

No. 09A871

**In the Supreme Court of the United States**

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J.D.B.,  
Petitioner,

v.

STATE OF NORTH CAROLINA,  
Respondent

---

ON PETITION FOR A WRIT OF *CERTORARI* TO  
THE SUPREME COURT OF NORTH CAROLINA

**MOTION OF JUVENILE LAW CENTER *ET AL.*  
FOR LEAVE TO FILE AN *AMICI CURIAE*  
BRIEF IN SUPPORT OF PETITION FOR A  
WRIT OF *CERTORARI* AND BRIEF OF  
JUVENILE LAW CENTER, *ET AL.* AS *AMICI*  
*CURIAE* IN SUPPORT OF PETITION FOR A  
WRIT OF *CERTORARI***

Marsha L. Levick  
*\*Counsel of Record\**

Jessica R. Feierman  
**Juvenile Law Center**  
1315 Walnut St., 4th Floor  
Philadelphia, PA 19107  
215-625-0551  
mlevick@jlc.org

Counsel for *Amici Curiae*

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IN SUPPORT OF PETITION FOR WRIT OF  
CERTIORARI

Juvenile Law Center respectfully moves this Court, pursuant to Supreme Court Rule 37(2)(b), for leave to file an *amicus curiae* brief in support of Petitioners. In support, Juvenile Law Center states as follows:

1. Juvenile Law Center, one of the oldest public interest law firms for children in the United States, was founded in 1975 to advance the rights and well-being of children in jeopardy. Juvenile Law Center 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. More detailed information about Juvenile Law Center is available at [www.jlc.org](http://www.jlc.org).

2. Juvenile Law Center works to integrate juvenile justice practice and policy with knowledge of adolescent development. Juvenile Law Center has authored several publications on this topic, including *Kids are Different: How Knowledge of Adolescent Development Theory Can Aid Decision-Making in Court*, a module in *Understanding Adolescents: A Juvenile Court Training Curriculum* (ed. by Lourdes Rosado, American Bar Association Juvenile Justice Center, Juvenile Law Center, Youth Law Center 2000). Juvenile Law Center Executive Director, Robert G. Schwartz, co-edited *Youth on Trial: A Developmental Perspective on Juvenile Justice*, an examination of the impact of the legal system on adolescent development and psychology published in 2000 (ed. by Thomas Grisso and Robert G. Schwartz, University of Chicago Press). Juvenile Law Center has also used knowledge of adolescent development to inform its contributions in two recent amicus briefs to this Court: *Roper v. Simmons*, 543 U.S. 551 (2005) (regarding the constitutionality of the death penalty for minors aged sixteen

and seventeen at the time of their crimes) and *Yarborough v. Alvarado*, 124 S.Ct. 1706 (2004) (regarding whether a minor's age was properly considered when determining if the minor was in custody during a police interrogation). Juvenile Law Center, works to ensure that law enforcement practices comport with principles of adolescent development, and that officials take into account age and lack of experience with the justice system in assessing whether a reasonable youth would believe he was in custody during police interrogation.

3. Juvenile Law Center is particularly concerned with juvenile and criminal justice systems and their effect on children's emotional and psychological health. Juvenile Law Center is an active participant in the John D. and Catherine T. MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice, addressing the effects of juvenile and adult incarceration on juvenile offenders.
4. Juvenile Law Center helps to facilitate a national dialogue on juvenile justice issues both by participating as *amici* in cases across the country and conducting trainings at national conferences hosted by organizations such as the American Bar Association, National Council of Juvenile and Family Court Judges, Office of Juvenile Justice and Delinquency Prevention, and the National Association of

Council for Children. Juvenile Law Center is also a co-founder, with the American Bar Association and the Youth Law Center, of the National Juvenile Defender Center (NJDC). NJDC offers a wide range of integrated services to juvenile defenders, including training, technical assistance, advocacy, networking, collaboration, capacity building and coordination.

5. This case involves two issues of extraordinary importance to the lives of vulnerable youth - first, to what extent does age factor into custody determinations for purposes of *Miranda* warnings, and second, how the school setting affects custody determinations. Juvenile Law Center has great expertise on issues related to youths' constitutional rights and therefore would add value to the Court's consideration of these issues.
6. Barbara S. Blackman of the North Carolina Appellate Defenders has consented on behalf of Petitioner J.D.B. to our participation. LaToya B. Powell, Assistant Attorney General for the North Carolina Department of Justice and counsel for Respondent, refused to consent.
7. *Amici* recognize that, in the absence of the consent of both parties, our brief is disfavored.

WHEREFORE, Juvenile Law Center respectfully requests that this Honorable Court enter an order granting it leave to appear as *amicus curiae* in support of petitioner, J.D.B.

Respectfully submitted,

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Marsha L. Levick, Esq.

*\*Counsel of Record\**

Jessica Feierman, Esq.

JUVENILE LAW CENTER

1315 Walnut Street, Suite 400

Philadelphia, PA 19107

(215) 625-0551

Fax (215) 625-2808

mlevick@jlc.org

*Counsel for Amicus Curiae*

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## INTEREST OF *AMICI*

*Amici* Juvenile Law Center *et al.* work on issues of child welfare, juvenile justice, and children's rights. *Amici* have a unique perspective on the interplay between the constitutional rights and developmental psychology of children involved in the juvenile and criminal justice systems.<sup>1</sup>

This Court has never provided guidance regarding how to assess the effect of the school setting in determining whether a child is in custody for purposes of *Miranda v. Arizona*, 384 U.S. 436 (1966).. Nor has this Court settled the question of whether age matters for such determinations.

*Amici* share a deep concern that the North Carolina state court's decision that *Miranda* custody decisions should be made without regard to age, and that the school setting should make it more difficult, rather than easier, for a child to assert that he or she is in custody, would subject scores of youth to interrogations they do not desire or fully understand, but cannot, because of their age, terminate. Because youth are more likely than adults to make false confessions, *Amici* fear that such a rule would also undermine the truth-seeking function that properly-performed interrogations fill.

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<sup>1</sup> *Amici* file this brief with the consent of counsel for Petitioner, Barbara S. Blackman. Prosecuting Attorney LaToya B. Powell has withheld consent. No counsel for a party authored this brief in whole or in part. No person or entity, other than *Amici*, their members, or their counsel made a monetary contribution for the preparation or submission of this brief. A brief description of all *Amici* appears at Appendix A.

*Amici* join together in support of Plaintiffs-Appellees' Petition for Writ of Certiorari.

## SUMMARY OF ARGUMENT

This case involves two issues of extraordinary importance to the lives of vulnerable youth – first, how the school setting affects custody determinations for purposes of *Miranda* warnings, and second, to what extent age factors into such determinations.

This case calls upon the Court to determine whether J.D.B., a 13-year-old, would feel reasonably free to terminate an interrogation and leave the room when he was pulled out of his middle school classroom by a uniformed police officer and escorted to a school conference room where he was then questioned by a police officer and school officials about an off-grounds incident. If he would *not* feel free to leave, police would be required to issue *Miranda* warnings.

This Court has recognized that the school atmosphere is inherently coercive, making students more vulnerable to pressures, and ultimately in need of unique constitutional protections. *See Lee v. Weisman*, 505 U.S. 577, 593 (1992) (finding that school children are uniquely susceptible to the pressures of prayer delivered during school events); *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 266-67 (1988) (employing a distinct First Amendment analysis for speech in the school setting). This case presents an opportunity for the Court to clarify how the distinctive pressures of the school environment factor into Fifth Amendment custody determinations.

Historically, this Court has also recognized that the “status of minors under the law is unique.” *Bellotti v. Baird*, 443 U.S. 622, 633 (1979). The North Carolina court’s conclusion that age does not matter for Fifth Amendment custody determinations contradicts this Court’s precedents, statutes and case law from numerous states, and developmental scholarship regarding adolescent perceptions and decision-making.

In *Yarborough v. Alvarado*, 541 U.S. 652 (2004) this Court considered whether the age of a suspect just shy of his 18<sup>th</sup> birthday mattered for establishing custody. Because *Yarborough* required the Court to apply a deferential *habeas* standard, the Court never reached the merits of Alvarado’s case. *Id.* at 665. *J.D.B. v. North Carolina* presents an opportunity for the Court to clarify unsettled law in the first instance and provide necessary guidance to state courts and law enforcement. Petitioners have presented thorough information to this Court on the split among state and federal circuit courts as to whether age should be considered in the custody analysis. *Amici* write separately here to underscore the importance of the issue to vulnerable youth.

*Amici* therefore respectfully request this Court’s clarification that the school setting, combined with the student’s age, should factor into custody determinations under the Fifth Amendment.

## ARGUMENT

### I. THIS COURT SHOULD GRANT THE PETITION FOR CERTIORARI TO ENSURE THAT STUDENTS ARE NOT DEPRIVED OF

## **THEIR FIFTH AMENDMENT RIGHTS BECAUSE THEY ARE IN A SCHOOL SETTING.**

To determine whether J.D.B. was in custody, the Court must consider the circumstances surrounding the interrogation, and then consider, “given those circumstances, would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave.” *Thompson v. Keohane*, 516 U.S. 99, 112 (1995).

J.D.B., a 13-year-old special education middle school student, was removed from his social studies class by a uniformed police officer. The officer escorted J.D.B. to a conference room where another officer and two school officials were waiting. The door to the conference room was closed and the officer proceeded to question J.D.B. about a series of neighborhood break-ins. The questioning officer knew that J.D.B. was only 13, yet neither the police officers nor the school attempted to contact J.D.B.’s parent or guardian. Instead, the assistant principal pressured J.D.B. to “do the right thing” and the officer threatened to seek a secure custody order, which would require J.D.B. to stay in juvenile detention before adjudication. The officer did not tell J.D.B. that he was free to leave or that he did not have to talk to him until after J.D.B. had written an incriminating statement.

Courts must determine how “a reasonable person *in the position of the individual being questioned* would gauge the breadth of his or her ‘freedom of action.’” *Stansbury v. California*, 511 U.S. 318, 325 (1994) (emphasis added). Thus, the relevant analysis is whether a reasonable 13-year-old student, who was pulled out of class in the middle of

the school day, escorted by a uniformed officer to a confined conference room, and subjected to questioning by four adults, including two police officers and two school officials, would have felt he was at liberty to terminate the interrogation and leave. *See Berkemer v. McCarty*, 468 U.S. 420, 442 (1984). This requires an understanding of how a 13-year-old student in a school setting would perceive his or her breadth of “freedom of action” differently than an individual in a non-school setting. *Stansbury*, 511 U.S. at 325. The North Carolina Supreme Court reasoned that J.D.B. was not in custody because the restrictions of the school environment apply to all students. *In re J.D.B.*, 686 S.E.2d 135, 138 (N.C. 2009). Indeed the student handbook instructs students to stop moving when an adult addresses them and prohibits students from walking away until an adult has dismissed them. *Id.* at 144 (Brady, J., dissenting). Such reasoning would make it virtually impossible for a court to find that a student in a school setting was ever in custody. It would also leave students in a uniquely vulnerable situation in which law enforcement could conduct interrogations at school specifically to avoid complying with the *Miranda* rule.

The Constitutional test does not ask whether an individual would have felt *more* free to leave than his or her peers. It asks simply whether a person in that situation would feel free to leave. J.D.B. did not. He was therefore in custody for the purposes of *Miranda*. This approach is further supported by Supreme Court jurisprudence recognizing that students in school settings experience pressure and coercion differently from individuals in other settings. This Court has adopted a distinctive First

Amendment analysis in cases involving schools, holding that students require distinctive protections. *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 271-73 (1988) (holding that public school authorities may censor school-sponsored publications). Indeed, this Court has found it untenable to put students in a situation in which they had to choose between conforming to the immense pressures of the school setting and asserting their Constitutional rights. See *Lee v. Weisman*, 505 U.S. 577, 593 (1992) (holding that primary and secondary school children should not be put in the position of having to choose between participating in a school prayer or protesting, even though such a choice may be acceptable for mature adults); *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 312 (2000) (finding that where a prayer was delivered before school football games, the school created a coercive situation in which students were unconstitutionally forced to choose between ignoring the pressure to attend the game or facing a personally offensive religious ritual). In school prayer cases, the Court further recognizes that students are uniquely susceptible to the pressures of the school environment. In holding that prayers delivered by clergy at public high school graduation ceremonies violate the Establishment Clause of the First Amendment, this Court observed that “there are heightened concerns with protecting freedom of conscience from subtle coercive pressure in the elementary and secondary public school.” *Lee*, 505 U.S. at 592.

That officers came to J.D.B.’s school to question him about an offense that took place during non-school hours and off school property further underscores the problems with coercion of students,

and the importance of protecting them. In such situations, officers can use the school setting to circumvent the protection from coercion that a child would otherwise receive from his or her family.<sup>2</sup> Middle school is a “restrictive environment” in which “students are not free to leave the campus without permission,” *In re J.D.B.*, 686 S.E.2d 135, 143 (N.C. 2009) (Brady, J. dissenting), and are unlikely to request their parents’ assistance – even in a highly stressful situation. The Majority in the court below established a rule that would further allow police to exploit the school setting. Although children are *more* susceptible to coercion than adults, this rule would offer them *less* protection.<sup>3</sup> While such tactics would be inappropriate regardless of the context, they are particularly troubling where, as here, the student posed no risk to school safety or functioning.

J.D.B, a seventh grade student, was questioned at school during the school day. The school environment increased the coercive effect of the police interrogation and left J.D.B. more

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<sup>2</sup> That many states require a parent’s presence for such questioning underscores the importance of preserving the child/parent relationship and the protection from coercion that a minor can receive from his or her family. *See e.g.*, Colo. Rev. Stat. Ann. § 19-2-511; Conn. Gen. Stat. § 46b-137(a); Ind. Code § 31-32-5-1; Iowa Code § 232.11; Kan. Stat. Ann. § 38-2333. *See also In the Matter of B.M.B.*, 955 P.2d 1302, 1312-13 (Kan. 1998); ME. Rev. Stat. Ann. tit. 15 § 3203-A(2-A); Miss. Code Ann. § 43-21-303(3), *see also M.A.C. v. Harrison County Family Court*, 566 So.2d 472, 475 (Miss. 1990); Mont. Code Ann. § 41-5-331; N.C. Gen. Stat. § 7B-2101; Okla. Stat. tit. 10A, § 2-2-301; Tex. Fam. Code Ann. § 51.09; W.Va. Code § 49-5-2(k)(1).

<sup>3</sup> In fact, removing J.D.B. from class caused more disruption to the school than questioning him in a less restrictive, more neutral environment, such as his home.

vulnerable and fearful, and unable to terminate the interrogation. He was therefore in custody.

**II. THIS COURT SHOULD GRANT THE PETITION FOR CERTIORARI TO ENSURE THAT VULNERABLE ADOLESCENTS RECEIVE THE FIFTH AMENDMENT PROTECTIONS TO WHICH THEY ARE ENTITLED.**

This Court has consistently grounded its legal treatment of adolescents in an understanding of the developmental differences between youth and adults. It has also specifically recognized that the differences between adolescents and adults make them more susceptible to coercion in the confession context, and therefore entitled to Constitutional protections tailored to their particular needs.

**A. This Court has never squarely addressed the impact of adolescence on custody determinations.**

This Court has yet to directly decide how age factors into custody determinations. In *Yarborough v. Alvarado*, 541 U.S. 652 (2004), the Court considered the habeas petition of a teenager who argued that age should affect the *Miranda* custody inquiry. Because of the deference due a state court on habeas review, this Court never reached a decision on the merits. *Id.* at 665. It determined only that the state court’s refusal to consider Alvarado’s age was a “reasonable” application of “clearly

established law.” *Id.* at 660-69.<sup>4</sup> The law was not “clearly established” because the question of age had *not* been addressed by earlier *Miranda* cases. *Id.* at 666.<sup>5</sup> Because J.D.B.’s case comes to the Court on direct appeal, it allows the Court to address the issue on the merits in the first instance.

The *Yarborough* Court acknowledged that “fair-minded jurists could disagree over whether Alvarado was in custody.” *Id.* at 664. J.D.B.’s case, however, is much stronger than Alvarado’s. As the majority observed in *Yarborough*, Alvarado was “five months shy of his 18<sup>th</sup> birthday” at the time of the alleged offense, *id.* at 656, while J.D.B. was only thirteen at the time of his interrogation. A 13-year-old’s age, particularly when the 13-year-old is questioned in school, can be discerned by police, and police can assume that a young adolescent’s age will have a bearing on his or her behavior in reaction to police questioning.

**B. An adolescent’s youth provides the police with an objective standard by which to determine whether an individual is in custody.**

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<sup>4</sup> *Amici* clarify here that the appropriate standard for considering a *Miranda* issue on direct review is *de novo*, *See Clewis v. Texas*, 386 U.S. 707, 708 (1967). There is no reason to apply the Antiterrorism and Effective Death Penalty Act (AEDPA) “unreasonable application of clearly established federal law” standard here.

<sup>5</sup> The *Yarborough* Court addressed age and experience. The question of experience is not at issue here. Moreover, unlike age, the experience of a suspect is difficult, if not impossible for an officer to know.

When determining whether J.D.B. was in custody, the Court must consider all the circumstances that would weigh on a reasonable person's belief that they were not free to terminate the interrogation and leave. Age is an objective factor that should be considered in assessing this analysis. A reasonable 13-year-old will behave differently than a reasonable adult. To apply the adult standard to a 13-year-old defendant would allow police to create highly coercive situations without providing the legal protections designed to protect against false or coerced confessions. In *Miranda v. Arizona*, 384 U.S. 436 (1966), this Court recognized the critical importance of ensuring that police do not give in to “the temptation to press the witness unduly, to browbeat him if he be timid or reluctant, to push him into a corner, and to entrap him into fatal contradictions.” *Id.* at 443 (citing *Brown v. Walker*, 161 U.S. 591, 596-97 (1896)). Individuals must be protected from “overzealous police practices.” *Id.* at 444. This Court's rules about custodial interrogation must ultimately satisfy these goals.

As Justice O'Connor's concurrence in *Yarborough* acknowledged, the age of a younger adolescent could impact the determination of whether the child was in custody. *Yarborough v. Alvarado*, 541 U.S. 652, 669 (2004) (O'Connor, J., concurring). Not only would a young adolescent have more difficulty understanding his rights and terminating police questioning, police would also have an easier time predicting the child's reaction.

There may be cases in which a suspect's age will be relevant to the *Miranda* “custody” inquiry. In this case, however, Alvarado was almost 18 years

old at the time of his interview. It is difficult to expect police to recognize that a suspect is a juvenile when he is so close to the age of majority. Even when police do know a suspect's age, it may be difficult for them to ascertain what bearing it has on the likelihood that the suspect would feel free to leave. That is especially true here; 17 ½-year-olds vary widely in their reactions to police questioning, and many can be expected to behave as adults.

*Id.* (O'Connor, J., concurring).

Officers would not have difficulty recognizing that a 13-year-old middle school student was a minor. Moreover, as Justice O'Connor's concurrence implicitly acknowledges, while it might be difficult for police to distinguish between a 17-½-year-old and an 18-year-old, it is not difficult to distinguish between a 13-year-old and an 18-year-old. When officers know that they are questioning a minor, they must consider the question of custody accordingly.

A reasonable child experiences custody differently from a reasonable adult. As the Court clarified in *Haley v. Ohio*, 332 U.S. 596, 599 (1948), a teenager, too young to exercise or even comprehend his rights, becomes an "easy victim of the law." Because officers have the capacity to take advantage of adolescents in the confession context, they also have a duty to recognize that teenagers experience custody differently than adults.

This Court has acknowledged that minors make decisions differently than adults – particularly in the inherently coercive and stressful context of confessions. In *Gallegos v. Colorado*, 370 U.S. 49

(1962), this Court found unconstitutional the confession of a 14-year-old held for five days without access to his parents, lawyers or a judge. The Court's holding, which rested on due process grounds, took issue with "the element of compulsion . . . condemned by the Fifth Amendment." *Id.* at 51. Recognizing the critical factor of age, the Court reasoned that the juvenile "cannot be compared with an adult in full possession of his sense and knowledgeable of the consequences of his admissions." *Id.* at 54. Without the advice as to his rights or the aid of more mature judgment, the Court found that the juvenile "would have no way of knowing what the consequences of his confession were" or "the steps he should take in the predicament in which he found himself." *Id.* Thus, to interrogate a 14-year-old boy during a five-day detention would be "to treat him as if he had no constitutional rights." *Id.* at 55.

Similarly, in *Haley*, this Court held that a 15-year-old boy's confession should have been excluded because it was involuntarily extracted by methods violative of due process requirements of the Fourteenth Amendment. *Haley*, 332 U.S. 596. Haley was interrogated from midnight to five in the morning by police officers working in relays. *Id.* at 598. He was not informed of his rights or provided access to counsel, friends, or family. *Id.* This Court's analysis of the voluntariness of Haley's confession turned on his juvenile status:

Age 15 is a tender and difficult age for a boy of any race. . . . That which would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens. This is the period of great instability which the crisis of

adolescence produces. A 15-year old lad, questioned through the dead of night by relays of police, is a ready victim of the inquisition. Mature men possibly might stand the ordeal . . . . But we cannot believe that a lad of tender years is a match for the police in such a contest.

*Haley*, 332 U.S. at 599-600.

In more recent decisions in the Eighth Amendment context, this Court has emphasized that an adolescent's lack of maturity affects his or her decision-making capacity such that youth must be treated differently from adults under the Constitution. *See Graham v. Florida*, No. 08-7412 (U.S. May 17, 2010) (holding that juvenile offenders are considered categorically less culpable than adults and thus cannot be sentenced to life in prison without parole for a nonhomicide crime); *see also Roper v. Simmons*, 543 U.S. 551 (2005) (holding that the death penalty cannot be applied to offenders who were under the age of 18 when their crimes were committed due to their diminished culpability). Although *Graham* and *Roper* focus on juvenile culpability, the salient characteristics this Court identifies as distinguishing juveniles from adults, including immature decision-making and vulnerability to outside pressures, also operate to make juveniles more vulnerable in the confession context.

Adolescent development research underscores that teenagers cannot make decisions in the same way that adults can. Psychosocial factors influence adolescents' perceptions, judgment and decision-making and limit their capacity for autonomous choice. Elizabeth Cauffman & Laurence Steinberg,

*Researching Adolescents' Judgment and Culpability*, in *Youth on Trial: A Developmental Perspective on Juvenile Justice* 325 (Thomas Grisso & Robert G. Schwartz eds., 2000); Kathryn Modecki, *Addressing Gaps in the Maturity of Judgment Literature: Age Differences in Delinquency*, 32 *L. & Hum. Behav.* 78, 79-80 (2008). Specifically, present-oriented thinking, egocentrism, greater conformity to authority figures, less experience and greater vulnerability to stress and fear than adults leave juveniles more susceptible than adults to feeling that their freedom is limited.<sup>6</sup> Thus, a reasonable youth will feel that he or she is in custody even when a reasonable adult will not.

Moreover, research supports the conclusion that juveniles' responses to stress heighten their inability to consider a range of options. Because adolescents have less experience with stressful situations, they have a lesser capacity to respond adeptly to such situations. Laurence Steinberg & Robert G. Schwartz, *Developmental Psychology Goes to Court* in *Youth on Trial: A Developmental Perspective on Juvenile Justice* 9, 26 (Thomas Grisso and Robert Schwartz eds. 2000). Adolescents tend to process information in an 'either-or' capacity, particularly in stressful situations. While adults may perceive multiple options in a particular

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<sup>6</sup> See Marty Beyer, *Recognizing the Child in the Delinquent*, 7 *Ky. Child Rts. J.* 16, 17 (Summer 1999); David Elkind, *Egocentrism in Adolescence*, 38 *Child Dev.* 1025, 1029-30 (1967); *Kids are Different: How Knowledge of Adolescent Development Theory Can Aid in Decision-Making in Court* (L. Rosado ed. 2000); Marty Beyer, *Immaturity, Culpability & Competency in Juveniles: A Study of 17 Cases*, 15 *Crim. Just.* 27, 27 (Summer 2000); Laurence Steinberg, *et al.*, *Age Differences in Future Orientation and Delay Discounting*, 80 *Child Dev.* 28, 30, 35-36 (2009).

situation, adolescents may only perceive one. Marty Beyer, *Immaturity, Culpability & Competency in Juveniles: A Study of 17 Cases*, 15 *Crim. Just.* 27, 27 (Summer 2000); Marty Beyer, *Recognizing the Child in the Delinquent*, 7 *Ky. Child Rts. J.* 16, 17-18 (Summer 1999). The tendency of juveniles to think only about the present moment combined with their intense self-consciousness leads them to have difficulty thinking past the time of interrogation to a point in which they would be free, and prevents them from recognizing the possibility of terminating an interrogation

Further, research confirms that “[a]dolescents are more likely than young adults to make choices that reflect a propensity to comply with authority figures . . . when being interrogated by the police.” Thomas Grisso, *et al.*, *Juveniles’ Competence to Stand Trial: A Comparison of Adolescents and Adults’ Capacities as Trial Defendants*, 27 *L. & Hum. Behav.* 333, 357 (2003); *see also* Lawrence Kohlberg, *The Psychology of Moral Development: The Nature and Validity of Moral Stages* 172-73 (1984). Thus, when subjected to police questioning, juveniles are less prone to feel as though they can end questioning or leave the room.

This Court also has recognized that juveniles’ limited understanding of the criminal justice system and the roles of the actors within it differentiate them from adults. *Graham v. Florida*, No. 08-7412 at \*27 (U.S. May 17, 2010) (noting that juveniles’ limited understanding puts them at a “significant disadvantage in criminal proceedings”); *In re Gault*, 387 U.S. 1, 45 (1967) (finding that confessions of juveniles require “special caution”). *Gallegos* further illustrates how juvenile status implicates the ability

to exercise constitutional rights in the confession context. *Gallegos*, 370 U.S. 49. Gallegos was “not equal to the police in knowledge and understanding of the consequences of the questions and answers being recorded” and therefore was “unable to know how to protect his own interests or how to get the benefits of his constitutional rights.” *Id.* at 54.

The increased susceptibility of juveniles and their decreased comprehension of their rights creates a greater risk of false confessions. This Court has acknowledged that “authoritative opinion has cast formidable doubt upon the reliability and trustworthiness of ‘confessions’ by children.” *In re Gault*, 387 U.S. at 52. Age has been found to be a significant predictor of the self-reported likelihood of falsely confessing. Naomi E. Sevin Goldstein, *et al.*, *Juvenile Offenders’ Miranda Rights Comprehension and Self-Reported Likelihood of Offering False Confessions*, 10 Assessment 359, 366 (2003). Due to intellectual and emotional immaturity, juveniles are more suggestible than adults and therefore, may be more easily persuaded or coerced by police during interrogation. G. Richardson, *et al.*, *Interrogative Suggestibility in an Adolescent Forensic Population*, 18 J. of Adolescence 211, 215 (1995). Therefore, it is critical that juveniles have appropriate protections during police interrogations.

Younger children are even more susceptible to pressure during police interrogation than older adolescents. “A significant body of developmental research indicates that, on average, youths under the age of fourteen differ significantly from adolescents sixteen to eighteen years of age in their level of psychological development.” Elizabeth S. Scott & Thomas Grisso, *Developmental Incompetence, Due*

*Process, and Juvenile Justice*, 83 N.C. L. Rev. 793, 817 (2005). Furthermore, children 15 and younger are “significantly more likely than older adolescents and young adults to be impaired” in legal contexts. Grisso, *Juveniles’ Competence to Stand Trial*, *supra*, at 356. <sup>7</sup> Younger suspects, who perceive themselves to be in custody, must at a minimum have their rights explained to them at the outset of questioning.

A 13-year-old boy such as J.D.B. would not have believed that he was able to refuse to answer Officer DiCostanzo’s questions and leave the school conference room. He was therefore in custody under *Miranda*.

## CONCLUSION

For the foregoing reasons, *Amici Curiae* respectfully request that this court grant J.D.B.’s petition for a Writ of Certiorari.

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<sup>7</sup> Indeed, a developmentally appropriate response to confessions from younger teenagers might go further: because such youth may not even understand *Miranda* warnings, requiring the presence of counsel might be one of the only ways to ensure the voluntariness – and accuracy – of their confessions. A study of youths’ comprehension of *Miranda* warnings revealed 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 . . .” Grisso, *Juveniles’ Competence to Stand Trial*, *supra*, at 356. (citing Thomas Grisso, *Juveniles’ Waiver of Rights: Legal and Psychological Competence* 192 (1981)). Another study revealed that juveniles age 14 and below “demonstrate incompetence to waive their right to silence . . .” Grisso, *Legal and Psychological Competence*, *supra*; see also Thomas Grisso, *Juveniles’ Capacities to Waive Miranda Rights: An Empirical Analysis* 68 Cal. L. Rev. 1134 (1980).

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## APPENDIX A

### **Identity of Amici and Statements of Interest**

#### **Organizations**

The **Center for Children’s Advocacy, Inc.** (Center) is a non-profit organization affiliated with the University of Connecticut School of Law, dedicated to the enhancement of the legal rights of poor children. The Center provides educational and mental health advocacy to children who are involved with the juvenile justice system and provides training and technical support to attorneys and service providers who work with court involved youth. Through contracts with the state Commission on Child Protection, the Center provides comprehensive pre-service training to all attorneys new to the juvenile court. The Center advocates on behalf of youth in the areas of child welfare, disability, and education.

The Center served as class counsel for all children in the state’s juvenile detention centers. *Emily J. v. Weicker*, 3:93 CV 1944 (D.Conn. 1997). The Center also participates in legislative advocacy, working with state, federal, and local officials on questions of juvenile justice, alternatives to incarceration, and children’s access to mental health care, and developmentally appropriate treatment within the juvenile justice system. The Center participates as *amicus curiae* in state and federal courts throughout the country, including the United States Supreme Court, in cases addressing the rights and interests of children. The

questions the Court must decide are, therefore, at the core of the work of the Center for Children's Advocacy.

**The Center on Children and Families** (CCF) at Fredric G. Levin College of Law is based at University of Florida, the state's flagship university. CCF's mission is to promote the highest quality teaching, research and advocacy for children and their families. CCF's directors and associate directors are experts in children's law, constitutional law, criminal law, family law, and juvenile justice, as well as related areas such as psychology and psychiatry. CCF supports interdisciplinary research in areas of importance to children, youth and families, and promotes child-centered, evidence-based policies and practices in dependency and juvenile justice systems. Its faculty has many decades of experience in advocacy for children and youth in a variety of settings, including the Virgil Hawkins Civil Clinic and Gator TeamChild juvenile law clinic.

**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 works on the Annie E. Casey Foundation's Juvenile Detention Alternatives

Initiative (JDAI), which aims to reduce unnecessary use of secure detention and ensure safe and humane conditions of confinement for children. CCLP also works on the John D. and Catherine T. MacArthur Foundation's Models for Change initiative, which promotes a variety of juvenile justice reforms, including reduction of Disproportionate Minority Contact (DMC) with the justice system. As part of Models for Change, CCLP coordinates the DMC Action Network, a network of twenty jurisdictions working on data-driven strategies to reduce racial and ethnic disparities in the juvenile justice system. In all of its activities, CCLP emphasize the need for programs and services for troubled youth that are consistent with the scientific research on adolescent development. CCLP has an interest in this case because it raises important issues of adolescent development and interrogation by law enforcement authorities.

The **Central Juvenile Defender Center**, a training, technical assistance and resource development project, is housed at the Children's Law Center, Inc. In this context, it provides assistance on indigent juvenile defense issues in Ohio, Kentucky, Tennessee, Indiana, Arkansas, Missouri, and Kansas.

The **Child Advocacy Clinic** at Rutgers University School of Law-Newark serves the needs of children and families who are at risk and living in poverty in Newark and the surrounding areas. The Clinic advocates for children through a variety of means, including direct representation, education and outreach, and policy and program development.

The Clinic regularly serves as law guardian (attorney) for abused and neglected children who are residing in foster care. In addition, the Clinic seeks to secure public benefits and therapeutic and medical interventions for children with disabilities and to assist kinship caregivers in meeting the legal, financial, and educational needs of the children in their care. The Clinic has participated as *amicus curiae* in state and federal courts throughout the country, in cases addressing the rights and interests of children.

The **Children's Law Center, Inc.** in Covington, Kentucky has been a legal service center for children's rights since 1989, protecting the rights of youth through direct representation, research and policy development and training and education. The Center provides services in Kentucky and Ohio, and has been a leading force on issues such as access to and quality of representation for children, conditions of confinement, special education and zero tolerance issues within schools, and child protection issues. It has produced several major publications on children's rights, and utilizes these to train attorneys, judges and other professionals working with children.

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 serve as *amicus curiae*

in juvenile justice and child welfare matters in Massachusetts courts. The CLCM is particularly concerned with fair treatment and outcomes for juveniles in delinquency proceedings and in adult court.

The **Children & Youth Law Clinic (CYLC)** is an in-house legal clinic, staffed by faculty and students at the University of Miami School of Law, which advocates for the rights of children in abuse and neglect, delinquency and other legal proceedings. Founded in 1995, the CYLC has appeared as *amicus curiae* in numerous federal and state court cases implicating significant due process and therapeutic interests of children in state custody. The CYLC has pioneered the use of “therapeutic jurisprudence” in its advocacy for children in school discipline, dependency, mental health, delinquency, and other court proceedings. Therapeutic jurisprudence is a field of social inquiry with a law reform agenda, which studies the ways in which legal rules, procedures, and the roles of legal actors produce therapeutic or anti-therapeutic consequences for those affected by the legal process. The CYLC works to ensure that children are treated with dignity and respect by public education, child welfare and juvenile justice systems charged with their schooling, protection and treatment. We believe that public policy should further the therapeutic interests of children, minimize anti-therapeutic consequences of the legal process, assure their fair and dignified treatment, and promote the rehabilitative purposes of the juvenile justice system.

The **Colorado Criminal Defense Bar (CCDB)** is an established organization of Colorado criminal defense practitioners: attorneys, paralegals and investigators who represent adults and juveniles accused of crime. Founded in 1979, the CCDB includes both private and public criminal defense practitioners and promotes increased knowledge of the law in the area of criminal practice and works to develop best practices in the criminal and juvenile justice arenas. CCDB seeks to defend individual liberties guaranteed by the Bill of Rights and to protect the rights of those who are most vulnerable in our society.

The **Education Law Center - PA** is a public-interest organization dedicated to ensuring that all Pennsylvania children have access to a quality public education. Founded in 1975, ELC-PA focuses primarily on the needs of poor children, children in the child welfare system, children with disabilities, English language learners, and others who are often at a disadvantage in the public education system. ELC has extensive experience with problems involving the relationship of schools and law enforcement, as well as with special education matters, having litigated a number of cases in these areas. ELC seeks to participate as *amicus* in order to share our views concerning how, given what we know about the operation of schools and about adolescent behavior and development, the relevant Supreme Court precedents should be applied to the circumstances of this case.

The **Florida School-to-Jail Pipeline**

**Reform Work Group** is a statewide project of civil legal service providers who receive Children’s Legal Services funding through the Florida Bar Foundation. The School-to-Jail Pipeline Reform Work Group seeks to reverse the trend in Florida public schools of removing children with mental health and behavioral issues from public school settings through referrals for delinquency prosecutions in the juvenile justice system. The Work Group is involved in outreach and educational efforts with school districts, community agencies and parents; litigation challenging the failure of school districts to provide positive behavioral supports and behavior intervention plans to students with mental health and behavioral issues; and legislative and policy outreach to reduce the use of restraint and seclusion against disabled students and to prohibit police interrogation of children outside the presence of their parents.

Member groups of the School-to-Jail Work Group include statewide legal service offices as well as county and regional non-profit law offices.

**Florida Legal Services, Inc.**, founded in 1973, is a statewide legal services organization dedicated to ensuring that indigent people have access to justice. Florida Legal Services’ children’s advocacy unit works together with local legal aid programs throughout Florida to protect the rights and interests of youth in the welfare and juvenile justice system. Recognizing that misguided policies have led to increased referrals to the juvenile justice system, FLS supports systemic reforms that promote

education and prevention programs and provide youth with essential services.

**International CURE (Citizens United for Rehabilitation of Errants)** is a grassroots organization that started in San Antonio, Texas, in 1972. In 1974, it expanded to a statewide organization and in 1985, it became a national group and moved its headquarters to Washington, DC. Since then, there have been nine national conventions and chapters exist in most states. As in Texas, most of these chapters are directed by people who have loved ones in prison and/or who have been incarcerated themselves. In 2005, CURE received consultative status from the United Nations and changed its name from "national" to "international". In June, 2009, International CURE had its 4th International Conference on Prison Reform and Human Rights in Geneva, Switzerland. The goals of CURE are twofold. (1) To use prisons only for those who absolutely have to be in them and (2) For those who have to be incarcerated, they should receive all the rehabilitative opportunities they need to "turn their lives around." CURE strongly feels that these goals will substantially reduce crime.

The **Justice for Children Project** is an educational and interdisciplinary research project housed within The Ohio State University Michael E. Moritz College of Law. Begun in January 1998, the Project's mission is to explore ways in which the law and legal reform may be used to redress systemic problems affecting children. The Justice for Children Project has two primary components: original

research and writing in areas affecting children and their families, and direct legal representation of children and their interests in the courts. Through its scholarship, the Project builds bridges between theory and practice by providing philosophical support for the work of children's rights advocates. By its representation of individual clients through the Justice for Children Practicum and through its amicus work, the Justice for Children Project strives to advance the cause of children's rights in delinquency, status offense, abuse, neglect, and other legal proceedings affecting children's interests.

The **Juvenile Justice Initiative (JJI)** of Illinois is a non-profit, non-partisan, inclusive statewide coalition of state and local organizations, advocacy groups, legal educators, practitioners, community service providers and child advocates supported by private donations from foundations, individuals and legal firm. JJI as a coalition establishes or joins broad-based collaborations developed around specific initiatives to act together to achieve concrete improvements and lasting changes for youth in the justice system, consistent with the JJI mission statement. Our initiatives seek to create a constituency for youth in the justice system with an emphasis on promoting intervention strategies, ensuring fairness for youth in the justice system, and building community resources for comprehensive continuums of services and sanctions to reduce reliance on confinement. Our collaborations work in concert with other organizations, advocacy groups, concerned individuals and state and local government entities throughout Illinois to ensure

that fairness and competency development are public and private priorities for youth in the justice system.

**Juvenile Justice Project of Louisiana** (JJPL) is the only statewide, non-profit advocacy organization focused on reform of the juvenile justice system in Louisiana. Founded in 1997 to challenge the way the state handles court involved youth, JJPL pays particular attention to the high rate of juvenile incarceration in Louisiana and the conditions under which children are incarcerated. Through direct advocacy, research and cooperation with state run agencies, JJPL works to both improve conditions of confinement and identify sensible alternatives to incarceration. JJPL also works to ensure that children's rights are protected at all stages of juvenile court proceedings, from arrest through disposition, post-disposition and appeal, and that the juvenile and adult criminal justice systems take into account the unique developmental differences between youth and adults in enforcing these rights. JJPL continues to work to build the capacity of Louisiana's juvenile public defenders by providing support, consultation and training, as well as pushing for system-wide reform and increased resources for juvenile public defenders.

Formed in 1997, the **Justice Policy Institute** (JPI) is dedicated to reducing society's reliance on incarceration and finding just and effective solutions to social issues. JPI has consistently promoted a rational criminal justice agenda through policy formulation, research, education and public speaking. JPI is often featured in the national media, both for its groundbreaking research and straight

talk about what is needed to fix our country's justice system. JPI formulates and promotes public policy in both juvenile and criminal justice. JPI conducts research, partners with advocates, administrators and policymakers in developing effective and fair policies, and engages in innovative criminal justice discourse in the field and through the media.

**The Juvenile Rights Advocacy Project (JRAP)** is a curricular law clinic, based at Boston College Law School since 1995. JRAP represents youth, with a focus on girls, who are in the delinquency or status offense systems, across systems and until the youth reach majority. JRAP attorneys use legal system to access social services and community supports for youth, hold systems accountable, and reduce the use of incarceration. JRAP also conducts research and policy advocacy for youth in the justice system. Among its work, JRAP seeks to develop and model programs for delinquent girls that reduce the use of incarceration and detention, and prompt systems to work collaboratively to shore up community resources supporting youth.

**Legal Aid Services of Broward County, Inc.**, began offering legal services to the public in 1973. LAS' mission is to provide free civil legal advice, representation and education to the poor of Broward County to improve the lifestyle and living conditions of the low-income community. Its Education Legal Rights Project works to ensure that eligible students and their families receive advocacy training, due process and legal representation in

their struggle to receive appropriate benefits and educational services.

**The Legal Aid Society of Palm Beach County, Inc.**, was founded in 1949 to provide equal access to justice to disadvantaged persons living in Palm Beach County. Its Educational Advocacy Law Project (EALP) provides advocacy and legal services to overcome barriers to public education for school-age children, focusing on assistance to children who have difficulty enrolling in school or have been involuntarily removed from school, or have been denied initial evaluations to determine whether they have disabilities, or denied necessary educational services despite having been identified as students with disabilities. In partnership with Southern Legal Counsel and the Southern Poverty Law Center, EALP successfully litigated a case against the local school district which resulted in an agreement to implement district-wide positive behavioral interventions and supports as well as increased special education and related services for students with behavioral issues.

**Legal Services for Children (LSC)** has been providing holistic legal services to children and youth in the San Francisco Bay Area since 1975. LSC employs a multidisciplinary model of representation, utilizing teams of attorneys and social workers to serve the complex needs of our minor clients. This model is based upon the premise that children are developmentally different from adults, and that legal representation and treatment should be individually tailored to account for the unique needs and

competencies of each child. LSC fully supports the foundational principle supporting a separate juvenile court, recently reiterated by the Supreme Court in *Roper v. Simmons*: the constitution requires courts exercising jurisdiction over children to take into account their unique characteristics as juveniles.

The **Kids First Law Center** is a nonprofit public interest organization for children in Cedar Rapids, Iowa. Kids First opened in January 2005 and provides free legal counsel to children in high-conflict custody and divorce cases. Kids First focuses on the needs and rights of children placed in the middle of conflict. The organization strives to make children's voices heard in the court system. We believe judges and attorneys should seek to understand situations from the child's perspective. Because of their developmental stages and comprehension abilities, children should be treated differently than adults in the court system.

The **Midwest Juvenile Defender Center** (MJDC) is an eight state regional network of defense attorneys representing juveniles in the justice system. It was created to increase the capacity of juvenile defenders in the Midwest. MJDC gives juvenile defense attorneys a more permanent capacity to address practice issues, improve advocacy skills, build partnerships, exchange information, and participate in the national debate over juvenile crime. MJDC provides support to juvenile defenders to ensure that youth are treated fairly in the justice system.

### **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. One of the primary goals of NCYL's juvenile justice advocacy is to ensure that youth in trouble with the law are treated as adolescents and not adults and in a manner that is consistent with their developmental stage and capacity to change.

### **The National Juvenile Justice Network**

(NJJN) enhances the capacity of state-based juvenile justice coalitions and organizations to press for state and federal laws, policies and practices that are fair, equitable and developmentally appropriate for all children, youth and families involved in, or at risk of becoming involved in, the justice system. A critical component of the appropriate treatment of youth in

conflict with the law is providing youth with trained defense attorneys at all stages of system process as well as ensuring youth are granted increased due process protections given their particular vulnerability to authority.

NJJN was formed in 2002 by a group of eleven juvenile justice reform organizations from different states who saw a need to facilitate networking among reform organizations and increase information-sharing and strategizing across state lines. Now, by collaborating with state, local and national change agents for children and by creating a network that is itself effective and respected, NJJN works to ensure that every state's juvenile justice system develops model laws, policies and programs. NJJN currently has 40 members from 33 states, and 16 partner organizations that support its work.

**The Northeast 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 NRJDC 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 **Rutgers Urban Legal Clinic**, a clinical program of Rutgers Law School – Newark, was established over thirty years ago to assist low-income clients with legal problems that are caused or exacerbated by urban poverty. The Clinic’s Criminal and Juvenile Justice section provides legal representation to individual clients and undertakes public policy research and community education projects in both the juvenile and criminal justice arenas. In recent years, ULC students and faculty have worked with the New Jersey Office of the Public Defender, the New Jersey Institute for Social Justice, the Essex County Juvenile Detention Center, Covenant House – New Jersey, staff of the New Jersey State Legislature, and a host of national organizations on a range of juvenile justice practice and policy issues, including questions pertaining to the due process and fourth amendment rights of young people.

The **Southwest Juvenile Defender Center**, housed at the University of Houston Law Center, brings together juvenile defenders, mental health professionals, educators, legislators, and other juvenile justice professionals. Through this collaboration the Center strives to improve advocacy for children. The Center has collaborated with the American Bar Association Juvenile Justice Center, the National Juvenile Defender Center, Texas Appleseed, and other advocacy organizations to complete an assessment of the Texas juvenile justice system. That report, *Selling Justice Short: Juvenile Indigent Defense in Texas*, played an important role in passing the Fair Defense Act, which reformed both

juvenile and criminal indigent defense in Texas. The Center provides training and technical support for defense attorneys representing youth. The Center also educates the general public, including citizens and multidisciplinary professionals, to promote justice for children.

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 educates attorneys and court personnel about the role of counsel in delinquency cases and provides training and resources to juvenile defenders. 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.

**Southern Legal Counsel, Inc.**, is a not-for-profit public interest law firm that provides representation for children throughout the State of Florida, seeking to obtain special education and related services. SLC also is litigating to force the State to meet its constitutional duty to provide a high quality education to its public school students. In the past, SLC has litigated cases on behalf of youth in the juvenile justice system seeking rehabilitation and educational services. We are currently focusing on improving the behavioral services provided by school districts in order to stem the flow of children with disabilities from school to jail.

The **W. Haywood Burns Institute for Juvenile Justice Fairness and Equity** works to protect and improve the lives of youth of color, poor children and their communities by ensuring fairness and equity throughout all public and private youth serving systems. A disproportionately high percentage of youth waived to adult court and sentenced to prison are youth of color. We join in calling for review in this case to address the fundamental unfairness visited upon the defendant.

The **Youth Law Center** is a San Francisco-based national public interest law firm working to protect the rights of at-risk children, especially those at risk of or involved in the juvenile justice or child welfare systems. Since 1978, Youth Law Center attorneys have represented children in civil rights and juvenile court cases in California and two dozen other states. The Center's attorneys are often consulted on juvenile policy matters, and have participated as amicus curiae in cases around the country involving important juvenile system issues. Youth Law Center attorneys have written widely on a range of juvenile justice, child welfare, health and education issues, and have provided research, training, and technical assistance on legal standards and juvenile policy issues to public officials in almost every State. The Center has long been involved in public policy discussions, legislation and court challenges involving the treatment of juveniles in the juvenile and criminal justice systems. The Center has worked to develop procedures that recognize the particular needs of children at the initial stages of law enforcement investigation, and took part in the

MacArthur Foundation study of adolescent development as it relates to criminal justice concepts. Most recently, Youth Law Center attorneys undertook a statewide study of juvenile competence in California, and authored *Incompetent Youth in California Juvenile*, published in the Stanford Law & Policy Review.

### **Individuals**

**Tamar Birckhead** is an Assistant Professor of Law at the University of North Carolina at Chapel Hill where she teaches the Juvenile Justice Clinic and the Criminal Lawyering Process. Her research interests focus on issues related to juvenile justice policy and reform, criminal law and procedure, and indigent criminal defense. Professor Birckhead's 2008 article on raising the age of juvenile court jurisdiction from 16 to 18 in North Carolina has received significant attention at both the state and national levels. The Raleigh *News & Observer* published an Op-Ed written by Professor Birckhead on the subject of raising the age, and she has been interviewed by radio and print reporters across the state on her findings. She has testified before the N.C. Governor's Crime Commission on the history of raising the age of juvenile court jurisdiction, and Action for Children North Carolina, the state's premier child advocacy organization, issued a press release and fact sheet on her research. In addition, The Campaign for Youth Justice, a national organization dedicated to ending the practice of trying, sentencing, and incarcerating youth under 18 in the adult criminal justice system, highlighted

Professor Birckhead's research in their newsletter and interviewed her for their weekly radio program, *Juvenile Justice Matters*. Prior to joining the UNC School of Law faculty in 2004, Professor Birckhead practiced for ten years as a public defender, representing indigent criminal defendants -- including juveniles -- in the Massachusetts trial and appellate courts as a staff attorney with the Committee for Public Counsel Services and in federal district court in Boston as an Assistant Federal Public Defender. Professor Birckhead has defended clients in a wide variety of criminal cases, from violent felony offenses in state court to acts of terrorism in federal court. Licensed to practice in North Carolina, New York and Massachusetts, Professor Birckhead has been a frequent lecturer at continuing legal education programs across the U.S. as well as a faculty member at the Trial Advocacy Workshop at Harvard Law School. She is Vice President of the Board for the North Carolina Center on Actual Innocence and has been appointed to the Executive Council of the Juvenile Justice and Children's Rights Section of the North Carolina Bar Association. She is also a member of the Advisory Board for the North Carolina Juvenile Defender as well as a member of the Criminal Defense Section and the Juvenile Defender Section of the North Carolina Academy of Trial Lawyers. Professor Birckhead received her B.A. degree in English Literature with Honors from Yale University and her J.D. with Honors from Harvard Law School, where she served as Recent Developments Editor of *The Harvard Women's Law Journal*.

**Jeffrey Fagan** is a Professor of Law and Public Health at Columbia University. He has conducted research on juvenile crime and juvenile justice for more than three decades. He has published numerous peer-reviewed articles, books and book chapters on juvenile justice. His research on the transfer of adolescents to criminal court has focused on the public safety and jurisprudential dimensions of the law and policy of transfer. His research and scholarship on responses of juvenile offenders to punishment and other legal sanctions recognizes and incorporates the critical developmental differences between youth and adults in assessing the proportionality and public safety impacts of criminal legal sanctions. His work on racial disparities in juvenile justice analyzes the cumulative effects of racial disparity and disadvantage at all stages of juvenile court proceedings, from arrest through disposition and from post-disposition through appeal. His research on adolescents and procedural justice works examines whether law enforcement practices to assess their fit with principles of adolescent development, and estimates the positive impacts on public safety when police take into account age and lack of experience with the justice system in their interactions with minors. He was a member of the MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice from 1996-2006, and served on the Committee on Law and Justice of the National Research Council (including two years as Vice-Chair) from 2000-2006. He has participated as amicus curiae in state and federal courts across the country, including the United

States Supreme Court, in cases addressing the rights and well-being of children.

**Barry Feld** is Centennial Professor of Law, University of Minnesota Law School. He received his B.A. from the University of Pennsylvania; his J.D. from University of Minnesota Law School; and his Ph.D. in sociology from Harvard University. 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. One of his earliest books, *Neutralizing Inmate Violence: Juvenile Offenders in Institutions* (Ballinger 1976), studied ten different juvenile correctional programs and the impact of institutional security practices on social control. 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; 2<sup>nd</sup> Ed. 2005); and *Juvenile Justice Administration in a NUTSHELL* (West 2002). 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.

**Frank F. Furstenberg, Ph.D.**, is the Zellerbach Family Professor of Sociology at the University of Pennsylvania. Dr. Furstenberg is also the Director of the MacArthur Foundation Research Network on Transitions to Adulthood which examines the changing nature of adulthood, and the policies, programs, and institutions that support young people as they move into adulthood. The Network is both documenting these cultural and social shifts and exploring how families, government, and social institutions are shaping the course of young adult's development. The Network is currently developing policies related to vulnerable populations of young adults. A team of researchers from many different institutions are conducting a related series of analyses of data such as Add Health, NLSY, PSID, and NSFH to investigate the multiple paths to adulthood. At the same time, a team of qualitative researchers is looking at how adults in five different sites around the country are interpreting their life experiences. The aim is to understand how young adults manage and particularly to examine how schooling, work, family, and community institutions affect the transition to adulthood. The Network has extended the research to a focus on vulnerable populations: those leaving foster care, those leaving juvenile justice or prison, those with special health

needs, homeless youth and others. This research is forthcoming from the University of Chicago Press in *On Your Own Without a Net*. Much of Dr. Furstenberg's research focuses on the family in the context of disadvantaged urban neighborhoods, cross-national research on children's well-being, life course studies and the transitions from adolescence to adulthood. He has authored numerous articles in professional journals and is co-editor of *On the Frontier of Adulthood: Theory, Research, and Public Policy* (University of Chicago Press, 2005).

**Theresa Glennon** is the Feinberg Professor of Law at the James E. Beasley School of Law at Temple University. She conducts research and writing and teaches in the areas of education law, family law and disability. Her scholarship includes a focus on issues concerning disability and discipline in the school environment. She served as a staff attorney at the Education Law Center-Pennsylvania from 1985-1989, prior to entering legal academia, where she focused on the legal rights of students with disabilities. She is currently a member of the Board of Trustees of the Education Law Center of Pennsylvania and a member of the Institutional Review Board for Public/Private Ventures, which reviews research proposals for educational, afterschool and other social services programs involving teenagers and others in order to ensure the protection of human subjects.

**Martin Guggenheim** is the Fiorello La Guardia Professor of Clinical Law at N.Y.U. Law School, where he has taught since 1973. He served as Director of Clinical and Advocacy Programs from

1988 to 2002 and also was the Executive Director of Washington Square Legal Services, Inc. from 1987 to 2000. He has been an active litigator in the area of children and the law and has argued leading cases on juvenile delinquency and termination of parental rights in the Supreme Court of the United States. He is also a well-known scholar whose books include “What’s Wrong with Children’s Rights” published by Harvard University Press in 2005 and “Trial Manual for Defense Attorneys in Juvenile Court,” published by ALI-ABA in 2007 which was co-authored with Randy Hertz and Anthony G. Amsterdam. He has won numerous national awards including in 2006 the Livingston Hall Award given by the American Bar Association for his contributions to juvenile justice.

**Professor Kristin Henning** joined the faculty of the Georgetown Law Center in 1995 as a Stuart-Stiller Fellow in the Criminal and Juvenile Justice Clinics. As a Fellow she represented adults and children in the D.C. Superior Court, while supervising law students in the Juvenile Justice Clinic. In 1997, Professor Henning joined the staff of the Public Defender Service (PDS) for the District of Columbia where she continued to represent clients and helped to organize a Juvenile Unit designed to meet the multi-disciplinary needs of children in the juvenile justice system. Professor Henning served as Lead Attorney for the Juvenile Unit from 1998 until she left the Public Defender Service to return to Georgetown in 2001. As lead attorney, she represented juveniles in serious cases, supervised and trained new PDS attorneys, and coordinated and conducted training for court-appointed attorneys representing juveniles.

Professor Henning has been active in local, regional and national juvenile justice reform, serving on the Board of the Mid-Atlantic Juvenile Defender Center, the D.C. Department of Youth Rehabilitation Services Advisory Board and Oversight Committee, and on local D.C. Superior Court committees such as the Delinquency Working Group and the Family Court Training Committee. She has published a number of law review articles on the role of child's counsel, the role of parents in delinquency cases, confidentiality in juvenile courts, and therapeutic jurisprudence in the juvenile justice system. She is also a lead contributor to the *Juvenile Law and Practice* chapter of the District of Columbia Bar Practice Manual and has participated as an investigator in eight state assessments of the access to counsel and quality of representation for juveniles.

Kris Henning received her undergraduate degree from Duke University, a J.D. from Yale Law School in 1995, and an LL.M. degree from Georgetown University Law Center in 2002. In 2005, Kris was selected as a Fellow in the Emerging Leaders Program of the Duke University Terry Sanford Institute of Public Policy and the Graduate School of Business at the University of Cape Town, South Africa. Professor Henning also traveled to Liberia in 2006 and 2007 to aid the country in juvenile justice reform and was awarded the 2008 Shanara Gilbert Award by the Clinical Section of the Association of American Law Schools in May for her commitment to social justice, service to the cause of clinical legal education, and an interest in

international clinical legal education.

**Paul Holland** is Associate Dean of Academic Affairs and an Associate Professor at Seattle University School of Law. He teaches in the Youth Advocacy Clinic and served as Director of the school's Ronald A. Peterson Law Clinic from 2006 - 2009. Professor Holland has also taught in clinics addressing issues of juvenile justice and the legal rights of children at Georgetown University Law Center, Loyola University (Chicago) and the University of Michigan. In 2006, his article *Schooling Miranda: Policing Interrogation in the Twenty-First Century Schoolhouse*, was published in the Loyola Law Review. He served as Chair of the Washington Governor's Juvenile Justice from 2008-2009.

Professor **Alan M. Lerner** has been a member of the University of Pennsylvania Law School faculty since 1993.

He is the Director of the Law School's Interdisciplinary Child Advocacy Clinic, and is the Law School's Faculty Co-Director of the University's Field Center for Children's Policy, Practice, and Research. He also serves on the Pennsylvania Supreme Court's Juvenile Court Procedural Rules Committee.

In 2007, Professor Lerner was named a "Bellow Scholar" by the Association of American Law Schools (AALS), Committee on Lawyering in the Public Interest, for his research project, "Identifying the Red Flags of Child Neglect to Facilitate Evidence-Based, Focused Responses." He has made numerous presentations throughout the

United States, and abroad, to professional organizations concerned with equal justice, child welfare, and clinical teaching theory and practice.

Professor Lerner's scholarly publications include: **TEACHING LAW AND EDUCATING LAWYERS: Closing the Gap Through Multidisciplinary Experiential Education**, *International Journal of Clinical Legal Education* (Winter, 2006, 96-133); **USING OUR BRAINS: What Cognitive Science and Social Psychology Teach Us About Teaching Law Students to Make Ethical, Professionally Responsible, Choices**, *23 Quinnipiac Law Review*, 643 (2004); and **LAW & LAWYERING IN THE WORKPLACE: Building Better Lawyers By Teaching Students to Exercise Critical Judgment as Creative Problem Solvers**, *32 Akron L. Rev.* 107 (1999).

Before joining the faculty, Professor Lerner practiced law for 25 years concentrating his practice in labor and employment law, with a particular focus on problems of workplace discrimination and harassment. He also chaired his firm's Labor and Employment Law Department, and Ethics Committee. He was twice named as one of "The Best Lawyers in America."

**Wallace Mlyniec** is the former Associate Dean of Clinical Education and Public Service Programs, and currently the Lupo-Ricci Professor of Clinical Legal Studies, and Director of the Juvenile Justice Clinic at Georgetown University Law Center. He teaches courses in family law and children's

rights and assists with the training of criminal defense and juvenile defense fellows in the Prettyman Legal Internship Program. He is the author of numerous books and articles concerning criminal law and the law relating to children and families. Wallace Mlyniec received a Bicentennial Fellowship from the Swedish government of study their child welfare system, the Stuart Stiller Award for public service, and the William Pincus award for contributions to clinical education. He holds his B.S. from Northwestern University and his J.D. from Georgetown University. He is the Vice Chair of the Board of Directors of the National Juvenile Defender Center and former chair of the American Bar Association Juvenile Justice Committee.

**Eddie Ohlbaum** is a trial lawyer who joined the Temple Law School Faculty in Spring 1985. The first holder of Temple's first chair in trial advocacy, the Jack E. Feinberg Professorship of Litigation, he was awarded the prestigious Richard S. Jacobson Award, given annually by the Roscoe Pound Foundation to one professor for "demonstrated excellence in teaching trial advocacy" in 1997. He is a former senior trial lawyer with the Defender Association of Philadelphia. Professor Ohlbaum is the senior member of the coaching team of the law school's championship mock trial team—which has won 5 national championships in the past sixteen years—and the architect of Temple's unique L.L.M. in Trial Advocacy. His programs have won awards from the American College of Trial Lawyers and the Committee on Professionalism of the American Bar Association. The author of three books, Professor

Ohlbaum is a frequent speaker on evidence and advocacy at key international and domestic conferences.

Professor **Catherine J. Ross** is Professor of Law at the George Washington University Law School where she writes and teaches on the rights of children, constitutional law, and the relations between juveniles, families and the state. Professor Ross has published widely on the rights of children in the juvenile justice system, the child welfare system and the educational system, among other topics.

Professor Ross was a Member of the School of Social Science at the Institute for Advanced Study in 2008-9, and has been a visiting professor at the University of Pennsylvania and Boston College. She earned her Ph.D. and J.D. at Yale where she also received post-doctoral training at the Bush Center in Child Development and Social Policy and served on the faculty of the Yale Child Study Center, a department of the Yale Medical School. For identification purposes only, Professor Ross is a former chair of the American Bar Association's Steering Committee on the Rights of Children, and currently co-chairs the Committee on the Rights of Children of the ABA's Section on Individual Rights and Responsibilities. She joins the amici in her individual capacity.

Professor **D. Kelly Weisberg** is a Professor of Law at Hastings College of the Law where she teaches Family Law, Children and the Law, and Juvenile Justice. She served as Director of the

Hastings' Family Law Concentration from 2003-2007. She is the author of numerous law review articles and books, including: *Modern Family Law* (co-authored with Susan Appleton)(Aspen Publishers, 4th ed. 2010); and *Child, Family, State: Cases and Materials on Children and the Law* (co-authored with Robert Mnookin) (Aspen Publishers, 6th ed. 2009).

Before joining the faculty at Hastings College of the Law in 1982, she worked at the International Commission of Jurists in Geneva, where she conducted legal research on the rights of children during the International Year of the Child. She has also worked at the URSA Institute, San Francisco, California, where she participated in federally-funded studies of juvenile parole, juvenile prostitution, family violence, and sexual exploitation of children. She has served as a consultant for the American Bar Association, Women on Law Faculties Study, and also for the American Justice Institute, National Juvenile Justice Assessment Center, for a study of child abuse. She testified before the Senate Subcommittee of Juvenile Justice and Delinquency Prevention, on the relationship between runaway behavior and juvenile prostitution. She has taught at Washington University School of Law, St. Louis; Boston University; and at the University of Florida Levin College of Law.

**Eric J. Zogry**, Juvenile Defender of the North Carolina Office of the Juvenile Defender, joins amici as juveniles who are alleged delinquent and are interrogated by law enforcement must be fully

protected against self-incrimination. The mission of our office can be described in four parts: to provide services and support to defense attorneys, to evaluate the current system of representation and make recommendations as needed, to elevate the stature of juvenile delinquency representation, and to work with other juvenile justice actors to promote positive change in the juvenile justice system. Protection of juveniles' constitutional and procedural rights is an integral goal for our office.