No. 08-7412, 08-7621

In the Supreme Court of the United States

TERRANCE JAMAR GRAHAM,
Petitioner,
v.
STATE OF FLORIDA,
Respondent

ON WRIT OF *CERTORARI* TO
THE DISTRICT COURT OF APPEAL OF FLORIDA,
FIRST DISTRICT

BRIEF OF JUVENILE LAW CENTER, NATIONAL JUVENILE DEFENDER CENTER, CHILDREN AND FAMILY JUSTICE CENTER, *ET AL.* AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICI*[1]

The organizations submitting this brief work with, and on behalf of, adolescents in a variety of settings, from day care to foster care, substance abuse to homelessness, and at every stage of the juvenile and criminal justice process. *Amici* are advocates and researchers who bring a unique perspective and a wealth of experience in providing for the care, treatment, and rehabilitation of youth in the child welfare and juvenile justice systems. *Amici* know from first hand experience that youth who enter these systems need extra protection and special care, clearly necessitated by their status as youth. *Amici* also know from their collective experience that adolescent immaturity often manifests itself in numerous ways that implicate culpability, including diminished ability to assess risks, make good decisions, and control impulses. *Amici* also know that central to adolescence is the capacity to change and mature. It is precisely for these reasons that *Amici* believe that the status of childhood and adolescence separates youth from adults in categorical and distinct ways that, while youth should be held accountable, youth cannot be held to the same standards of blameworthiness and culpability as their adult counterparts.

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[1] *Amici* file this brief with the consent of all parties. Letters of consent have been lodged with the Clerk of Court. 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.

IDENTITY OF *AMICI*

See Appendix "A" for a list and brief description of all *Amici*.

SUMMARY OF ARGUMENT

Petitioners challenge the constitutionality under the Eighth Amendment of an irrevocable sentence of life without parole for youthful offenders who committed non-homicide crimes while under the age of eighteen. *Amici* urge this Court to find these sentences unconstitutional.

This Court's holding in *Roper v Simmons*, striking the juvenile death penalty as cruel and unusual punishment, was the Court's most recent application of the Eighth Amendment to juveniles and reflects a decades-long commitment to considering the special characteristics of youth when construing their rights under the Constitution. While the Court's solicitude for youth is particularly pronounced in cases addressing children's involvement in the juvenile and criminal justice systems, children's unique developmental status has repeatedly been taken into account in determining the scope and breadth of their rights under various provisions of the Constitution that reach into the civil arena as well. This doctrinal approach to determining children's rights under the Constitution must also govern the Court's analysis here.

Additionally, while Roper adhered to this Court's special consideration of youth, its holding was enriched and informed by scientific and

developmental research that confirmed, inter alia, the transitory nature of the characteristics of youth, their diminished criminal culpability and their capacity for change and rehabilitation. This research informs the outcome in these appeals as well.

Lastly, this Court's Eighth Amendment jurisprudence proscribes penalties that do not accord with human dignity. Looking beyond legislative indicia, this Court must exercise its own independent judgment in determining the constitutionality of criminal punishments under the Eighth Amendment. Such independent judgment must consider the diminished culpability of the petitioners and the fact that these life without parole sentences fail to serve any legitimate penological purpose.

This Court's historical youth jurisprudence, informed by research and buttressed by the Court's independent consideration of whether a sentence of life without parole imposed on adolescents comports with human dignity, collectively prohibit the imposition of these sentences on youth who have been convicted of non-homicide crimes committed while under the age of eighteen.

ARGUMENT

I. COURTS HAVE A SPECIAL DUTY TO ENSURE THAT THE EIGHTH AMENDMENT ADEQUATELY PROTECTS YOUTH

The fact that minors are different than adults 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, this Court has consistently considered the developmental and social differences of youth in measuring the scope and breadth of minors' constitutional rights in both civil and criminal law.

This Court's constitutional jurisprudence confirms that a sentence of life without parole must be assessed in light of the unique developmental status and diminished culpability of youth as a class. While this Court has, of course, considered the constitutionality of the death penalty as applied to youth, *see, e.g., Roper v. Simmons,* 543 U.S. 551 (2005), *Thompson v. Oklahoma,* 487 U.S. 815 (1988), *Stanford v. Kentucky,* 492 U.S. 361 (1989), to date, this Court has not considered an Eighth Amendment challenge to a juvenile sentence other than the

death penalty.[2] The substantive factors underlying the Court's decision in Roper – including the diminished culpability of youth as a class and their innate capacity for change – apply equally here, and also compel the conclusion that imposition of the irrevocable penalty of life without parole for a person who was under 18 at the time of his or her crime is cruel and unusual.

This Court has previously raised the concern that the federal courts must be provided with objective factors with which to assess the constitutionality of criminal sentences. Thus, the difficulty of assessing the gravity of an offense – or comparing the gravity of offenses in various jurisdictions – may pose a barrier to the Court's willingness to determine whether a particular term of years sentence is constitutional. *See, e.g., Harmelin v. Michigan*, 501 U.S. 957, 959 (1991) (*Kennedy, concurring in part and concurring in the judgment*) ("proportionality review by federal courts should be informed by objective factors to the maximum extent possible…."); *Ewing v. California,* 538 U.S. 11, 23-24 (2003) (describing the "principles of proportionality review" Kennedy laid out in *Harmelin* as guiding the Court's "application of the Eighth Amendment…."); *Coker v. Georgia,* 433 U.S. 484, 592 (1977) ("Eighth Amendment judgments should not be, or appear to be, merely the subjective views of individual Justices; judgment should be

[2]Because this case rests upon this Court's jurisprudence on youth, it does not require the Court to reach the question of whether in other contexts "death is different" such that death penalty cases require a different and more rigorous analysis under the Eighth Amendment.

informed by objective factors to the maximum possible extent.") Here, however, this Court's previous application of the Constitution to adolescents, informed by medical, scientific and adolescent development research, provides objective factors to guide the Court's reasoning.

This Court's previous cases require the recognition that youth are different from adults in large part because of their capacity to change and their diminished culpability. Criminal sentences that disregard these central distinctions between adolescents and adults, including the death penalty and life without parole, are unconstitutional. In contrast, a sentence of life with the possibility of parole may be constitutional under appropriate circumstances because it would allow for a later individualized assessment of the culpability and dangerousness of a juvenile offender. Moreover, the depth of an adolescent's capacity to change, and in fact the inevitability of change and maturation for an adolescent, distinguishes youthful defendants from all other types of defendants. Indeed, this Court has already established that for the purpose of reduced culpability, the appropriate age to draw the line is age eighteen. *Roper,* 543 U.S. at 554 ("While drawing the line at 18 is subject to the objections always raised against categorical rules, that is the point where society draws the line for many purposes between childhood and adulthood and the age at which the line for death eligibility ought to rest.").

A. Supreme Court Constitutional Jurisprudence Recognizes the Unique Developmental Status of Minors

1. This Court's Constitutional Jurisprudence Recognizes the Importance of the Transitory Nature of Adolescence for Both Criminal Culpability and Criminal Procedure.

The emerging body of research confirming the distinct emotional and psychological status of youth was critical to *Roper v. Simmons*, 543 U.S. 551 (2005), this Court's landmark ruling abolishing the juvenile death penalty. In prohibiting the execution of offenders under the age of eighteen as a violation of the Eighth Amendment's ban on cruel and unusual punishment, this Court relied on medical, psychological and sociological studies, as well as common experience, which all showed that children under age eighteen are less culpable and more amenable to rehabilitation than adults who commit similar crimes. *Id.* at 568-76. This Court in *Roper* reasoned that because juveniles have reduced culpability, they cannot be subjected to the harshest penalty reserved for the most depraved offenders; punishment for juveniles must be moderated to some degree to reflect their lesser blameworthiness.

Central to this Court's determination about juvenile culpability in *Roper* was its understanding that the personalities of adolescents are "more transitory" and "less fixed" than those of adults. *Id.* at 570. This Court further explained that

> Indeed, "[t]he relevance of youth as a mitigating factor derives from the fact that the signature qualities of youth are transient; as individuals mature, the impetuousness and recklessness that may dominate in younger years can subside." *Johnson[v. Texas*, 509 U.S. 350...], 368, 113 S.Ct. 2658[(1993)]; see also Steinberg & Scott 1014 ("For most teens, [risky or antisocial] behaviors are fleeting; they cease with maturity as individual identity becomes settled. Only a relatively small proportion of adolescents who experiment in risky or illegal activities develop entrenched patterns of problem behavior that persist into adulthood").

Id. This Court noted that this transient nature of a youth's personality was confirmed by psychological and psychiatric practice:

> It is difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption. See Steinberg & Scott 1014-1016. As we understand it, this difficulty underlies the rule forbidding psychiatrists from diagnosing any patient under 18 as having antisocial personality disorder, a disorder also referred to as psychopathy or sociopathy, and which is characterized by callousness, cynicism, and contempt for

> the feelings, rights, and suffering of others. American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders 701-706 (4th ed. text rev.2000); see also Steinberg & Scott 1015.

Id. at 573. As a result, this Court's holding rested in part on the incongruity of imposing a final and irrevocable penalty on an adolescent, who had capacity to change and grow. "[I]t would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed." *Id.* at 570. The Court underscored that the state was not permitted to extinguish the juvenile's "potential to attain a mature understanding of his own humanity." *Id.* at 573.

Roper brought a new scientific lens to this Court's Constitutional jurisprudence, relying on recent – and highly informative – developments in research on adolescent development.[3] While *Roper* enriched the

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[3] The Court cited the following articles and studies in its opinion: Jeffrey Jensen Arnett, *Reckless Behavior in Adolescence: A Developmental Perspective*, 12 Developmental Rev. 339 (1992); Laurence Steinberg & Elizabeth Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 Am. Psychologist 1009, 1014 (2003); Erik H. Erikson, *Identity: Youth and Crisis* (1968). Other studies support the same conclusion. *See also* Elizabeth Cauffman & Laurence Steinberg, *(Im)maturity of Judgment in Adolescence: Why Adolescents May Be Less Culpable Than Adults*, 18 Behav. Sci. & L. 741-760 (2000); Elizabeth S. Scott and Thomas Grisso, *Evolution of Adolescence: A Developmental Perspective on Juvenile Justice Reform*, 88(1) J. Crim. L. & Criminology 137, 137-189 (1997); Elizabeth R. Sowell et al., *Mapping Continued Brain Growth*

constitutional analysis by embedding its reasoning in science, it also built upon this Court's long history of recognizing that there are differences between youth and adults that merit consideration and often different treatment under the Constitution. This body of research, cited approvingly by the *Roper* Court, strongly confirms the longstanding principle that courts must recognize developmental differences between adolescents and adults, and that all youth should be shielded from the harshest consequences of criminal liability.

For example, in *Haley v. Ohio,* this Court recognized that when it comes to criminal procedure, a teenager cannot be judged by the more exacting standards applied to adults. 332 U.S. 596 (1948) (holding unconstitutional the statement of a fifteen-year old defendant). Because minors are generally less mature and more vulnerable to coercive interrogation tactics than adults, they deserve heightened protections under the Constitution. *Id.* The *Haley* Court emphasized the unique vulnerability of youth during the period of adolescence:

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and Gray Matter Density Reduction in Dorsal Frontal Cortex: Inverse Relationships during Postadolescent Brain_Maturation, 21(22) J. Neuroscience 8819, 8819-8829 (2001); Nat'l Inst. Mental Health, *Teenage Brain: A work in progress, A brief overview of research into brain development during adolescence*, NIH Publ'n No. 01-4929 (2001); Kristen Gerencher, *Understand your teen's brain to be a better parent*. Detroit Free Press, Feb. 2, 2005; Barry C. Feld, *Competence, Culpability, and Punishment: Implications of* Atkins *for Executing and Sentencing Adolescents*, 32 Hofstra L. Rev. 463, 515-522 (2003) (discussing scientific studies on adolescent neurological development).

> Age 15 is a tender and difficult age for a boy of any race. He 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 in his early teens. This is the period of great instability which the crisis of adolescence produces.

Id. at 599.

This Court has also been explicit that constitutional rights themselves may be – and often must be – defined with reference to an individual's age and developmental status. In *Gallegos v. Colorado*, for example, this Court, considering the admissibility of a juvenile's statement, observed that an adolescent "cannot be compared with an adult in full possession of his senses and knowledgeable of the consequences of his admissions.... Without some adult protection against this inequality, a 14-year-old boy would not be able to know, let alone assert, such constitutional rights as he had." 370 U.S. 49, 54 (1962). *See also Haley,* 332 U.S. at 601 ("Formulas of respect for constitutional safeguards cannot prevail over the facts of life which contradict them.") *See also In re Gault,* 387 U.S. 1, 48 (1967) (observing that confessions may be particularly problematic when taken from "children from an early age through adolescence" and that without procedural protections, a confession may be "the product of ignorance of rights or of adolescent fantasy, fright or despair." *Id.* at 55.)

This Court has similarly recognized the unique attributes of youth at other key points of their involvement in the juvenile and criminal justice systems. For example, this Court has acknowledged

that a child has a particular need for the "'guiding hand of counsel at every step in the proceedings against him.'" *Id.* at 36 (extending key constitutional rights including the right to counsel to minors subject to delinquency proceedings in juvenile court). This Court has also sought to promote the well-being of youth by ensuring their ongoing access to rehabilitative, rather than punitive, juvenile justice systems. *See McKeiver v. Pennsylvania,* 403 U.S. 528, 539-40 (1971); *Gault*, 387 U.S. at 15-16. *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).

2. This Court's Constitutional Jurisprudence in Civil Cases Also Takes Account of the Unique Developmental Status of Children

This Court's special treatment of youth is not limited to their encounters with the juvenile and criminal justice systems. In civil cases, as well, this Court has frequently expressed its view that children are different from adults, and tailored its constitutional analysis accordingly. Reasoning that "during the formative years of childhood and adolescence, minors often lack . . . experience, perspective, and judgment," *Bellotti v. Baird*, 443 U.S. 662, 635 (1979), the Court in a series of cases has upheld greater state restrictions on minors' exercise of reproductive choice. *Bellotti v. Baird*, 443 U.S. 662, 635 (1979), S*ee 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."). As a result, this Court has held that a state may choose to require that minors consult with their parents before obtaining an abortion, subject to a constitutionally required bypass procedure, and may take other "reasonable step[s] in regulating its health professions to ensure that, in most cases, a young woman will receive guidance and understanding from a parent." *Ohio v. Akron Center For Reproductive Health*, 497 U.S. 502, 520 (1990). *See also Hodgson*, 497 U.S. at 483 (Kennedy, J., concurring in part) ("Age is a rough but fair approximation of maturity and judgment, and a State has an interest in seeing that a child, when confronted with serious decisions such as whether or not to abort a pregnancy, has the assistance of her parents in making the choice."); *id* at 458 (O'Connor, J., concurring in part) (holding that the liberty interest of a minor deciding to bear child can be limited by parental notice requirement, given that immature minors often lack the ability to make fully informed decisions); *Bellotti*, 443 U.S. at 640 (holding that because immature minors often lack capacity to make fully informed choices, the state may reasonably determine that parental consent is desirable).

This Court has also held, as a matter of First Amendment law, that different obscenity standards apply to children than to adults, *Ginsburg v. New York,* 390 U.S. 629, 637 (1968), and that the state has a compelling interest in protecting children from images that are "harmful to minors." *Denver Area Educational Telecommunications Consortium, Inc. v.*

FCC, 518 U.S. 727, 743 (1996). *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, guided by 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).

The developmental status of youth has played a role as well to this Court's school prayer cases. Thus, 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 pressures in the elementary and secondary public schools. *Lee v. Weissman*, 505 U.S. 577, 593 (1992) . In explaining those coercive pressures, the *Weisman* Court contrasted mature adults and children, noting that the latter are "often susceptible to pressure from their peers towards conformity . . . in matters of social convention." *Id.* Similarly, in *Santa Fe Independent Sch. Dist. v. Doe*, 530 U.S. 290, 317 (2000), this 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 opinion stressed "the immense social pressure" on students, *id.* at 311, observing that "the choice between attending these games and avoiding personally offensive religious rituals is in no practical sense an easy one." *Id.* at 312.

In a wide variety of contexts, this Court's constitutional rulings both recognize and respond to

the key developmental differences between adolescents and adults.

3. Social Science Research Confirms the Transitory Nature of Adolescence and the Capacity of Youth for Rehabilitation.

This Court's emphasis on the transitory nature of youth finds support in social science literature. "Contemporary psychologists universally view adolescence as a period of development distinct from either childhood or adulthood with unique and characteristic features." Elizabeth S. Scott & Laurence Steinberg, *Rethinking Juvenile Justice* 31 (2008). A central feature of adolescence is its transitory nature. As Scott and Steinberg explain:

> The period is *transitional* because it is marked by rapid and dramatic change within the individual in the realms of biology, cognition, emotion, and interpersonal relationships.... Even the word "adolescence" has origins that connote its transitional nature: it derives from the Latin verb *adolescere,* to grow into adulthood.

Id. at 32.

Studies show that youthful criminal behavior can be distinguished from permanent personality traits. Rates of impulsivity are high during adolescence and early adulthood and decline thereafter. See Steinberg, Cauffman, Banich & Graham, *Age Differences in Sensation Seeking and Impulsivity as Indexed by Behavior and Self-Report:*

Evidence for a Dual Systems Model, 44 Dev. Psych. 1764 (2008). As youth grow, so do their self-management skills, long-term planning, judgment and decision-making, regulation of emotion, and evaluation of risk and reward. *See* Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 Am. Psych. 1009, 1011 (2003). As a result, "[t]he typical delinquent youth does not grow up to be an adult criminal…." *Id.* at 54. As one report explained,

> More than 30 percent of boys examined in one study committed one or more acts of serious violence by age 18. Few of these youth were ever arrested for violent offenses, but more than three-fourths nonetheless terminated their violence by age 21. Other research has found that the criminal careers of most violent juvenile offenders span only a single year. Understanding this self-correcting dynamic is crucial in any attempt to combat juvenile crime. Most juvenile offenders – even those who commit serious acts of violence – are not destined for lives of crime.

Richard A. Mendel, Less Hype, More Help: Reducing Juvenile Crime, What Works – and What Doesn't 15 (2000). Thus, not only are youth developmentally capable of change, research also demonstrates that when given a chance, even youth with histories of violent crime can and do become productive and law abiding citizens, even without any interventions.

These findings (unsurprising to any parent)

are primarily grounded in behavioral research, but also consistent with recent findings in developmental neuroscience. Brain imaging techniques show that areas of the brain associated with impulse control, judgment, and the rational integration of cognitive, social, and emotional information do not fully mature until early adulthood. Scott & Steinberg, *Rethinking Juvenile Justice* 46-68.[4]

While the process of physiological and psychological growth alone will lead to rehabilitation for most adolescents, research over the last fifteen years on interventions for juvenile offenders has yielded rich data on the effectiveness of programs

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[4] *See also* Elizabeth Sowell, et al., *In vivo evidence for post-adolescent brain maturation in frontal and striatal regions*, 2 Nat. Neurosci. 859-861 (1999); Nitin Gogtay, et al. *Dynamic Mapping of Human Cortical Development during Childhood through Early Adulthood*, 101 Nat'l Acad. Sci. Proc. 8174-8179 (2004), http://www.loni.ucla.edu/~thompson/DEVEL/PNASDevel04.pdf._ While it is beyond the scope of this brief to explore the adolescent psychology research comprehensively, it is worth noting that one of the clearest visual representations of these differences can be found at http://www.nytimes.com/interactive/2008/09/15/health/20080915-brain-development.html?scp=1&sq=interactive%20compare%20brain%20development%20in%20various%20areas%20&st=cse, an interactive web-based link allowing visitors to compare brain development in various areas (such as judgment) at different ages. The research demonstrates that while the seventeen year old brain is fairly developed, it is not until age twenty-one that a youth experiences "tremendous gains in emotional maturity, impulse control and decision-making [that will] continue to occur into early adulthood." *Id.* Thus, while there are distinctions between the development levels of older adolescents' brains and those of younger teens, this biological process is not typically complete until a child reaches his or her mid-twenties.

that reduce recidivism and save money, underscoring that rehabilitation is a realistic goal for the overwhelming majority of juvenile offenders, including violent and repeat offenders. The Surgeon General has recognized the capacity of violent youth to respond to rehabilitation:

> [E]ffective treatment can divert a significant proportion of delinquent and violent youths from future violence and crime. This finding contradicts the conclusions of scientists two decades ago who declared that nothing had been shown to prevent youth violence. The second major conclusion is that there is enormous variability in the effectiveness of different types of programs for seriously delinquent youth. The most effective programs, on average, reduce the rate of subsequent offending by nearly half (46 percent), compared to controls….

Dep't of Health and Human Services, Youth Violence: A Report of the Surgeon General, ch. 5 (2001), http://www.surgeongeneral.gov/library/youthviolence/chapter5/sec5.html.

Examples of programs shown to be effective with violent and aggressive youth include Functional Family Therapy (FFT), Multidimensional Therapeutic Foster Care (MTFC), and Multi-Systemic Therapy (MST). *See* Peter W. Greenwood, *Changing Lives: Delinquency Prevention as Crime-Control Policy* 70 (2006). All three have been shown to significantly reduce recidivism rates even for serious violent offenders. *See* Charles M. Borduin et

al., *Multisystemic Treatment of Serious Juvenile Offenders: Long-Term Prevention of Criminality and Violence* 63 J. Consulting & Clinical Psychol. 569, 573 (1995) (describing the effectiveness of MST in reducing recidivism rates even for serious offenders with histories of repeat felonies); Carol M. Schaeffer and Charles M. Borduin, *Long-term follow-up to a randomized clinical trial of multisystemic therapy with serious and violent juvenile offenders*, 73 J. Consulting & Clinical Psychol. 445, 449-452 (2005) (finding that the benefits of MST often extend into adulthood); Hinton et al., Juvenile Justice: A System Divided, 18 *Crim. Just. Pol'y Rev.* 466, 475 (2007) (describing FFT's success with drug-abusing youth, violent youth, and serious juvenile offenders.); J. Mark Eddy et al., *The Prevention of Violent Behavior by Chronic and Serious Male Juvenile Offenders: A 2-Year Follow-up of a Randomized Clinical Trial,* 12 J. Emotional & Behav. Disorders 2, 2-7 (2004) (describing reduced recidivism rates for violent and chronically offending youth who participated in MTFC).

Indeed, there is compelling evidence that many juvenile offenders, even those charged with serious and violent offenses, can and do achieve rehabilitation and change their lives to become productive citizens. *See* Second Chances: 100 Years of the Children's Court: Giving Kids a Chance To Make a Better Choice (Justice Policy Inst. & Children & Family Law Ctr., n.d.), http://www.cjcj.org/files/ secondchances.pdf (last visited Jun. 12, 2009) (profiling 25 individuals, including D.C. District Court Judge Reggie Walton and former United States Senator Alan Simpson, who were adjudicated delinquent in juvenile court –

many for violent offenses including attempted murder and armed robbery – and then changed the course of their lives.

B. The Supreme Court's Duty Under the Eighth Amendment to Ensure that Penalties Accord with Human Dignity Precludes the Imposition of Life Without Parole on Adolescents.

This Court has been clear that the decisive question in determining whether a penalty is constitutional under the Eighth Amendment is whether it comports with human dignity. As this Court has explained, "our cases… make clear that public perceptions of standards of decency with respect to criminal sanctions are not conclusive. A penalty also must accord with 'the dignity of man,' which is the 'basic concept underlying the Eighth Amendment.'" *Gregg v. Georgia*, 428 U.S. 153, 173 (1976) *citing Trop v. Dulles,* 356 U.S. 86, 100 (1958). The *Gregg* Court further explained:

> Although legislative measures adopted by the people's chosen representatives provide one important means of ascertaining contemporary values, it is evident that legislative judgments alone cannot be determinative of Eighth Amendment standards since that Amendment was intended to safeguard individuals from the abuse of legislative power.

Id. at 174 n.19. As this Court has repeatedly observed, the Court itself must determine in its "own

independent judgment" whether a penalty is constitutional. *Roper v. Simmons,* 543 U.S. 551, 564 (2005). This analysis is even more vital in the case of youth; as described above, this Court has consistently recognized that youths' unique developmental status informs the constitutional analysis. Thus, for a penalty to be constitutional, it must be appropriately calibrated to the defendant's "personal responsibility and moral guilt." *Harmelin v. Michigan*, 501 U.S. 957, 1023 (1991). For an adolescent, that determination includes consideration of the diminished responsibility and guilt of adolescents as a class. As petitioners have explained, there is a national consensus against imposing life without parole in both cases before the Court today. However, because a penalty that fails to consider the diminished culpability of adolescents as a class is unconstitutional, this Court's analysis need not depend on such a determination.

1. **When Considering Juvenile Life Without Parole, this Court Must Take Into Account the Diminished Culpability of Juveniles.**

This Court has been clear that for those who *as a class* have diminished culpability, the relevant question under the Eighth Amendment is whether the severity of the sentence can ever be appropriate for a member of the class. Thus, an offender's youth or mental capacity can make certain penalties unconstitutional regardless of the severity of the offense. In *Roper*, this Court concluded that a death

sentence is categorically unconstitutional as applied to any youth under eighteen. The Court explained:

> Given this Court's own insistence on individualized consideration, petitioner maintains that it is both arbitrary and unnecessary to adopt a categorical rule barring imposition of the death penalty on any offender under 18 years of age.
>
> We disagree. The differences between juvenile and adult offenders are too marked and well understood to risk allowing a youthful person to receive the death penalty despite insufficient culpability.

Roper v. Simmons, 543 U.S. 551, 572-73 (2005). Thus, regardless of the brutality of the crime, the death penalty may not be imposed. *Id.* This categorical exclusion protects the vast majority of juveniles whose crimes, even if extremely serious, reflect "unfortunate yet transient immaturity," from receiving an irreversible punishment designed for those whose characters are irreparable. *Id.* at 573. *See also Thompson v. Oklahoma*, 487 U.S. 815, 835 (1988) (highlighting that "less culpability should attach to a crime committed by a juvenile than to a comparable crime committed by an adult.")[5]

[5] While the cases resting on a finding of lesser culpability arise in the context of the death penalty, this Court has indicated that categorical culpability is meaningful in other contexts as well. *See, e.g., Robinson v. California*, 370 U.S. 660, 667(1962) (invalidating a statute criminalizing being addicted to the use of narcotics and determining that "imprisonment for ninety days is not, in the abstract, a punishment which is either cruel or unusual. But the question cannot be considered in the abstract. Even one day in prison would be a cruel and unusual

As a number of state courts have recognized, this same logic dictates holding a sentence of life without the possibility of parole unconstitutional for juveniles. As the Kentucky Supreme Court explained, "[t]he intent of the legislature in providing a penalty of life imprisonment without benefit of parole . . . was to deal with dangerous and incorrigible individuals who would be a constant threat to society. We believe that incorrigibility is inconsistent with youth. . . ." *Workman v. Commonwealth*, 429 S.W.2d 374, 377 (Ky. 1968). The Nevada Supreme Court has similarly recognized the incongruity of applying a sentence of life without parole to juveniles, observing:

> Before proceeding we pause first to contemplate the meaning of a sentence "without possibility of parole," especially as it bears upon a seventh grader. All but the deadliest and most unsalvageable of prisoners have the right to appear before the board of parole to try and show that they have behaved well in prison confines and that their moral and spiritual betterment merits consideration of some adjustment of their sentences.

Naovarath v. State, 779 P.2d 944, 944 (Nev. 1989). The court concluded that this was a "severe penalty indeed" to impose upon an adolescent and held that it could not be constitutionally applied to a thirteen-year-old. *Id.* at 944-45.

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punishment for the 'crime' of having a common cold."). While the issue before the Court in *Robinson* was the type of offense, the recognition that addiction alone does not warrant imprisonment also underscores the importance of individual culpability in Eighth Amendment analysis.

Similarly, the California appellate courts have held that an adolescent's capacity to change affects the constitutionality of his or her sentence. The California Appellate Court for the Fourth District, building upon the state's longstanding recognition of the legal differences between youth and adults, recently explained:

> Age also matters..... [T]he perpetrator's age is an important factor in assessing whether a severe punishment falls within constitutional bounds. ([*People v.*] *Dillon*,... 34 Cal.3d [441,] ...479, 194 Cal. Rptr. 390, 668 P.2d 697.) Youth is generally relevant to culpability (ibid.; cf. Cal. Rules of Court, rule 4.413(c)(2)(C)), and the diminished "degree of danger" ([*In re*] *Lynch*, ... 8 Cal.3d [410,]...425, 105 Cal. Rptr. 217, 503 P.2d 921) a youth may present after years of incarceration has constitutional implications (see *In re Barker* ...151 Cal.App.4th 346, 375, 59 Cal.Rptr.3d 746 [(Cal.App.1 Dist., 2007)].
>
> In *Barker,* the court "agreed with the observations of the federal district court in *Rosenkrantz v. Marshall* [...] 444 F.Supp.2d 1063[, 1085] [(C.D.Cal.2006)] that "the general unreliability of predicting violence is exacerbated in [a] case by ... petitioner's young age at the time of the offense [and] the passage [in that case] of nearly twenty years since that offense was committed..."

In re Nunez 173 Cal.App. 4th 709, 726-27 (2009). The Court therefore held that petitioner's youth, in conjunction with other factors, made

unconstitutional the imposition of juvenile life without parole. *Id.* *See also id.* at 736 ("Stated differently by our Supreme Court, the harshness of an LWOP is particularly evident 'if the person on whom it is inflicted is a minor, who is condemned to live virtually his entire life in ignominious confinement, stripped of any opportunity or motive to redeem himself for an act attributable to the rash and immature judgment of youth.'")

Moreover, recognizing the unique developmental status of youth provides this Court with objective and reasoned guidance with which to analyze the cases before it. For juveniles subject to life without the possibility of parole, this Court can follow its previous decisions in acknowledging that: (1) youth are different from adults; and (2) therefore, a penalty which disregards a youth's developmental status by wholly failing to provide for a youth's capacity to change is unconstitutional. Under this second prong, a sentence of life <u>with</u> the possibility of parole may be constitutional under the appropriate circumstances because the parole system in place would allow for a subsequent review of the culpability and dangerousness of a juvenile offender, later grown into a mature adult, and his current state of rehabilitation.

Roper recognized that society's selection of age eighteen as the line between youth and adulthood was also the appropriate line below which youth could not be subject to the death penalty. This accepted view of adulthood also must inform the analysis of life without parole, a punishment that is similarly irrevocable, and also ends in death. 543 U.S. at 572-73. Social science research further supports the decision to draw the line at age

eighteen. While younger adolescents lack the cognitive capacity of older adolescents, sixteen and seventeen year olds actually have *more* problems with risk perception than younger adolescents. Barry Feld, *A Slower Form of Death: Implications of* Roper v. Simmons *for Juveniles Sentenced to Life Without Parole*, 22 Notre Dame J.L. Ethics & Pub. Pol'y 9, 35-36 (2008). A study of over 900 individuals aged ten to thirty found that while impulsivity and sensation-seeking decline with age, both preference for risk and inability to perceive it peak at late adolescence. *See* MacArthur Found. Research Network on Adolescent Dev. & Juvenile Justice, Development and Criminal Blameworthiness (2006), http://www.adjj.org/ downloads/3030PPT-%20Adolescent%20Development %20and%20Criminal%20Blameworthiness.pdf. The study concluded that eighteen is the pivotal age at which adolescents' proclivity for risk declines precipitously. *Id.*

2. Because Life Without the Possibility of Parole Does not Serve a Legitimate Penological Purpose, it is Unconstitutional as Applied to Adolescents.

This Court has been careful not to dictate to the states the proper purposes of punishment. *See, e.g., Ewing v. California*, 538 U.S. 11, 25 (2003) ("Our traditional deference to legislative policy choices finds a corollary in the principle that the Constitution 'does not mandate adoption of any one penological theory.' [*Harmelin*] at 999, 111 S.Ct. 2680 (Kennedy, J., concurring in part and concurring

in judgment)). Thus, "A sentence can have a variety of justifications, such as incapacitation, deterrence, retribution, or rehabilitation. . . . Selecting the sentencing rationales is generally a policy choice to be made by state legislatures, not federal courts." *Id.*

A state may choose to impose a punishment for purposes of retribution, incapacitation, deterrence, rehabilitation – or any combination thereof. *Id.* A punishment that serves no legitimate penological purpose, however, inflicts needless pain and suffering in violation of the Eighth Amendment. As this Court reasoned in *Coker v. Georgia,* 433 U.S. 584, 592 (1977), "a punishment is 'excessive' and unconstitutional if it...makes no measurable contribution to acceptable goals of punishment and hence is nothing more than the purposeless and needless imposition of pain and suffering." *See also Atkins v. Virginia*, 536 U.S. 304, 319 (2002); *Enmund v. Florida*, 458 U.S. 782, 798 (1982). Whether life without parole serves a legitimate purpose – and comports with the dignity of man – therefore rests at least in part on whether it serves a legitimate penological purpose. Juvenile life without parole sentences do not appropriately serve any of the purposes of punishment.

a. *Deterrence*

First, these sentences do not effectively deter other juveniles from committing similar crimes. In *Roper*, the Court noted that "the same characteristics that render juveniles less culpable than adults suggest as well that juveniles will be less susceptible to deterrence." *Roper v. Simmons,* 543 U.S. 551, 571

(2005) (discussing psychological studies that demonstrate “the absence of evidence of deterrent effect” of the death penalty on would-be juvenile offenders); *See also Thompson* 487 U.S. at 837-38 (remarking that for children under age sixteen, "it is obvious that the potential deterrent value of the death sentence is insignificant for two reasons. The likelihood that the teenage offender has made the kind of cost-benefit analysis that attaches any weight to the possibility of execution is so remote as to be virtually nonexistent. And, even if one posits such a cold-blooded calculation by a 15-year-old, it is fanciful to believe that he would be deterred by the knowledge that a small number of persons his age have been executed during the 20th century"). Logic suggests that if the death penalty does not effectively deter young people, neither will a sentence of life without parole. *See, e.g., Naovarath v. State*, 779 P.2d 944, 948 (Nev. 1989) (holding that life without parole for a thirteen year old defendant was unconstitutional and questioning whether the sentence could even serve as a deterrent for other teenagers). Indeed, criminological studies questioning the deterrent effect of harsh adult criminal sanctions on juveniles further underscore this point: if the threat of some adult sentences fails to deter youth, the possible imposition of the relatively rare and extreme adult sentence of life without parole is unlikely to do so either. *See* Jeffrey Fagan, *Juvenile Crime and Criminal Justice: Resolving Border Disputes*, 18 Future of Child. 81, 102-103 (2008), http://www.eric.ed.gov/ ERICDocs/ data/ericdocs2sql/content_storage_01/0000019b/80/41/ 92/20.pdf; David Lee and Justin McCrary, “*Crime, Punishment, and Myopia*,” (Nat’l Bureau of Econ. Research, Working Paper No. W11491, 2005). *See*

also Eric L. Jensen & Linda K. Metsger, *A Test of the Deterrent Effect of Legislative Waiver on Violent Juvenile Crime,* 40 *Crime & Delinq.* 96, 96-104 (1994), cited in Donna Bishop, *Juvenile Offenders in the Adult Criminal System*, 27 *Crime & Just.* 81 (2000); Richard Redding & Elizabeth Fuller, *What Do Juveniles Know About Being Tried as Adults? Implications for Deterrence*, Juvenile & Family Court Journal (Summer 2004) (cited in Elizabeth S. Scott & Laurence Steinberg, *Rethinking Juvenile Justice* 199 (2008)).

b. Retribution

Life without parole sentences also fail to serve a legitimate retributive purpose. While retribution is served to some degree by any harsh sentence, that does not end the inquiry. Indeed, "[t]he heart of the retribution rationale is that a criminal sentence must be directly related to the personal culpability of the criminal offender." *Tison v. Arizona*, 481 U.S. 137, 149 (1987). As the *Roper* Court stated about the culpability of youth: "[r]etribution is not proportional if the law's most severe penalty is imposed on one whose culpability or blameworthiness is diminished, to a substantial degree, by reason of youth and immaturity." *Roper*, 543 U.S. at 571. Thus, the *Roper* Court found that because offenders younger than eighteen are less culpable and more amenable to rehabilitation than those who are older, it is impossible to determine with any reasonable certainty that they are beyond redemption. *Id.*, at 568-75 (noting that differences between juveniles and adults "render suspect any conclusion that a

juvenile falls among the worst offenders. . . The reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character." *Id.* at 570). The *Roper* Court underscored that children should be treated differently because of their relative "lack of maturity," their susceptibility to outside pressures, and the still-developing nature of their personalities. *Roper*, 543 U.S. at 569 - 70.[6]

This conclusion, too, finds ample support in behavioral and neurobiological research. Adolescence has been characterized as a period of "tremendous malleability" and "tremendous plasticity in response to features of the environment." *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). Recent scholarship confirms that "[a]s a developmental stage, adolescence is a

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[6] On this issue, *Roper* follows a long line of cases recognizing juveniles' distinctive susceptibility to coercion and pressure. *See, e.g., In re Gault*, 387 U.S. 1, 39 (1967) (juveniles need the assistance of counsel to prevent coercion in the courtroom); *Thompson v. Oklahoma,* 487 U.S. 815, 835 (1988) (holding the death penalty unconstitutional for juveniles under age 16 at the time of their crime because "inexperience, less education, and less intelligence make the teenager less able to evaluate the consequences of his or her conduct while at the same time he or she is much more apt to be motivated by mere emotion or peer pressure than is an adult"); *Lee v. Weissman,* 505 U.S. 577, 592 (1992) (holding school prayer unconstitutional and noting that "[a]s we have observed before, there are heightened concerns with protecting freedom of conscience from subtle coercive pressure in the elementary and secondary public schools.")

complex mixture of the transitional and the formative," Scott & Steinberg, *Rethinking Juvenile Justice* 32, and that

> Because adolescents' executive functions are not mature, their capacities for planning, for anticipating future consequences, and for impulse control are deficient—as compared with those of adults—at a time when their inclination to engage in risk-taking behavior in the company of peers is greater than it will be in a few years."

Id. at 49.

Additionally, some studies have suggested that "adolescents' risk perception actually declines during mid-adolescence and then gradually increases into adulthood -- sixteen- and seventeen-year-old youths perceive fewer risks than do either younger or older research subjects." Barry Feld, *A Slower Form of Death: Implications of* Roper v. Simmons *for Juveniles Sentenced to Life Without Parole*, 22 Notre Dame J.L. Ethics & Pub. Pol'y 9, 35-36 (2008).

The reasoning of *Roper* applies with equal force here – life without parole, termed by some as a "slow death," is an extraordinarily severe punishment. Elizabeth Cepparulo, Roper v. Simmons: Unveiling Juvenile Purgatory: Is Life Really Better than Death? 16 Temp. Pol. & Civ. Rts. L. Rev. 225, 239 (2006). Moreover, LWOP's finality allows no room to recognize a child's development and growth. When inflicted on youth with diminished culpability and heightened capacity to change, the sentence is too disproportionate to serve

its retributive aims within the bounds of the Eighth Amendment.

c. Incapacitation

As for incapacitation, although LWOP sentences do serve that purpose, such incapacitation is unreasonable and disproportionate where the offender no longer poses a danger to the community. *See United States v. Jackson*, 835 F.2d 1195, 1200 (7th Cir. 1987) (Posner, J., concurring) ("A civilized society locks up [criminals] until age makes them harmless but it does not keep them in prison until they die"). This Court, in *Roper*, recognized that this may be particularly relevant to youth: "Indeed, 'the relevance of youth as a mitigating factor derives from the fact that the signature qualities of youth are transient; as individuals mature, the impetuousness and recklessness that may dominate in younger years can subside.'" 543 U.S. at 570 (quoting *Johnson v. Texas*, 509 U.S. 350, 368 (1993)). The Court further emphasized that "the character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed." *Id.* at 569-70 (internal citations omitted). Because "it is difficult even for expert psychologists to differentiate between" a crime reflecting immaturity and one reflecting "irreparable corruption," a sentence that makes no allowance for a child's future rehabilitation should not stand. *See id.* at 573-74. In *Graham v. Collins,* this Court similarly emphasized the role of future dangerousness in assessing the constitutionality of a sentence, noting that: "youthfulness may also be

seen as mitigating just because it is transitory, indicating that the defendant is less likely to be dangerous in the future." 506 U.S. 461, 518 (1993).

Sociological and psychological research supports this conclusion. *See* Steinberg & Schwartz, "*Developmental Psychology Goes to Court*," 23 (explaining that the malleability of adolescence suggests that a youthful offender is capable of altering his life course and developing a moral character as an adult); John H. Laub & Robert J. Sampson, *Shared Beginnings, Divergent Lives: Delinquent Boys to Age 70* (2003) (documenting the criminal histories of 500 individuals who had been adjudicated delinquents and showing that their youthful characteristics were not immutable; change to a law-abiding life was possible and in many instances depended upon aspects of their adult lives). As a result, a child sent to prison should have the opportunity to rehabilitate and qualify for release after a reasonable term of years. Mechanisms such as parole boards can provide a crucial check to ensure that the purposes of punishment are satisfied without unnecessarily incapacitating fully rehabilitated individuals and keeping youth "in prison until they die." *Naovarath*, 779 P.2d at 948.

d. Rehabilitation

Last, life without parole sentences do not promote rehabilitation for juveniles; they frustrate it. Like the death penalty, life without parole unconstitutionally fails to recognize a child's "potential to attain a mature understanding of his own humanity." *Roper*, 543 U.S. at 554. A mandatory sentence of life imprisonment without the

possibility of parole shares one important characteristic of a death sentence – the offender will never regain his freedom. Because such a sentence does not even purport to serve a rehabilitative function, the sentence must rest on a rational determination that the punished "criminal conduct is so atrocious that society's interest in deterrence and retribution wholly outweighs any considerations of reform or rehabilitation of the perpetrator." *Furman*, 408 U.S. at 307 (Stewart, J., concurring). See also *Naovarath*, 779 P.2d at 944, 948-949 (describing the devastating effects of a life without parole sentence on a youth and holding the sentence unconstitutional as applied to a thirteen-year-old).

Again, research bears out the many ways in which lengthy adult sentences – especially life sentences – work against a youth's rehabilitation. Understandably, many juveniles sent to prison fall into despair. They lack incentive to try to improve their character or skills for eventual release because there will be no release. Indeed, many juveniles sentenced to spend the rest of their lives in prison commit suicide, or attempt to commit suicide. *See* Human Rights Watch, *The Rest of Their Lives: Life without Parole for Child Offenders in the United States* 63-64 (2005), http://www.hrw.org/en/reports/2005/10/11/rest-their-lives; *See also*, Wayne A. Logan, *Proportionality and Punishment: Imposing Life Without Parole on Juveniles*, 33 Wake Forest L. Rev. 681, 712, nn.141-47 (1998) (discussing the "psychological toll" associated with LWOP, including citations to cases and sources suggesting that LWOP may be a fate worse than the death penalty).

Life without parole sentences are antithetical to the goal of rehabilitation. The "denial of hope,"

Naovarath, 779 P.2d at 944, is antithetical to the core values of human dignity that the Eighth Amendment was enacted to protect.

CONCLUSION

For the foregoing reasons, *Amici Curiae*, Juvenile Law Center, et al., respectfully request that this Court hold juvenile life without parole sentences unconstitutional in all cases, and reverse the Florida Court of Appeals' decisions in the present cases.

Respectfully Submitted,

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Dated: July 23, 2009

Sullivan v. Florida & Graham v. Florida

Identity of Amici and Statements of Interest

APPENDIX A

Organizations

Juvenile Law Center (JLC) is the oldest multi-issue public interest law firm 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. JLC also works to ensure that children's rights to due process are protected at all stages of juvenile court proceedings, from arrest through disposition, from post-disposition through appeal, and that the juvenile and adult criminal justice systems consider the unique developmental differences between youth and adults in enforcing these rights.

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 **National Juvenile Defender Center (NJDC)** was created to ensure excellence in juvenile defense and promote justice for all children. NJDC responds to the critical need to build the capacity of the juvenile defense bar in order to improve access to counsel and quality of representation for children in the justice system. NJDC gives juvenile defense attorneys a better capacity to address important practice and policy issues, improve advocacy skills, build partnerships, exchange information, and participate in the national debate over juvenile justice. NJDC provides support to public defenders, appointed counsel, child advocates, law school clinical programs and non-profit law centers to ensure quality representation and justice for youth in urban, suburban, rural and tribal areas. It also offers a wide range of integrated services to juvenile defenders and advocates, including training, technical assistance, advocacy, networking, collaboration, capacity building and coordination.

Alabama Fair Sentencing of Children is a grass roots effort in Alabama working to abolish juvenile life without parole. On May 6, 2009, a bill that would affect our children serving Life and Life Without Parole was introduced in the House of Representatives by Bobby Scot (D-VA) and John Conyers (D- MI). The name of the bill is HR 2289, the Juvenile Justice Accountability and Improvement Act of 2009. We are working with the coordinating efforts of the National for the Fair Sentencing of Children in Washington, DC to end life without parole, the death sentence in prison, by advocating the passage of this crucial legislation.

The Barton Child Law & Policy Clinic is a program of Emory Law School dedicated to ensuring safety, well-being and permanency for abused and court-involved children in Georgia. These outcomes are best achieved when systems only intervene in families when absolutely necessary, treat children and families fairly, provide the services and protections they are charged to provide, and are accountable to the public and the children they serve. The mission of the clinic is to promote and protect the well-being of neglected, abused and court-involved children in the state of Georgia, to inspire excellence among the adults responsible for protecting and nurturing these children, and to prepare child advocacy professionals.

The Barton Clinic was founded in March 2000. From summer 2001 – fall 2005, the Barton Clinic also housed the Southern Juvenile Defender Center, a regional support center for attorneys representing children accused of delinquent and status offenses. The Southern Juvenile Defender Center represented

children in juvenile courts in Georgia and provided technical assistance, training, and policy development assistance for seven southern states. In fall 2005 the Southern Juvenile Defender Center moved to the Southern Poverty Law Center. In summer 2006 the Barton Clinic added the Juvenile Defender Clinic to its existing public policy and legislative clinical offerings. Students in the Juvenile Defender Clinic provide quality representation to children by ensuring fairness and due process in their court proceedings and by ensuring courts make decisions informed by the child's educational, mental health and family systems objectives.

Legal services provided by the Barton Clinic are provided at no cost to our clients.

The Campaign for the Fair Sentencing of Youth (CFSY) consists of advocates, lawyers, religious groups, mental health experts, victims, law enforcement, doctors, teachers, families, and people directly impacted by this sentence, who are dedicated to ending the practice of sentencing youth to life in prison without the opportunity to give evidence of their remorse and rehabilitation. We believe that youth given long sentences deserve meaningful and periodic reviews, to ensure that those who can prove they have reformed are given an opportunity to re-enter society as contributing citizens before they die. We use a multi-pronged approach to raise awareness about this issue and to end the practice of sentencing youth to life without parole through public education, advocacy, and litigation. The CFSY coordinates with other national organizations and state-level campaigns actively engaged in this work in more than 15 states.

The **Campaign for Youth Justice (CFYJ)** is a national organization created to provide a voice for youth prosecuted in the adult criminal system. The organization is dedicated to ending the practice of trying, sentencing, and incarcerating youthful offenders under the age of 18 in the adult criminal justice system; and is working to improve conditions within the juvenile justice system. CFYJ raises awareness of the negative impact of prosecuting youth in the adult criminal justice system and of incarcerating youth in adult jails and prisons and promotes researched-based, developmentally-appropriate rehabilitative programs and services for youth as an alternative. CFYJ also provides research, training and technical assistance to juvenile and criminal justice system stakeholders, policymakers, researchers, nonprofit organizations, and family members interested in addressing the unique needs of youth prosecuted in the adult system.

The **Center for 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 Child Welfare Clinic and Gator TeamChild juvenile law clinic.

The **Center for Children's Advocacy (CCA)** is a non-profit organization based at the University of Connecticut Law School and is dedicated to the promotion and protection of the legal rights of poor children. The children represented by CCA are dependent on a variety of Connecticut state systems, including judicial, health, child welfare, mental health, education and juvenile justice. CCA engages in systemic advocacy focusing on important legal issues that affect a large number of children, helping to improve conditions for abused and neglected children in the state's welfare system as well as in the juvenile justice system. CCA works to ensure that children's voices are heard and that children are afforded legal protections everywhere – community, foster placements, educational institutions, justice system and child welfare.

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 locally in DC, Maryland and Virginia and also across the country to reduce

racial and ethnic disparities in juvenile justice systems, reduce the use of locked detention for youth and advocate safe and humane conditions of confinement for children. CCLP helps counties and states develop collaboratives that engage in data-driven strategies to identify and reduce racial and ethnic disparities in their juvenile justice systems and reduce reliance on unnecessary incarceration. CCLP staff also work with jurisdictions to identify and remediate conditions in locked facilities that are dangerous or fail to rehabilitate youth.

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 **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.

Children's Law Center of Los Angeles (CLC) is a nonprofit, public interest law corporation created 18 years ago and funded by the Court to serve as appointed counsel for Los Angeles County's abused and neglected youth. Our 220 person staff of lawyers, paralegals and investigator/social workers serves as the "voice" in the foster care system for the vast majority of the nearly 24,000 children under the jurisdiction of the Los Angeles dependency court. Our committed attorneys and social work investigators are tireless advocates for these vulnerable youth, guiding them through the complicated and often overwhelming foster care system and accompanying court process. Appearing at every hearing, often with their young clients beside them in the courtroom, the child's attorney is the only person in the court speaking exclusively on behalf of the child and going to bat for these children in ensuring that their needs are met.

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. This case presents questions of significance to the rights of all juveniles, but especially to the rights

of juveniles as young as 14 in Massachusetts who face mandatory life without parole sentences in adult court.

The **Child Welfare League of America (CWLA)** is an 89-year-old association of more than 600 public and private child and family-service agencies that collectively serve more than 3 million abused, neglected and vulnerable children and youth every year. Since its inception in 1920, CWLA has been a leader in the development of quality programming, practices and policies in all areas of child welfare and child well-being. In our work with children and youth impacted by the juvenile and criminal justice systems, we have grown increasingly concerned about the link between child maltreatment and juvenile delinquency. CWLA advocates for policies and practices that seek to interrupt the path to criminal offending that is frequently the outcome for victims of child abuse and neglect. CWLA knows that children and adolescents have less capacity than adults to take care of themselves and make good decisions, we also advocate for policies and practices that recognize these fundamental differences and provide children and adolescents with the supports they need to negotiate the path to adulthood. In all of its work, CWLA strives to ensure that every child and young person is protected from harm, injustice and discrimination and at all stages of the court process, juvenile and adult criminal justice systems consider the unique developmental differences between youth and adults in achieving these goals.

The ***Civitas*** **ChildLaw Center** is a program of the Loyola University Chicago School of Law, whose mission is to prepare law students and lawyers to be ethical and effective advocates for children and promote justice for children through interdisciplinary teaching, scholarship and service. Through its Child and Family Law Clinic, the ChildLaw Center also routinely provides representation to child clients in juvenile delinquency, domestic relations, child protection, and other types of cases involving children. The ChildLaw Center maintains a particular interest in the rules and procedures regulating the legal and governmental institutions responsible for addressing the needs and interests of court-involved youth.

The **Defender Association of Philadelphia** is an independent, non-profit corporation created in 1934 by a group of Philadelphia lawyers dedicated to the ideal of high quality legal services for indigent criminal defendants. Today some two hundred and fifteen full time assistant defenders represent clients in adult and juvenile state and federal trial and appellate courts and at civil and criminal mental health hearings as well as state and county violation of probation/parole hearings. Association attorneys also serve as the Child Advocate in neglect and dependency court. More particularly, Association attorneys represent juveniles charged with homicide. Life imprisonment without the possibility of parole is the only sentence for juveniles found guilty in adult court of either an intentional killing or a felony murder. The Defender Association attorneys have had numerous juveniles given sentences of life imprisonment without parole.

The constitutionality of such sentences have been challenged at the trial level and at the appellate level by Defender Association lawyers.

Fight for Lifers, West is a Lifers Support Group in Western Pennsylvania devoted to Prisoners in Pennsylvania who are sentenced to Life Imprisonment Without Parole. In the years since Roper, FFLW has identified 453 Juvenile Lifers in the PADOC, revealing that Pennsylvania leads the world in this category. We have sent 21 newsletters, one every two months, to these 453 Juveniles lifers, helping to make these prisoners aware of each other and giving important information to them. In this way, they have shared information with each other, and made an impact on the outside world. FFLW has been seriously involved in the PA Senate Judiciary Committee Public Hearing on Juvenile Lifers, September 22, 2008, and in the United States House Subcommittee on Crime and Terrorism and Homeland Security hearing on H.R. 2289- Juvenile Justice Accountability and Improvement Act of 2009, on June 9, 2009. We intend to be involved with the Supreme Court in its consideration of the two Florida cases, and welcome the opportunity to sign on with the Juvenile Law Center in its Amicus brief on behalf of two Florida children who have been sentenced to Life Without Parole.

Human Rights Watch is a non-governmental organization established in 1978 to monitor and promote observance of internationally recognized human rights. It has Special Consultative Status at the United Nations, regularly reports on human rights conditions in the United States and more than

seventy other countries around the world, and actively promotes legislation and policies worldwide that advance protections of domestic and international human rights and humanitarian law. Human Rights Watch has investigated life without parole sentences for youth in the United States since 2004. Its reports on this subject include *The Rest of Their Lives: Life Without Parole for Child Offenders in the United States* (a 2005 report on juveniles sentenced to life without parole throughout the United States); *Thrown Away* (a 2005 report on life without parole for juveniles in Colorado); and *When I Die They'll Send Me Home* (a 2008 report on life without parole for juveniles in California).

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 **Iowa Coalition to Oppose Life without the Possibility of Parole for Children** is made up of groups of individuals and organizations who support the elimination of the sentence of life without the possibility of parole for children in the state of Iowa. The Coalition works to support legislation that will eliminate the sentence of life without the possibility of parole for children in the state of Iowa.

The **John Howard Association of Illinois** provides critical public oversight of Illinois' prisons, jails, and juvenile correctional facilities. As it has for more than a century, the Association promotes fair, humane, and effective sentencing and correctional policies, addresses inmate concerns, and provides Illinois citizens and decision-makers with information needed to improve criminal and juvenile justice.

JustChildren, a project of the Legal Aid Justice Center, with offices in Charlottesville, Richmond, and Petersburg, is Virginia's largest children's law program. We work to reform Virginia's juvenile justice system in such areas as access to counsel, conditions of confinement, juvenile reentry, and juvenile transfer. JustChildren's goal is to keep more children in school, off the streets, and out of courts and prisons. In 2005, we helped to pass a law requiring counsel for youth at their initial detention hearings.   We currently lead a statewide legislative campaign to reduce the number of youth who are

tried and sentenced as adults. JustChildren also represents youth in juvenile prisons seeking access to more appropriate services and youth tried as adults, who have blended sentences of juvenile and adult time, to obtain reduction or elimination of the adult time. Working with these youth, many of whom have been convicted of serious felonies, we see how rehabilitation can transform a youth's behavior and attitude. Boys and girls involved in extensive dangerous behaviors have matured, turned their lives around, and persuaded Virginia judges that they no longer need to serve lengthy adult sentences.

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.

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 indentify 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.

The **Juvenile Rights Advocacy Project (JRAP)** is 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.

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 **Mid-Atlantic Juvenile Defender Center (MAJDC)** is one of nine regional centers created by the National Juvenile Defender Center in 2000. MAJDC is a multi-faceted juvenile defense resource center serving the District of Columbia, Maryland, Puerto Rico, Virginia and West Virginia. We are committed to working within communities to ensure excellence in juvenile defense and promote justice for all children. MAJDC promotes policy development in the region through conducting state based assessments of access to counsel and quality of representation in delinquency proceedings. MAJDC also coordinates training programs for defenders, provides technical assistance and encourages the

development of oversight and accountability in the justice system.

Founded in 1977, the **National Association of Counsel for Children (NACC)** is a 501(c)(3) non-profit child advocacy and professional membership association dedicated to enhancing the well being of America's children. The NACC works to strengthen the delivery of legal services to children, enhance the quality of legal services affecting children, improve courts and agencies serving children, and advance the rights and interests of children. NACC programs which serve these goals include training and technical assistance, the national children's law resource center, the attorney specialty certification program, the model children's law office program, policy advocacy, and the *amicus curiae* program. Through the *amicus curiae* program, the NACC has filed numerous briefs involving the legal interests of children in state and federal appellate courts and the Supreme Court of the United States. The NACC uses a highly selective process to determine participation as *amicus curiae. Amicus* cases must past staff and Board of Directors review using the following criteria: the request must promote and be consistent with the mission of the NACC; the case must have widespread impact in the field of children's law and not merely serve the interests of the particular litigants; the argument to be presented must be supported by existing law or good faith extension the law; there must generally be a reasonable prospect of prevailing. The NACC is a multidisciplinary organization with approximately 2000 members representing all 50 states and the District of Columbia. NACC membership is

comprised primarily of attorneys and judges, although the fields of medicine, social work, mental health, education, and law enforcement are also represented.

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 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. NCYL also works to protect the rights of children in juvenile and adult criminal justice systems, at all stages of the proceedings, and to ensure that they are treated fairly consistent with their age and stage of development.

The mission of the **National Juvenile Justice Network (NJJN)** is to enhance the capacity of state-based juvenile justice coalitions and organizations to advocate 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. NJJN currently comprises forty members in thirty-three states all of which seek to establish effective and appropriate juvenile justice systems. NJJN holds that youth are developmentally different from adults and a result should not be transferred into the adult criminal justice system where they are subject to extreme and harsh sentences such as life without the possibility of parole.

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 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 **Pacific Juvenile Defender Center** is a regional affiliate of the National Juvenile Defender Center. Members of the Center include juvenile trial lawyers, appellate counsel, law school clinical staff, attorneys and advocates from nonprofit law centers working to protect the rights of children in juvenile delinquency proceedings in California and Hawaii.

The Center engages in appellate advocacy, public policy and legislative discussions with respect to the treatment of children in the juvenile and criminal justice systems. Center members have extensive experience with cases involving serious juvenile crime, the impact of adolescent development on criminality, and the differences between the juvenile and adult criminal justice systems. These cases, involving the imposition of Life Without the Possibility of Parole on juvenile offenders, present questions that are at the core of the Pacific Juvenile Defender Center's work.

The **Pendulum Foundation** is a non-profit organization committed to educating the public about the issues surrounding children convicted as adults. The goal of the Foundation is to ensure – whether inside or outside of prison – happy, healthy, well-adjusted and productive adults. Located in Colorado, the Pendulum Foundation serves kids who are serving life in prison. The Foundation is committed to educating the public about the issues surrounding children convicted and sentenced as adults. We are also committed to taking into prison MRT, a groundbreaking cognitive behavior program, which will help transform the lives of young prisoners. Scientific research has decreed that children are indeed different than adults. The justice system agrees – by sentencing many of these kids to harsher sentences than their adult counterparts. The children who've received life sentences in Colorado are not the worst of the worst. We have a youth who is serving life for a hit and run. Two others who killed their abusers after all social service agencies, law enforcement and professionals failed to help.

Many of our kids never killed anybody. Twenty years ago these young lifers would have received treatment, time in a youth facility and would now be productive, taxpaying members of society. The Pendulum Foundation has been instrumental in ending JLWOP in Colorado and in creating the first juvenile clemency board in the nation, but those are tiny steps and will have no effect on those who will die behind bars. Visit these prisons. Talk to these kids – now men. You'll see for yourself that life without parole for a child is indeed cruel and unusual punishment.

The **Pennsylvania Prison Society** is strongly moved to join JLC and other organizations in addressing the issue of sentencing juvenile offenders to life without possibility of parole. Since its founding more than two centuries ago, the Prison Society has advocated for a humane system of corrections: one that recognizes the inherent ability of men and women to change their attitudes and behavior. No group exemplifies better the concept of rehabilitation than juvenile offenders. We see the condemnation of juveniles to life without parole as an unwarranted abdication of faith in humanity -- a terminal sentence that offends our sense of humane treatment, violates the spirit of the Supreme Court with respect to its ruling relating to death sentences for juveniles, and flies in the face of neurological findings on brain development and criminal culpability. The Prison Society has a long-term positive working relationship with life-sentenced inmates across the Commonwealth and particularly those arrested when they were juveniles. For the past twelve years, the Prison Society has been

involved in litigation regarding the Board of Pardons, which impacts lifers seeking commutation—the only avenue available to them now for release from prison. Most recently, the agency has been working with members of the General Assembly to craft legislation to study the issue of juveniles with life sentences in Pennsylvania as well as pursuing parole options.

The **Public Defender Service for the District of Columbia (PDS)** is a federally funded, independent public defender organization; for almost 40 years, PDS has provided quality legal representation to indigent adults and children facing a loss of liberty in the District of Columbia justice system. PDS provides legal representation to many of the indigent children in the most serious delinquency cases, including those who have special education needs due to learning disabilities. PDS also represents classes of youth, including a class consisting of children committed to the custody of the District of Columbia.

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.

The **Support Center for Child Advocates** (*Child Advocates*) is Philadelphia's volunteer lawyer program for abused and neglected children in Philadelphia, representing 800 children each year. For all the children committed to *Child Advocates* care, lawyers and social workers advocate to ensure safety, health, education, family, permanency and access to justice. Respected for diligent and effective advocacy, *Child Advocates* moves both public systems to deliver entitled services and private systems to open their doors to needy children and their families. We know that child victims, especially poor children and including many whom we have represented, may act out criminally in response to their victimization, poverty, family background and their own developmental deficits.

Voices for Georgia's Children is an independent, non-profit organization whose mission is to substantially improve outcomes for Georgia's children by engaging lawmakers and the public into building a sustained, comprehensive, long-term agenda to impact the lives of our kids in five distinct areas: health, safety, education, connectedness and employability. Through advocacy, original research and analysis, Voices assists leaders and citizens of Georgia in making sound decisions on policy,

investment and systems that serve children and youth.

The **Youth Law Center** is a San Francisco-based national public interest law firm working to protect the rights of children at risk of or involved in the juvenile justice and 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 as adults. Center attorneys were consultants in the John D. and Catherine T. MacArthur Foundation project on adolescent development, and have recently authored a law review article on juvenile competence to stand trial. These cases, challenging the imposition of Life Without the Possibility of Parole on a 13 year-old and a 17 year-old, for crimes not resulting in death, fit squarely with in the Center's long-term interest and expertise.

Individuals

Mary Berkheiser is a Professor of Law at the William S. Boyd School of Law, University of Nevada, Las Vegas. Professor's Berkheiser's area of specialization is juvenile law and the rights of juveniles accused of committing crimes. Professor Berkheiser directs the Juvenile Justice Clinic in the law school's Thomas & Mack Legal Clinic and teaches Criminal Law and Criminal Procedure - Adjudication. In the clinic, law students are certified to practice law before the courts of the State of Nevada under the supervision of Professor Berkheiser. Those students represent juveniles in proceedings in the juvenile and state district courts, advocating for their legal rights and their expressed interests. In addition, Professor Berkheiser and her students have drafted legislation and testified at legislative hearings on matters affecting juveniles in the State of Nevada. Professor Berkheiser is the co-director of the Western Juvenile Defender Center and a member of the Clark County Juvenile Justice Administration's Juvenile Detention Alternatives Initiative (JDAI) team and of the JDAI Girls Initiative Workgroup. Professor Berkheiser has authored two articles on juvenile issues – *Capitalizing Adolescence: Juvenile Offenders on Death Row*, 59 Miami L. Rev. 135 (2005), and *The Fiction of Juvenile Right to Counsel: Waiver in the Juvenile Courts*, 54 Fla. L. Rev. 577 (2002) – and is at work on a third article that critiques juvenile plea bargaining.

Shay Bilchik is the founder and Director of the Center for Juvenile Justice Reform at Georgetown University Public Policy Institute. The Center's purpose is to focus the nation public agency

leaders, across systems of care and levels of government, on the key components of a strong juvenile justice reform agenda. This work is carried out through the dissemination of papers on key topics, the sponsorship of symposia, and a Certificate Program at Georgetown providing public agency leaders with opportunities for short, but intensive, periods of study. Prior to joining the Institute on March 1, 2007, Mr. Bilchik was the President and CEO of the Child Welfare League of America, a position he held from February of 2000. Shay led CWLA in its advocacy on behalf of children through his public speaking, testimony and published articles, as well as collaborative work with other organizations. He worked closely with the CWLA Board of Directors, staff, and its public and private agency members on issues impacting the well-being of children and families. In 2001, 2004, 2005 and 2006, he was named among The NonProfit Times Power and Influence Top 50 for making his mark in the public policy arena and championing child welfare issues. Prior to his tenure at CWLA, Shay headed up the Office of Juvenile Justice and Delinquency Prevention (OJJDP) in the U.S. Department of Justice, where he advocated for and supported a balanced and multi-systems approach to attacking juvenile crime. Before coming to the nation's capital, Mr. Bilchik was an Assistant State Attorney in Miami, Florida from 1977-1993, where he served as a trial lawyer, juvenile division chief, and Chief Assistant State Attorney. Mr. Bilchik earned his B.S. and J.D. degrees from the University of Florida. As a former prosecutor and U.S. Department of Justice official in charge of juvenile justice and delinquency prevention issues he has

learned that overly punitive sentencing policies do not work to either make our communities safe or rehabilitate offenders. In fact, research on juvenile offending, sentencing of juveniles as adult offenders, and adolescent brain development teach us that these disproportionate responses actually exacerbate juvenile offending patterns. JLWOP is a prime example of this simplistic thinking and ineffective public policy - a policy that is not shared by any developed country in the world.

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.

Professor **Laura Cohen** earned a B.A. summa cum laude from Rutgers College and a J.D. from Columbia, where she was managing editor of the Columbia Human Rights Law Review. She is the former director of training for the New York City Legal Aid Society's Juvenile Rights Division, where she oversaw both the attorney training program and public policy initiatives relating to juvenile justice and child welfare. She also has served as a senior policy analyst for the Violence Institute of New Jersey; deputy court monitor in Morales Feliciano v. Hernandez Colon, a prisoners' rights class action in the U.S. District Court in San Juan, Puerto Rico; adjunct professor at New York Law School; and staff attorney for the Legal Aid Society. Professor Cohen codirects the Northeast Regional Juvenile Defender Center, an affiliate of the National Juvenile Defender Center, which is dedicated to improving the quality of representation accorded children in juvenile court. Her scholarly interests include juvenile justice, child welfare, and the legal representation of children and adolescents. Professor Cohen teaches doctrinal and clinical courses relating to juvenile justice law and policy, is a team leader of the MacArthur Foundation-funded New Jersey Juvenile Indigent Defense Action Network, and has published numerous articles on juvenile justice and child welfare.

Michele Deitch, J.D., M.Sc., teaches juvenile justice policy and criminal justice policy at the University of Texas—Lyndon B. Johnson School of Public Affairs and at the University of Texas School of Law. She is the lead author of *From Time Out to Hard Time: Young Children in the Adult Criminal*

Justice System (LBJ School of Public Affairs, 2009). She served as part of the legal team that represented Christopher Pittman in his petition of certiorari to the United State Supreme Court in 2008 (*Pittman v. South Carolina*), challenging the constitutionality of a mandatory 30-year sentence without possibility of parole imposed on a 12-year old child. Professor Deitch has served on a Blue Ribbon Task Force charged with proposing reforms to the Texas juvenile justice system, and she has been a federal court appointed monitor of conditions in the Texas adult prison system. She also served as the drafter of the American Bar Association's proposed standards on the legal treatment of prisoners.

Barbara Fedders is a clinical assistant professor at the University of North Carolina School of Law. Prior to joining the UNC faculty in January 2008, Professor Fedders was a clinical instructor at the Harvard Law School Criminal Justice Institute for four years. Prior to that, she worked for the Massachusetts Committee for Public Counsel Services as a Soros Justice Fellow and staff attorney. She began her career in clinical work at the Juvenile Rights Advocacy Project at Boston College Law School. As a law student, Professor Fedders was a Root-Tilden-Snow scholar and co-founded the NYU Prisoners' Rights and Education Project. She is a member of the advisory boards of the Prison Policy Initiative and the Equity Project.

Professor **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. 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.

Brian J. Foley is a Visiting Associate Professor of Law at Boston University School of Law. He teaches and writes in the area of criminal law and procedure. *See, e.g.*, *Policing from the Gut: Anti-Intellectualism in American Criminal Procedure*, 69 MARYLAND L. REV. __ (2010) (forthcoming); *Until We Fix the Labs and Fund Criminal Defendants: Fighting Bad Science With Storytelling*, 43 TULSA L. REV. 397 (2007) (invited - symposium on forensic scientific evidence and actual innocence); *Guantanamo and Beyond: Dangers of Rigging the Rules*, 97 J. CRIM. L. & CRIMINOLOGY 1009 (2007). Professor Foley co-authored a 50-state survey of law concerning juvenile life without parole that was

published as an Appendix to Connie de la Vega and Michelle Leighton, *Sentencing Our Children to Die in Prison: Global Law and Practice*, 42 U.S.F L. REV. 984 (2008). He has done pro bono work against juvenile life without parole sentences, co-authoring the following party brief and amicus briefs: *Brief for Appellant*, in Commonwealth of Pennsylvania vs. Edward Batzig, Superior Court of Pennsylvania Sitting in Philadelphia, EDA 2005, No. 1711 (with Defender Association of Philadelphia, the Juvenile Law Center, and the Center for Law and Global Justice, University of San Francisco School of Law), May, 2008; *Brief of Amicus Curiae Defender Association of Philadelphia and Juvenile Law Center on Behalf of Aaron Phillips,* in Commonwealth of Pennsylvania v. Aaron Phillips, Pennsylvania Superior Court, Eastern District, EDA 2005, No. 2729 (with Defender Association of Philadelphia and Juvenile Law Center); *Brief of Amicus Curiae Defender Association of Philadelphia and Juvenile Law Center on Behalf of John Pace,* in Commonwealth of Pennsylvania v. John Pace, Pennsylvania Superior Court, Eastern District, EDA 2006, No. 921.

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.

Kristin Henning is a Professor of Law and Co-Director of the Juvenile Justice Clinic at the Georgetown Law Center. Prior to her appointment to the Georgetown faculty, Professor Henning was the Lead Attorney for the Juvenile Unit of the Public Defender Service (PDS) for the District of Columbia, where she represented clients and helped organize a specialized Unit to meet the multi-disciplinary needs of children in the juvenile justice system. 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 Board of Directors for the Center for Children's Law and Policy, and the D.C. Department of Youth Rehabilitation Services Advisory Board and Oversight Committee. She has served as a consultant to organizations such as the New York Department of Corrections and the National Prison Rape Elimination Commission, and was appointed as a reporter for the ABA Task Force on Juvenile Justice Standards. Professor Henning has published a number of law review articles on the role of child's counsel, the role of parents in delinquency cases, confidentiality and victims' rights in juvenile courts, and therapeutic jurisprudence in the juvenile justice

system. 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 on behalf of children. Professor Henning received her B.A. from Duke University, a J.D. from Yale Law School, and an LL.M. from Georgetown Law Center. Professor Henning was a Visiting Professor of Law at NYU Law School during the Spring semester of 2009.

Miriam Aroni Krinsky is a Lecturer at the UCLA School of Public Policy and also an Adjunct Professor at Loyola Law School. She sits on the ABA Youth at Risk Commission, the California Blue Ribbon Commission on Foster Care, the California Judicial Council, and numerous federal, state and local policy groups. She has testified before legislative, governmental and judicial bodies, authored over 50 articles, and lectured nationwide on criminal law, child welfare, sentencing, and related topics. Ms. Krinsky previously served as the Executive Director of the Children's Law Center of Los Angeles – a nonprofit legal services organization that serves as counsel for over 20,00 children in foster care. Prior to that, she spent 15 years as a federal prosecutor – both in Los Angeles and on an organized crime drug task force in Maryland. During her tenure with the Department of Justice, Ms. Krinsky supervised the LA US Attorneys Office General Crimes and Criminal Appellate Sections, chaired the Solicitor General's Advisory Group on Appellate Issues, served on the AG's Advisory Committee on Sentencing, and received AG Reno's

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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 thirteen 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.

Jeffrey Shook is an Assistant Professor of Social Work and an Affiliated Assistant Professor of Law at the University of Pittsburgh. He received his Ph.D. in Social Work and Sociology and MSW from the University of Michigan, his JD from American University, and his BA in Economics from Grinnell College. His research and teaching focus broadly on the intersection of law, policy, and practice in the lives of children and youth. Specifically, he has conducted research and published on the transfer of juveniles to the criminal justice system, the administration of juvenile justice, the characteristics of youthful offenders, the movement of youth across child serving systems, and outcomes of youth who have aged out of the child welfare system. He has also testified in a variety of public forums on these issues, including the Michigan House of Representatives (Subcommittee on DOC Appropriations), the Pennsylvania Senate (Judiciary Committee), U.S. Representative John Conyers

(Public Hearing – Detroit, MI), and the DHS Task Force on Juvenile Waiver (Michigan).

Abbe Smith is Professor of Law and Co-Director of the Criminal Justice Clinic and E. Barrett Prettyman Fellowship Program at Georgetown Law School, where she has taught since 1996. Prior to coming to Georgetown, Professor Smith was the Deputy Director of the Criminal Justice Institute, Clinical Instructor, and Lecturer on Law at Harvard Law School. In addition to Georgetown and Harvard, Professor Smith has taught at City University New York Law School, Temple University School of Law, American University Washington College of Law, and the University of Melbourne Law School, where Professor Smith was a Senior Fulbright Scholar. Professor Smith teaches and writes in the areas of criminal defense, legal ethics, juvenile justice, and clinical legal education. In addition to numerous articles in law journals, she is the author of CASE OF A LIFETIME: A CRIMINAL DEFENSE LAWYER'S STORY (Palgrave MacMillan 2008), co-author with Monroe Freedman of UNDERSTANDING LAWYERS' ETHICS (Lexis-Nexis 2004), and a contributing author of WE DISSENT (Michael Avery, ed., NYU Press, 2008) and LAW STORIES (Gary Bellow & Martha Minow, eds., University of Michigan Press, 1996). Prior to becoming a law teacher, Professor Smith was a public defender in Philadelphia. She continues to be actively engaged in criminal defense practice and frequently presents at public defender and legal aid training programs in the US and abroad.

Michael F. Sturley is the Stanley D. and Sandra J. Rosenberg Centennial Professor at the University of Texas Law School, where he has been a member of the faculty for 25 years. In this Court, he represented Christopher Pittman, who two terms ago challenged his harsh adult sentence for offenses committed when he was only twelve years old. See Pittman v. South Carolina, 128 S. Ct. 1872 (2008) (No. 07-8436) (denying cert. to State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007)).

Barbara Bennett Woodhouse is L.Q.C. Lamar Professor of Law at Emory University and Co-Director of the Barton Child Law and Policy Clinic, and she is also David H. Levin Chair in Family Law (Emeritus) at University of Florida. For twenty five years, she has been teaching, researching and writing about justice for children. Before joining the Emory faculty, she was co-founder of the multidisciplinary Center for Children's Policy Practice and Research at University of Pennsylvania and founder of the Center on Children and Families at University of Florida. She has published many articles, book chapters and an award winning book on children's rights, as well as participating in appellate advocacy in cases involving the rights of children and juveniles.