PRINCIPLES OF BEHAVIORAL AND COGNITIVE NEUROLOGY 1, 47 (Marsel Mesulam ed., 2d. Ed. 2000). As this area of the brain develops, young adults become more reflective and deliberate decision makers, the very skills which they would need in confronting

and dealing with police in search and interrogation situations. See David E. Arredondo, *Child Development, Children's Mental Health and the Juvenile Justice System: Principles for Effective Decision-Making*, 14.1 STAN. L. & POL'Y REV. 13, 15 (2003) (citing NAT'L RES. COUNCIL & INST. OF MED., JUVENILE CRIME, JUVENILE JUSTICE 16 (Joan McCord *et al.* eds., 2001)); Elizabeth S. Scott and Laurence Steinberg, *Blaming Youth*, 81 TEX. L. REV. 799, 816 (2003) (citing Patricia Spear, *The Adolescent Brain and Age-Related Behavioral Manifestations*, 24 NEUROSCIENCE & BIOBEHAVIORAL REVIEWS 417, 421-23 (2000)); National Institute of Mental Health, *Teenage Brain: A Work in Progress* (NIH Publication No. 01-4929, January 2001) (available at http://www.nimh.nih.gov/publicat/teenbrain.pdf). *See also In re Stanford*, 537 U.S. 968, __, 123 S.Ct. 472, 474 (2002) (Stevens, J., dissenting) (noting that "[n]euroscientific evidence of the last few years has revealed that adolescent brains are not fully developed" and "use of magnetic resonance imaging – MRI scans – have provided valuable data that serve to make the case even stronger that adolescents are more vulnerable, more impulsive, and less self-disciplined than adults") (internal quotations omitted) (citations

omitted). While still in its infancy, this research shows that there may well be a biological underpinning to what social science tells us about adolescents.

Thus, based on the record, and given what we know about adolescent development, the trial court had no choice but to find that the Commonwealth had not borne its heavy burden of showing that Guthrie's actions and inactions at the house and at the police station were more than just a mere acquiescence or resignation to the perceived authority of uniformed police officers.

CONCLUSION

Wherefore, for the foregoing reasons, and any others that may appear to this honorable court, *Amici Curiae* Juvenile Law Center *et al.* respectfully request that this court reverse the ruling of the intermediate appellate court and reinstate the trial court's order that suppressed admission of the tangible evidence seized from Guthrie's home as well as Guthrie's statements.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE
PURSUANT TO MASS. R. APP. PROC. 16(K)

I, Lourdes M. Rosado, Esq., do hereby certify this 10th day of October, 2006, that this brief complies with the rules of court that pertain to the filing of briefs, including, but not limited to: Mass. R. A. P. 16(a)(6) (pertinent findings or memorandum of decision); Mass. R. A. P. 16(e) (references to the record); Mass. R. A. P. 16(f) (reproduction of statutes, rules, regulations); Mass. R. A. P. 16(h) (length of briefs); Mass. R. A. P. 18 (appendix to the briefs); and Mass. R. A. P. 20 (form of briefs, appendices, and other papers).

_____
Lourdes M. Rosado, Esq.

DATED: October 10, 2006

CERTIFICATE OF SERVICE

I, Lourdes M. Rosado, Esq., do hereby certify under the penalties of perjury that on this the 10th day of October, 2006, I served this brief on the persons below via first class mail.

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AFFIDAVIT OF FILING PURSUANT TO MASS. R. APP. PROC. 13

I, Lourdes M. Rosado, Esq., do hereby attest and affirm that the that the day of mailing of this brief was within the time fixed for filing.

_____

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APPENDIX A

IDENTITY OF AMICI CURIAE

Organizations

Juvenile Law Center (JLC) is one of the oldest legal service firms for children in the United States, founded in 1975 to advance the rights and well being of children in jeopardy. JLC pays particular attention to the needs of children who come within the purview of public agencies – for example, abused or neglected children placed in foster homes, delinquent youth sent to residential treatment facilities or adult prisons, or children in placement with specialized services needs. JLC works to ensure children are treated fairly by systems that are supposed to help them, and that children receive the treatment and services that these systems are supposed to provide. We believe the juvenile justice and child welfare systems should be used only when necessary, and work to ensure that the children and families served by those systems receive adequate education, and physical and mental health care. JLC is a non-profit public interest firm. Legal services are provided at no cost to our clients.

The **Northwestern University School of Law's Bluhm Legal Clinic** has represented poor children in juvenile and criminal proceedings since the Clinic's founding in 1969. The **Children and Family Justice Center** (CFJC) was established in 1992 at the Clinic as a legal service provider for children, youth and families and a research and policy center. Six clinical staff attorneys currently work at the CFJC, providing legal representation and advocacy for children in a wide variety of matters, including in the areas of juvenile delinquency, criminal justice, special education, school suspension and expulsion, immigration and political asylum, and appeals. CFJC staff attorneys are also law school faculty members who supervise second- and third-year law students in the legal and advocacy work; they are assisted in this work by the CFJC's social worker and social work students.

The **Center for Children's Law and Policy** (CCLP) is a public interest law and policy organization focused on reform of juvenile justice and other systems that affect troubled and at-risk children, and protection of the rights of children in such systems. The Center's

work covers a range of activities including research, writing, public education, media advocacy, training, technical assistance, administrative and legislative advocacy, and litigation. CCLP capitalizes on its Washington, DC location by working on juvenile justice and education reform efforts in DC, Maryland, and Virginia; partnering with other Washington-based system reform and advocacy organizations such as the Justice Policy Institute, National Juvenile Defender Center, and Campaign 4 Youth Justice; engaging in legislative advocacy with Congress; and associating with major Washington law firms which provide assistance on a pro bono basis. CCLP also works in other states and on national initiatives such as MacArthur Foundation's Models for Change initiative, where it is responsible for efforts to reduce Disproportionate Minority Contact (DMC) with the justice system, and the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative, which aims to reduce the use of locked detention and ensure safe and humane conditions of confinement for children. Much of CCLP's work involves reviewing policies and procedures around the arrests of minors, therefore CCLP has a particular interest in this case.

Founded in 1977, the **Children's Law Center of Massachusetts** (CLCM) is a private, non-profit legal services agency that provides direct representation and appellate advocacy for indigent children in juvenile justice, child welfare and education matters. CLCM attorneys regularly participate as faculty in MCLE and other continuing legal education seminars and have filed *amicus curiae* briefs in juvenile justice and child welfare matters in the past. The CLCM has a vital interest in ensuring that the rights and interests of children in the Commonwealth are protected in delinquency matters. This case presents questions of significance both to the children who are involved in the court system and to the attorneys who represent them. The *amici* hope their views will add to the Court's consideration of the issues raised in this appeal.

Children's Law Center of Minnesota (CLC) opened for operation in 1995 and is the only legal center for children in Minnesota. CLC is a nonprofit organization whose mission is to promote the rights and interests of all children – especially children of

color and children with disabilities – in the judicial, child welfare, health care and education systems. CLC carries out its mission by providing direct representation for children and by advocating and participating in statewide efforts to reform and improve the child protection and juvenile justice systems. CLC participates in statewide committees such as the Children in Need of Protection or Services Public Defender Workgroup that examined and made recommendations for the state-wide representation of children and parents in abuse and neglect proceedings and the Children's Justice Initiative that recommends system change to change the lives of children in foster care. CLC also participates nationally in the American Bar Association Section of Litigation Children's Rights Litigation Committee Working Group and the National Children's Law Network that is forging a national agenda for the well being of children in foster care and delinquency proceedings.

Children have rights and legal protections, but they are not self-supporting; they need someone, first, to help them understand how their lives can be better and, second, to speak effectively on their behalf and promote their important interests. The services that CLC

provides center on the rights of children to have a voice in their own future and to be secure in their person and environment. CLC represents children who have been physically or sexually abused or neglected and are in the foster care system. A large number of these children are also brought into detention as status offenders because of running away and truancy. Often, when police question children because of allegations of wrongdoing, the children do not understand their rights including their right not to talk to the police officer with dire consequences for the children. CLC joins this brief because of the critical public policy issue at stake for the children it serves.

Founded in 1997, the **Juvenile Justice Project of Louisiana** (JJPL) has established itself as a partner in efforts to reform Louisiana's juvenile justice system. We have dedicated ourselves to advocating not only for more effective, less expensive alternatives to incarceration, but also for the zealous and effective representation of children in the juvenile and criminal justice systems. JJPL was founded on the recognition that children and adolescents are fundamentally different from adults and, as such, require

developmentally appropriate interventions and advocacy. The manner in which the judicial system responds to young people in crisis has been a central focus of JJPL. We believe that children must be afforded essential due process protections and that such protections necessarily include a consideration of their developmental capacities and limitations. This is particularly the case where a child is likely to feel intimidated by authority figures. Given the ways in which young people are especially susceptible to police questioning and interrogations, a juvenile must have meaningful access to counsel to ensure his rights are protected. JJPL is committed to ensuring that children and youth accused of wrongdoing receive the appropriate protections of the law.

The **Juvenile Rights Advocacy Project** (JRAP) is based at Boston College Law School and is staffed by a director, supervising attorneys, and second third year law students. The JRAP represents youth (with a focus on girls) who are in the delinquency system, comprehensively, across systems, and until they reach majority. JRAP representation uses the legal system to access social and

community services and hold systems accountable, reducing the use of incarceration and supporting girls in their communities. In addition to individual representation, the JRAP is involved in ongoing research and policy advocacy aimed at reducing incarceration and supporting youth in their communities. Within its policy agenda, the JRAP seeks to develop and model programs for delinquent youth that provide access for youth to a range of social services and promote collaboration across systems.

The **National Center for Youth Law** (NCYL) is a private, non-profit organization devoted to using the law to improve the lives of poor children nation-wide. For more than 30 years, NCYL has worked to protect the rights of low-income children and to ensure that they have the resources, support and opportunities they need to become self-sufficient adults. NCYL provides representation to children and youth in cases that have a broad impact. NCYL also engages in legislative and administrative advocacy to provide children a voice in policy decisions that affect their lives. NCYL supports the advocacy of others around the country through its legal journal, Youth

Law News, and by providing trainings and technical assistance. NCYL has participated in litigation that has improved the quality of foster care in numerous states, expanded access to children's health and mental health care, and reduced reliance on the juvenile justice system to address the needs of youth in trouble with the law. As part of the organization's juvenile justice agenda, NCYL works to ensure that youth in trouble with the law are treated as adolescents and not adults, in a manner that is consistent with their developmental stage and capacity to change.

The **New England Juvenile Defender Center, Inc.** was created in 2000 to ensure excellence in juvenile defense and promote justice for children in the juvenile justice systems of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont. The Center focuses primarily on supporting defenders to provide the best possible services to court-involved children and to ensure that the juvenile justice systems in New England treat children like children and provide them with real opportunities for care and treatment where

appropriate. The Center has also created a Juvenile Impact Litigation Fund to support solo practitioners and organized groups of attorneys to challenge conditions of confinement in the region. The NEJDC is a non-profit public interest organization.

The **Northeast Regional Juvenile Defender Center** (NRJDC) is dedicated to increasing access to justice for and the quality of representation afforded to children caught up in the juvenile and criminal justice systems. Housed jointly at Rutgers Law School - Newark and the Defender Association of Philadelphia, the NRJDC provides training, support, and technical assistance to juvenile defenders in Pennsylvania, New Jersey, New York, and Delaware. The NJRDC also works to promote effective and rational public policy in the areas of juvenile detention and incarceration reform, disproportionate confinement of minority children, juvenile competency and mental health, and the special needs of girls in the juvenile justice system.

The **Office of the Juvenile Defender** (OJD) in Vermont is an office within the Office of the Defender General. The Office of the Defender General is responsible for providing public defender representation to qualified Vermont citizens. The OJD was established to provide ongoing post-dispositional legal representation to those children and youth who were the subject of abuse, neglect or delinquency petitions in Family Court, were represented by public defenders statewide, and, as a result of those proceedings, were placed in the custody of the Commissioner of the Department for Families and Children (DCF), Vermont's child welfare agency. The OJD provides legal representation to its clients at caseplan review meetings, various administrative hearings and when they are placed at the Woodside Juvenile Rehabilitation Center, which houses Vermont's sole juvenile detention center. The OJD pays particular attention to those children who are placed at the juvenile detention center and endeavors to ensure that their Constitutional rights are protected and that they are treated fairly by DCF and receive appropriate services.

The **Pacific Juvenile Defender Center** (PJDC) is a regional affiliate of the National Juvenile Defender Center. PJDC is a collaborative effort of the San Francisco Office of the Public Defender and the Center on Juvenile and Criminal Justice. The PJDC is housed at Legal Services for Children. The Defender Center provides support, training and technical assistance for juvenile defenders throughout California and Hawaii. It is the mission of the Defender Center to improve the quality of juvenile defense in our region and ensure that juveniles are provided with holistic representation that meets their needs.

The **San Francisco Public Defender's Office** provides legal representation per year to approximately 1,400 juveniles, aged 10-18, who are arrested and charged with delinquent offenses. The majority of the juvenile clients represented by the office come from difficult family circumstances and live in dangerous and poverty stricken neighborhoods and are in need of legal and social services. Our juvenile clients are a very vulnerable population with needs that are substantial and involve multi-systems collaborations such as with

special education, mental health, dependency and immigration. The goal of the juvenile justice system is very different form the adult system. We recognize the need to treat children going through adolescence very differently than adults.

The **Southern Juvenile Defender Center** (SJDC) works to ensure excellence in juvenile defense and secure justice for children in delinquency and criminal proceedings in the southeastern United States. SJDC provides training and resources to juvenile defenders, and advocates for systemic reforms designed to give children the greatest opportunities to grow and thrive. Through public education and advocacy, SJDC encourages attorneys and judges to rely upon scientific research concerning adolescent brain development in cases involving youthful defendants. SJDC is based at the Southern Poverty Law Center ("SPLC") in Montgomery, Alabama. Founded in 1971, SPLC has litigated numerous civil rights cases on behalf of incarcerated children and other vulnerable populations.

Individual

Barry Feld is Centennial Professor of Law, University of Minnesota Law School. He has written eight books and about seventy law review and criminology articles and book chapters on juvenile justice with a special emphasis on serious young offenders, procedural justice in juvenile court, adolescents' competence to exercise and waive Miranda rights and counsel, youth sentencing policy, and race. His most recent books include: *Bad Kids: Race and the Transformation of the Juvenile Court* (Oxford 1999), which received the Outstanding Book Award from the Academy of Criminal Justice Sciences and the Michael Hindelang Outstanding Book Award from the American Society of Criminology; *Cases and Materials on Juvenile Justice Administration* (West 2000; 2nd Ed. 2005); and *Juvenile Justice Administration in a NUTSHELL* (West 2002). Additionally, Feld has conducted and published (one in November, 2006, another in January, 2007), the first empirical studies of how police actually interrogate juveniles, based on Minnesota interrogation tapes. Feld has testified before state legislatures and the U. S. Senate, spoken on various aspects of juvenile justice administration to legal,

judicial, and academic audiences in the United States and internationally. He worked as a prosecutor in the Hennepin County (Minneapolis) Attorney's Office and served on the Minnesota Juvenile Justice Task Force (1992 -1994), whose recommendations the 1994 legislature enacted in its revisions of the Minnesota juvenile code. Between 1994 and 1997, Feld served as Co-Reporter of the Minnesota Supreme Court's Juvenile Court Rules of Procedure Advisory Committee.