

Nos. 08-7412 & 08-7621

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

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TERRANCE JAMAR GRAHAM,  
*Petitioner,*

v.

STATE OF FLORIDA,  
*Respondent.*

—◆—  
JOE HARRIS SULLIVAN,  
*Petitioner,*

v.

STATE OF FLORIDA,  
*Respondent.*

—◆—  
**On Writs Of Certiorari To The  
District Court Of Appeal,  
First District, State Of Florida**

—◆—  
**BRIEF OF *AMICI CURIAE* EDUCATORS  
IN SUPPORT OF PETITIONERS**

—◆—  
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## OTHER AUTHORITIES

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John Dewey, <i>Experience and Education</i> (1938).....	7, 11
The Door, <i>The Door 2008 Annual Report</i> (2003)....	26, 27
Angela L. Duckworth & Martin E.P. Seligman, <i>Self-Discipline Outdoes IQ in Predicting Academic Performance of Adolescents</i> , 16 <i>Psychological Sci.</i> 939 (2005).....	23
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James Forman, Jr., <i>Out of Jail and Into Jobs</i> , 8 Educ. Next 44 (Fall 2008).....	<i>passim</i>
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J.D. Hoyer & Chris Sturgis, <i>The Alternative Pathways Project: A Framework for Dropout Reduction and Recovery</i> 5 (June 2005) .....	19, 20
Sarah Ingersoll & Donni LeBoeuf, <i>Reaching Out to Youth Out of the Education Mainstream, Juvenile Justice Bull. (U.S. Department of Justice, Office of Juvenile Justice and Delin- quency Prevention)</i> , Feb. 1997 .....	16, 22, 25
Juvenile Detention Alternatives Initiative, <i>Detention Reform: An Effective Public Safety Strategy</i> 4 (2007) .....	29
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Deanna Kuhn, <i>Do Cognitive Changes Accom- pany Development in the Adolescent Brain?</i> 1 Persp. Psychol. Sci. 59 (2006).....	9

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Cheryl M. Lange & Sandra J. Sletten, <i>Alternative Education: A Brief History and Research Synthesis</i> , Project FORUM (National Association of State Directors of Special Education), 2002 .....	16, 17, 20, 21
Peter E. Leone et al., <i>School Failure, Race, and Disability: Promoting Positive Outcomes, Decreasing Vulnerability for Involvement with the Juvenile Delinquency System</i> (The National Center on Education, Disability, and Juvenile Justice), Oct. 2003.....	23
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National Research Council, Commission on Behavioral and Social Sciences and Education, <i>Losing Generations: Adolescents in High-Risk Settings</i> 102-03 (1993).....	16
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Betsy Brown Ruzzi & Jacqueline Kraemer, <i>Academic Programs in Alternative Educa- tion: An Overview</i> (National Center on Edu- cation and the Economy), April 2006 .....	20, 21
Social Policy Research Associates, <i>Evaluation of the YouthBuild Youth Offender Grants</i> (Final Report May 2009).....	17
Arnold J. Sameroff et al., <i>Stability of Intelligence from Preschool to Adolescence: The Influence of Social and Family Risk Factors</i> , 64 <i>Child Development</i> 80 (1993).....	11
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Ronald D. Stephens & June Lane Arnette, <i>From the Courthouse to the Schoolhouse: Making Successful Transitions</i> (U.S. Depart- ment of Justice, Office of Juvenile Justice and Delinquency Prevention), Feb. 2000 .....	18, 28
Laurence Steinberg, & Kathryn C. Monahan, <i>Age Differences in Resistance to Peer Influ- ence</i> , 43 <i>Developmental Psychology</i> 1531 (2007).....	13
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U.S. Charter Schools Website, New Non- Federal Research and Reports, <a href="http://www.uscharterschools.org/cs/r/query/q/1558?x-title=New+Non-Federal+Research+and+Reports">http://www.uscharterschools.org/cs/r/query/q/1558?x-title=New+Non-Federal+Research+and+Reports</a> .....	18
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Nora Volkow & Ting-Kai Li, <i>The Neuroscience of Addiction</i> , 8 <i>Nature Neurosci.</i> 1429 (2005) .....	13

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**STATEMENT OF *AMICI***<sup>1</sup>

*Amici curiae* are leading educators, scholars, and child advocates who believe that all children have the potential for growth and transformation so long as society does not give up on them.<sup>2</sup> Several *amici* are leaders of alternative education schools and programs who serve so-called “at-risk”<sup>3</sup> youth – adolescents who have been incarcerated, exhibited disruptive or violent behavior, dropped out of school, or who disproportionately face the insidious obstacles of poverty, neglect, violence, addiction, and other often incapacitating social harms. As educators, *amici* are intimately familiar with the dynamic, transient nature of youth and therefore categorically reject the notion that children are incorrigible and thus cannot be changed. On the contrary, educators know first-hand

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<sup>1</sup> No counsel for any party authored this brief in whole or in part, and no party or its counsel made a monetary contribution intended to fund the preparation or submission of this brief. Letters of consent from the parties have been filed with the Clerk’s office.

<sup>2</sup> A full statement of each *amicus*’s interest can be found in the Appendix.

<sup>3</sup> The term “at-risk” encompasses a wide range of vulnerability factors. The No Child Left Behind Act of 2001, for example, defines an “at-risk” youth to include “a school aged individual who is at-risk of academic failure, has a drug or alcohol problem, is pregnant or is a parent, has come into contact with the juvenile justice system in the past, is at least 1 year behind the expected grade level for the age of the individual, has limited English proficiency, is a gang member, has dropped out of school in the past, or has a high absenteeism rate at school.” 20 U.S.C. § 6472(2).

that because adolescents are still developing cognitively, socially, emotionally, and even physically, they possess an inherent capacity for positive growth and development. That defining characteristic of youth means that even the most at-risk or troubled child has the potential to transform his life as he matures. In light of these fundamental principles, which motivate *amici* to nourish each child's potential for positive development, *amici* write here to express their deep concern about the sentences at issue in these cases.

In particular, *amici* firmly believe that sentencing juveniles to life without parole ("LWOP") for non-homicide crimes committed during their youth wrongly ignores children's inherent potential to mature and rehabilitate, and cruelly deprives adolescents of any opportunity to utilize those qualities to one day become contributing members of society. Such sentences run counter to prevailing views about adolescent development, which are reflected in educators' professional consensus regarding the most successful education practices in the United States. Accordingly, *amici* respectfully submit that treating the failings of a minor like those of an adult is egregiously misguided and that ignoring adolescents' capacity for transformation by condemning juveniles to die in prison constitutes excessive, cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments to the United States Constitution.



## SUMMARY OF ARGUMENT

In light of the categorical differences between adolescents and adults, which are fundamental to the mission and best practices of educators, it offends civilized standards of decency to sentence adolescents to die in prison for non-homicide offenses committed during their youth. To do so would fail to appreciate the lesser moral culpability of juvenile offenders and their diminished ability, as compared to adults, to understand the consequences of their conduct and to control their immediate surroundings in order to escape negative influences. *Amici* therefore agree with Petitioners that, in light of these fundamental differences between adults and adolescents, there is no justification for imposing LWOP sentences on juveniles as a means of deterrence or retribution for non-homicide offenses.

Even more fundamentally, educators like *amici* agree that sentencing children to die in prison for non-homicide offenses senselessly ignores children's capacity for growth and rehabilitation so early in their lives, wrongly treating those adolescents as irretrievably depraved. As the work of educators vividly demonstrates, however, juveniles are particularly amenable to the positive influences of education, community support, and rehabilitation because they are still developing. Alternative schools and programs, in particular – many of them led by *amici* – are committed to the principle that all children, regardless of the odds, have the potential to succeed. The remarkable success of these programs

demonstrates that even the most troubled or at-risk child can prevail over adversity, reform harmful behavior, and grow into a contributing member of society. Educators therefore reject as fundamentally erroneous the central premise upon which LWOP sentences for juveniles are founded – that some children are so irretrievably bad that they are incorrigible and cannot change. Because juvenile LWOP sentences for non-homicidal crimes deny those children’s potential for growth and development, such sentences are out of step with norms of civilized society, and in violation of the prohibition on excessive, cruel and unusual punishment under the Eighth and Fourteenth Amendments to the United States Constitution.



## ARGUMENT

**THE WORK OF EDUCATORS DEMONSTRATES THAT BECAUSE JUVENILES ARE UNFORMED AND HAVE AN INHERENT CAPACITY FOR POSITIVE GROWTH AND REHABILITATION, LIFE WITHOUT PAROLE SENTENCES, WHICH WHOLLY DISREGARD THESE UNIQUE CHARACTERISTICS OF YOUTH, ARE EXCESSIVE, CRUEL AND UNUSUAL IN VIOLATION OF THE EIGHTH AMENDMENT.**

The Eighth Amendment, which prohibits cruel and unusual punishments and applies to the States through the Fourteenth Amendment, “guarantees individuals the right not to be subjected to excessive

sanctions.” *Roper v. Simmons*, 543 U.S. 551, 560 (2005). That right is grounded in the fundamental principle that punishment should be proportional to the offense and that the government has a duty “to respect the dignity of all persons.” *Id.* (citing *Atkins v. Virginia*, 536 U.S. 304, 311 (2002)). Consistent with those precepts, in evaluating whether a particular sentence violates the Eighth Amendment, this Court considers whether punishments are so disproportionate and contrary to “‘evolving standards of decency that mark the progress of a maturing society’” as to be excessive or cruel and unusual. *Id.* at 561 (quoting *Trop v. Dulles*, 356 U.S. 86, 100-01 (1958) (plurality opinion)); *Atkins*, 536 U.S. at 311 n.7 (noting that the Amendment proscribes “all excessive punishments, as well as cruel and unusual punishments that may or may not be excessive”). Thus, to be proportionate and constitutional, punishment must be appropriately “justified under one or more of three principal rationales: rehabilitation, deterrence, and retribution.” *Kennedy v. Louisiana*, 128 S.Ct. 2641, 2649 (2008).

This Court in *Roper* identified “three general differences” between adolescents and adults which can render certain sentences, when applied to juveniles, unjustified by those penological interests and therefore excessive, cruel or unusual. 543 U.S. at 569-70. First, because adolescents lack maturity and are still developing, they have an underdeveloped sense of responsibility. *Id.* at 569. Second, juveniles, as compared to adults, are both more vulnerable to

negative influences and societal pressures, including peer pressure, and less able to control their own environment in order to escape them. *Id.* Third, because adolescents are still developing, their characters and identities are not fully-formed. *Id.* at 570. These differences – which educators of at-risk students confront on a daily basis – indicate that juveniles are less culpable than adults for their mistakes or harmful behavior and that it is only “the rare juvenile offender whose crime reflects irreparable corruption” with absolutely no potential for rehabilitation. *Id.* at 573.

Here, in light of these categorical differences between adolescents and adults, with which educators are intimately familiar, “it would offend civilized standards of decency,” *id.* at 561 (quoting *Thompson v. Oklahoma*, 487 U.S. 815, 830 (1988) (plurality opinion)), to sentence adolescents to die in prison for non-homicide offenses committed during their youth. Because doing so ignores juveniles’ inherent capacity for positive growth and transformation, *amici* respectfully submit that such sentences are inconsistent with society’s prevailing view of adolescents as reflected in the scholarship and accepted practices undergirding the work of leading educators.

#### **A. Education Theory And Practice Have Long Recognized The Dynamic, Transient Nature Of Youth.**

The very purpose of education – to help children develop into fully formed and self-sufficient persons –

speaks to the dynamic, unformed nature of youth. See Lawrence Kohlberg & Rochelle Mayer, *Development as the Aim of Education*, 42 Harv. Educ. Rev. 449, 493 (1972) (describing goal of education as “development, both intellectual and moral”); *Wisconsin v. Yoder*, 406 U.S. 205, 221 (1972) (“[E]ducation prepares individuals to be self-reliant and self-sufficient participants in society.”). Indeed, education theorists and scholars have long recognized that the best education practices are attuned to adolescents’ unformed character and minds. Thus, the earliest proponents of so-called “progressive” education argued that traditional education models inappropriately “impose[d] adult standards, subject-matter, and methods upon those who are only growing slowly toward maturity.” John Dewey, *Experience and Education* 18-19 (1938). Leading education theorist John Dewey observed that “the gulf between the mature or adult” world and that of the young required educational approaches responsive to the experiences and developmental needs of youth. *Id.* at 21-22, 50 (“Education as growth or maturity should be an ever-present process.”); see also Jerome Bruner, *The Process of Education* 9 (1960) (“[S]chools must also contribute to the social and emotional development of the child if they are to fulfill their function of education for life in a democratic community and for fruitful family life”). Nurturing adolescents for positive development and growth has remained an essential component of education and a vital objective of educators.

Today, there exists a “national consensus on the need for 21st century schools to offer more than academic instruction to foster success in school and life for all children.” Mark T. Greenberg et al., *Enhancing School-Based Prevention and Youth Development Through Coordinated Social, Emotional, and Academic Learning*, 58 *Am. Psychologist* 466, 474 (2003) (“[M]ost educators, parents, students, and the public support a broader educational agenda that also involves enhancing students’ social-emotional competence, character, health, and civic engagement.”). Many school-based prevention and youth development programs therefore aim to holistically foster adolescents’ social, moral, and intellectual growth. *Id.* at 468-70. Schools serving at-risk students, in particular, often emphasize the development of morals and responsibility in their pupils. *See infra* Part C.

These programs, which recognize the positive impact of education on the unformed character and minds of youth, are supported by a wealth of evidence-based research showing that the brain continues to develop throughout childhood and in particular during the teenage years. *See* B.J. Casey et al., *Structural and Functional Brain Development and Its Relation to Cognitive Development*, 54 *Biological Psychiatry* 241, 253 (2000); *see also* Usha Goswami, *Neuroscience and Education*, 74 *Brit. J. Educ. Psychol.* 1, 3 (2004) (noting that “[b]rain volume quadruples between birth and adulthood”). A better understanding of development in the adolescent brain has shed light on and disproved

certain assumptions regarding how adolescents think, learn, and behave. *See generally* Goswami, *supra*. For example, “the frontal and parietal cortices” of the brain – the areas “associated with complex abilities such as planning, paying attention, and interacting with other people” – develop significantly during the teenage years and into the twenties. *See* Catherine Sebastian, *The Second Decade: What Can We Do About The Adolescent Brain?* 1 *Opticon* 1826 1, 2 (2007), available at [http://www.ucl.ac.uk/opticon1826/archive/issue2/VfPLIFE\\_Teenagers.pdf](http://www.ucl.ac.uk/opticon1826/archive/issue2/VfPLIFE_Teenagers.pdf) (noting that the “most profound differences between adults and adolescents occur at the decisionmaking or executive levels of processing”); *see also* Deanna Kuhn, *Do Cognitive Changes Accompany Development in the Adolescent Brain?* 1 *Persp. Psychol. Sci.* 59, 60 (2006). These changes are of interest to educators because they determine key competencies related to learning, such as the ability to exercise self-control and reason, and to “anticipat[e] the outcome of events.” Sebastian, *supra*, at 2. All of this evidence indicates significant differences between adults and adolescents in brain functioning and behavior and confirms what has largely been implicit in education theory: that “teenagers are not the same as adults,” but rather are works-in-progress who do not function with the same competencies, maturity, or cognitive abilities as adults. *See* Daniel R. Weinberger et al., *The Adolescent Brain: A Work in Progress* 19 (The National Campaign to Prevent Teen Pregnancy), 2005, available at <http://www.thenationalcampaign.org/resources/pdf/BRAIN.pdf>.

The significant differences between adults and adolescents – which educators confront every day – including the ability to exercise self-control, to reason, and to anticipate the outcome of events, *see* Sebastian, *supra*, at 2, indicate that adolescents are often unable to engage in the kind of foresight or “cost-benefit analysis that attaches any weight to the possibility of” a death-in-prison sentence. *See Thompson*, 487 U.S. at 837 (suggesting that offenders under 16 years old do not consider the consequence of death sentences for homicides). Because of that underdeveloped ability to engage in complex thought or anticipate the outcome of events, there is no legitimate justification for imposing LWOP sentences on juveniles as a means of deterrence. *See id.* at 836-38.

In addition, because the intellectual, social, and emotional maturity, and “character of a juvenile [are] not as well formed as that of an adult,” irresponsible or harmful behavior by a juvenile “is not as morally reprehensible as that of an adult.” *Roper*, 543 U.S. at 570 (quoting *Thompson*, 487 U.S. at 835). This lesser culpability of juvenile offenders also renders LWOP sentences unjustified on grounds of retribution. *See Atkins*, 536 U.S. at 319 (“[T]he severity of the appropriate punishment necessarily depends on the culpability of the offender.”). Accordingly, LWOP sentences for juveniles are unjustified by sufficient penological interests and are therefore excessive, cruel and unusual under the Eighth and Fourteenth Amendments to the United States Constitution.

**B. Educators Recognize That Children Are Particularly Susceptible To Negative Influences And Societal Harms, Including Poverty, Violence, Addiction, And Peer Pressure.**

As educators, *amici* also recognize that because children are still developing, they are especially vulnerable to negative influences and societal harms, including poverty, violence, addiction, and peer pressure. Indeed, the education theorist John Dewey recognized in 1938 that educational experiences do “not occur in a vacuum” but that children’s ability to learn and positively develop is dramatically affected by the social environments in which they live and learn. *See Dewey, supra*, at 39-40. That principle has been confirmed by subsequent research showing that the more risk factors present in childhood environments – including whether children grow up in dangerous, polluted, and deteriorating neighborhoods, attend neglected and poorly functioning schools, or are exposed to violence and neglect in the home – the greater the threat to healthy adolescent development and cognitive growth. *See Gary W. Evans, The Environment of Childhood Poverty*, 59 *Am. Psychologist* 88 (2004); Brian J. Bigelow, *There’s an Elephant in The Room: The Impact of Early Poverty and Neglect on Intelligence and Common Learning Disorders in Children, Adolescents, and Their Parents*, 34 *Developmental Disabilities Bulletin* 177, 185 (2006); *see also* Arnold J. Sameroff et al., *Stability of Intelligence from Preschool to Adolescence:*

*The Influence of Social and Family Risk Factors*, 64 Child Development 80, 80-97 (1993).

Poverty, in particular, is overwhelmingly “harmful to the physical, socioemotional, and cognitive well-being of children.” Evans, *supra*, at 88; *see also* Bigelow, *supra*, at 202 (“The deleterious effects of stressful levels of poverty on early child development are no longer subject to serious debate.”). Thus, the evidence suggests that poverty can impair brain growth and development starting from birth and “is often the most important variable in understanding children’s learning disorders.” Bigelow, *supra*, at 177-78.

Adolescents are also particularly vulnerable to drug abuse and addiction in light of the developing nature of their brains. Don Vereen, *Research Shows Consequences of Drug Abuse on the Teenage Brain*, The Challenge Vol. 14, No. 3 (U.S. Department of Education, Office of Safe and Drug-Free Schools), 2007, at 1, *available at* [http://www.thechallenge.org/challenge\\_14\\_3.pdf](http://www.thechallenge.org/challenge_14_3.pdf). According to the U.S. Department of Education, juveniles are particularly susceptible to drug abuse because “[t]he critical areas in the brain used for making judgments and comprehending complex concepts like safety and freedom are not fully developed at age 15” and do not fully develop until the twenties. *Id.* Accordingly, experts contend that adolescents’ heightened risk of addiction is often not simply a product of “social angst” or experimentation, but rather results from the fact that such “factors occur during a period of dramatic

changes” in the adolescent brain. *Interview with Nora Volkow, M.D., Director of the National Institute on Drug Abuse (NIDA)*, *The Challenge*, Vol. 14, No. 3 (U.S. Department of Education, Office of Safe and Drug-Free Schools), 2007, at 2.<sup>4</sup>

Research further indicates that adolescents are particularly susceptible to the negative influence of peers. See Laurence Steinberg & Kathryn C. Monahan, *Age Differences in Resistance to Peer Influence*, 43 *Developmental Psychology* 1531 (2007) (“[T]here is little doubt that peers actually influence each other and that the effects of peer influence are stronger during adolescence than in adulthood.”); see also Evans, *supra*, at 78, 88 (noting children from low-income families who are exposed to unstable home environments and other risk factors, are “more likely to rely on peers than adults” and are particularly vulnerable to aggressive peers). And, significantly, “susceptibility to peer pressure” is greatest when anti-social behavior and delinquency are involved. Steinberg, *supra*, at 1532. Such susceptibility, and with it, the likelihood of anti-social behavior, however, abates with age and development.

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<sup>4</sup> Preliminary research also suggests that the brain’s neurological response to drugs such as nicotine and marijuana is different in adolescence than in adulthood. See Nora Volkow & Ting-Kai Li, *The Neuroscience of Addiction*, 8 *Nature Neurosci.* 1429 (2005). Scientists are beginning to explore how this neurological difference contributes to adolescents’ predisposition to addiction. *Id.*

In working to advance the social and emotional development of adolescents, educators necessarily confront these vulnerabilities on a daily basis. Their experience reflects what this Court recognized in *Roper*: that “juveniles are more vulnerable or susceptible to negative influences and outside pressure, including peer pressure” because of their “lack of maturity” and underdeveloped character and identity. 543 U.S. at 569. While “[t]hese qualities often result in impetuous and ill-considered actions and decisions,” *id.* (internal citation and quotations omitted), as this Court has recognized, juveniles’ “vulnerability and comparative lack of control over their immediate surroundings mean juveniles have a greater claim to be forgiven for failing to escape negative influences in their whole environment.” *Id.* at 570 (citing *Stanford v. Kentucky*, 492 U.S. 361, 395 (1989) (Brennan, J., dissenting)). This difference between adolescents and adults further renders LWOP sentences for juveniles unjustified on grounds of deterrence or retribution. Accordingly, such sentences are excessive, cruel and unusual under the Eighth and Fourteenth Amendments to the United States Constitution.

### **C. The Success Of Educators Serving At-Risk Juveniles Demonstrates That All Juveniles Have A Unique Capacity For Transformation.**

Most fundamentally, the experience of educators in successfully teaching at-risk adolescents who have been so often dismissed as “too difficult” or “not worth

it” undermines the primary basis for LWOP sentences for juveniles – the notion that some children are so irretrievably depraved that they are incapable of reform. As the work of *amici* and other educators demonstrate, all adolescents have the potential for positive growth and development, and even the most troubled youth can change and be rehabilitated.

The Department of Education recently decried that “[o]ne of the more insidious myths about education is that students who have traditionally been characterized as ‘at risk’ cannot manage a rigorous college preparatory curriculum and that if pushed too hard they will drop out of school.” U.S. Department of Education, Office of Innovation and Improvement, *Charter High Schools: Closing the Achievement Gap* 30-31 (2006), available at <http://www.ed.gov/admins/comm/choice/charterhs/report.pdf>. The achievements of at-risk youth in alternative schools and other programs debunk that misconception, demonstrating that when adolescents’ developmental needs are properly addressed, these children can succeed. *Id.* at 22, 31. These positive results speak to the potential of all juveniles – even the most at-risk or troubled child – to positively develop and transform their lives as they mature to become contributing members of society.

Indeed, a critical component of successfully reaching at-risk students is educators’ refusal to treat them as “lost causes” who are incapable of change. In fact, the available evidence suggests that when schools and communities reject troubled or at-risk

children, adolescents are even more likely to experience repeated failure. See Cheryl M. Lange & Sandra J. Sletten, *Alternative Education: A Brief History and Research Synthesis*, Project FORUM (National Association of State Directors of Special Education), 2002, at 12, available at [http://www.projectforum.org/docs/alternative\\_ed\\_history.pdf](http://www.projectforum.org/docs/alternative_ed_history.pdf) (finding that studies of school dropouts indicate that “school climate of rejection by teachers or peers has a strongly negative effect on the prospect for students at risk”); Sarah Ingersoll & Donni LeBoeuf, *Reaching Out to Youth Out of the Education Mainstream*, Juvenile Justice Bull. (U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention), Feb. 1997, at 6, available at <http://www.ncjrs.gov/pdffiles/163928.pdf> (noting that challenges to reintegration of students from the juvenile justice system are due to the fact that “these youth frequently face parents who have given up on them, teachers and fellow students who fear them, and citizens who do not want them in the community”); see also National Research Council, Commission on Behavioral and Social Sciences and Education, *Losing Generations: Adolescents in High-Risk Settings* 102-03, 117 (1993); Mark Dynarski & Philip Gleason, *How Can We Help? What We Have Learned from Evaluations of Federal Dropout-Prevention Programs* 5 (1998) (submitted to U.S. Department of Education by Mathematica Policy Research, Inc.), available at <http://www.mathematica-mpr.com/publications/PDFs/dod-syn.pdf>; Laudan Y. Aron, *An Overview of Alternative Education* (The Urban Institute), Jan. 2006, at 15, available at

[http://www.urban.org/UploadedPDF/411283\\_alternative\\_education.pdf](http://www.urban.org/UploadedPDF/411283_alternative_education.pdf). To be sure, at-risk students may exhibit defiant and disruptive behavior, making the task of education even more challenging. See James Forman, Jr., *Out of Jail and Into Jobs*, 8 Educ. Next 44, 48 (Fall 2008) available at [http://media.hoover.org/documents/ednext\\_20084\\_44Forman.pdf](http://media.hoover.org/documents/ednext_20084_44Forman.pdf). During the past few decades, however, innovative educators have taken stock of these entrenched obstacles, and sought to alter existing institutional structures and challenge preconceived notions about at-risk students, including those with behavioral problems. By addressing the needs of especially defiant, disruptive, at-risk students, these educators have enabled thousands of students to reform their behavior, overcome their challenges, and achieve success.

In particular, over the past half-century, educators and policymakers have increasingly embraced evolving education models for helping students at risk of failure in school. Lange & Sletten, *supra*, at 1; see also No Child Left Behind Act of 2001, § 1401(b), 20 U.S.C. § 6421(b) (providing funding for state and local educational agencies to “establish or improve programs of education for neglected, delinquent, or at-risk children or youth”). Innovative schools and programs have had dramatic success in maximizing at-risk students’ potential, including by improving test scores, increasing college placements and achieving greater stability and transition to work. See generally *Charter High Schools*, *supra*; Social Policy Research Associates, *Evaluation of the YouthBuild*

*Youth Offender Grants* (Final Report May 2009) (Prepared for Department of Labor/ETA), available at [http://wdr.doleta.gov/research/FullText\\_Documents/Evaluation%20of%20the%20YouthBuild%20Youth%20Offender%20Grants%20%2D%20Final%20Report%2Epdf](http://wdr.doleta.gov/research/FullText_Documents/Evaluation%20of%20the%20YouthBuild%20Youth%20Offender%20Grants%20%2D%20Final%20Report%2Epdf); U.S. Charter Schools Website, New Non-Federal Research and Reports, <http://www.uscharterschools.org/cs/r/query/q/1558?x-title=New+Non-Federal+Research+and+Reports>; David Whitman, *Sweating the Small Stuff: Inner-City Schools and the New Paternalism* (Thomas B. Fordham Institute), 2008, available at <http://www.edexcellence.net/doc/20080826-sweating-the-small-stuff.pdf>.

In addition to improving students' scores and easing transition for troubled youth into the workforce, programs aimed directly at preventing crime by juveniles exposed to violence have been found to "cost-effectively intervene in young and troubled lives to prevent harmful and costly behaviors." Little Hoover Commission, *Never Too Early, Never Too Late: To Prevent Youth Crime and Violence* ii (June 2001), available at <http://www.lhc.ca.gov/studies/159/report159.pdf>. Additionally, studies of prison education programs have found that inmates who participate in those programs are more likely to be employed and less likely to re-offend than nonparticipants – if and when they are released. Ronald D. Stephens & June Lane Arnette, *From the Courthouse to the Schoolhouse: Making Successful Transitions* (U.S. Department of Justice, Office of Juvenile Justice and

Delinquency Prevention), Feb. 2000, at 4, *available at* <http://www.ncjrs.gov/pdffiles1/ojjdp/178900.pdf>.

Studies of these efforts prove “that all students – even those who are often labeled as slow, lazy, or troubled in traditional schools – can be productive and successful in creative educational settings that provide a personalized approach.” J.D. Hoyer & Chris Sturgis, *The Alternative Pathways Project: A Framework for Dropout Reduction and Recovery* 5 (June 2005), *available at* [http://www.ytfg.org/documents/AltPathv.7.7Julyfin\\_000.pdf](http://www.ytfg.org/documents/AltPathv.7.7Julyfin_000.pdf); *see also* Whitman, *supra*, at 252. Many of the most effective and successful alternative schools include within their curriculum practices and methods that specifically address the developmental changes experienced by at-risk students during adolescence as well as their vulnerability to negative influences and societal harms. *See Charter High Schools, supra*, at 22 (observing that successful charter secondary schools have specialized programs to address “any adolescent life issue that arises, whether academic, personal, or social”); *see also* Jodie L. Roth & Jeanne Brooks-Gunn, *Academic Success, Adolescence*, in *Encyclopedia of Primary Prevention and Health Promotion* 140, 143 (Thomas P. Gullotta & Martin Bloom eds., 2003) (citations omitted) (“Adults who support adolescents’ learning with high expectations, an understanding of the cognitive, social, and emotional changes that occur during adolescence, and a solid grasp of the subject

matter, create a secure and positive learning environment that encourages and promotes adolescents' academic success.”). Other identified best practices are also tailored to address the vulnerabilities of at-risk adolescents and to maximize the potential for positive growth and development. See Tary Tobin & Jeffrey Sprague, *Alternative Education Strategies: Reducing Violence in School and the Community*, 8 J. Emotional & Behav. Disorders 177, 177-86 (2000) (finding alternative education practices that promote success among at-risk youth include small class size to enable individualized instruction, “clearly defined rules and consequences,” positive reinforcement, a focus on social skills, mentoring and parental involvement); Dynarski & Gleason, *supra*, at 4; see also *Charter High Schools*, *supra*, at 7-32 (reviewing “common themes” of high achieving schools); Hoye & Sturgis, *supra*, at 7-9 (same); Aron, *supra*, at 11-13 (same); Betsy Brown Ruzzi & Jacqueline Kraemer, *Academic Programs in Alternative Education: An Overview* (National Center on Education and the Economy), April 2006, at 31, available at [http://www.doleta.gov/youth\\_services/pdf/ae\\_overview\\_text.pdf](http://www.doleta.gov/youth_services/pdf/ae_overview_text.pdf) (same); Forman, Jr., *supra*, at 47-48; (same); Lange & Sletten, *supra*, at 10-12 (same).

Recognizing the particular vulnerability of adolescent at-risk students, many alternative schools have sought to emphasize inviting school climates that foster individual relationships between teachers

and students by providing small schools and classes and counseling services. The animating theory of many of these schools is “that a sense of caring will encourage students to persist in their school experience and, together with a sense of academic success, will increase self-esteem.” Lange & Sletten, *supra*, at 12; *see also* Geoffrey Canada, *fist stick knife gun: A Personal History of Violence in America* 109 (1995) (explaining need for schools and programs to provide to at-risk children “sense of protection and security”); Dynarski & Gleason, *supra*, at 4-5 (describing counseling as primary tool to overcome obstacles to progress and success in schools used by dropout-prevention program); *Charter High Schools, supra*, at 19-24 (identifying “wraparound student support” – including low student-to-teacher ratio, counselors, social workers, family and community involvement – as a common theme of charter secondary schools that have successfully closed the achievement gap); Ruzzi & Kraemer, *supra*, at 31 (highlighting importance of “personal relationships between the students and the teachers and individualized attention to each student’s learning needs, strengths, and life situations”); Aron, *supra*, at 12 (same).

For example, the See Forever Foundation and the Maya Angelou Public Charter School, based in Washington, D.C., which serve “kids who were in school, who had been suspended or expelled, who had been locked up” achieve impressive academic

outcomes, with one of its schools ranked in the top quarter of similar schools for academic improvement. Forman, Jr., *supra*, at 49. The co-founder of the school, *amicus* James Forman, Jr., attributes the students' achievement not only to a relevant and interesting curriculum, but also to "high expectations," and to the "caring, trusting, and loving relationships" that are fostered in the educational setting. *Id.* at 47-48. The teaching methods and environments of institutions like these are specifically designed to address adolescents' particular stage of development and their attendant developmental needs. *See* Roth & Brooks-Gunn, *supra*, at 143.

Similarly, effective educational models for detained and incarcerated youth emphasize individual and family counseling, treatment, and development of conflict resolution skills. Ingersoll & LeBoeuf, *supra*, at 7. For example, in a study of more than twenty dropout-prevention programs throughout the country, researchers found that alternative middle school programs, which provided intensive counseling services and individualized attention through small classroom settings to students with low ability or who had felt alienated and failed in regular schools, succeeded in keeping kids in school and advanced their academic progress. Dynarski & Gleason, *supra*, at 12-20. Specifically, students in the programs "were half as likely to drop out" and advanced further in school than they did when educated under traditional models. *Id.* at 18-20.

In addition, because adolescents' moral consciousness is still developing, and in order to counteract their particular susceptibility to negative influences and societal harms, innovative schools seek to influence students' behavior by incorporating values and character education into the curriculum. Paul Tough, *What It Takes to Make a Student*, The New York Times Magazine, Nov. 26, 2006. Educators in these institutions have stressed the development of "social and emotional competencies" in teaching at-risk students. Forman, Jr., *supra*, at 50; *see also* U.S. Department of Education, Office of Educational Research and Improvement, *Education Reform and Students at Risk: Studies of Education Reform 37* (1997) (finding that successful charter schools serving at-risk populations "provide students with emotional stability and intellectual engagement" and create "educational communities of resilience") (internal quotation marks and citations omitted); Peter E. Leone et al., *School Failure, Race, and Disability: Promoting Positive Outcomes, Decreasing Vulnerability for Involvement with the Juvenile Delinquency System* (The National Center on Education, Disability, and Juvenile Justice), Oct. 2003, at 12-13, *available at* [http://www.edjj.org/Publications/list/leone\\_et\\_al-2003.pdf](http://www.edjj.org/Publications/list/leone_et_al-2003.pdf) (finding that focus on cognitive, emotional and moral development aids at-risk youth in making "appropriate behavioral choices in the presence of multiple risk factors"). Also, studies of successful individual classrooms have noted that a focus on students' moral development and the encouragement of ethical deliberation are integral to

academic achievement. *See, e.g.*, Mike Rose, *Possible Lives: The Promise of Public Education in America* 432 (1995). These educational practices are predicated on an accepted truth that LWOP sentences ignore: adolescents are still developing and ought not be viewed as lost causes, incapable of educational, social, or moral progress.

For example, high-achieving charter schools – such as those operated as part of the Knowledge is Power Program (KIPP) and Achievement First – have built upon psychological research, and stressed the importance of self-discipline as a means to high academic achievement. Tough, *supra* (describing innovative and successful educators’ reliance on research stressing importance of “‘noncognitive’ abilities like self-control, adaptability, patience and openness” to achieving academic success); Angela L. Duckworth & Martin E.P. Seligman, *Self-Discipline Outdoes IQ in Predicting Academic Performance of Adolescents*, 16 *Psychological Sci.* 939, 944 (2005) (“We believe that many of America’s children have trouble making choices that require them to sacrifice short-term pleasure for long-term gain, and that programs that build self-discipline may be the royal road to building academic achievement.”); David Whitman, *supra*, at 20, 38, 260-62 (noting that emphasis on behavior and order was most important factor to success of at-risk students in innovative secondary schools). Similarly, critical to the success of the SEED Public Charter

School of Washington, D.C., a school aimed at underserved students from low socioeconomic backgrounds – beyond its intensive academic program – is its emphasis on “Habits For Achieving Life Long Success,” which include life skills, conflict resolution, time management, making good choices and a “focus on five core values: respect, responsibility, self-discipline, compassion, and integrity.” *Charter High Schools, supra*, at 56. The Maya Angelou Public Charter School likewise focuses on fostering resiliency in its students, stressing self-control, delaying gratification, goal-setting, and acceptance of responsibility. Forman, Jr., *supra*, at 50. The schools’ emphasis on behavior modification and character development and their resulting success are a testament to educators’ understanding of the dynamic nature of adolescence and the capacity of even troubled youth to reform and flourish as they grow towards adulthood.

Fundamentally, educators of at-risk students all unequivocally reject the notion that children cannot be changed or are incorrigible and therefore cannot be educated. See Ingersoll & LeBoeuf, *supra*, at 9 (finding that effective programs for at-risk youth may “prevent crime and delinquency and nurture each child’s potential to become a successful and contributing member of society” and that “[e]ach young person deserves the opportunity to demonstrate that he or she is capable of success”); Nancy Martin & Samuel Halperin, *Whatever It Takes: How Twelve Communities Are Reconnecting Out-of-School Youth*

(American Youth Policy Forum), 2006, at 2-3, *available at* <http://www.aypf.org/publications/WhateverItTakes/WITfull.pdf> (finding that all successful dropout recovery programs viewed youth “as potentially motivated young adults and students of promise”). The students’ remarkable rates of achievement at these schools and in these programs validate the view that all children have the capacity for positive growth and development, and that even troubled children can transform themselves as they mature.

The SEED school, for example, was founded on “the premise that all children can succeed in school, regardless of social or economic barriers, if given the right environment and support.” *Charter High Schools, supra*, at 55. Consequently, SEED students outperform their peers in Washington, D.C. schools by an almost 2 to 1 margin. *Id.* at 58. In addition, 100 percent of the class of 2005 was accepted to four-year colleges. *Id.*

Similarly, The Door, an organization in New York City that provides a range of integrated services to over 11,000 youth each year, 20 percent of whom have been involved with the justice system, and 25 percent of whom have either been homeless or been placed in foster care, operates based upon “the philosophy that every young person has untapped potential.” The Door, *The Door 2008 Annual Report* 1, 3 (2003), *available at* [http://www.door.org/pdf/Door%20Annual%20Report\\_FINAL%20FOR%20WEB.pdf](http://www.door.org/pdf/Door%20Annual%20Report_FINAL%20FOR%20WEB.pdf). Through the Door’s support system and nurturing of that potential, 600

youth applied for post-secondary education in 2008, and 70 percent of those applicants are expected to begin school in the fall of 2009. *Id.* at 5.

Educators concur that immensely critical to the success of at-risk students, particularly those who have failed in traditional schools or been incarcerated, is instilling in them the understanding that “the adults in the room won’t give up on them, won’t just teach the kids who are getting it, and won’t write them off as incorrigible.” Forman, Jr., *supra*, at 48. Indeed, at-risk students interviewed in studies of secondary charter schools that have achieved notable success in academic outcomes and college placement have all identified educators’ trust and confidence in their capacity to change and succeed as instrumental to their own achievement. *See Charter High Schools, supra*, at 11 (“They push and they push hard. Knowing that they care is my safety net. Teachers believed in me so I started to work hard and then harder.” (quoting student from YES College Preparatory School, Southeast Campus, Houston, Texas)); *id.* at 38 (“I had teachers tell me I was stupid, dumb, wouldn’t amount to anything. Here it is okay to have learning differences. I’m comfortable being me because they don’t let you fall, but if you do they pick you up.” (quoting student from Gateway High School, San Francisco)); *id.* at 46 (“[H]ere I can change myself.” (quoting student from Minnesota New Country School, Henderson, Minnesota)); *id.* at 50 (“Here the teachers don’t give up on you. They are working for your future, to help you go to college.” (quoting student from North Star Academy Charter

School of Newark)); *id.* at 62 (“I think this school is amazing because over the years it kept me out of trouble. I would be in jail or dead right now, because a lot of my friends are in jail or dead.” (quoting student from Toledo School for the Arts)).

The work of educators demonstrates that as juveniles grow and mature, they are amenable to positive influences such as education, community support, and rehabilitation precisely because they are still developing. This illustrates that as compared to adults, juveniles have a greater capability to reform their behavior in order to become productive, healthy citizens. Indeed, the successful programs of several *amici* show that even the most troubled or at-risk child can prevail over disadvantage, hardships, and even serious adolescent mistakes and transform his life as he matures so long as society does not give up on him. Increased test scores, the closing of the achievement gap, and the high rate of college acceptances at many of the alternative schools serving at-risk youth, *see, e.g., id.* at 35-66, as well as the reduction in recidivism rates associated with prison education programs, *see* Stephens & Arnette, *supra*, at 4, all demonstrate that adolescents can overcome some of the most difficult obstacles when their cognitive, social, and emotional capacities are nurtured and their potential for positive growth is not denied.

As this Court observed in *Roper*, children’s ongoing development and susceptibility to outside pressures render it “less supportable to conclude that even a heinous crime committed by a juvenile is

evidence of irretrievably depraved character.” 543 U.S. at 570 (citing *Johnson v. Texas*, 509 U.S. 350, 368 (1993) (noting that youth is a mitigating factor because “signature qualities of youth are transient” and that “impetuosity and recklessness” diminish with maturity)); see also Juvenile Detention Alternatives Initiative, *Detention Reform: An Effective Public Safety Strategy* 4 (2007), available at [http://www.aecf.org/upload/PublicationFiles/jdai\\_facts2.pdf](http://www.aecf.org/upload/PublicationFiles/jdai_facts2.pdf) (citing research showing “that three-fourths of all youth who commit serious violent crimes during adolescence terminate their offending by age 21”). In fact, the positive results from *amici* and other educators demonstrate that even the most troubled youth, are capable of rehabilitation – a penological interest bearing on the appropriateness of particular sentences. See *Kennedy*, 128 S.Ct. at 2649. Therefore, as this Court recognized, “[f]rom a moral standpoint it 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.” *Roper*, 543 U.S. at 570. Accordingly, in light of adolescents’ inherent potential for transformation, which distinguishes juveniles from adults, LWOP sentences for juveniles who have committed non-homicide offenses are excessive, cruel and unusual under the Eighth and Fourteenth Amendments to the United States Constitution.

**D. Life Without Parole Sentences For Juveniles Are Contrary To Civilized Standards Of Decency.**

The experience of educators in successfully teaching at-risk adolescents who have been so often dismissed as “too difficult” or “not worth it” demonstrates that depriving adolescents of the opportunity to utilize their inherent potential for positive growth and development by sentencing them to die in prison for mistakes made during their youth is contrary to civilized standards of decency. As this Court has recognized, “evolving standards of decency must embrace and express respect for the dignity of the person, and the punishment of criminals must conform to that rule.” *Kennedy*, 128 S.Ct. at 2649. For that reason, “measures of consensus” that reflect society’s view regarding standards of human dignity have appropriately informed this Court’s jurisprudence addressing the excessiveness or cruelty of particular punishments. *See id.* at 2657 (finding “social consensus against the death penalty for the crime of child rape” based on infrequency of executions); *Atkins*, 536 U.S. at 316 n.21 (citing views of leading mental health and religious experts as “additional evidence . . . [of a] much broader social and professional consensus” regarding the excessiveness of the death penalty for mentally retarded individuals); *Thompson*, 487 U.S. at 830 (citing views of “respected professional organizations, by other nations that share our Anglo-American heritage, and by the leading members of the Western European

community” in concluding that it would offend civilized standards of decency to execute a person who was less than 16 years old at the time of his or her offense). Thus, here, in determining whether LWOP sentences for juveniles are out of step with the norms of civilized society, the views of educators who are intimately familiar with the competencies and potential of youth are especially pertinent, and the successful practices of *amici* and other educators should inform the decision of this Court that LWOP sentences for juveniles are excessive, cruel and unusual.

As set forth above, in light of the undisputable differences between adults and adolescents, which are integral to the mission and best practices of educators, there is no justification consistent with the norms of civilized society for imposing LWOP sentences on juveniles as a means of deterrence or retribution for non-homicide offenses. Even more fundamentally, as professionals committed to nourishing each child’s potential for success, educators like *amici* resolutely believe that wholly depriving adolescents of the opportunity to utilize their inherent capacity for positive growth and development by sentencing them to die in prison for mistakes made during their youth is contrary to civilized standards of decency. In fact, to deny children’s inherent potential for growth and transformation would be contrary to the long-standing work and objectives of educators, which this Court has recognized “as pivotal to” preparing adolescents for citizenship and “maintaining the fabric” of civilized

society. *Grutter v. Bollinger*, 539 U.S. 306, 331 (2003) (citing *Plyler v. Doe*, 457 U.S. 202, 221 (1982)). While educators cannot always predict which child who faces considerable odds in life will triumph over his disadvantaged circumstances or who will face ongoing adversity, they firmly believe that because adolescents are still developing cognitively, socially, and emotionally, society must give each adolescent a chance. Significantly, *amici* believe that realizing each child's potential is not simply a matter of resources: whether in prison educational programs, traditional public schools, or alternative schools, children are most likely to succeed when adults simply recognize their potential and refuse to give up on them because of failures during their youth.

In contrast to these prevailing views about adolescent growth and development, LWOP sentences for juveniles ignore children's capacity for growth and rehabilitation, so early in their lives, and treat them as irretrievably depraved. It is this aspect of a juvenile LWOP sentence in particular – the wholesale disregard of a child's inherent potential for transformation and the denial of any opportunity to utilize those qualities for positive growth – that categorically distinguishes it from other long-term, non-death prison sentences, and renders it contrary to civilized standards of decency. For these reasons, *amici* respectfully submit that such sentences are impermissibly excessive, cruel and unusual, and violate the

Eighth and Fourteenth Amendments to the United States Constitution.



**CONCLUSION**

For the foregoing reasons, *amici* respectfully submit that the decisions of the District Court of Appeal, First District, State of Florida should be reversed.

Respectfully submitted,

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## **APPENDIX**

**Geoffrey Canada** is President and Chief Executive Officer of Harlem Children's Zone (HCZ). The organization began in 1970 working with young children and their families as New York City's first truancy-prevention program. As the crack epidemic tore through Harlem in the 1980s and 1990s, many inside and outside Harlem gave up hope. Believing that new approaches were necessary to save children in this disintegrating community, HCZ turned a local public school into a thriving community center and worked to make Harlem's schools safer. Following the organizational creed to do "whatever it takes" when it comes to helping children succeed, Mr. Canada, in 1997, launched the Harlem Children's Zone Project, which targeted a 24-block area in Central Harlem with a comprehensive range of services, including pre-school programs, parenting workshops, and health initiatives. The Zone Project today covers 100 blocks and serves over 10,000 children. Over the years, HCZ introduced several ground-breaking efforts, including the Promise Academies, two high-quality public charter schools. The Promise Academy middle school, in particular, has achieved remarkable success, having eliminated the achievement gap between its black students and the city average for white students. Mr. Canada and HCZ have been the subject of hundreds of media stories and received scores of awards recognizing their contribution to the cause of children and education. Mr. Canada's and HCZ's work are also the subject of the book by Paul

Tough, *Whatever It Takes: Geoffrey Canada's Quest to Change Harlem and America* (2008). Noting the great success of HCZ, President Obama has said he will seek to “replicate the Harlem Children’s Zone in twenty cities across the country.”

**David Domenici and James Forman, Jr.** are co-founders of See Forever Foundation and Maya Angelou Public Charter Schools. Concerned that children leaving the District of Columbia’s juvenile detention facility had few programs to get them on track, in 1997, Mr. Domenici and Mr. Forman left their jobs as young lawyers and founded See Forever Foundation and the Maya Angelou Public Charter School, which work to create learning communities in lower income urban areas where all students, particularly those who have not succeeded in traditional schools, can reach their potential. See Forever has spent the last 11 years building successful alternative educational programs for young people who have been court-involved, truant, or unsuccessful in traditional schools. The Maya schools have been very successful. This past year, 93 percent of its graduates were accepted into 4-year or 2-year colleges and universities. Research shows that they are outperforming their peers. Over 70 percent go on to college or postsecondary school (compared to less than 40 percent of students graduating from district public schools). **James Forman, Jr.** is also a Professor at Georgetown Law School, where he teaches and writes in the area of Criminal Procedure and Education Law and Policy. **David Domenici** is the principal of the

Maya Angelou Academy, the school located inside of New Beginnings, the District of Columbia's secure facility for youth who have been adjudicated delinquent. The Maya Angelou Academy is a part of See Forever's network of schools.

**Fr. Jim Gartland, S.J.**, is the President of Cristo Rey Jesuit High School, a neighborhood school with the mission of offering the best college preparatory education available to the youth of the Pilsen/Little Village community of Chicago, for whom other private schools are not a financial option. Founded in 1996, Cristo Rey now educates more than 530 students each year with virtually all students accepted to at least one college. Today 82 percent of Cristo Rey graduates are currently attending or have completed college. Cristo Rey is increasingly receiving national recognition as a ground breaking model for urban education. In response to the success of Cristo Rey, the Cassin Educational Initiative Foundation and the Bill & Melinda Gates Foundation invested close to \$30 million toward replicating this educational model around the United States. Currently, there are 24 schools throughout the country that are associated through the Cristo Rey Network and operate using the educational model named for the first Cristo Rey School in Chicago.

**Khary Lazarre-White** is the Executive Director and Co-Founder of The Brotherhood/Sister Sol Inc. (BHSS). Founded in 1995, BHSS provides comprehensive, holistic and long-term support services to youth in Harlem who range in age from six to

eighteen, focusing on leadership development, educational achievement, bias reduction, sexual responsibility, sexism and misogyny, political education and social justice, Pan African and Latino History, and global awareness. Among the many services BHSS provides to youth in the community are school and home counseling, job training, college preparation, employment opportunities, and activist training. BHSS publishes assorted curricula and collections of youth writings and trains educators throughout the nation. One of the founding tenets of BHSS is that every young person can be reached and can change the course of his or her life through proper guidance and support, opportunities and resources, and through education and learned discipline. The Brotherhood/Sister Sol has earned national recognition, receiving awards that include Oprah Winfrey's Angel Network Use Your Life Award, Ford Foundation's Leadership for a Changing World Award, and the Exemplary Advocacy Organization Award from the New York State Department of Education.

**Dr. Peter E. Leone** is a Professor of Special Education, at the University of Maryland, College of Education, and specializes in Behavior Disorders. His experience includes direct service to troubled youth as well as field-based research which examines the multidimensional problems associated with behavior disorders. Dr. Leone points to the role of environmental and cultural factors in the inception of behavior disorders and believes educators need to take a multidisciplinary approach when implementing

programs for troubled or troubling youth. Dr Leone's research interests focus on program environments for troubled youth, educational entitlements of incarcerated youth, and policy studies. He directs The National Center on Education, Disability, and Juvenile Justice, a research, training and technical assistance project funded by the U.S. Department of Education. Dr. Leone has had numerous articles published in professional journals and has made many presentations at national, state, and local conferences on topics related to the effective treatment and instruction of behaviorally disordered youth.

**Dr. M. Ann Levett** is the Executive Director of the School Development Program at the Yale University Child Study Center. The Yale Child Study Center is a department at Yale University School of Medicine that brings together multiple disciplines to further the understanding of the problems confronted by children and families. Among the many disciplines involved in the Child Study Center are child psychiatry, pediatrics, genetics, neurobiology, epidemiology, psychology, nursing, social work and social policy. The mission of the Center is to understand child development, social, behavioral, and emotional adjustment, and psychiatric disorders and to help children and families in need of care. Housed within the Child Study Center is the School Development Program (SDP), the organization charged with implementing in school communities, the Comer Process, a school and system-wide intervention formulated by Dr.

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James P. Comer, Maurice Falk Professor of Child Psychiatry at the Yale University School of Medicine's Child Study Center. The SDP aims to bridge child psychiatry and education by focusing on the six developmental pathways along which children mature – physical, cognitive, psychological, language, social, and ethical.

**Dianne Morales** is the Executive Director of The Door. The Door is an organization in New York City that serves over 11,000 young people each year by empowering them to reach their potential by providing comprehensive youth development services in a diverse and caring environment. Founded in 1972 to address the acute crisis affecting America's urban adolescent population, The Door employs a holistic approach that helps each individual member to dismantle the complex barriers that often stand in the way of success. Among its many services, The Door provides primary health care, health education, mental health counseling, legal services, GED, ESL, tutoring and homework help, college preparation and computer classes, career development services and training, job placement, daily meals, arts, sports and recreational activities.

**Dr. Pedro Noguera** is a professor in the Steinhardt School of Culture, Education, and Human Development at New York University. He is also the Executive Director of the Metropolitan Center for Urban Education and the co-Director of the Institute for the study of Globalization and Education in Metropolitan Settings. An urban sociologist, Dr.

Noguera's scholarship and research focus on the ways in which schools are influenced by social and economic conditions in the urban environment. Dr. Noguera has served as an advisor to and engaged in collaborative research with numerous large urban school districts throughout the United States.

**Sharon Olken** is the Principal of the Gateway High School in San Francisco, a model college preparatory charter school committed to academic excellence through personalized, student-centered learning. At the core of the Gateway philosophy is an individualized approach to teaching and learning that fosters an environment for each student to reach his or her potential. The Gateway curricular program aims to prepare students for academic excellence in college and for lives which demonstrate integrity, responsibility, intellectual curiosity, and respect for a culturally diverse world. Gateway is particularly committed to providing high quality college preparation for students with diagnosed disabilities and to ensuring that its diverse student body includes at-risk students facing the insidious obstacle of childhood poverty. Due to Gateway's rigorous curriculum, personalized, student-centered learning, and intensive social and emotional support, 95 percent of its graduates attend college compared with a district-wide 77 percent. In 2009, *Newsweek* named Gateway one of its "top U.S. High Schools."

**Christine Pahigian** is the Executive Director of Friends of Island Academy (FOIA). FOIA is a community-focused organization that works with

youth, primarily ages 15 to 19 coming home from jail and/or detention in New York City. The organization seeks to re-integrate these youth and prevent them from re-entering the system. FOIA reaches out to youth prior to their release from Rikers Island and upon discharge, provides them with job training, counseling, education, mentoring, and youth leadership development to help participants stay out of trouble, take responsibility for themselves, and work to rebuild their lives. Founded in 1990, FOIA evolved from the conviction that with intense support and access to opportunity, many young people could be saved from a life of recurrent criminal behavior.

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