

Nos. 10-9646 and 10-9647

IN THE SUPREME COURT OF THE UNITED STATES

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EVAN MILLER,
Petitioner,

v.

STATE OF ALABAMA,
Respondent.

----- ♦ -----
**On Writ Of Certiorari To The
Alabama Court Of Criminal Appeals**

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KUNTRELL JACKSON,
Petitioner,

v.

RAY HOBBS, DIRECTOR,
ARKANSAS DEPARTMENT OF CORRECTION,
Respondent.

----- ♦ -----
**On Writ Of Certiorari To The
Supreme Court Of Arkansas**

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**BRIEF OF JUVENILE LAW CENTER *ET AL.*
AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS**

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INTEREST OF *AMICI*¹

The organizations submitting this brief work on behalf of adolescents in a variety of settings, including adolescents involved in the juvenile and criminal justice systems. *Amici* are advocates and researchers who have a wealth of experience and expertise in providing for the care, treatment, and rehabilitation of youth in the child welfare and justice systems. *Amici* know that youth who enter these systems need extra protection and special care. *Amici* understand from their collective experience that adolescent immaturity manifests itself in ways that implicate culpability, including diminished ability to assess risks, make good decisions, and control impulses. *Amici* also know that a core characteristic of adolescence is the capacity to change and mature. For these reasons, *Amici* believe that youth status separates juvenile and adult offenders in categorical and distinct ways that warrant distinct treatment under the Eighth Amendment.

IDENTITY OF *AMICI*

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

¹ The consent of counsel for all parties is on file with the 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. A brief description of all *Amici* appears in the Appendix.

STATEMENT OF FACTS

Amici adopt the statement of facts as articulated in the briefs of Petitioners Kuntrell Jackson and Evan Miller.

SUMMARY OF ARGUMENT

The imposition of life without parole sentences on juveniles violates the Cruel and Unusual Punishments Clause of the Eighth Amendment. As the Supreme Court has held, juvenile offenders are categorically different from adult offenders in constitutionally relevant ways. According to settled research, juveniles are immature in their judgment and decision-making capacities, they are especially susceptible to negative peer pressures, and they are uniquely capable of transformation and rehabilitation. As found in *Roper v. Simmons* and *Graham v. Florida*, juveniles as a class are less culpable for their criminal conduct than adults.

Culpability is a cornerstone of our criminal justice system, and it is central to ensuring that sentences are rational and proportional under the Eighth Amendment. Traditionally, the Court has looked primarily to the nature of the offense to assess proportionality. In the case of juveniles, this Court has modified its traditional Eighth Amendment analysis to focus specifically on the unique attributes and characteristics of the juvenile offender in reviewing the constitutionality of sentences. The reduced culpability of juveniles renders life without parole sentences inherently disproportionate under

the Eighth Amendment and thus categorically impermissible.

In the instant cases, the sentencing schemes in Alabama and Arkansas compound the constitutional infirmity of a life without parole sentence. In both cases, the sentences were mandatory. Following this Court's reasoning in striking mandatory death sentences under the Eighth Amendment, a mandatory juvenile life without parole sentence by its nature precludes considerations of the individual juvenile offender or the circumstances of his crime. Absent these considerations neither the sentencer nor the reviewing court have any ability to assess the proportionality of the sentence to a particular juvenile. A mandatory scheme thus precludes constitutionally relevant evidence of youth, lesser criminal involvement, and potential for maturity and therefore impermissibly taints the reliability of the sentence. Additionally, Jackson's life without parole sentence following a conviction of felony murder is squarely at odds with this Court's holding in *Graham* that juveniles who neither kill, intend to kill, or foresee that life will be taken are constitutionally ineligible for such sentences.

Finally, this Court has repeatedly acknowledged that the risk of wrongful convictions is of concern in evaluating the harshest sentences imposed on certain categories of offenders. Research demonstrates that juveniles are particularly at risk of giving false confessions because of their developmental characteristics, further supporting increased scrutiny of such sentences under the Constitution.

ARGUMENT

In the last six years, this Court has issued three landmark decisions that profoundly alter the status and treatment of juveniles in the justice system. Construing the Eighth Amendment, the Court abolished the juvenile death penalty in 2005 in *Roper v. Simmons*. In 2010, the Court struck a sentence of life without parole imposed on a juvenile convicted of a nonhomicide offense in *Graham v. Florida*. Last term, interpreting the Fifth and Fourteenth Amendments, the Court held in *J.D.B. v. North Carolina* that a juvenile's age is relevant to the *Miranda* custody analysis. In all three cases, the Court adopted settled research regarding adolescent development and required the consideration of the attributes of youth when applying constitutional protections to juvenile offenders.

The constitutionality of a life without parole sentence imposed on juveniles convicted of homicide offenses is now before the Court. Jackson and Miller were fourteen years old at the time of their offenses. Jackson was convicted of capital felony murder based upon his participation in an attempted robbery in which the victim was killed by a co-defendant; Miller was convicted of capital murder. In both cases, the sentences were mandatory upon conviction under the relevant state law. *Amici* submit that this Court's current Eighth Amendment jurisprudence concerning what constitutes cruel and unusual punishment for *juveniles* requires that these sentences be struck.

Roper confirmed that juveniles are sufficiently less blameworthy than adults, such that the application of different sentencing principles is required under the Eighth Amendment, even in cases of capital murder. *Roper's* distinct doctrinal approach was extended to sentences of life without parole in *Graham*, as the Court saw no meaningful distinction between a sentence of death or life without the possibility of parole. That death comes later or more slowly in the latter instance does not alter the stark finality of the sentence.

Graham and *Roper* have equal application here. Together, they dictate a distinct Eighth Amendment analysis for juveniles, premised on the simple fact that youth are different for the purposes of criminal law and sentencing practices. Relying on prevailing developmental research and common human experience concerning the transitions that define adolescence, the Court has recognized that the age and special characteristics of young offenders play a critical role in assessing whether sentences imposed on them are disproportionate under the Eighth Amendment. As both the majority and the dissent agreed in *Roper* and *Graham*, this Court has supplanted its 'death is different' analysis in adult Eighth Amendment cases for an offender-focused 'kids are different' frame in juvenile cases. See *Graham v. Florida*, 130 S. Ct. 2011, 2046 (2010) (Thomas, J., dissenting); *Roper v. Simmons*, 543 U.S. 551, 558-59 (2005) (O'Connor, J., dissenting).

Juveniles are uniquely different from any other category of offender; the Court has properly

crafted a separate Eighth Amendment analysis to take account of their exceptional status.

I. A JUVENILE LIFE WITHOUT PAROLE SENTENCE IS UNCONSTITUTIONALLY DISPROPORTIONATE

When evaluating sentences under the Eighth Amendment, this Court must look “beyond historical conceptions to ‘the evolving standards of decency that mark the progress of a maturing society.’” *Graham v. Florida*, 130 S. Ct. at 2021 (citing *Estelle v. Gamble*, 429 U.S. 97, 102 (1976)).² *Graham* and *Roper* reflect the Court’s own evolving understanding of the salient developmental differences between juveniles and adults. As these developmental differences continue to inform this Court’s decisions involving children’s constitutional rights in the justice system, the scrutiny of juvenile sentencing practices must yield to a different set of constitutional principles.

A. The Eighth Amendment Requires That Sentences Be Proportionate

“Proportionality” is central to the Court’s analysis of sentencing practices under the Eighth Amendment. *See, e.g., Graham*, 130 S. Ct. at 2021 (citing *Solem v. Helm*, 463 U.S. 277 (1983)) (interpreting the Eighth Amendment’s ban on cruel and unusual punishment to include punishments that are “unconstitutionally excessive”). Cases

² The cruel and unusual standard “embodies a moral judgment,” which “must change as the basic mores of society change.” *Kennedy v. Louisiana*, 554 U.S. 407, 419 (2008) (internal citation omitted).

addressing the proportionality of sentences “fall within two general classifications. The first involves challenges to the length of term-of-years sentences given all the circumstances in a particular case. The second comprises cases in which the Court implements the proportionality standard by certain categorical restrictions on the death penalty.” *Id.* The “categorical” classification of cases assesses the proportionality of a sentence as compared to the nature of the offense or the *characteristics of the offender*. *Id.* at 2022. Thus, some offenders have characteristics that make them categorically less culpable than other offenders who commit similar or identical crimes. *See, e.g., Roper*, 543 U.S. 551 (striking the death penalty for juvenile defendants); *Atkins v. Virginia*, 536 U.S. 304 (2002) (striking the death penalty for mentally retarded defendants); *Kennedy*, 554 U.S. 407 (striking the death penalty for defendants convicted of rape where the crime was not intended to and did not result in the victim’s death); *Graham*, 130 S. Ct. 2011 (striking sentences of juvenile life without parole in nonhomicide cases).

The Court has adopted a two-pronged analysis in categorical challenges. It first considers “objective indicia of society’s standards as expressed in legislative enactments and state practice” to determine whether there is a national consensus against the practice. *Roper*, 543 U.S. at 563. Next, the Court must determine “in the exercise of its own independent judgment whether the punishment in question violates the Constitution.” *Graham*, 130 S. Ct. at 2022 (citing *Roper*, 543 U.S. at 572). The Court’s ‘judgment’ is guided by its “own understanding and interpretation of the Eighth

Amendment's text, history, meaning and purpose." *Id.* (citing *Kennedy*, 554 U.S. at 421). While community consensus is "entitled to great weight," it "is not itself determinative of whether a punishment is cruel and unusual." *Graham*, 130 S. Ct. at 2026 (citing *Kennedy*, 554 U.S. at 435). Ultimately, the task of interpreting the Eighth Amendment remains the responsibility of this Court. *Roper*, 543 U.S. at 575.

In exercising its own judgment, the Court considers the culpability of the offender in light of his crime and individual characteristics; the severity of the punishment in question; and whether the challenged punishment serves legitimate penological goals. *Id.* at 568, 571-72.

B. The Eighth Amendment Requires A Separate Proportionality Analysis For Juvenile Offenders

As Justice Frankfurter wrote over fifty years ago, "[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). *Graham* echoed this point: Justice Kennedy observed that "criminal procedure laws that fail to take defendants' youthfulness into account at all would be flawed." 130 S. Ct. at 2031. Accordingly, a developmental framework for assessing juvenile sentencing practices has emerged, narrowing the

range of permissible sentencing options for offenders under the age of eighteen.

A child's age is far "more than a chronological fact"; it bears directly on children's constitutional rights and status in the justice system. *J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2403 (2011) (citations omitted). *Graham* and *Roper* enriched the Court's longstanding view of juveniles with scientific research confirming that youth merit distinctive treatment under the Eighth Amendment. See, e.g., Steinberg et al., *Age Differences in Sensation Seeking and Impulsivity as Indexed by Behavior and Self-Report: Evidence for a Dual Systems Model*, 44 Dev. Psychol. 1764 (2008).³ Indeed, this Court has been explicit that juvenile status drives constitutional status in juvenile and criminal proceedings. See, e.g., *Haley v. Ohio*, 332 U.S. 596, 601 (1948) ("Formulas of respect for constitutional safeguards cannot prevail over the facts of life which contradict them."). See also *Gallegos v. Colorado*, 370 U.S. 49, 54 (1962) (in confession case, observing that an adolescent "cannot be compared with an adult in full possession of his senses and knowledgeable of the consequences of his admissions.").

The *Graham* Court noted three characteristics that distinguish youth from adults for culpability purposes: 1) juveniles have a "lack of maturity and an underdeveloped sense of responsibility;" 2) they

³ The Court in *J.D.B.* noted that "[a]lthough citation to social science and cognitive science authorities is unnecessary to establish these commonsense propositions [that children are different than adults], the literature confirms what experience bears out." 131 S. Ct. at 2403 n.5.

“are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure;” and 3) their characters are “not as well formed.” 130 S. Ct. at 2026 (internal quotations omitted). The Court noted that “[i]t 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.” 130 S. Ct. at 2026 (quoting *Roper*, 543 U.S. at 569-70, 573). This Court concluded, “[a] juvenile is not absolved of responsibility for his actions, but his transgression ‘is not as morally reprehensible as that of an adult.’” *Id.* (quoting *Thompson v. Oklahoma*, 487 U.S. 815, 835 (1988)).⁴

The culpability of the offender is a cornerstone of our criminal justice system and central to ensuring the rationality of sentencing. *See Tison v. Arizona*, 481 U.S. 137, 156 (1987) (“Deeply ingrained in our legal tradition is the idea that the more purposeful is the criminal conduct, the more serious is the offense, and, therefore, the more severely it ought to be punished.”). This Court has held that juveniles as a class have a reduced culpability for their criminal conduct. Because of this reduced culpability, life without parole sentences are categorically unconstitutional when imposed on a juvenile.⁵

⁴ See Elizabeth S. Scott & Laurence Steinberg, *Rethinking Juvenile Justice* 31 (2008) (explaining that “[m]ost teenagers desist from criminal behavior . . . [as they] develop a stable sense of identity, a stake in their future, and mature judgment.”)

⁵ This Court has recognized that “[l]ife without parole is an especially harsh punishment for a juvenile.” *Graham*, 130 S. Ct.

at 2028. A life without parole sentence imposed on a child is not only longer, it is also qualitatively different. The conditions children face in adult prisons exacerbate the disproportionality of juvenile life sentences. See Human Rights Watch, *Against All Odds: Prison Conditions for Youth Serving Life Without Parole Sentences in the United States*, 18 (2012), <http://www.hrw.org/reports/2012/01/03/against-all-odds-0>. (reporting that almost all youth offenders serving life without parole interviewed or surveyed by Human Rights Watch suffered physical violence at the hands of other inmates); *id.* at 14, n.24 (“In 2005 . . . individuals under the age of 18 made up less than 1 percent of all inmates in U.S. jails. Yet 21 percent of all victims of substantiated incidents of sexual abuse involving jail inmates that year were under the age of 18.”) (internal citation omitted); Marty Beyer, *Experts For Juveniles At Risk of Adult Sentences*, in MORE THAN MEETS THE EYE: RETHINKING ASSESSMENT COMPETENCY AND SENTENCING FOR A HARSHER ERA OF JUVENILE JUSTICE (P. Puritz, A. Capozello, & W. Shang eds., 1997) (“Youth in adult facilities were eight times more likely to commit suicide than their counterparts held in the juvenile justice system.”); Jason J. Washburn et al., *Psychiatric Disorders Among Detained Youths: A Comparison of Youths Processed in Juvenile Court and Adult Criminal Court*, 59 *Psychiatric Servs.* 966, 969-70 (2008) (noting that 35% of detained adult males have a psychiatric disorder as compared to 64% of youths in adult custody and “the conditions associated with extended detention, such as separation from loved ones, crowding, and solitary confinement, may increase the risk of suicidal behavior.”). The lack of rehabilitation afforded to juveniles serving life without parole sentences further aggravates the disproportionate nature of the sentence. See *Graham*, 130 S. Ct. at 2030 (“[D]efendants serving life without parole sentences are often denied access to vocational training and other rehabilitative services that are available to other inmates. For juvenile offenders, who are most in need of and receptive to rehabilitation, the absence of rehabilitative opportunities or treatment makes the disproportionality of the sentence all the more evident.”) (internal citations omitted).

II. MANDATORY LIFE WITHOUT PAROLE SENTENCES UNCONSTITUTIONALLY DEPRIVE JUVENILES OF ANY CONSIDERATION OF THE RELEVANT CHARACTERISTICS OF YOUTH

Petitioners Miller and Jackson both received mandatory life without parole sentences after conviction of a homicide offense. These sentences were imposed without any consideration of the particularities of their underlying offenses or their relative moral culpability and are therefore unconstitutional. *Amici* support a categorical ban on such terminal sentences for juveniles in all cases. As discussed above, this Court's Eighth Amendment proportionality analysis forecloses the imposition of such sentences. Additionally, under any circumstances, there is no place in this Court's Eighth Amendment jurisprudence for *automatic* sentences of life without parole for juveniles in homicide cases.

This Court held over three decades ago that mandatory death sentences for adults are, in all cases, unconstitutional:

While the prevailing practice of individualizing sentencing determinations generally reflects simply enlightened policy rather than a constitutional imperative, we believe that in capital cases the fundamental respect for humanity underlying the Eighth Amendment . . . requires consideration of the character and

record of the individual offender and the circumstances of the particular offense as a constitutionally indispensable part of the process. . . .

Woodson v. North Carolina, 428 U.S. 280, 304 (1976) (citation omitted). See also *Pennsylvania ex rel. Sullivan v. Ashe*, 302 U.S. 51, 55 (1937) (Court recognized over seventy-five years ago that justice in sentencing “generally requires consideration of more than the particular acts by which the crime was committed and that there be taken into account the circumstances of the offense together with the character and propensities of the offender.”).

The recognition that the elements of criminal offenses alone are generally insufficient to provide an accurate sentencing picture has animated this Court’s constitutional criminal law jurisprudence throughout the post-World War II era. See, e.g., *Williams v. New York*, 337 U.S. 241, 247 (1949) (“Highly relevant – if not essential – to [the] selection of an appropriate sentence is the possession of the fullest information possible concerning the defendant’s life and characteristics.”) (footnote omitted). The *Williams* Court fully understood that considerations for conviction were necessarily different than those for punishment. The Court noted:

The belief no longer prevails that every offense in a like legal category calls for an identical punishment without regard to the past life and habits of a particular offender. The whole country has

traveled far from the period in which the death sentence was an automatic and commonplace result of convictions.

Id. This observation ultimately informed the Court's subsequent ruling that mandatory death sentence schemes violated the Eighth and Fourteenth Amendments. Because mandatory sentences preclude consideration of both the individual aspects of the crime and the offender, mandatory sentences of death are uniformly prohibited. *See Sumner v. Shuman*, 483 U.S. 66, 74 (1987) (terminal sentencing schemes must permit "the sentencing authority to consider relevant mitigating circumstances pertaining to the offense and a range of factors about the defendant as an individual," no matter how aggravated the homicide).

The analysis foreclosing mandatory capital punishment should likewise apply to the terminal sentence of life without the possibility of parole for juveniles. In the instant situation, the individual characteristics of the offenders require judicial scrutiny before a terminal sentence of life without parole can be imposed under the Eighth Amendment. Yet neither the Alabama nor Arkansas sentencing schemes permit any consideration of the offender's age, maturity, or potential for reform. *See Graham*, 130 S. Ct. at 2032. Therefore, like adult mandatory death sentences, mandatory life without parole sentences for juveniles must be prohibited in all cases.

A. Mandatory Sentences Of Life Without Parole For Juveniles Impermissibly Prevent This Court From Fulfilling Its Constitutional Review Function

In the adult death penalty context, a mandatory sentencing procedure implicates the Eighth Amendment's requirement of heightened reliability of such sentences. Heightened reliability is necessary because: "the penalty of death is qualitatively different from a sentence of imprisonment. . . . Because of that qualitative difference, there is a corresponding difference in the *need for reliability in the determination that death is the appropriate punishment in a specific case.*" *Woodson*, 428 U.S. at 305 (emphasis added). Such heightened reliability can only be accomplished if courts are satisfied that the procedures in place adequately ensure that the sentence properly reflects the moral culpability of the offender. *See Penry v. Lynaugh*, 492 U.S. 302, 328 (1989) (jurors must be allowed to express a "reasoned moral response" regarding the defendant's "moral culpability").

This is precisely the same question courts must face when assessing a juvenile sentence of life without parole because "an offender's age is relevant to the Eighth Amendment, and criminal procedure laws that fail to take defendant's youthfulness into account at all would be flawed." *Graham*, 130 S. Ct. at 2028.

The same heightened reliability concerns that forced the ban on adult mandatory death sentences

likewise bar the imposition of mandatory juvenile life without parole sentences. First, there is no meaningful constitutional difference between adult capital sentences and juvenile life without parole sentences. As this Court noted in *Graham*:

[L]ife without parole sentences share some characteristics with death sentences that are shared by no other sentences. The State does not execute the offender sentenced to life without parole, but the sentence alters the offender's life by a forfeiture that is irrevocable. It deprives the convict of the most basic liberties without giving hope of restoration. . . .

130 S. Ct. at 2027. As Chief Justice Roberts made plain, "*Roper*'s conclusion that juveniles are typically less culpable than adults has pertinence beyond capital cases, and rightly informs the case-specific inquiry I believe to be appropriate. . . ." *Id.* at 2039 (Roberts, C.J., concurring).

First, the *Graham* majority held that irrevocable judgments about the character of juvenile offenders are impermissible under the Constitution – at least where they deny juveniles any opportunity to prove their eligibility to re-enter society. 130 S. Ct. at 2030. Moreover, *Graham* and *Roper* both explicitly provide that the capacity of juvenile offenders to change and grow, combined with their reduced blameworthiness and inherent immaturity, set them apart from adult offenders in pronounced, constitutionally relevant ways. Mandatory

sentencing schemes by definition preclude individualized determinations. This ‘one size fits all’ sentencing practice is thus directly at odds with *Graham* and *Roper*, since it bars consideration of age at all in sentencing while simultaneously proscribing any “realistic opportunity” for release. *Id.* at 2034.

Second, automatic sentencing procedures undermine reliability by precluding the consideration of the relationship between the sentence and constitutionally relevant factors such as the nature of the particular offense and the specific offender. Such proportionality determination is constitutionally required in any review of juvenile life without parole sentences. *Id.* at 2030. Mandatory sentencing schemes preclude such review and therefore violate the Constitution.

In any juvenile case in which the sentence is life without parole, the lack of reliability in the sentence or verdict impermissibly impairs the Court’s ability to conduct the constitutionally mandated proportionality evaluation. In short, no court can have any confidence that a mandatory sentence of life without parole for a juvenile has a sufficient relationship to that offender’s personal moral culpability, maturity, or potential for reform.

B. Mandatory Sentences Of Life Without Parole For Juveniles Impermissibly Undermine The Reliability Of The Sentence As It Relates To The Defendant's Moral Culpability And Potential For Maturity And Reform

In *Roper*, this Court held that the juvenile death penalty violated the Eighth Amendment because juveniles are presumed to be less morally culpable than adults who may commit the same crime. 543 U.S. at 570. In *Graham*, the Court relied on the same youthful characteristics to categorically ban sentences of life without parole for juveniles in nonhomicide crimes, particularly because “[a] life without parole sentence improperly denies the juvenile offender a chance to demonstrate growth and maturity.” 130 S. Ct. at 2029; *see also id.* at 2038 (Roberts, C.J., concurring).⁶

The flaw in mandatory life without parole statutes is that the constitutionally relevant qualities associated with juveniles may never be considered by the sentencing court. Rather, this Court’s acknowledgement of youth’s diminished moral culpability in *Roper* and *Graham* is replaced with a non-rebuttable presumption of equal moral culpability between adults and juveniles. In other words, mandatory sentences of life without parole

⁶ Chief Justice Roberts in *Graham* characterized the Court’s juvenile punishment cases as recognizing “that juvenile offenders are *generally* – though not necessarily in every case – less morally culpable than adults who commit the same crimes.” 130 S. Ct. at 2038 (Roberts, C.J., concurring).

rest on the unconstitutional premise that juveniles are *always* as morally culpable as adults.

As was found in the adult death penalty context, such a premise unconstitutionally undermines the reliability that the sentence is an actual reflection of the moral culpability of the juvenile offender:

A process that accords no significance to relevant facets of the character and record of the individual offender or the circumstances of the particular offense excludes from consideration in fixing the ultimate punishment of death the possibility of compassionate or mitigating factors stemming from the diverse frailties of mankind. It treats all persons convicted of a designated offense not as uniquely individual human beings, but as members of a faceless, undifferentiated mass to be subjected to the blind infliction of the [punishment].

Woodson, 428 U.S. at 304. In the context of juvenile sentencing, the constitutionally relevant factors of maturity and potential for reform are among those “relevant facets of character” that are precluded by a mandatory sentence. In his concurrence in *Graham*, Justice Roberts cautioned that “[o]ur system depends upon sentencing judges applying their reasoned judgment to each case that comes before them.” *Id.* at 2042 (Roberts, C.J., concurring). Mandating a life without parole sentence violates *Graham* at both the

front and back end of the sentence as the individual characteristics and circumstances of the juvenile offender will not, as a matter of law, *ever* be considered.⁷

In the instant cases, both Petitioners presented evidence of their youth at the time of the offense – a constitutionally relevant sentencing factor that the mandatory scheme precluded from consideration. The Petitioners also provided other compelling evidence regarding the circumstances of the offense and their personal qualities that indicated diminished moral culpability beyond (and intertwined) with their very young age.

⁷ The high prevalence of disabilities in juveniles involved in the criminal justice system further impedes the reliable assessment of juvenile culpability. Incarcerated youth are significantly more likely to have a mental disorder than youth in the general population. See Seena Fazel et al., *Mental Disorders Among Adolescents in Juvenile Detention and Correctional Facilities: A Systematic Review and Meta-regression Analysis of 25 Surveys*, 47 J. Am. Acad. Child Adolescent Psych. 1010, 1016 (2008); Christopher B. Forrest et al., *The Health Profile of Incarcerated Male Youths*, 105 Pediatrics 286, 289 (2000). Between 70 and 100 percent of “incarcerated youth meet [the] normal [diagnostic] criteria for at least one disorder,” with “approximately 20% of youth meeting diagnostic criteria for a serious mental health disorder -- defined as serious emotional disturbance resulting in functional impairment.” Candice L. Odgers et al., *Misdiagnosing the Problem: Mental Health Profiles of Incarcerated Juveniles*, 14 Can. Child Adolescent Psych. Rev. 26, 27 (2005). By comparison, the prevalence of *any* disorder in the general youth population is approximately 1 in 3, with only 1 in 10 youth meeting the criteria for a serious disorder. *Id.* Mandatory life without parole sentencing prevents the sentencer from considering how a disability impacts the youth’s overall culpability.

Specifically, Petitioner Jackson was a non-trigger person convicted of felony murder. Mandatory sentences of life without parole for a juvenile convicted of felony murder are particularly problematic. Because individuals with varying levels of intent and involvement can be convicted of felony murder, the level of moral culpability and appropriate sentence should involve a particularly individualized assessment. In death penalty cases involving adults convicted of felony murder, this Court has recognized the importance of individualized determinations, including the need to examine the offender's "intentions, expectations, and actions." *Enmund v. Florida*, 458 U.S. 782, 800 (1982). *See also id.* at 825 (O'Connor, J., dissenting) ("the intent-to-kill requirement . . . fails to take into account the complex picture of the defendant's knowledge of his accomplice's intent and whether he was armed, the defendant's contribution to the planning and success of the crime, and the defendant's actual participation during the commission of a crime. Under these circumstances, the determination of the degree of blameworthiness is best left to the sentencer. . .").⁸

⁸ Additionally, the failure to consider the juvenile's age or overall level of culpability in the mandatory sentencing of juveniles convicted of felony murder only compounds the sentence's unconstitutionality. Petitioner Jackson also presented evidence regarding his home and community environment, which was impoverished, violent and drug-laden. His biological father was absent and his mother's long-time boyfriend was physically abusive; and his mother, brother and several other relatives had been incarcerated. These facts support the conclusion that Jackson did not possess the same moral culpability as an adult when he committed a felony murder at age fourteen. Petition for Writ of Certiorari at 4-5,

Petitioner Miller presented a compelling life history, which supported the presumption that at fourteen he was less morally culpable than an adult. Miller was raised in a tumultuous household in which both parents were substance abusers. He was physically abused by his father. His parents separated when he was ten and he was moved to foster care. When he was just five, Miller attempted to hang himself; by age fourteen, Miller had attempted suicide at least five additional times. He began using drugs and alcohol by age eight, and at the time of the crime he was using prescription drugs, marijuana, and methamphetamines. See Petition for Writ of Certiorari at 4-5; *Miller v. State*, No. CR-06-0741, 2010 WL 33377692 (Ala. Crim. App. Aug. 27, 2010). His defense counsel proffered these facts to justify a sentence other than a capital sentence, but these factors were considered only with respect to the elements of the offense because of the mandatory sentencing scheme. In fact, the prosecution mocked evidence of Miller's youth:

I guess that is the same argument about him being a kid and not responsible. He's not a kid. He's old enough to take a bat and beat somebody to death with it. He's not one of our kids either. I resent that. Parade him up here and try to get you to do something other than what needs to be done because he was fourteen at the time that this

Jackson v. Norris, No. 09-145, 2011 WL 478600 (Ark. Feb. 9, 2011). See Section III, *infra*.

happened, he is seventeen now and he just doesn't have responsibility for it.

State v. Miller, Trial Tr. at 1320 [hereinafter *Miller Tr.*]; see also *id.* at 1323. Although these arguments may be constitutionally acceptable when there is discretion in sentencing, see *Eddings v. Oklahoma*, 455 U.S. 104 (1982), such arguments reveal rather than cure the constitutional problem in a mandatory life without parole scheme. To suggest that a sentencing decision should be made on the offenders' trial age rather than at the time of the offense both disregards and denigrates the constitutional principles underlying *Graham* and *Roper*.⁹

⁹ That a sentencer may view youth as a factor indicating increased, rather than diminished, culpability supports a categorical ban on juvenile life without parole sentences. As this Court found in *Roper*:

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. . . . In some cases a defendant's youth may even be counted against him. In this very case . . . the prosecutor argued [the defendants'] youth was aggravating rather than mitigating.

543 U.S. at 572-73 (internal citation omitted). Because a sentencer may consider youth a "two-edged sword" – recognizing a youth's diminished capacity while simultaneously fearing that the juvenile's young age or troubled upbringing indicates a propensity to reoffend – an unacceptable risk exists that a sentencer will not properly account for a youth's diminished culpability in fashioning an appropriate sentence. See *Penry*, 492 U.S. at 324.

III. THE IMPOSITION OF A LIFE WITHOUT PAROLE SENTENCE ON A JUVENILE WHO DID NOT KILL OR INTEND TO KILL IS IMPERMISSIBLE UNDER THE EIGHTH AMENDMENT

In *Graham*, this Court found that children “who did not kill or intend to kill” have a “twice diminished” moral culpability due to both their age and the nature of the crime. 130 S. Ct. at 2027. This Court further “recognized that defendants *who do not kill, intend to kill, or foresee that life will be taken* are categorically less deserving of the most serious forms of punishment than are murderers.” *Id.* (emphasis added). *Graham*’s rationale applies equally to juveniles convicted of felony murder where there is no allegation or finding of fact that the youth killed or intended to kill.¹⁰

¹⁰ Felony murder was first codified in the United States in the nineteenth-century. Guyora Binder, *The Origins of American Felony Murder Rules*, 57 Stan. L. Rev. 59, 64-65 (2004). Initially, felony murder was considered an aggravating factor that might justify the imposition of the death penalty – the fact that the killer had a “felonious motive” increased his overall culpability. Guyora Binder, *The Culpability of Felony Murder*, 83 Notre Dame L. Rev. 965, 978 (2008). The expansion of the felony murder doctrine to include accomplices who did not participate in the act of violence and did not engage in an inherently violent act was more a judicial than legislative expansion. In the twentieth century, courts expanded the scope of accomplice liability and imposed criminal liability even where the connection between the felony and the killing was tenuous. *Id.* at 980. Since felony murder legislation did not itself reflect the broad scope of the doctrine as currently applied, assessing legislative intent and national consensus is difficult.

Graham cited *Enmund v. Florida*, 458 U.S. 782 (1982), for the proposition that individuals who do not kill or intend to kill are categorically less deserving of the most serious forms of punishment than murderers. 130 S. Ct. at 2027. *Enmund*, like Petitioner Jackson, took part in a robbery in which another participant shot and killed the victims. *Enmund* held:

For the purposes of imposing the death penalty, *Enmund*'s criminal culpability must be limited to his participation in the robbery, and his punishment must be tailored to his personal responsibility and moral guilt. Putting *Enmund* to death to avenge two killings that he did not commit and had no intention of committing or causing does not measurably contribute to the retributive end of ensuring that the criminal gets his just deserts.

458 U.S. at 801. *Enmund* held that the death penalty "is an excessive penalty for the robber who, as such, does not take a human life." *Id.* at 797.

Similarly, the criminal culpability of a juvenile convicted of felony murder should be limited to the juvenile's personal participation in the underlying felony. With no finding that the juvenile either killed or intended to kill, the juvenile is no more culpable than a juvenile convicted of a nonhomicide felony.

Accordingly, sentencing such juveniles to life without parole is unconstitutional under *Graham*.¹¹

A. The Rationale Behind Felony Murder Does Not Justify A Life Without Parole Sentence

The felony murder doctrine requires simply that an offender participated in a felony and that someone was killed in the course of the felony; the offender need not have actually committed the killing or intended that anyone would die. *See, e.g., Lowe v. State*, 2 So.3d 21, 46 (Fla. 2008) (“Under the felony murder rule, state of mind is immaterial. Even an accidental killing during a felony is murder.”) (internal quotation omitted). Felony murder is often justified by a “transferred intent” theory, where the intent to kill may be inferred from an individual’s intent to commit the underlying felony since a “reasonable person” would know that death is a possible result of felonious activities. *See, e.g., Commonwealth v. Legg*, 491 Pa. 78, 82 (1980) (finding it proper to infer intent to kill from an intent to commit a felony because, pursuant to a “reasonable man” standard, the person engaged in a felony “knew or should have known that death might result from the felony”). The adult felony murder

¹¹ *Graham* also cited *Tison v. Arizona*, 481 U.S. 137 (1987), which upheld the death penalty in an adult felony murder case, for the proposition that “[t]he heart of the retribution rationale is that a criminal sentence *must be directly related to the personal culpability of the criminal offender.*” *Graham*, 130 S. Ct. at 2028 (quoting *Tison*, 481 U.S. at 149) (emphasis added). Juveniles convicted of felony murder are less personally culpable than adults because of their age and immaturity.

doctrine is inconsistent with the developmental and neuroscientific research that has informed this Court's recent decisions involving juveniles. These decisions preclude ascribing the same level of anticipation or foreseeability to a juvenile who takes part in a felony – even a dangerous felony – as the law ascribes to an adult. *See J.D.B.*, 131 S. Ct. at 2404 (noting that the common law has long recognized that the “reasonable person” standard does not apply to children).

1. Juveniles' Decision-Making And Risk-Assessment Are Less Developed Than Adults'

Adolescents' risk assessment and decision-making capacities differ from those of adults in ways that are particularly relevant in cases of felony murder. This Court has observed that adolescents “often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them.” *J.D.B.*, 131 S. Ct. at 2403 (internal quotation omitted). *See also* Elizabeth S. Scott & Laurence Steinberg, *Adolescent Development and the Regulation of Youth Crime*, 18 *The Future of Children* 15, 20 (2008) [hereinafter Scott & Steinberg, *Adolescent Development*] (“Considerable evidence supports the conclusion that children and adolescents are less capable decision makers than adults in ways that are relevant to their criminal choices.”).

Adolescents are also less likely to perceive risks and are less risk-averse than adults. Scott & Steinberg, *Adolescent Development*, at 21. In the

criminal sentencing context, this Court has recognized that adolescents' "lack of maturity and underdeveloped sense of responsibility . . . often result in impetuous and ill-considered actions and decisions." *Graham*, 130 S. Ct. at 2028 (quoting *Johnson v. Texas*, 509 U.S. 350, 367 (1993)). In particular, this Court has noted that adolescents have "[d]ifficulty in weighing long-term consequences" and "a corresponding impulsiveness." *Graham*, 130 S. Ct. at 2032. See also Scott & Steinberg, *Adolescent Development*, at 20. Adolescents are less likely than adults to assess and weigh the risk that someone might get hurt or killed in the course of the felony. Because an adolescent who participates in a felony is less likely to foresee or account for the possibility of death in the course of that felony, a life without possibility of parole sentence is not proportionate to the juvenile's culpability in felony murder cases. *Cf. Tison*, 481 U.S. at 157-58. Accordingly, their risk-taking should not be equated with malicious intent, nor should their recklessness be equated with indifference to human life.

2. Juveniles Are Particularly Vulnerable To Negative Influences And Outside Pressures

"[J]uveniles are more vulnerable or susceptible to negative influences and outside pressures" than adults. *Roper*, 543 U.S. at 569. They "have less control, or less experience with control, over their own environment." *Id.* Research confirms the common perception that adolescents are highly susceptible to peer pressure. Scott and Steinberg,

Adolescent Development, at 21. In particular, because certain criminal behaviors can heighten status among adolescent peers, youth may face peer pressure to engage in criminal activities that they would otherwise avoid. *Id.* at 20-21.

The influence of peers may be especially significant in felony murder cases, in which there are always accomplices. As with Petitioner Jackson, the youth may make a spur-of-the-moment decision to participate in the felony, perhaps out of fear of social rejection or loss in social status if he refuses. *Id.* at 22. An adolescent participating in a felony is driven more by pressures, impulses and emotion than careful assessment of the risks to himself or others. *Id.*¹² It is unreasonable to infer that that a juvenile had an intent to kill merely based on the juvenile's decision to engage in a felony.

B. Juvenile Life Without Parole Sentences For Felony Murder Serve No Penological Purpose

“A sentence lacking any legitimate penological justification is by its nature disproportionate to the offense.” *Graham*, 130 S. Ct. at 2028. *Graham* held that none of the penological goals of retribution, deterrence, incapacitation, or rehabilitation justified

¹² Similarly, Petitioner Miller's capital murder conviction relied on the fact that the murder was committed during the course of an arson. *Miller v. State*, 63 So. 3d 676, 683 (Ala. Crim. App. 2010). For the reasons noted above, his actions do not necessarily manifest an intent to kill or an indifference to the value of human life.

a life without parole sentence for a juvenile convicted of a nonhomicide offense. *Id.* at 2028-30. Similarly, none of these penological goals justifies a life without parole sentence on a juvenile convicted of felony murder.

Retribution does not justify a life without parole sentence for a juvenile convicted of felony murder. First, because of juveniles' diminished culpability, "the case for retribution is not as strong [a penological justification] with a minor as with an adult." *Roper*, 543 U.S. at 571. Second, the culpability of an individual convicted of felony murder must be based upon the individual's own conduct and not upon the murder committed by others involved in the felony. See *Enmund*, 458 U.S. at 798 ("The focus must be on *his* culpability, not on that of those who committed the robbery and shot the victims."). Because the culpability of a juvenile is based on his own actions – not the resulting harm – where a juvenile convicted of felony murder did not kill or intend to kill, his culpability is no different from a juvenile convicted of a nonhomicide felony.¹³ As in *Graham*, retribution cannot justify a life without parole sentence.

¹³ This Court has held that the death penalty can be imposed on an adult convicted of felony murder where the adult was a major participant in the crime and was recklessly indifferent to human life. *Tison*, 481 U.S. at 152. In *Roper* and *Graham*, this Court recognized that youth generally are more reckless than adults, which can result in "impetuous and ill-considered actions and decisions." *Roper*, 543 U.S. at 569; *Graham*, 130 S. Ct. at 2028. An adolescent's recklessness is not a manifestation of his indifference to human life so much as a reflection of his immaturity and impulsiveness.

Deterrence also fails to justify a life without parole sentence for juveniles convicted of felony murder. In *Enmund*, an adult death penalty case, this Court was “quite unconvinced . . . that the threat that the death penalty will be imposed for murder will measurably deter one who does not kill and has no intention or purpose that life will be taken.” 458 U.S. at 798-99. The Court found that “competent observers have concluded that there is no basis in experience for the notion that death so frequently occurs in the course of a felony for which killing is not an essential ingredient that the death penalty should be considered as a justifiable deterrent to the felony itself.” *Id.* at 799. Deterrence is an inappropriate rationale because, “if a person does not intend that life be taken or contemplate that lethal force will be employed by others, the possibility that the death penalty will be imposed for vicarious, felony murder will not ‘enter into the cold calculus that precedes the decision to act.’” *Id.* (quoting *Gregg v. Georgia*, 428 U.S. 153, 186 (1976)).

Deterrence is an even less compelling rationale for juveniles. Juveniles “are less likely to take a possible punishment into consideration when making decisions.” *Graham*, 130 S. Ct. at 2028-29. This Court has questioned whether the prospect of even the death penalty would have “a significant or even measurable deterrent effect on juveniles.” *Roper*, 543 U.S. at 571. “[T]he absence of evidence of deterrent effect is of special concern because the same characteristics that render juveniles less culpable than adults suggest as well that juveniles will be less susceptible to deterrence.” *Id.*

Additionally, *Graham's* rejection of incapacitation or rehabilitation as a sentencing justification applies equally in felony murder cases. As to incapacitation, this Court found, "[t]o justify life without parole on the assumption that the juvenile offender forever will be a danger to society requires the sentencer to make a judgment that the juvenile is incorrigible. The characteristics of juveniles make that judgment questionable." *Graham*, 130 S. Ct. at 2029. Even expert psychologists cannot differentiate between offenders whose crimes are adolescence-limited and those rare juvenile offenders who will persist with their crimes into adulthood. *Id.* Rehabilitation likewise cannot justify the sentence, since by definition, the sentence "forfeits altogether the rehabilitative ideal." *Id.* at 2030.

IV. THE HEIGHTENED RISK OF WRONGFUL CONVICTIONS WEIGHS AGAINST IMPOSING OF LIFE WITHOUT PAROLE SENTENCES ON JUVENILES

This Court struck down the death penalty for mentally retarded offenders because the heightened risk that mentally retarded defendants may falsely confess necessitates a sentence less severe than death. *See Atkins v. Virginia*, 536 at 320-21, n.25 (2002) (citing the increased risk "that the death penalty will be imposed in spite of factors [including the possibility of false confessions] which may call for a less severe penalty."). Like mentally retarded individuals, juveniles have an increased propensity to falsely confess. *See J.D.B.*, 131 S. Ct. at 2401 (the

risk of false confession is “all the more acute” when a juvenile is the subject of a custodial interrogation); *In re Gault*, 387 U.S. 1, 52 (1967) (“[A]uthoritative opinion has cast formidable doubt upon the reliability and trustworthiness of ‘confessions’ by children”).

Empirical studies have confirmed that juveniles are particularly likely to confess to crimes they never committed. See Joshua A. Tepfer et al., *Arresting Development: Convictions of Innocent Youth*, 62 Rutgers L. Rev. 887, 904 (2010) (wrongfully convicted teenagers and children were almost twice as likely to have falsely confessed than wrongfully convicted adults); Steven A. Drizin & Richard A. Leo, *The Problem of False Confession in the Post-DNA World*, 82 N.C. L. Rev. 891, 945 (2004) (32% of individuals in a dataset of 125 false confessors were under eighteen); Samuel L. Gross et al., *Exonerations in the United States, 1989 Through 2003*, 95 J. Crim. L. & Criminology 523, 544-45 (2005) (dataset of 340 exonerations revealed that juveniles were three times more likely to have falsely confessed than adults).¹⁴ Indeed, even the leading interrogation training company, John E. Reid & Associates, has agreed that juveniles are at greater risk of falsely confessing and warn police to use “extreme caution and care” when interrogating them. John E. Reid & Associates, Inc., Critics

¹⁴ Laboratory studies have reached the same conclusion. See Allison D. Redlich & Gail S. Goodman, *Taking Responsibility For an Act Not Committed: Influence of Age and Suggestibility*, 27 L. & Hum. Behav. 141, 150-51 (2003) (majority of juveniles between the ages of twelve and sixteen years old complied with a request to sign a false confession without a word of protest).

Corner: False and Coerced Confessions, http://www.reid.com/educational_info/criticfalseconf.html (last visited Jan. 5, 2012).

Additionally, the overwhelming majority of proven false confessions occur in murder cases that carry the severest sentences, suggesting that the risk of sentencing innocent youth to life without parole may be particularly high. Drizin & Leo, 82 N.C. L. Rev. at 946. Examples abound of the imposition of life without parole sentences on wrongfully convicted youth. *See, e.g.*, Center on Wrongful Convictions of Youth, Calvin Ollins, <http://www.cwcy.org/exonereesViewDetail.aspx?id=12> (last visited Jan. 5, 2012); Innocence Project of Florida, Anthony Caravella, http://floridainnocence.org/content/?page_id=2000 (last visited Jan. 5, 2012) (Before his exoneration, Calvin Ollins served more than thirteen years for the murder and rape of a Chicago medical student he falsely confessed to committing when he was fourteen; before exoneration, Anthony Caravella served twenty-six years of his life sentence for a crime he falsely confessed to committing when he was fifteen).

False confessions from juveniles are also apt to result in convictions – even when the defendants are innocent. The *reliability* of confessions is not relevant at the transfer stage, and judges rarely screen out unreliable confessions before trial. *See* Jenny E. Carroll, *Rethinking the Constitutional Criminal Procedure of Juvenile Transfer Hearings: Apprendi, Adult Punishment, and Adult Process*, 61 Hastings L. J. 175, 189-90 (2009). During pre-trial

suppression hearings, judges are tasked only with considering the voluntariness – not the reliability – of inculpatory statements. *See Colorado v. Connelly*, 479 U.S. 157, 161 (1986) (“A statement rendered by one in the condition of respondent might be proved to be quite unreliable, but this is a matter to be governed by the evidentiary laws of the forum . . . and not by the Due Process Clause of the Fourteenth Amendment.”). Once the trial commences, jurors give overwhelming weight to confession evidence. *See Miranda v. Arizona*, 384 U.S. 436, 466 (1966) (confessions are “the most compelling possible evidence of guilt”); *Connelly*, 479 U.S. at 182 (Brennan, J., dissenting) (“[t]rials of fact accord confessions such heavy weight in their determinations that the introduction of a confession makes the other aspects of a trial in court superfluous”) (internal citations omitted). *Accord* Saul M. Kassin & Katherine Neumann, *On the Power of Confession Evidence: An Experimental Test of the Fundamental Difference Hypothesis*, 21 L. & Hum. Behav. 469 (1997) (laboratory study concluding that confessions are “uniquely potent”); Drizin & Leo, 82 N.C. L. Rev. *supra* (finding that 81% of false confessors who took their cases to trial were wrongfully convicted). Upon conviction, false confessors will almost certainly be sentenced more harshly because their recantations are seen as a lack of remorse. *Id.* at 921.

The net result is that juveniles’ “reduced capacity” increases their vulnerability to giving false confessions when pressured by police. *See Atkins*, 536 U.S. at 320-21. This, together with juvenile defendants’ added difficulties trusting adults,

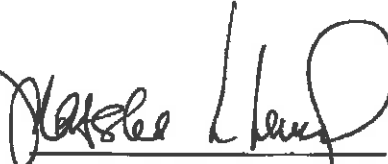
working with counsel, and fully appreciating the impact of court procedures, all combine to make it more, rather than less, likely that they will receive a wrongfully imposed sentence of life without parole.

In sum, the increased risk that juveniles may falsely confess, coupled with the fact the sentencer will not consider their heightened risk of falsely confessing when imposing life without parole, further supports a categorical bar on sentences of life without parole for juveniles.

CONCLUSION

For the foregoing reasons, *Amici* respectfully request that this Court adopt a categorical ban on sentences of life without parole for all juveniles under the age of eighteen.

Respectfully Submitted,



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Miller v. Alabama and Jackson v. Hobbs

Identity of *Amici* and Statements of Interest

APPENDIX

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.

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 clinical program of Emory Law School dedicated to promoting and protecting the legal rights and interests of children involved with the juvenile court, child welfare and juvenile justice systems in Georgia. The Center achieves its reform objectives through research-based policy development, legislative advocacy, and holistic legal representation for individual clients. The Barton Center's children's rights agenda is based on the belief that policy and law should be informed by research and that legal service to children and families need to be holistic. That basis recognizes that children should be viewed in their social and familial contexts and provided with individualized services to protect their legal rights, respond to their human needs, and ameliorate the social conditions that create risk. The Barton Center adopts an interdisciplinary, collaborative approach to achieving justice for youth.

The Barton Center was founded in March 2000 and has engaged in the legal representation of juveniles in delinquency cases since the summer of 2001. In 2010 the Barton Center added an appellate representation dimension through its Appeal for Youth Clinic, which seeks systemic reform through

the holistic appellate representation of offenders in our juvenile and criminal justice systems.

The Campaign for the Fair Sentencing of Youth (CFSY) is a national coalition and clearinghouse that coordinates, develops and supports efforts to implement just alternatives to the extreme sentencing of America's youth with a focus on abolishing life without parole sentences for all youth. Our vision is to help create a society that respects the dignity and human rights of all children through a justice system that operates with consideration of the child's age, provides youth with opportunities to return to community, and bars the imposition of life without parole for people under age eighteen. We are advocates, lawyers, religious groups, mental health experts, victims, law enforcement, doctors, teachers, families, and people directly impacted by this sentence, who believe that young people deserve the opportunity to give evidence of their remorse and rehabilitation. Founded in February 2009, the CFSY uses a multi-pronged approach, which includes coalition-building, public education, strategic advocacy and collaboration with impact litigators—on both state and national levels—to accomplish our goal.

The Campaign for Youth Justice (CFYJ) is a national organization created to provide a voice for youth prosecuted in the adult criminal justice 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 on Children and Families (CCF) at the University of Florida Fredric G. Levin College of Law in Gainesville, Florida is an organization whose mission is to promote the highest quality teaching, research and advocacy for children and their families. CCF's directors and associate directors are experts in children's law, constitutional law, criminal law, family law, and juvenile justice, as well as related areas such as psychology and psychiatry. CCF supports interdisciplinary research in areas of importance to children, youth and families, and promotes child-centered, evidence-based policies and practices in dependency and juvenile justice systems. Its faculty has many decades of experience in advocacy for children and youth in a variety of settings, including the Virgil Hawkins Civil Clinics 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 Center for Public Representation, a national public interest law firm with its main office in Northampton, Massachusetts, has represented children and adults with disabilities for nearly forty years. Because a high percentage of individuals in the juvenile and adult correctional systems have mental disabilities, their representation is among the Center's highest priorities. The Center's advocacy efforts have included creating alternatives to incarceration, improving conditions of incarceration and promoting release to appropriate and effective community-based programs.

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 Chicago Lawyers' Committee for Civil Rights Under Law, Inc. is the public interest law consortium of Chicago's leading law firms. The Chicago Lawyers' Committee was established in 1969 by a group of local attorneys to provide quality legal counsel to those clients whose civil rights cases and projects would benefit the community at large. The mission of the Chicago Lawyers' Committee is to promote and protect civil rights, particularly the civil rights of poor, minority, and disadvantaged people in the social, economic, and political systems of our

nation. Problems of high rates of incarceration are a special concern of the Chicago Lawyers' Committee, particularly as those high rates of incarceration adversely effect minority communities. The Lawyers' Committee has recently created an incarceration project devoted to advancing means of reducing levels of incarceration. The Chicago Lawyers' Committee has a special interest in working against those circumstances in which individuals are sentenced in terms of life in prison without the possibility of parole.

The Child Welfare League of America (CWLA) is a coalition of hundreds of private and public 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 and advancement of national standards of care, quality programming, best practices and policies, and collaborative strategies that result in better outcomes for vulnerable children, youth, and families. 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 standards of care for youth recognize that children and adolescents and especially those involved with child welfare and delinquency systems need support that is developmentally and age appropriate. Research shows children and adolescents have less

capacity than adults to take care of themselves and make good decisions. Therefore we 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 Children and Family Justice Center (CFJC) is a comprehensive children's law center that has represented young people in conflict with the law and advocated for policy change for over 20 years. In addition to its direct representation of youth and families in matters relating to delinquency and crime, immigration/asylum and fair sentencing practices, the CFJC also collaborates with community members and other advocacy organizations to develop fair and effective strategies for systems reform. CFJC staff attorneys are also law school faculty members who supervise second- and third-year law students; they are assisted in their work by the CFJC's fellows, social workers, staff and students.

The Children & Youth Law Clinic (CYLC) is an in-house legal clinic, staffed by faculty and students at the University of Miami School of Law established in 1995. The CYLC serves the legal needs of children and adolescents in abuse and neglect, delinquency, criminal justice, health care,

mental health, disability, independent living, education, immigration and general civil legal matters. The CYLC participates in interdisciplinary research, provides training and technical assistance for lawyers, judges, and other professionals, and produces scholarship and practice materials on the legal needs of children. We have appeared as amicus curiae in numerous federal and state court cases implicating significant due process and therapeutic interests of children in criminal and juvenile justice proceedings.

The CYLC has pioneered the use of "therapeutic jurisprudence" in its advocacy for children in delinquency, criminal, school discipline, dependency, mental health, and other court proceedings. Therapeutic jurisprudence is a field of social inquiry with a law reform agenda, which studies the ways in which legal rules, procedures, and the roles of legal actors produce therapeutic or anti-therapeutic consequences for those affected by the legal process. We believe that courts should recognize the unique developmental characteristics of children, including their immature decision-making abilities, susceptibility to negative external influences, and capability for reform, should assure their fair treatment, and promote their best interests in all legal proceedings where their interests are adjudicated.

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 non-profit public interest law corporation that receives appointments from the Los Angeles County and the Sacramento County dependency courts to serve as counsel for abused and neglected youth. CLC serves as counsel for the vast majority of youth under the jurisdiction of Los Angeles and Sacramento counties. It has been providing children with representation for twenty years, and serves a greater number of children than any other such organization in the country. CLC is also actively engaged in local, statewide and national legislative and other reform efforts.

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's mission is to promote and secure equal justice and to maximize opportunity for low-income children and youth. Further, the CLCM is committed to assuring children's age and developmental factors are considered by decision makers when imposing policies or penalties that impact children's lives. This case presents questions

of significance both to the children who are involved in the justice system and to the attorneys who represent them. The *amici* hope their views will add to the Court's consideration of the issues raised in this appeal.

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 Colorado Juvenile Defender Coalition (CJDC) is a non-profit organization dedicated to excellence in juvenile defense and advocacy, and justice for all children and youth in Colorado. A primary focus of CJDC is to reduce the prosecution of children in adult criminal court, remove children from adult jails, and reform harsh prison sentencing laws through litigation, legislative advocacy, and community engagement. CJDC works to ensure all children accused of crimes receive effective assistance of counsel by providing legal trainings and resources to attorneys. CJDC also conducts nonpartisan research and educational policy campaigns to ensure children and youth are constitutionally protected and treated in developmentally appropriate procedures and settings. Our advocacy efforts include the voices of affected families and incarcerated children.

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 defendants represents clients in adult and juvenile, state and federal, trial and appellate courts, and at civil and criminal mental health hearings as well as at 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 has been challenged at the trial level and at the appellate level by Defender Association lawyers.

The Disability Rights Legal Center (DRLC) is a non-profit legal organization that was founded in 1975 to represent and serve people with disabilities. Individuals with disabilities continue to struggle against ignorance, prejudice, insensitivity and lack of legal protection in their endeavors to achieve fundamental dignity and respect. The DRLC assists people with disabilities in attaining the benefits, protections and equal opportunities guaranteed to them under the Rehabilitation Act of 1973, the Americans with Disabilities Act, Individual with

Disabilities Education Improvement Act and other federal and state laws. Its mission is to champion the rights of people with disabilities through education, advocacy and litigation. The DRLC is a recognized expert in the field of disability rights, and regularly files amicus briefs in state and federal courts, and is involved in policy-making activities on behalf of persons with disabilities both statewide and nationally. For example, DRLC filed an amicus brief on the merits at the United States Supreme Court in the cases of *Cullen v. Pinholster*, 131 S.Ct. 1388 U.S. (2011), addressing the impact of disability on the death penalty phase of a criminal matter, and *Graham v. Florida*, 130 S.Ct. 2011 (2010), on the issue of whether disability should be considered in charging and sentencing of minor youths charged as adults. DRLC also filed an amicus brief on the merits at the United States Supreme Court in *Forest Grove Sch. Dist. v. T. A.*, 129 S. Ct. 2484 (2009), on the issue of whether the Individuals with Disabilities Education Act allows reimbursement for private school placement without prior receipt of special education service, and in *Goodman v. Georgia*, 126 S. Ct. 877 (2005), a case addressing the issue of whether Congress properly abrogated state sovereign immunity when enacting Title II of the Americans with Disabilities Act.

The Education Law Center - PA is a public-interest organization dedicated to ensuring that all Pennsylvania children have access to a quality public education. ELC-PA has 35 years of experience addressing the educational needs of children, including many who have also been involved with the juvenile justice system. We seek to participate as

amicus in order to explain why, in our view, the fair treatment of children requires individualized consideration rather than the application of inflexible rules.

Families & Allies of Virginia's Youth (FAVY) is a diverse statewide organization that works to improve life outcomes for youth who are involved in — or who are at risk of being involved in — Virginia's justice systems. FAVY informs and supports families and youth who encounter the justice system. FAVY also advocates for justice system reforms, especially equitable, age-appropriate, and rehabilitative treatment of youth in the justice system. FAVY's membership includes people from throughout the commonwealth of Virginia — mostly family members of young people in the justice system, along with concerned community members and advocates.

Fight for Lifers, West is a Lifers Support Group in Western Pennsylvanian devoted to Prisoners in Pennsylvania who are sentenced to Life Imprisonment Without Parole. In the years since Roper, FFLW has identified 481 Juvenile Lifers in the PADO, revealing that Pennsylvania leads the world in this category. We have sent 36 Newsletters, one every two months to these Juvenile 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 of 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. FFLW was included in an Amicus Brief filed by the Juvenile Law Center in *Graham v. Florida* in 2009.

Florida's Children First ("FCF") is Florida's preeminent legal advocacy organization dedicated to the legal rights of children in the state's care and custody. Our mission is to advance the rights of at-risk children and youth. We seek full representation of children and youth and meaningful and sustainable improvement in Florida's child-serving systems. Our work is comprised of public policy development, executive branch monitoring, training and technical assistance, public awareness, and, where necessary, strategic litigation.

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 prison reform organization that advocates for more rehabilitative opportunities for people incarcerated. These opportunities must especially be given to *all* juveniles. Life without parole sentences for juveniles in effect closes the door to rehabilitation by (1) providing no release no matter how much a person is rehabilitated and (2) transferring that person into the adult system.

The **Iowa Chapter of Citizens United for the Rehabilitation of Errants (CURE)** was established in 1992 and is a member organization of International CURE. We are committed to working for justice and protection of human rights within our criminal justice system. We believe that children should be treated and processed within the juvenile justice system rather than in the adult courts. We believe that the justice system should recognize developmental differences between adults and children. We also believe that it is cruel and unusual treatment to sentence children to a sentence of life without parole which denies them the opportunity for rehabilitation and redemption.

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.

The Juvenile and Special Education Law Clinic (JSELC) is one of eight clinics at the U.D.C. David A. Clarke School of Law. JSELC faculty and student attorneys represent children and parents (or guardians) in Washington, DC primarily in special education and school discipline matters, with a focus of advocating on behalf of young people who also are enmeshed in the delinquency or criminal systems. JSELC protects and enforces students' and parents' (or guardians') rights in administrative hearings, as well as in local and federal court. JSELC has its roots in representing youth in the delinquency system. JSELC faculty pioneered a nationally-recognized approach of addressing delinquency problems by supplementing delinquency defense with, in appropriate cases, advocacy to address the education and special education needs of the children

who are the subject of those delinquency proceedings. By arranging for young people to receive needed special education services, JSELC professors and law students ensure that delinquency system judges, probation officers, and others respond appropriately to the children's needs for care and rehabilitation. As a consequence, JSELC faculty and the clinic are often able to protect children from punitive responses or to extricate children from the delinquency system altogether.

Juvenile Justice Initiative (JJI) of Illinois is a non-profit, non-partisan, inclusive statewide coalition of state and local organizations, advocacy groups, legal educators, practitioners, community service providers and child advocates supported by private donations from foundations, individuals and legal firm. JJI as a coalition establishes or joins broad-based collaborations developed around specific initiatives to act together to achieve concrete improvements and lasting changes for youth in the justice system, consistent with the JJI mission statement. Our mission is to transform the juvenile justice system in Illinois by reducing reliance on confinement, enhancing fairness for all youth, and developing a comprehensive continuum of community-based resources throughout the state. Our collaborations work in concert with other organizations, advocacy groups, concerned individuals and state and local government entities throughout Illinois to ensure that fairness and competency development are public and private priorities for youth in the justice system

Juvenile Justice Project of Louisiana (JJPL) is the only statewide, non-profit advocacy organization focused on reform of the juvenile justice system in Louisiana. Founded in 1997 to challenge the way the state handles court involved youth, JJPL pays particular attention to the high rate of juvenile incarceration in Louisiana and the conditions under which children are incarcerated. Through direct advocacy, research and cooperation with state run agencies, JJPL works to both improve conditions of confinement and identify sensible alternatives to incarceration. JJPL also works to ensure that children's rights are protected at all stages of juvenile court proceedings, from arrest through disposition, 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. 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.

Loyola Law School Center for Juvenile Law and Policy (CJLP) is an organization dedicated to reforming the Los Angeles juvenile justice system through research, activism, and advocacy. Through direct client representation, community involvement, and policy research and advocacy, the Center provides a voice for children and families involved in the Juvenile Justice System, and a point of convergence for students, faculty, stakeholders, and community members dedicated to the creation of a more humane and responsive justice system for children. CJLP has written and participated in numerous amicus briefs

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.

NAMI, the National Alliance on Mental Illness, is the nation's largest grassroots mental health organization dedicated to building better lives for the millions of Americans affected by mental illness. NAMI advocates for access to services, treatment, support and research and is steadfast in its commitment to raising awareness and building a community of hope for individuals living with mental illnesses across the lifespan. NAMI has long prioritized advocacy on behalf of youth with mental health disorders in criminal justice systems, many of whom have mental illnesses so severe that they interfere with daily functioning. We believe that it is cruel and inappropriate to sentence individuals who commit crimes while they are youth to life without parole and further believe that both age and mental health status must be strongly considered as mitigating factors in such cases.

The National Association of Counsel for Children (NACC) is a non-profit child advocacy and professional membership association dedicated to enhancing the well-being of America's children. Founded in 1977, the NACC is a multidisciplinary organization with approximately 2200 members representing all 50 states, DC, and several foreign countries. The NACC works to improve the delivery of legal services to children, families, and agencies; advance the rights and interests of children; and develop the practice of law for children and families as a sophisticated legal specialty. NACC programs include training and technical assistance, the national children's law resources center, the attorney specialty certification program, the model children's law office project, policy advocacy, and the amicus curiae program. Through the amicus curiae program, NACC has filed numerous briefs involving the legal interest of children in state and federal appellate courts and the Supreme Court of the United States.

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 legal advocacy for children and families by promoting well resourced, high quality legal advocacy; implementing best practices; advancing systemic improvement in child serving agencies, institutions and court systems; and promoting a safe and nurturing childhood through legal and policy advocacy. NACC programs which serve these goals

include training and technical assistance, the national children's law resource center, the attorney specialty certification 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 and their families 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 pass 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 3000 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 Black Law Student Association (NBLSA) is a national organization formed to articulate and promote the needs and goals of black law students and effectuates change in the legal community. We are currently the largest student run organization in the United States with nearly 6,000 members. The NBLSA has a special interest in protecting youthful offenders in the

juvenile system. NBLSA created The Juvenile Education Advocacy Network ("J.E.A.N"). J.E.A.N targets youth at risk of obtaining juvenile records, and pairs these youths with local BLSA chapters that focus on juvenile delinquency prevention. In addition, NBLSA has initiated a community service program focused on criminal justice reform that addresses the needs of juveniles at every level. Such community service programs include Criminal Justice Reform; early prevention, successful reentry, and the incarcerated population.

The **National Center for Youth Law** (NCYL) is a private, non-profit organization devoted to using the law to improve the lives of poor children nation-wide. For more than 30 years, NCYL has worked to protect the rights of low-income children and to ensure that they have the resources, support and opportunities they need to become self-sufficient adults. NCYL provides representation to children and youth in cases that have a broad impact. NCYL also engages in legislative and administrative advocacy to provide children a voice in policy decisions that affect their lives. NCYL supports the advocacy of others around the country through its legal journal, Youth Law News, and by providing trainings and technical assistance. NCYL has participated in litigation that has improved the quality of foster care in numerous states, expanded access to children's health and mental health care, and reduced reliance on the juvenile justice system to address the needs of youth in trouble with the law. As part of the organization's juvenile justice agenda, NCYL works to ensure that youth in trouble with the law are treated as adolescents and not

adults, in a manner that is consistent with their developmental stage and capacity to change.

The National Family Network (NFN) works to create a community of support for friends and family members of people impacted by violence committed by youth, in order to establish a strong, family-run, advocacy base. The NFN works to organize and mobilize family members and loved ones in order to engage in dialogue, advocacy, action planning, and information sharing to advance efforts to end the practice of sentencing youth to life in prison without the possibility of parole. We are the family and friends of those impacted by violence. We are focused on healing and restorative practices in place of extreme sentencing practices imposed on youth.

The National Juvenile Defender Center was created to ensure excellence in juvenile defense and promote justice for all children. The National Juvenile Defender Center 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. The National Juvenile Defender Center gives juvenile defense attorneys a more permanent capacity to address important practice and policy issues, improve advocacy skills, build partnerships, exchange information, and participate in the national debate over juvenile justice. The National Juvenile Defender Center 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. The National Juvenile Defender Center also offers a wide range of integrated services to juvenile defenders and advocates, including training, technical assistance, advocacy, networking, collaboration, capacity building and coordination.

The mission of the **National Juvenile Justice Network (NJJN)** leads and supports a movement of state and local juvenile justice coalitions and organizations to secure local, 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-one members in thirty-three states, all of which seek to establish effective and appropriate juvenile justice systems. NJJN recognizes that youth are fundamentally different from adults and should be treated in a developmentally appropriate manner focused on their rehabilitation. Youth should not be transferred into the punitive adult criminal justice system where they are subject to extreme and harsh sentences such as life without the possibility of parole, and are exposed to serious, hardened criminals. NJJN supports a growing body of research that indicates the most effective means for addressing youth crime are rehabilitative, community-based programs that take a holistic approach, engage youth's family members and other key supports, and provide opportunities for positive youth development

The **New Jersey Institute for Social Justice (NJISJ)** is a Newark-based non-partisan

research and advocacy organization dedicated to the advancement of New Jersey's urban areas and residents. NJISJ advances its agenda through policy-related research and analysis, development and implementation of model programs, advocacy efforts, operational partnerships with government, and public education. The Institute has a deep and longstanding commitment to juvenile justice. The Institute played a central role in bringing the Juvenile Detention Alternatives Initiative to New Jersey, where it is now statewide and has resulted in many thousands fewer pretrial detentions of juveniles, which have long term harmful effects, with no increase in either pretrial re-offense or court non-appearance rates. The Institute has served since its inception on the New Jersey Council for Juvenile Justice System Improvement, a body jointly established by the Acting Administrative Director of the New Jersey Courts and the Executive Director of the State Juvenile Justice Commission.

The mission of the **North Carolina Office of the Juvenile Defender** can be described in four parts: to provide services and support to defense attorneys, to evaluate the current system of representation and make recommendations as needed, to elevate the stature of juvenile delinquency representation, and to work with other juvenile justice actors to promote positive change in the juvenile justice system. The Office of the Juvenile Defender is interested in this case as it impacts the constitutional rights of juveniles, particularly those juveniles facing life sentences without the possibility of parole.

The Northeast Juvenile Defender Center is one of the nine Regional Centers affiliated with the National Juvenile Defender Center. The Center provides support to juvenile trial lawyers, appellate counsel, law school clinical programs and nonprofit law centers to ensure quality representation for children throughout Delaware, New Jersey, New York, and Pennsylvania by helping to compile and analyze juvenile indigent defense data, offering targeted, state-based training and technical assistance, and providing case support specifically designed for complex or high profile cases. The Center is dedicated to ensuring excellence in juvenile defense by building the juvenile defense bar's capacity to provide high quality representation to children throughout the region and promoting justice for all children through advocacy, education, and prevention.

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 **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** serves youth who are serving long prison sentences, particularly those serving life without parole. In our capacity as a 501c3, The Pendulum Foundation educates both the public and those former juveniles inside the prison system. We have been featured in local, regional, national and international media. We provide college scholarships, programs, books and support for our incarcerated young men and women. In our capacity as Pendulum Juvenile Justice, a 501c4, we worked with the Colorado legislature to lower life without parole sentences for juveniles, soften direct file

statutes and create the first juvenile clemency board in the United States

For 225 years the **Pennsylvania Prison Society** has advocated for a restorative and constructive correctional system – one that is rooted in fairness and premised on society’s needs to hold offenders accountable for their offenses and to aim to make them less likely to commit additional crimes once they are released. Sentences of life without parole strip away all hope of transformation and are, therefore, fundamentally inhumane as well as excessively cruel. Imposing such a terminal sentence on a child is additionally unfair in failing to take into account the diminished mental and emotional capacities of youthful offenders.

The **Public Defender Service for the District of Columbia (PDS)** is a federally funded, independent public defender organization; for 50 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 through the delinquency system.

Based in one of our nation’s poorest cities, the **Rutgers School of Law – Camden Children’s Justice Clinic** is a holistic lawyering program using multiple strategies and interdisciplinary approaches

to resolve problems for indigent facing juvenile delinquency charges, primarily providing legal representation in juvenile court hearings. While receiving representation in juvenile court and administrative hearings, clients are exposed to new conflict resolution strategies and be educated about their rights and the implications of their involvement in the juvenile justice system. This exposure assists young clients in extricating themselves from destructive behavior patterns, widen their horizons and build more hopeful futures for themselves, their families and their communities. Additionally, the Clinic works with both local and state leaders on improving the representation and treatment of at-risk children in Camden and throughout the state.

Rutgers Urban Legal Clinic (ULC), The ULC is a clinical program of Rutgers Law School – Newark, established more than thirty years ago to assist low-income clients with legal problems that are caused or exacerbated by urban poverty. The Clinic's Criminal and Juvenile Justice section provides legal representation to individual clients and undertakes public policy research and community education projects in both the juvenile and criminal justice arenas. ULC students and faculty have worked with the New Jersey Office of the Public Defender, the New Jersey Institute for Social Justice, the Essex County Juvenile Detention Center, Covenant House – New Jersey, staff of the New Jersey State Legislature, and a host of out-of-state organizations on a range of juvenile justice practice and policy issues. The ULC is a team leader of the New Jersey Juvenile Indigent Defense Action Network, an initiative of the John D. and

Catherine T. MacArthur Foundation that, among other efforts, seeks to provide post-dispositional legal representation to young people committed to the New Jersey Juvenile Justice Commission.

The **Sentencing Project** is a 25-year old national non-profit organization engaged in research and advocacy on criminal justice and juvenile justice reform. The organization is recognized for its policy research documenting trends and racial disparities within the justice system, and for developing recommendations for policy and practice to ameliorate these problems. The Sentencing Project has produced policy analyses that document the increasing use of sentences of life without parole for both juveniles and adults, and has assessed the impact of such policies on public safety, fiscal priorities, and prospects for rehabilitation. Staff of the organization are frequently called upon to testify in Congress and before a broad range of policymaking bodies and practitioner audiences.

The **Southern Juvenile Defender Center** is one of nine regional centers created by the National Juvenile Defender Center (NJDC) to enhance the juvenile defense bar's capacity to provide high quality representation. The Southern Juvenile Defender Center offers technical assistance and advice to juvenile defenders, facilitates networking opportunities for juvenile defenders, conducts state and regional trainings and gathers and analyzes juvenile indigent defense data. The Southern Juvenile Defender Center is interested in this case as it impacts the constitutional rights of juveniles,

particularly those juveniles facing life sentences without the possibility of parole.

The **Support Center for Child Advocates** (*Child Advocates*), founded in 1977, is Philadelphia's volunteer lawyer program for abused and neglected children in Philadelphia, representing 800 children each year. For 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 through a "whole child" model of representation, *Child Advocates* moves both public systems to deliver entitled services and private systems to open their doors to needy children and their families. Like all young people, *Child Advocates'* clients have distinct physical, emotional and developmental needs, however, the added background of abuse and neglect further impacts their development and behavior. *Child Advocates* strives to make certain that the individual circumstances of its young clients are taken into consideration by the Courts, public agencies and other decision-makers in the child's life.

The **University of Michigan Law School Juvenile Justice Clinic** (JJC) is a live client clinic that represents juveniles charged with criminal and delinquent conduct in various courts in the State of Michigan. The JJC represents approximately 30 clients at any given time. Additionally, JJC students and faculty work on juvenile justice policy issues.

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 **W. Haywood Burns Institute (BI)** is a San Francisco-based national nonprofit organization with a mission to protect and improve the lives of youth of color, poor youth and the well-being of their communities by reducing the adverse impacts of public and private youth-serving systems to ensure fairness and equity throughout the juvenile justice system. BI works with local juvenile justice systems to reduce racial and ethnic disparities in the juvenile justice system. Using a data driven, consensus based approach, BI works in sites across the country to bring officials from law enforcement, legal systems and child welfare together with community leaders, parents and children to change policies, procedures and practices that result in the detention of low-offending youth of color and poor youth. In addition, through the Community Justice Network for Youth, BI supports local organizations to build their capacity to hold local juvenile justice systems accountable, reduce the overuse of detention, and promote the use of community alternatives to detention. The BI has worked in more than 40 jurisdictions nationally and achieved significant results in reducing racial and ethnic disparities.

The Wisconsin Council on Children and Families (WCCF) was established in 1881 and has continued to the present time, through research, policy analysis, and education to promote policies and investments to ensure that all children grow up in safe, healthy, and nurturing families and communities. As a multi-issue advocacy organization, WCCF has been engaged in promoting policies that ensure youthful offenders receive effective developmentally appropriate responses and interventions at all stages of the juvenile and criminal justice system. WCCF has been particularly active in promoting policies that ensure youth are not treated as adults and that the unique developmental differences between adults and juveniles are attended to. WCCF believes, based on sound research, that use of developmentally appropriate interventions for youthful offenders accomplishes both the primary goals of the justice system, namely reducing the likelihood of further community harm and promoting the youth's success in becoming a productive member of our community.

Youth Advocate Programs, Inc. (YAP) is a non-profit, direct services organization founded in 1975. Our mission is to provide individuals who are, have been or may be subject to compulsory care with the opportunity to develop, contribute and be valued as assets so that communities have safe, proven effective and economical alternatives to institutional placement. Our philosophy stems from the premise that every individual and family has strengths and capabilities that can and must be developed. Our core agency principles guide this premise into practice and the principles reflect the agency's

ongoing commitment to family-focused programming that empowers youth and families to lead healthy, safe and productive lives in their communities. We recognize that strong families make strong communities and strong children, and oppose the incarceration of youth. YAP serves over 12,000 youth and families per year, specializing in youth who are typically rejected by government and other service providers because they present the most challenging cases. The agency provides child welfare, mental health and juvenile justice systems with cost-effective alternatives to residential, correctional and other out-of-home placements.

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. The imposition of life without parole sentences upon fourteen year-olds is an issue that fits squarely within the Center's long-term interests.

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. Licensed to practice in North Carolina, New York and Massachusetts, Professor Birckhead has been a frequent lecturer at continuing legal education programs across the United States as well as a faculty member at the Trial Advocacy Workshop at Harvard Law School. She is 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. 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. She regularly consults on matters within the scope of her scholarly expertise, including issues related to juvenile justice policy and reform, criminal law and procedure, indigent criminal defense, and clinical legal education. She is frequently asked to assist litigants, advocates, and scholars with amicus briefs, policy papers, and expert testimony, as well as specific questions relating to juvenile court and delinquency.

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) and *Juveniles in the Adult Criminal Justice System in Texas* (LBJ School of Public Affairs, 2011), and is currently engaged in research about conditions of confinement for juveniles in adult prisons and jails. 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 served on a Blue Ribbon Task Force that proposed 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 original drafter of the American Bar Association's recently adopted standards on the legal treatment of prisoners.

Donald N. Duquette is Clinical Professor of Law and Director of the Child Advocacy Law Clinic at the University of Michigan Law School. He is also the Director of the National Quality Improvement Center on the Representation of Children in the Child Welfare System. In 1976 Professor Duquette founded the first law school clinical law program devoted to child abuse and neglect matters. He is a co-founder of the National Association of Counsel for Children's (NACC's) Child Welfare Law Specialist certification of lawyers, recognized as a legal speciality by the ABA and now available in 30 states. His most recent book, *Child Welfare Law and Practice: Representing Children, Parents and State Agencies in Abuse, Neglect and Dependency Proceedings* (Bradford Legal Publishers, Second Edition, 2010), defines the scope and duties of this new legal specialty and prepares experienced lawyers for a national certifying examination.

Professor Duquette's teaching, scholarship and advocacy are directly related to improving justice for children and youth. He has an abiding interest in having America's juvenile justice jurisprudence recognize the abilities -- and the limitations -- of the developing human being during adolescence.

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 Professor of Law at Florida Coastal School of Law. He teaches and writes in the area of criminal law and procedure. 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 several amicus briefs and the party brief, *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.

James Alan Fox, Ph.D., is the Lipman Family Professor of Criminology, Law and Public Policy at Northeastern University in Boston. He has written 18 books, including several that concern homicide and youth homicide, in particular. He has devoted over 15 years to researching the causes and prevention of juvenile homicide, and has consulted with key policy makers in the United States and abroad.

Frank Furstenberg is a Professor of Sociology at the University of Pennsylvania where he is also an Associate in the Population Studies Center and the Zellerbach Family Chair, Emeritus. He received a B.A. from Haverford College and a Ph.D. from Columbia University. Furstenberg's research

focuses on children, youth, and families with an emphasis on public policy. He has authored and edited a dozen books and many journal articles on family change, urban youth, teenage parenthood, divorce and remarriage, and related topics. His most recent books include *Managing to Make It* (1999), *On the Frontier of Adulthood* (2003), and *Destinies of the Disadvantaged: The Politics of Teenage Childbearing* (2007). Furstenberg chaired the MacArthur Network on Adult Transitions from 2000-2010. He is a fellow of the Institute of Medicine of the National Academy of Sciences, The Academy of Arts and Sciences, and The Academy of Political and Social Sciences.

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 youth charged with delinquency 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 City 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 and is a currently a Visiting Clinical Professor of Law at Yale Law School.

Paul Holland is Associate Dean for Academic Affairs at Seattle University School of Law, where he teaches in the Youth Advocacy Clinic, a law school clinic that represents juveniles charged with crimes. He has taught in clinical programs representing juvenile clients at the University of Michigan Law School, Loyola University (Chicago) School of Law and Georgetown University Law Center. He has previously served as Chair of Washington's Governor's Juvenile Justice Advisory Committee.

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 highest national award for appellate work.

Julie E. McConnell is a Clinical Professor of Law at the University of Richmond School of Law and the Director of the Children's Defense Clinic. The Clinic represents children charged with misdemeanor and felony level offenses in Juvenile Domestic Relations District Courts in the Central Virginia area. Clinic faculty and third-year law students provide comprehensive, highly individualized and effective representation to youth and their families. The clinic works with the child and their family to attempt to address the underlying causes of delinquent behavior. The clinic also works to improve the level of representation afforded children in the criminal justice system by working in the broader community to provide training and assistance to juvenile court practitioners. Further, the Clinic works with community organizations and the legislature to improve access to justice for children. McConnell has previously worked with children in a group home setting, served as a clerk in the Virginia Court of Appeals, as a public defender in the City of Richmond for more than five years and as an Assistant Commonwealth's Attorney in Richmond Juvenile and Domestic Relations Court for almost six years.

James R. Merikangas, MD is Clinical Professor of Psychiatry and Behavioral Neuroscience at the George Washington University School of

Medicine in Washington D.C. He has been consultant to Juvenile courts in Pennsylvania and Connecticut. His 40 years of medical practice, and his examination of several hundred adult murders, supports the conclusion that juvenile life without parole sentences ignore the current scientific understanding of brain development of children and teenagers.

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

Elizabeth Scott is the Harold R Medina Professor of Law at Columbia University. She writes extensively about juvenile delinquency and juvenile justice policy, including the award winning book, *Rethinking Juvenile Justice*, written with developmental psychologist Laurence Steinberg (Harvard University Press 2008).

Jeffrey Shook is Associate Professor of Social Work and Affiliated Associate Professor of Law at the University of Pittsburgh. He received his Ph.D. in social work and sociology from the University of Michigan and his JD from American University. His research focuses on the intersections of law, policy, and practice in the lives of children and youth. Specifically, he has conducted studies and published numerous journal articles and book chapters on

issues involving the administration of juvenile justice, juveniles in the criminal justice system, and the justice system involvement of young people who age out of the child welfare system. Dr. Shook also has substantial experience working with children and youth and in systems that serve children and youth. His interest in this case stems from his desire to insure that juveniles are punished at a level appropriate for their level of culpability and that law and policy reflect the capacity that young people have for change.

Abbe Smith is Professor of Law, Director of the Criminal Defense & Prisoner Advocacy Clinic, and Co-Director of the 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* (4th ed., Lexis-Nexis, 2010), 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.