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As I write this note, we Americans are being bombarded with the annual series of awards shows, from the Grammys to the Oscars to the Emmys. Each year the American Bar Association hosts the Silver Gavel Awards in Media and the Arts honoring authors, filmmakers, columnists, advocates, and others whose work helps the public to understand the role of law in our society. The 2015 Silver Gavel Awards ceremony is posted on our website at www.ambar.org/gavelawards. I am always impressed by the dedication, scholarship, and commitment demonstrated by our honorees. Even more important to our staff is the insight provided into the social, cultural, and legal landscape shaping our laws and system of justice. The recipients of the 2015 Silver Gavel Awards this past July highlighted the critical need for reform in both the criminal and juvenile justice systems in our country. We took that guidance focusing our fall issue of Insights on the criminal justice system and this current issue on the juvenile justice system. Each issue raises not only the challenges but the solutions that many scholars and practitioners offer as ways to improve the policy and practice that shape these institutions.

The issue opens with an article focused on the genesis and evolution of the juvenile court system. University of Nevada, Las Vegas law professor David Tanenhaus traces the history of the juvenile court from its beginning in late nineteenth-century Chicago to its adoption by countries throughout the world today. Next, the legal team from Northwestern University's Center for Wrongful Convictions of Youth, Steven Drizin, Megan Crane, and Laura Nirider, guide us through a case study to illustrate the alarmingly high rates of false confessions among juveniles. The final article by Laura McNeal, a law professor at the University of Louisville, outlines how school disciplinary policies contribute to the “school-to-prison pipeline.”

To help you share this rich content with your students, our Learning Gateways provides activities and discussion questions designed to spark informed and engaging classroom conversations. Teaching Legal Docs opens up a discussion of expungement orders, which are common in juvenile court proceedings and provide for the erasure or sealing of court records. For Perspectives, we asked several juvenile justice professionals to share their thoughts on the most significant issues facing the juvenile justice system over the next decade. Legal writer, David L. Hudson Jr. focuses the Law Review on recent Supreme Court rulings concerning juveniles sentenced to life without parole. To close the issue, Profile features Gail Chang Bohr, an active judge from Minnesota who is working with the Juvenile Court Project in Trinidad and Tobago.

Do visit www.insightsmagazine.org for additional resources, materials, and useful links to help you bring this and other law-related topics to your classroom. In addition, you will find ready-to-use handouts and other instructional supports. While on the site, take a look at the 2016 Law Day Guide. Our theme this year is Miranda: More than Words. The downloadable guide is chock-full of ideas, resources, and information, and is a perfect complement to this issue of Insights.

Let us know how you used the issue!

Mabel McKinney-Browning
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Juvenile Justice in Global Perspective:
From Chicago to Shanghai and Back to First Principles

by David S. Tanenhaus

From their bones to their brains, as forensic anthropologists and neuroscientists remind us, children are physiologically different from adults. But has the law in the United States and elsewhere treated child suspects and defendants differently?

Although the idea that criminal law for the purposes of punishment should treat children as less culpable than adults predates the American Revolution, the establishment of a distinct and separate court system for juvenile offenders is a relatively recent invention. In 1898, for example, the clergyman and sociologist Frederick Wines could only imagine the benefits that would flow from creating such a court. As he explained, “What we should have, in our system of criminal justice, is an entirely separate system of courts for children, in large cities, who commit offenses which could be criminal in adults.” The following year this vision for a separate children’s court became an institutional reality, when the world’s first juvenile court, located in Chicago, opened its doors on July 3, 1899. Remarkably, within a generation, juvenile courts became a basic feature of urban governance in the United States, and the juvenile court idea spread globally. Such courts now operate in almost every nation in the world.

Juvenile courts have worked differently across time and space. Yet, whether in Chicago in 1915, Paris in 1965, or Shanghai in 2015, they share two critically important features. First, their jurisdiction is age-based. These courts hear only the cases of persons below a prescribed age. The international norm is a person’s eighteenth birthday. Second, juvenile courts practice the theory that criminal charges for young offenders should be heard in a separate court.

To understand the history and development of juvenile justice systems in this country and abroad, we must remember that birth order makes a difference. The criminal justice system is centuries older than its much younger sibling, the juvenile court. Before the juvenile court was even conceived, criminal courts already had a long history of handling cases of youth crime. Progressive reformers in the United States, such as the philanthropist Lucy Flower, argued that the criminal justice system harmed children, turning them into hardened criminals instead of productive and law-abiding citizens. The leaders of the juvenile court movement, spearheaded by Flower and the first generation of college-educated women in American history that included such luminaries as Jane Addams and Julia Lathrop, had to convince male lawmakers in Illinois and...
elsewhere that children did not belong in criminal court. They faced the same question that subsequent generations of juvenile justice advocates have had to answer: Why shouldn’t the cases of young offenders, especially those who commit serious crimes, be tried in criminal court? Flower, Addams, and Lathrop not only had to answer this question but also had to explain how their proposed children’s court would fit into the existing legal landscape. From the beginning, the juvenile court has been defined by its relationship to the criminal justice system.

For centuries, the Anglo-American criminal justice system has been based on competing theories of punishment that included forms of utilitarianism and retribution. Judges in England and America had constructed the overarching principles and rules for this common law system that addressed fundamental questions about who should be held criminally responsible for their acts and omissions. The common law tradition also developed limits, such as the principle of proportionality, for how much the state should punish a culpable individual for wrongdoing.

The leaders of the juvenile court movement belonged to a new generation that searched for sociological answers and governmental solutions to interrelated social problems such as poverty and crime. They argued that treatment, not punishment, should serve as the rationale for a separate justice system for juveniles. They worked with influential stakeholders to lobby Illinois state lawmakers to pass legislation that would divert children’s cases from the criminal court. For example, in November 1898, the members of the Cook County Grand Jury issued a detailed report on the “Treatment of Law-Offending and Homeless Boys by the City, County, and State.” The grand jury devoted the first two days of each session to hearing the cases of boys aged 10 to 16, “for various offenses, some of them serious, but most of them almost frivolous.” They objected to the fact that the criminal justice system “recognizes no difference between this child offender and the most hardened
create such an environment, its architects stripped away the distinguishing features of a criminal court. As Jane Addams later explained, “There was almost a change in mores when the Juvenile Court was established. The child was brought before the judge with no one to prosecute him and with no one to defend him—the judge and all concerned were merely trying to find out what could be done on his behalf.” Juvenile court personnel made intake decisions, filed delinquency petitions, presented evidence in court, and supervised children on probation. Until the late 1960s, defense and prosecuting attorneys appeared only occasionally in juvenile courts in the United States.

Widespread dissatisfaction with the criminal justice system’s punishment of young offenders, whether they had committed serious or frivolous offenses, served as a necessary condition for the creation of a separate justice system for juveniles. And the Chicago experience, as it turned out, was only the first example of how dissatisfaction with the criminal justice system’s handling of youth crime paved the way for the establishment of a separate juvenile court. This historical pattern repeated itself across the world over the course of the twentieth century and made the juvenile court America’s most copied legal innovation.

Comparative research suggests that the mission of juvenile courts may transcend political theory, religion, and national politics. Most systems rely on probation and community supervision as their first response to juvenile crime and attempt to keep children at home and in their communities. In comparison to criminal courts, the initial empirical research suggests that juvenile courts use lower levels of confinement and for shorter durations. This approach provides children the opportunity to grow up and out of delinquency. Yet it should be noted that comparative empirical scholarship that compares juvenile of the delinquency cases handled by juvenile courts in 2013.

The architects of the Illinois Juvenile Court Act of 1899 purposefully designed the new court to be sensitive to the developmental needs of children. As the court’s first probation officer, Timothy Hurley, emphasized, “a child should be treated as a child.” To criminals. All go the same route, and together.” This approach, they reported, destroyed children.

The architects of the Illinois Juvenile Court Act of 1899 purposefully

### Juvenile Offenses

In the last ten years (2004–2013), the number of cases handled by juvenile courts has decreased for almost all offenses.

<table>
<thead>
<tr>
<th>Offense</th>
<th>Number of cases 2013</th>
<th>Percent total</th>
<th>Percent change 10 Years 2004–2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total delinquency</td>
<td>1,058,500</td>
<td>100%</td>
<td>-37%</td>
</tr>
<tr>
<td>Person-related offenses</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Includes homicide, rape, robbery, assault, other sex offenses.</td>
<td>278,300</td>
<td>26%</td>
<td>-34%</td>
</tr>
<tr>
<td>Property-related offenses</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Includes burglary, theft, motor vehicle theft, arson, vandalism, trespassing, and stolen property.</td>
<td>366,600</td>
<td>35%</td>
<td>-42%</td>
</tr>
<tr>
<td>Drug law violations</td>
<td>141,700</td>
<td>14%</td>
<td>-23%</td>
</tr>
<tr>
<td>Public order offenses</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Includes obstruction of justice, disorderly conduct, weapons offenses, liquor law violations, and nonviolent sex offenses.</td>
<td>271,800</td>
<td>25%</td>
<td>-38%</td>
</tr>
</tbody>
</table>

courts to their local criminal courts as well as juvenile courts in other countries is still in its infancy.

Several features of the American experience, which has been extensively studied, are historically significant. First, American juvenile courts were works-in-progress whose mission (to protect and help kids) preceded the development of institutional capacity. For example, in Chicago, a charitable organization ran the juvenile detention home for years before the county later built a facility. Second, juvenile courts developed most rapidly in urban areas because rapid demographic change, connected to rise of large-scale industrialization, provided the impetus to establish such court systems. Third, the structure of American federalism ensured the local and state actors in concert with professional associations would be primarily responsible for the development and administration of juvenile justice systems in the first half of the twentieth century. The federal Children’s Bureau, for example, worked with local experts and national organizations in the 1920s to develop model legislation and best practices for juvenile courts, but these were only guidelines.

The federal government became more involved in juvenile justice during the second half of the twentieth century. In the 1960s, as part of its Due Process Revolution, the U.S. Supreme Court sought to create more uniform procedures in criminal and juvenile courts. This included the Court’s In re Gault decision, which held that children during the adjudicatory stage of a juvenile court hearing had the right to notice, counsel, confrontation, cross-examination of witnesses, and
the privilege against self-incrimination. In 1974, Congress passed and President Gerald Ford signed the landmark Juvenile Justice and Delinquency Prevention Act. This national legislation created a framework and mandatory guidelines for providing federal funds to the states and led to the establishment of the Office of Juvenile Justice and Delinquency Prevention. Yet the daily administration of juvenile justice largely remained a local matter.

There are intriguing parallels between the American history of juvenile justice and the more recent creation of thousands of juvenile courts in the largest cities of Mainland China during the 1980s and 1990s. Due to the size of the People's Republic of China (PRC), it now has the largest system of juvenile courts operating in the world. This system developed in a similar fashion to what happened in the United States. Local Chinese actors, beginning in Changning District, Shanghai, responded to the social problems resulting from rapid urbanization by establishing a separate court to process juvenile criminal cases. This local initiative, much like the Chicago Juvenile

Learning Gateways

Juveniles and Due Process: In re Gault

Students discuss the opinions, including a dissenting opinion, in the 1967 Supreme Court case, In re Gault, which set due process protocols for juvenile courts.

Background

Gerald Gault was 15 years old when he was arrested in Phoenix, Arizona. He and a friend, Ronald Lewis, were accused of making an obscene phone call to a neighbor, Mrs. Cook, on June 8, 1964. At the time of the arrest related to the phone call, Gault’s parents were at work, and the arresting officer did not contact them, or tell them that their son was being taken to a nearby Detention Home.

A hearing was held in juvenile court the next day. The neighbor, Mrs. Cook, who had reported the phone call, was not present in court. There was no transcript or recording made during the proceedings, there were no lawyers present in court, and no one was sworn in prior to testifying. Gault was questioned by the judge and there are conflicting accounts as to what, if anything, Gault admitted. After the hearing, Gault was taken back to the Detention Home. He was detained for another two or three days before being released, and another juvenile court hearing was scheduled for the following week.

At this hearing, the probation officers filed a report listing the charge as lewd phone calls. An adult charged with the same crime would have received a maximum sentence of a $50 fine and two months in jail. Gault, however, was sentenced, by the juvenile court judge, to six years in juvenile detention, until he turned 21.

The Gaults challenged the constitutionality of these proceedings, and Gerald’s case worked its way up to the Supreme Court. In an 8-1 decision, the Court ruled that what happened to Gerald was “fundamentally unfair.” The Court held that certain protections needed to be in place in juvenile delinquency hearings. The Court ruled that at a minimum, juveniles are entitled to assistance of counsel, notice of the charges against them, the right to confront witnesses against them, and the protection against self-incrimination.

Discussion Questions:

1. Do you think anything about Gerald Gault’s case seems unfair? What? Why?
2. Can you identify rights in the Bill of Rights that might be relevant to Gault’s case? Do you think his rights were respected as they are outlined?
3. If Gault had been tried as an adult he would have received a maximum sentence of a $50 fine and two months in jail. Do you think his sentence as a juvenile was fair? Should he have been tried as an adult? Why or why not?

Consider this excerpt from a dissenting opinion in the case:

Juvenile proceedings are not criminal trials. They are not civil trials. They are simply not adversary proceedings. Whether treating with a delinquent child, a neglected child, a defective child, or a dependent child, a juvenile proceeding’s whole purpose and mission is the very opposite of the mission and purpose of a prosecution in a criminal court. The object of the one is correction of a condition. The object of the other is conviction and punishment for a criminal act… And to impose the Court’s long catalog of requirements upon juvenile proceedings in every area of the country is to invite a long step backwards into the nineteenth century. In that era, there were no juvenile proceedings, and a child was tried in a conventional criminal court with all the trappings of a conventional criminal trial.

4. What is the justice’s concern? Do you think it is appropriate? Why?
5. Should “correction of a condition,” or rehabilitation, be a goal of the juvenile justice system? Why?
Court at the turn of the twentieth century, quickly attracted national attention and the support of professional associations such as the National Courts Work Conference. In the early 1990s, the central Chinese government established national standards for juvenile criminal case procedures and endorsed the principle of juvenile protection. This national legislation was similar to what the Children’s Bureau had done in the United States during the 1920s. In both cases, the standards emphasized the first principles of a separate juvenile justice system and were primarily guidelines. For example, the 1991 Chinese legislation declared that juvenile courts should embrace a policy to “educate, rehabilitate, and save” children.

At the same time that Chinese cities opened their first juvenile courts, the United States experienced a moral panic about youth crime. Criminologists in America such as John DiLulio warned the public about a new breed of “superpredators” who were “radically impulsive, brutally remorseless youngsters, including even more pre-teenage boys ... who do not fear the stigma of arrest, the pains of imprisonment, or the pangs of conscience.” They predicted a coming tidal wave of youth violence in the twenty-first century. In response, during the early 1990s, almost every state adopted “Get Tough” policies to make it easier to prosecute minors in adult court and to incarcerate adolescents in adult prisons. These laws often gave prosecutors the authority to determine which court system would handle a particular youth’s case. This dramatic departure from historical practices threatened to undermine the foundational principle that children are different. By the end of the century, some critics in the United States even called for the abolition of the juvenile court.

Yet youth crime rates had already began to drop precipitously and the “Get Tough” era in the United States ended about the same time that the twentieth century concluded. Since then, juvenile justice experts have proposed “Get Smart” policies based on scientific research into child and adolescent development. They call for a return to using juvenile courts instead of criminal courts and for substituting community-based alternatives for prisons.

The U.S. Supreme Court has also repudiated the “Get Tough Era.” In a series of recent decisions culminating in Miller v. Alabama (2012), the Court established as constitutional doctrine that “children are different from adults” for purposes of criminal punishment. The Court did so in the context of life without the possibility of parole sentences. The justices held that such sentences violated the Eighth Amendment’s prohibition of cruel and unusual punishments. By doing so, they rediscovered and reaffirmed a long-standing principle. Thus, we can now say that from their bones to their brains to their Eighth Amendment rights, children are different from adults.

Discussion Questions

1. Why do you think advocates thought it best to create a separate court for juveniles? What are the advantages and disadvantages to creating a separate court?
2. What effects do you think the “Get Tough” policies of the 1990s had on the juvenile and criminal justice systems? How are “Get Smart” policies different, and channeling the nineteenth century writings of juvenile court proponents?
3. Do you think it is significant that China and other countries outside of the United States have developed juvenile court systems? Why?
4. What concepts did the decision in the Miller case (2012) have in common with nineteenth-century writings about the need for a juvenile court?

Suggested Resources


Stay Connected!

Become a fan of the ABA Division for Public Education on Facebook and follow us on Twitter! Just click on the Facebook and Twitter icons at www.insightsmagazine.org.
Let's start with a thought experiment. Picture yourself as a thirteen-year-old boy, sitting in your middle school in the midst of class. Without warning, your principal enters your classroom, tells you to come with him, and brings you to a small room in the school's front office. There, three police officers—each wearing a holstered gun—are waiting for you. One officer leaves the room and closes the door behind him, but the detective, the sergeant, and the principal remain in the room with you. They sit you down. They surround you. The detective reads you the Miranda rights and immediately proceeds to accuse you of inappropriately touching your neighbor’s three-year-old sister. She does not ask if you did this. Instead, she says that she knows you did this; she has no doubt of your guilt because the evidence proves it; and now you just need to help yourself by telling her the truth. (In reality, this detective has no evidence; she has not conducted any investigation and has no reliable reason to presume your guilt.)

Shocked, you respond by stammering out the truth: you did not inappropriately touch that little girl. In fact, you say this over ten times. The detective refuses to listen and tells you that if you take a lie detector test, it will “come back deceptive because you’re lying.” Her accusations become increasingly specific and more detailed, providing you with her exact theory about how the alleged crime occurred.

When you start crying, she tells you that the only way you can help yourself is to confess. She offers that you probably touched the little girl for reasons that are completely “understandable”—maybe you were just “curious”—but if not, then
you must have done it for a less understandable reason: touching her “excited” you. If you were just curious, she says, you should say so now in order to “get this over with so we can get you the help you need.” She emphasizes that you “need help” and “the best thing for you right now is to be honest.” She makes clear that if you don’t confess, on the other hand, it will look as though you targeted the little girl out of a more sinister desire for sexual gratification.

Ultimately, you break. You agree that maybe you did touch her for three or four seconds out of curiosity—not for excitement. Your so-called confession includes only facts that the detective provided, and none that you offered yourself. You admit guilt because you are scared and just want to go home.

But you don’t go home. You are handcuffed and taken to the police station. Your case goes to court. Luckily, you have an attorney who is willing to do some work for your case. He files a motion to suppress your confession, arguing that you were coerced by police. But the judge doesn’t see it that way. He concludes that you confessed voluntarily because the detective’s voice and manner were “gentle” and “calm,” her questions were “short,” and—incredibly—because the detective was a female. You lose your case and are declared a juvenile delinquent and ward of the state.

This is not a story. This is a reality. This boy is real. He lives in California. We’ll call him John, age 13. John was labeled a juvenile delinquent, a ward of the state, and a sexual deviant. John lost over two years of his life to a humiliating and terrifying legal battle before the case against him was finally thrown out by the California Court of Appeals—all because a police interrogation at school forced him to falsely confess to a crime he did not commit.

This story may shock you—and it should. The tactics used by police to steamroll a child into confessing to a crime can offend our most basic notions of fairness and justice, not to mention the presumption of innocence that our criminal justice system is supposed to provide. But, while shocking, the sad truth is that this story is all too common.

Most readers are probably familiar with the tragic case of Brendan Dassey, featured in the Netflix series Making a Murderer. Brendan was sixteen years old and intellectually limited when he falsely confessed during police interrogation to helping his uncle assault and kill a young woman. The tactics used against him essentially mirrored those depicted above. Like John, Brendan was pulled out of class to be interrogated. Like John, Brendan was relentlessly accused of lying, when in fact it was the police who falsely claimed that they had evidence proving that he committed a crime.

Megan Crane is co-director of the Center on Wrongful Convictions of Youth at Northwestern’s Pritzker School of Law. She represents individuals wrongfully convicted as juveniles, with a focus on those who falsely confessed, co-teaches a course on juvenile justice and wrongful convictions, and supervises law students as they co-counsel in post-conviction proceedings.

Laura Nirider is co-director of the Center on Wrongful Convictions of Youth, where she specializes in representing juveniles who have falsely confessed to crimes they did not commit. Nirider has published, spoken, and appeared in the media extensively concerning police interrogations and false confessions, and she has co-authored the only police interrogation protocol aimed at preventing juvenile false confessions.

Steven A. Drizin is the assistant dean of the Bluhm Legal Clinic and a Clinical Professor at Northwestern’s Pritzker School of Law. He is the co-founder of the law school’s Center on Wrongful Convictions of Youth. He and Laura Nirider represent Making a Murderer’s Brendan Dassey in his appeals.
The Juvenile Brain

The prefrontal cortex of the brain, shaded in gray, controls judgment, problem-solving, and decision-making. It also helps to regulate impulsive behavior. This area of the human brain is not fully developed until one’s early twenties. Scientists link this developmental timeline to vulnerabilities of juveniles in school and police interrogations, including their propensity to confess to criminal activities they may not have actually committed. It is estimated that false confessions play a role in one-third of all wrongful convictions that have been uncovered by DNA evidence, and juveniles are two to three times more likely to confess to crimes they did not commit than their adult counterparts.

Image source: Database Center for Life Science, Japan.

Brendan Dassey was 16 when he was questioned by police in school and confessed to helping his uncle assault and kill a young woman. His case was profiled in the popular 2015 television series “Making a Murderer.” Photo: AP Photo/ Dan Powers, Pool.

crime. Like John, the police fed him the facts about the crime that later made his confession look reliable and corroborated. Like John, the police indicated that confessing would help Brendan. And, like John, Brendan—who, after confessing to murder, asked if he would get back to school in time for a school project—did not understand the serious and long-term consequences of his statements.

Brendan and John are not alone. According to the Innocence Project, false confessions played a role in nearly 30% of all wrongful convictions that have been uncovered by DNA evidence. According to the National Registry of Exonerations, which compiles data on wrongful convictions, 221 exonerations since 1989 involved proven false confessions, and we know this number is underrepresentative because it does not account for confessions not yet proven false nor confessions that did not result in a conviction. And studies of wrongful convictions show that children and adolescents, in particular, falsely confess with startling frequency; indeed, children are two to three times more likely to falsely confess during interrogation than adults. In a study of 125 proven false confessions, 63% of false confessors were under the age of twenty-five and 32% were under eighteen, a strikingly disproportionate result. Another study of 340 exonerations found that 42% of juveniles studied had falsely confessed, compared with only 13% of adults. And a laboratory study astonishingly found that a majority of youthful participants complied with a request to sign a false confession without uttering a single word of protest.

Why do false confessions happen so often to children? The answer lies in an all-too-toxic combination: the common use of psychological interrogation techniques like those illustrated above—designed for seasoned adult criminals—that exploit the developmental vulnerabilities of kids. As any teacher will recognize, youths’ brains are not yet fully developed in areas relating to judgment and decision-making, giving rise to classic “teenager” traits like impulsivity, vulnerability to pressure and suggestibility, as well as a tendency to be motivated by short-term rewards. Inside the interrogation room, these traits can make kids respond to the pressures of interrogation by deciding that a confession is the only way out of a difficult situation—regardless of its truth.

The Pressure Cooker of Psychological Interrogation

Most police officers have been trained to conduct interrogations using the Reid Technique, a set of psychological tactics similar to those used on John. The Reid Technique was developed and marketed by John E. Reid & Associates for one purpose—to extract confessions—and for that reason, Reid itself cautions that its technique should only be used when the police are confident the suspect is responsible for the crime being investigated. At its core, the technique is a guilt-presumptive, accusatory, manipulative process—and it packs a powerful psychological punch.

Here’s how the Reid Technique trains officers to obtain confessions.

Phase 1: Behavioral Analysis, A.K.A. the “Human Lie Detector”

- Engage in nonconfrontational open-ended period of questioning in which the officer is trained to believe he or she can operate as a “human lie detector” by observing and interpreting verbal and behavioral cues.
- Observe a suspect’s behaviors as he or she answers questions.
According to Reid, certain behaviors—slouching, lack of eye contact, crossing one’s arms, even scratching one’s nose—may indicate that the person being questioned is lying. Similarly, the method teaches that certain verbal responses can indicate deception, including “I don’t know” and “I can’t recall.”

If you find these claims unconvincing, you are not alone. Time and again, studies have debunked these claims: there is no unique behavior that can reveal deception. In fact, many of the behaviors identified by Reid as “deceptive” are normal adolescent behaviors, especially when a teen is being questioned by adults or other authority figures—like slouching and looking down at the floor. Officers’ mistaken belief that a suspect is lying and thus must be guilty is the first step down the road to wrongful conviction.

**Phase 2: Interrogation**

- **Isolate:** Isolate suspect in a small room to increase anxiety. (Although this is often done even before the behavioral analysis interview described above.)
- **Confrontation:** Reenter the room and immediately accuse the suspect of the crime. Exude unwavering confidence in guilt. Be persistent. Repeatedly and relentlessly accuse.
- **Denials:** Reject all denials and cut off all claims of innocence.
- **Make suspect feel as though he has been “caught”:** The officer may use props like a thick file of papers that he claims includes the evidence proving the suspect’s guilt. He may even lie to a suspect, telling the suspect he has evidence—e.g., a fingerprint, a video, or an eyewitness—connecting the suspect to a crime when no such evidence exists.
- **Minimizations or rationalization:** The officer offers a moral or legal justification which will make it more tolerable for the suspect to admit guilt, like the detective’s suggestion that John was just “curious.”
- **False choice between lesser of two evils:** Officers ask the suspect a question that forces the suspect to choose between two bad choices, one that makes the suspect look like a monster and one that portrays the crime and the offender in a less heinous light. In John’s case, his interrogator essentially gave him a choice between being treated like a curious teenager versus a sexual predator, and implied that he would be treated more leniently if he said he touched the girl out of mere curiosity.
- **Promises of help:** Officers suggest that the only way the suspect can help himself is to confess. For John, the detective told him she would get the help he needs. In Brendan’s case, his interrogators told him that confessing will “set him free” and that everything would be “okay” if he confessed.
- **Promises of leniency:** Interrogators often suggest that the suspect will get help as opposed to punishment, and imply that he or she will be allowed to go home or back to class—so long as the suspect confesses to the more “justified” version of the crime.

By deploying these tactics at the right psychological pressure points, experienced interrogators can be extraordinarily effective in causing a suspect to produce self-incriminating information. Sadly, far too often, that information can be false.

**Phase 3: Confession**

- **Elicit detailed narrative of the criminal act**
- **Record confession in writing or on video**

A guilty suspect should be able to provide details of the crime that have not been revealed to the public and should also be able to lead police to information or evidence that was previously unknown to the police. The innocent suspect, however, does not possess this “inside knowledge” of the crime. Recorded interrogations prove that interrogators regularly provide suspects this information during the interrogation, intentionally or not. Such “contamination” usually occurs when interrogators ask leading questions that include information about the crime, such as “you committed this offense with Joe, right?” or “you paid $20 for the marijuana, didn’t you?” For the innocent suspect, this kind of information disclosure allows him or her to incorporate accurate details about the crime into his or her confession. The result is a false confession which sounds disturbingly—and convincingly—true.

Today, many experts agree that the Reid Technique is psychologically coercive and can lead to false confessions, even when used on adults. Even the U.S. Supreme Court understands this—indeed, they recognized this reality back in 1966. In the landmark 1966 decision *Miranda v. Arizona*, the Court cited the Reid Technique to conclude that the “heavy toll” of custodial interrogation may result in false confessions. More recently, the Court went even further in 2009, in *Corley v. United States*, stating that “there is mounting empirical evidence that these pressures [of psychological interrogation generally, not specific to Reid Technique] can induce a frighteningly high percentage of people to confess to crimes they never committed.”

**Kids: Interrogate with Special Care**

Given the widespread recognition that the Reid Technique is psychologically coercive, there is now a general consensus that special care must be used on kids and teenagers in the interrogation room. Indeed, in 2011’s *J.D.B. v. North Carolina*, the Supreme Court held that
Juveniles, *Miranda* Rights, and Confessions Before the Supreme Court

**Haley v. Ohio** (1948)
Following the midnight arrest and five-hour interrogation of a 15-year-old boy by a team of detectives, the U.S. Supreme Court threw out the boy’s confession and reversed his conviction, concluding that teens like Haley are no match for adult interrogators: “Mature men possibly might stand the ordeal from midnight to 5 a.m. But we cannot believe that a lad of tender years is a match for the police in such a contest.” The Court noted the importance of ensuring that a young person has access to adult counsel: “[A teenager] needs someone on whom to lean lest the overpowering presence of the law, as he knows it, crush him.”

**Gallegos v. Colorado** (1962)
The U.S. Supreme Court threw out the confession of a 14-year-old boy when it was obtained through an on-and-off interrogation lasting five days, even though the interrogation itself was not particularly heavy-handed. In so concluding, the Court found that a teen “is unlikely to have any conception of what will confront him [during an interrogation] . . . or how to get the benefits of his constitutional rights.” The Court again suggested that only “adult advice” could give the boy “the protection which his own immaturity could not.”

**In re Gault** (1967)
This landmark case provided juveniles with many of the same due process protections already afforded to adults. In concluding that the Fifth Amendment right against self-incrimination must apply to juveniles, the U.S. Supreme Court explained that “authoritative opinion has cast formidable doubt upon the reliability and trustworthiness of ‘confessions’ by children.”

Recognizing that a young person may feel bound to submit to questioning when an adult would not, the U.S. Supreme Court held that officers must consider an individual’s age when determining whether he or she is in custody and, in turn, whether *Miranda* rights must be read.

The “risk [of false confessions] is all the more troubling—and recent studies suggest, all the more acute—when the subject of custodial interrogation is a juvenile.” Advances in neuroscience support this statement by explaining what “every parent knows” that teenagers are fundamentally different from adults in ways that are critically important to their treatment in the criminal justice system.

The brain’s prefrontal cortex is responsible for judgment, problem-solving, and decision-making, and it regulates impulsive behavior by applying brakes to other parts of the brain that are activated by fear and stress. The prefrontal cortex, however, does not develop fully until one’s early twenties, making children and teenagers uniquely vulnerable in the interrogation room for many reasons. Caught at this awkward middle stage of neurological development, children and teenagers are particularly vulnerable to external influence, such as that exerted by the interrogator; they experience a heightened reaction to stress, which is inherent to any interrogation for all suspects; they tend to focus on immediate rewards rather than long-term consequences, such as the idea that a kid can go home if he confesses; and they struggle to assess risks, a skill required to weigh the potential consequences of confessing to a serious crime. Add to all this kids’ “limited understanding of the criminal justice system and the roles of the institutional actors within it,” *J.D.B.*., and it is no longer puzzling why kids falsely confess at an alarming rate.

Even John E. Reid & Associates and other law enforcement organizations now recognize that kids need special protections in the interrogation room. In partnership with the Center on Wrongful Convictions of Youth, the International Association of Chiefs of Police (IACP) published a ground-breaking guide in 2012 concerning how to interrogate juvenile suspects. In *Reducing Risks: An Executive’s Guide to Effective Juvenile Interview and Interrogation*, the IACP emphasizes that “[o]ver the past decade, numerous studies have demonstrated that juveniles are particularly likely to give false information—and even falsely confess—when questioned by law enforcement.” Similarly, Reid explains on its website that “[i]t is well accepted that juvenile suspects are more susceptible to falsely confess than adults,” and warns that “every interrogator must exercise extreme caution and care when interviewing or interrogating a juvenile.”

The Reality of False Confessions Today
There has been progress: We now know how easily these psychologically coercive techniques can overbear the will of a child. Yet current cases and research indicate that most officers still employ these tactics when questioning juvenile suspects. In a 2014 survey of law enforcement, almost all officers reported frequently using the same interrogation techniques on minors as on adults.

Even worse, in spite of its recognition that “extreme caution and care” are required with juvenile suspects, Reid & Associates appears to be expanding the
use of its technique on kids. In addition to training police interrogators, the company is now marketing its technique to school administrators across the country for use on children at school. (So far, this training has occurred in at least twelve states.) The tactics taught to school administrators are virtually identical to those taught to police and fail to account for kids’ vulnerabilities. This is particularly troubling because kids questioned at school have fewer rights than kids questioned by police; principals are usually not required to read a student their Miranda rights, for instance, and kids may have more difficulty walking out of a schoolhouse interrogation than a stationhouse interrogation because, as the J.D.B. Court recognized, “presence at school is compulsory” and “disobedience at school is cause for disciplinary action.” Bottom line: using sophisticated and psychologically potent techniques like the Reid Technique on students is, “throwing caution to the wind.” Plainly speaking, it is a recipe for disaster.

Aftermath of a False Confession

In the wake of Making a Murderer, we’ve heard many people wonder why Brendan is still in prison when his confession was so clearly coerced and false. It’s true—and tragic—that Brendan’s case is still unresolved. Each level of the Wisconsin state court system rejected his argument that his confession was involuntary and coerced by police, and his case is now before the federal courts. He remains in adult prison, sentenced to spend his life behind bars.

But this, too, is sadly not unique. Confessions are incredibly powerful evidence. A full 81% of proven false confessors whose case went to trial were convicted—and that figure does not account for those false confessors who pled guilty before trial. (Of the first 125 DNA exonerees who falsely confessed, 11% pled guilty.) People, including judges and juries, are very reluctant to believe that a confession might be false—and the result, too often, can be a wrongful conviction.

Confessions can also contaminate other evidence in a case. A confession can cause police to view other evidence with bias that assumes the confessor’s guilt, encourage detectives to ignore exculpatory evidence and alternative suspects, and to end an investigation as soon as they have a confession. Confessions also often impact a defense lawyer’s performance because he or she may assume the client’s guilt and, in turn, may forego investigating the client’s innocence and rush to cut a deal for the client with the prosecutor. While laws in several states now require interrogations to be recorded, such laws by themselves are often not enough to persuade a jury that a confession was coerced unless an expert takes the stand to parse each tactic and explain its effect on the suspect. Troublingly, many courts do not permit such experts to testify.

We are now in a new post-Making a Murderer era. The show masterfully presents Brendan’s interrogation in a way that makes the falseness of his resulting statement clear; indeed, the show has made the idea of a false confession accessible to a wide-ranging audience for the first time. With any luck, judges will recognize that tactics which may be legitimate when used on adults may be coercive when applied to children and suppress confessions that result from such tactics. With any luck, jurors’ and judges’ perceptions of confessions may change in the future. They will stop placing blind faith in the reliability of confessions and demand greater corroboration of confessions.

Even further, teachers and parents can also change how this story plays out for their children and students. Teachers should fight the use of the Reid Technique in their schools, and parents should demand that they be notified before a principal plans to interrogate their child. Information is power, and Making a Murderer has made the public a lot more informed about how interrogation tactics can increase the risk of juvenile false confessions. In short, the tide may be turning. For children like Brendan, John, and so many others: Here’s hoping.
It is not uncommon among juvenile court proceedings to encounter the term “expungement,” or find an expungement order issued by the court. What does it mean? Here, Teaching Legal Docs will explore an expungement order, and try to place the document in a larger context of law and culture.

To “expunge” is to “erase or remove completely.” In law, “expungement” is the process by which a record of criminal conviction is destroyed or sealed from state or federal record. An expungement order directs the court to treat the criminal conviction as if it had never occurred, essentially removing it from a defendant’s criminal record as well as, ideally, the public record.

It is important to clarify that expungement is not “forgiveness” for committing a crime—that is a legal pardon. Likewise, pardons are not expungements and do not require removal of a conviction from a criminal record. In the United States, pardons may be granted by public officials. The President, for example, issues pardons annually. State governors may also pardon certain defendants in their states. Expungement proceedings, however, must be ordered by a judge, or court.

A State Affair
In the United States, virtually all expungement proceedings take place in state courts. Expungement orders from federal courts are extremely rare, and there is no federal statute governing its application at the federal level. Each state, however, has its own laws about whose records are eligible for expungement, which offenses may be expunged, procedures for application, and definitions of how records will be managed under an expungement order. Juvenile records are the most common, but many states also allow adult defendants to seek expungement of their records. In Kentucky, for example, an adult may petition the court for expungement of certain records. Maine and North Dakota, however, limit expungements to juveniles and other specific defendants. All states limit the types of offenses that may be expunged. Driving offenses, for example, may not be expunged from records in some states. Other serious offenses, including murder, kidnapping, and rape, may also be ineligible for expungement. Once a record is ordered by a court to be expunged, states then have laws about how the record is to be handled, typically sealed (Kentucky, for example) or destroyed (Washington). If a record is sealed, it may remain available to law enforcement officers, but removed from the public. If a record is destroyed, all relevant documentation is removed from the state court system following the state’s protocols for records destruction.

The example expungement order documents in this Teaching Legal Docs were issued by the Family Court of South Carolina and the Allegheny County Court in Pennsylvania. The documents complement one another by providing two important pieces of the expungement action—case information (South Carolina) and the actual expungement order from the court (Pennsylvania).

Both documents clearly indicate, with titles, that they are orders for expungement. An expungement order will typically identify a case, the parties involved, and the matter to be expunged from the court record. The South Carolina example includes entries for all of this information. If we consider this document alongside the documents from Pennsylvania, we might get a sense of how the court order for expungement is actually carried out. The order lists eight different agencies within the Allegheny County court system that are to receive a copy of the order, with instructions to “expunge and destroy the official and unofficial records” pertaining to the referenced criminal proceedings. It includes a date and state seal, which certify its filing with the court. The order is signed by a judge, who also wrote “By The Court” in script to indicate the court’s directive. Finally, at the bottom of the order, there is an “Affidavit of Expungement,” by which the person signing certifies that the indicated records “have been expunged and destroyed” as directed.
There Are Limits

An expungement order concerns specific matters and specific courts, and nothing more. Expungement orders do not remove records from the press, Google, or social media, for example. It depends on the matter that is being expunged, but sometimes additional documentation about the matter exists outside of the court’s jurisdiction. Without additional legal actions, the court cannot expunge such things as news stories, social media posts, interviews, or, in some cases, arrest reports made by police departments outside the court’s purview. Basically, expungement orders cannot completely erase public record. A recent federal court decision from the Tenth Circuit, Nilson v. Layton City, explains:

An expungement order does not privatize criminal activity. While it removes a particular arrest and/or conviction from an individual criminal record, the underlying object of expungement remains public. Court records and police blotters permanently document the expunged incident, and those officials integrally involved retain knowledge of the event. An expunged arrest and/or conviction is never truly removed from the public record and thus is not entitled to privacy protection.

So, while a person’s reasons for seeking expungement of a record, and a court’s reason for allowing expungement of a record, might, ultimately, include desires for privacy, it is important to realize that there are limitations. Courts are working daily to strike a balance between public record and expunged matter in today’s Information Age.
Traditionally, schools have been viewed as safe havens where children are free to learn and explore new things in a nurturing environment. However, various economic, social, and cultural factors have dramatically transformed many schools from safe havens to pathways to the juvenile and criminal justice system. Many of today’s schools, especially those in urban settings, are organized like prisons. When students enter the schoolhouse doors, they walk through metal detectors. If the metal detector alarms are triggered, they are searched. Armed police officers sweep the halls and stand guard throughout the building. Students are handcuffed and arrested for paper fights, mouthing off at a teacher, and other nonviolent offenses that are indicative of normal adolescent behavior. Each school year brings a new series of local news articles highlighting students who are tased or pepper-sprayed for little more than “clinching their fists” or “taking an aggressive stance.” This disturbing trend is often called the school-to-prison pipeline, which refers to overly harsh disciplinary policies and practices that push our nation’s schoolchildren out of classrooms and into the juvenile and criminal justice system.

This trend is problematic, because when children are not in school, they are not learning and are at a higher risk for not completing high school. According to recent school discipline data released by the U.S. Department of Education’s Office of Civil Rights, more than 3 million children in grades kindergarten through 12th grade were suspended at least once during the 2011–12 school year. Although, the school-to-prison pipeline is harmful to all students, some student populations—arguably the most vulnerable—are impacted more heavily than others. For example, African American and Latino students are disproportionately impacted by overly harsh disciplinary sanctions than their white peers. According to statistics released by the U.S. Department of Education’s Office of Civil Rights, African American boys are three and a half times more likely to be suspended than their white counterparts. Additionally, although black students made up only 18% of those enrolled in the schools sampled, they accounted for 35% of those suspended once, 46% of those suspended more than once, and 39% of all expulsions.
Additionally, students with disabilities are more than twice as likely to receive an out-of-school suspension than students without disabilities. In light of the troubling statistics regarding the school-to-prison pipeline, the question that stakeholders in education are attempting to answer is “how” did this harmful trend start?

The Evolution of the School-to-Prison Pipeline

The school-to-prison pipeline did not occur overnight, but rather through a slow progression of social, cultural, and political responses to efforts to improve school safety. Although several things have contributed to the development and perpetuation of the school-to-prison pipeline, the following factors collectively have played the most significant role in the evolution of this phenomenon: (1) Emergence of Get Tough on Crime Rhetoric, (2) Reactionary Response to Mass School Shootings, and (3) Expanding the Role of Law Enforcement Personnel in Schools.

1. Get Tough on Crime Rhetoric

The term “zero tolerance,” which originated from the war on drugs campaign, was initiated in the 1980s during the get tough on crime initiative promoted by the Reagan administration. The objective of the zero tolerance concept was to deter crime by removing judicial discretionary power and issuing mandatory prison sentences for certain drug-related offenses, regardless of whether the individual was a first-time offender. Prior to the adoption of zero tolerance legislation, judges had the discretionary power to issue less punitive sanctions such as probation or community service for first-time offenders. Although originally created for the

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adult criminal justice system, zero tolerance rhetoric eventually emerged in the K–12 schooling context in response to the Guns Free Act of 1994 to address drug and gang activity. Schools across the nation developed zero tolerance policies that required swift and harsh punishment for any students found in possession of a weapon, drug activity, and any behavior deemed threatening to a student or school staff. Despite the laudable goals of zero tolerance policy, what resulted were overly harsh disciplinary sanctions for normal adolescent behavior. Because of zero tolerance policies, there are numerous examples of students suspended or expelled for bringing things to school such as Listerine mouthwash, cough drops, plastic water pistols, and Midol. Furthermore, according to a recent report released by the Texas Appleseed Organization, only 20% of the 3,500 student arrests in one academic year involved violence or a weapon among the 11 Texas school districts studied.

2. Expanding the Role of Law Enforcement Personnel in Schools

The harmful effects of zero tolerance policies were exacerbated by the drastic increase of law enforcement personnel in K–12 schools. Currently, there are an estimated 17,000 school resource officers deployed in K–12 public schools. Several school districts fund school resource officer positions through federal grants. For example, in 2013, the Department of Justice announced a $45 million grant initiative to increase the number of school resource officers in schools. Thus, the increased focus on school safety, coupled with the availability of federal funding for school resource officers played a significant role in expanding the role of law enforcement in schools. However, despite the increased police presence in schools, research suggests that school resource officers do not increase school safety, but rather do more harm than good.

Also, the majority of states do not train police officers on how to police or interact with youth. Currently, only two states, Connecticut and Illinois, require
mandatory training for police officers on adolescent development and youth developmental competence, which is the “understanding that children and adolescents' perceptions and behaviors are influenced by biological and psychological factors related to their developmental stage.” This type of training teaches police officers how to adjust their language, behavior, and timing to de-escalate interactions with youth to avoid use of force when addressing misbehavior. The lack of police training on how to interact with youth is evident by the prevalence of highly publicized cases of excessive use of force on children in K–12 schooling settings, such as the handcuffing of a special needs third-grade student in a Kentucky school in 2014, and the violent throwing to the floor of a South Carolina high school student in 2015. In the case of the South Carolina student, she was in violation of a school cell phone policy that resulted in a school-based arrest, and she refused to get up from her desk. What is significant about these two incidents is that they demonstrate the excessive use of force utilized by school resource officers and school staff over reliance on school resource officers for routine disciplinary matters.

3. Criminalization of Normal Adolescent Behavior

Out-of-school suspension, expulsion, and in severe cases, school-based arrests, are the most severe consequences that a school district can impose for disruptive student misbehavior. Traditionally, these consequences have been reserved for offenses deemed especially severe or dangerous to the school-learning environment. Historically, the disciplinary sanction issued for nonviolent, normal adolescent behavior has been detention, temporary suspension of recess or lunchroom privileges, or some other developmentally appropriate response. However, in today's times, the response to normal defiant adolescent behavior is removal from the school-learning environment; the majority of out-of-school suspensions and expulsions are for nonviolent offenses. For example, in California 48% of the 710,000 suspensions during the 2011–12 academic year were for “willful defiance,” a term commonly used for disobeying a school authority figure. Furthermore, 19% of school suspensions in California for willful defiance were issued to African Americans even though they only account for 6% of the state's public school enrollment. The increased challenges in maintaining discipline in classrooms coupled with the increased presence of law enforcement personnel and lack of classroom management training has inadvertently caused many teachers to rely too heavily on school resource officers for routine disciplinary matters such as refusing to put away a cell phone or complete an assigned task. Many teachers call upon school resource officers as a quick remedy for disruptive student behavior that impedes the classroom-learning environment.

Solutions

The school-to-prison pipeline epidemic is a complex problem that requires a multifaceted solution that fosters a paradigm shift from punitive and exclusionary approaches that have limited value, to developmental approaches to school discipline. All stakeholders in education, including school resource officers and school personnel, must play an active role in addressing the school-to-prison pipeline to bring an end to this troubling epidemic.

School Resource Officers

First, all school resource officers should be required to receive training on how to police K–12 schooling environments that should include de-escalation tactics for adolescents, appropriate use of force with children, youth developmental competence, appropriate uses of force in school settings, and cultural competency to avoid cultural miscues that may result in unwarranted disciplinary sanctions. Additionally, school resource officers should use better discretion when determining whether student misconduct is normal adolescent behavior that does not pose an immediate threat to the safety or well-being of others, or one that requires a more severe response such as a school-based arrest. The ability of school resource officers to make this distinction is crucial to dismantling the school-to-prison pipeline. Lastly, school districts need to develop a better screening process for the selection of school resource officers to ensure that the officers have the training and disposition to serve their intended purpose, which is to maintain a safe learning environment.

Discussion Questions

1. What is the “school-to-prison pipeline?” How have certain policy trends contributed to its creation?
2. How do you think the author’s solutions might impact your school?
3. How might schools and courts work together to ensure that students remain in the classroom?

Suggested Resources

The stark reality is that today’s challenging schooling environment calls for teachers to play multiple roles such as educator, social worker, mentor, and disciplinarian.

because the majority of school disciplinary actions stem from disciplinary referrals issued by teachers for student misconduct in the classroom. The stark reality is that today’s challenging schooling environment calls for teachers to play multiple roles such as educator, social worker, mentor, and disciplinarian. Thus, if you equip teachers with innovative classroom management techniques, cross-cultural competency, and the skills on how to minimize what role, if any, implicit bias plays in disciplinary sanctions, overly harsh disciplinary practices will be significantly reduced. Although teachers are already trained and experienced educators and mentors, it is still very important they undergo this type of continuous professional development training to learn more developmentally appropriate ways to address disciplinary issues. Considering that the teaching population remains largely homogenously white, it is imperative that teachers possess the cultural competency to serve today’s diverse student population.

Conclusion

In conclusion, dismantling the school-to-prison pipeline must be a top priority for all stakeholders in education to ensure that children are no longer subjected to draconian approaches to school discipline. We can no longer turn a blind-eye to harmful disciplinary practices and policies that disproportionately affect students of color and those with special needs. The time is now; we cannot afford to redirect another child’s future into the juvenile and criminal justice system.

In the next decade, what will be the biggest issue facing the juvenile justice system?

Managing Juvenile Mental Health Needs

by Keyah Walker

In the next decade, a widespread issue that is likely to be problematic for America’s juvenile justice system are mental health disorders among detained youth. Youth in the juvenile justice system experience mental health issues at alarming rates when compared to the general youth population. Nearly 70% of youth in juvenile detention facilities in the United States suffer from mental health issues. This growing problem presents a challenge for juvenile detention centers because they do not always have access to the proper resources to foster successful rehabilitation.

Many juvenile detention centers offer mental health aid to youth, however, they are not always equipped to manage youth with significant mental health needs long term. In addition, first line staff are rarely made aware of specific mental health disorders on an individual basis due to confidentiality, which in turn makes it difficult to successfully provide proper treatment. Ultimately, this has the tendency to have negative impact on that child’s future short and long term. Whenever appropriate, youth with mental health needs should be prevented from entering the juvenile justice system altogether.

In order to solve this problem, instead of dumping troubled youth off at detention centers, the juvenile justice system should seek to implement a standardized screening instrument such as the Massachusetts Youth Screening Instrument (MAYSI) to identify symptoms of mental health disorders and determine if detention is an appropriate sanction for youth with mental health needs. In addition, more mental health facilities ought to be established to house youth with serious mental health needs.

Keyah Walker holds a master’s degree in Public Service Management from DePaul University. She is currently a youth development specialist at a juvenile detention facility in Illinois.

Protecting and Empowering Families

by Peter Sakai

As a former judge of the Juvenile Courts and currently the Presiding Judge of the Bexar County Children’s Courts system, which hear all the child abuse and neglect cases involving Child Protective Services, I believe that the biggest challenge for all the stakeholders is to make the entire juvenile justice system more effective and efficient for the protection of children and empowerment of families. There is no doubt that we live in a political world of budget restraint, sequestration, and sometimes, government shutdown, which impacts all of us that involve ourselves with the juvenile justice system. The system will have to be more creative, innovative, and out-of-the-box in bringing cutting-edge programs to their systems. More than ever, communication and collaboration between all the stakeholders of the community must be first and foremost in order for this to occur.

We have learned in Texas that the war on juveniles through the massive buildup of juvenile lockup facilities was costly and an inefficient use of taxpayer monies. We are currently seeing the dismantling of those facilities and a return of community-based programs that truly reintegrate juveniles.
with their community. In Bexar County, we see enhanced and cutting-edge diversion programs that focus and concentrate their services to parents and adults at an earlier stage, in order that they are empowered to take care of their own children. We see that the schools must stop the “school to prison pipeline” by criminalizing and sending their students to the juvenile justice system. Texas has decriminalized truancy of students and mandated that the students and their parents be treated in a truly rehabilitative program that treats the root problems of the family.

We must embrace restorative justice by putting families back together again. We must employ programs that truly are effective with evidence-based outcomes and have trauma informed care strategies. We must communicate and collaborate with all the stakeholders from the courts, child protection services, juvenile probation departments, law enforcement, nonprofit organizations that provide services, and the entire community, including the churches, to create and develop cutting-edge programs that meet the needs of the families that they serve. We cannot afford to do otherwise. I hope that you are up to the challenge.

Peter Sakai is the current Presiding Judge of the 225th District Court, Bexar County, San Antonio, Texas. He has statutory authority of all the child abuse and neglect cases in Bexar County and supervises two Associate Judges who hear those cases on a full-time basis. He is currently serving on the Board of Trustees of the National Council of Juvenile and Family Court Judges and the Texas Supreme Court Children’s Commission.

Recognizing Children as Children

by Jessica Feierman

In the coming decade we can—and must—ensure that the juvenile justice system takes into account the developmental differences between children and adults.

Since 2005, the United States Supreme Court has repeatedly recognized the importance of adolescent development to the law. Because teenagers are more impulsive than adults—but also likely to become rehabilitated—the Court held they are not as culpable as adult offenders and therefore cannot receive the harshest criminal sentences, such as the death penalty, or, in some cases, life without the possibility of parole. Because a child’s age informs whether he or she would feel free to leave during police questioning, law enforcement must take age into account when questioning a suspect and deciding whether to give Miranda warnings.

Despite these seminal cases, juvenile justice systems across the country too often treat youth as if they are simply miniature adults. On any given day roughly 54,000 teenagers are incarcerated in juvenile justice facilities nationwide. These young people endure separation from parents, and often face solitary confinement, strip searches, mechanical or physical restraints, educational disruption, and a heightened risk of physical and sexual violence.

At a time when youth’s brains are particularly malleable, and youth are still developing and maturing in myriad ways, subjecting young people to these harms is a serious misstep.

The problem is particularly urgent in light of troubling racial and ethnic disparities, with young people of color much more likely than their white peers to end up in the juvenile justice system for normative adolescent behavior such as acting out in school.

The next decade presents an opportunity to further align the juvenile justice system with the research on adolescent development. Certainly, we can abolish harmful correctional practices such as strip searches, solitary confinement, and restraints, but real reform will also require us to think anew about constructive responses to youth offending.

At the federal and state level, this work has already begun, with an increased emphasis on solving problems in schools and communities rather than directing young people unnecessarily to juvenile court. For youth who do enter the juvenile justice system, developmentally appropriate policies rely on the community-based services that work, rather than the adult-like incarceration model that has repeatedly failed.

Juvenile justice policies that recognize the unique needs of youth will lead to safer communities, a more equitable system, and opportunities for our youth to learn from their mistakes and contribute to our communities.

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The Civil Rights Implications of the School-to-Prison Pipeline

by Brenda Shum

One of the most alarming trends in juvenile justice is the increasing rate at which youth are excluded from school and find themselves involved in the criminal justice system. The school-to-prison pipeline refers to a collection of laws, policies, and practices that push students out of school and into the juvenile delinquency system. Research shows that a highly punitive approach to school discipline and the increased presence of police on campus undermine achievement for all students without any significant increase in school safety. Instead, frequent suspensions and expulsions increase the risk of dropout and involvement in the juvenile justice system.

The civil rights implications of exclusionary discipline practices are particularly disturbing in light of the disproportionate impact of exclusionary school discipline policies on some of our most vulnerable students, including students of color and students with disabilities. Black students are 3.5 times more likely to be expelled than white students, while Latino students are 2 times more likely and Native American students are 1.5 times more likely to be expelled than their white peers. In the 2010–11 school year, 1.2 million Black students and 700,000 Latino students were suspended. Approximately 40% of the total number of students expelled each year are Black, and 22% of the students expelled are Latino. Approximately 70% of all students arrested at school or referred to law enforcement by their school are Black or Latino. While Black students constitute 16% of student enrollment, they represent 27% of the students referred to law enforcement and 31% of the students subject to school-based arrest. Students with disabilities are more than twice as likely to be suspended than those without, and represent a quarter of the students referred to law enforcement even though they are only 12% of the overall student population.

These stark disparities represent a significant civil rights concern in light of the demonstrated negative impact that exclusionary discipline policies have on academic achievement, juvenile delinquency, and long-term life outcomes. What can be done? In January 2014, the U.S. Department of Education issued federal guidance highlighting the obligation of school districts to administer discipline without discrimination on the basis of race. While many recommendations are focused on positive behavioral interventions and restorative justice practices at the school level, there are also steps that the juvenile justice system can take in order to eliminate the devastating consequences of the school-to-prison pipeline. These include monitoring and minimizing school-based referrals to law enforcement, utilizing diversion for minor offenses where appropriate, and providing high-quality educational programming for detained or incarcerated youth.

In addition, the role of school police and school resource officers (SROs) must be reexamined. While some believe that SROs contribute to school safety, others recognize that an increased police presence does not contribute to a positive school climate. The role of police and SROs on campus should be determined by multiple stakeholders and be clearly defined by a memorandum of understanding. SROs should be provided appropriate training and supervision, and they should not be used for routine classroom management.

School administrators and educators must collaborate with their colleagues and counterparts within the juvenile justice system in order to eliminate or reduce the tragic long-term consequences associated with the school-to-prison pipeline. Together, they must implement research-based policies and practices that support and reinforce positive behavior and help children succeed both at school and within their communities. This is the civil rights imperative of our time.

3. Ibid.
4. Ibid.

Brenda Shum is director of the Educational Opportunities Project at the Lawyers’ Committee for Civil Rights Under Law where she oversees litigation designed to guarantee that all students receive a quality education in public schools and institutions of higher learning, and to eliminate discriminatory practices in school discipline, school funding, and special education.
Juvenile Justice and the Supreme Court

By David L. Hudson Jr.

On October 13, 2015, the U.S. Supreme Court examined another case of juvenile justice when it heard oral arguments in Montgomery v. Louisiana (14-280).

That case concerns whether the state of Louisiana is unconstitutionally confining inmate Henry Montgomery, who received a life sentence without the possibility of parole (LWOP) for shooting and killing a law enforcement officer in 1963. Countless individuals have received LWOP sentences for such conduct.

However, Montgomery was only 17 years old when he killed Sheriff Deputy Charles Hurt in East Baton Rouge, Louisiana. In other words, Montgomery was a juvenile when he committed the criminal act.

Originally sentenced to death, Montgomery’s sentence was overturned in 1966 because “prejudice permeated” the proceedings. Significant racial tension hovered over the case, as Montgomery is African American and the victim was Caucasian.

The Louisiana Supreme Court ordered a new trial. At his second trial, Montgomery was found guilty again, but this time was sentenced to life imprisonment instead of death.

Montgomery claims his sentence is illegal because the U.S. Supreme Court ruled in Miller v. Alabama (2012) that mandatory LWOP sentence on a juvenile defendant fails to consider individual variables in cases and individual characteristics of particular defendants.

The Court in Miller did not say that a juvenile killer could never receive a LWOP sentence. Instead, the Court explained that the law must provide some individualized discretion to the decision-maker so that such a harsh punishment is not automatic.

However, there is an interesting question as to whether the rule from Miller applies only prospectively to future cases or also applies retroactively. The state of Louisiana contends that the rule does not apply retroactively, while Montgomery urges the Court to apply this “new rule” of constitutional criminal law retroactively.

At oral argument, Montgomery’s attorney stressed that the 1,500 inmates who currently have LWOP sentences for crimes committed as juveniles “deserve a second chance at redemption.”

No Death Penalty for Juveniles

The question of whether juvenile sentences comport with the Eighth Amendment has been a staple on the Supreme Court’s docket in recent years. A decade ago, the U.S. Supreme Court ruled 5-4 in Roper v. Simmons (2005) that executing an inmate who committed murder when he or she was a juvenile violated the Eighth Amendment.

In reaching this decision, the Court in Roper overruled its decision in Stanford v. Kentucky (1989), in which the Court had upheld the death sentence of a defendant who killed when he was 17 years old.

The dissenting justices in Roper questioned the majority’s disregard of precedent and imposition of a categorical rule. In his dissent, Justice Antonin Scalia wrote that the Court’s Eighth Amendment jurisprudence should not be established by the views of “five members of the Court and like-minded foreigners.”

After Roper, juvenile justice adva-
icates set their sights on LWOP sentences. The reasoning is that a juvenile LWOP sentence is just as brutal and devastating as a death sentence. A LWOP sentence ensures that inmates never achieve freedom—even if they have served decades and rehabilitated themselves.

LWOP as Cruel and Unusual

The Court ruled 6-3 in Graham v. Florida (2010) that a LWOP sentence for a juvenile convicted of a nonhomicide defense constituted cruel and unusual punishment and violated the Eighth Amendment. Seventeen-year-old Terrance Graham received a life sentence in part because he was a recidivist offender.

The Court majority emphasized the points established in Roper—that juveniles are not similarly situated to adults. Instead, they are more impressionable, less mature, more vulnerable to peer pressure, and more amenable to possible rehabilitation.

The majority also noted that a LWOP sentence in some instances is harsher for a juvenile than an adult defendant, because the juvenile will spend much more time behind bars.

“Life without parole is an especially harsh punishment for a juvenile,” Justice Anthony Kennedy wrote in his majority opinion. “Under this sentence a juvenile offender will on average serve more years and a greater percentage of his life in prison than an adult offender.”

The majority also emphasized that a LWOP sentence was particularly inappropriate for a nonhomicide offense. According to the Court, the most severe punishment should be reserved for the most severe offense.

The Court also noted that imposing such a harsh sentence on nonhomicide offenders did not serve the penological objectives of deterrence and rehabilitation. With regard to deterrence, juveniles are generally less mature and not as able to control their impulses as adults. “A sentence of life imprisonment without parole, however, cannot be justified by the goal of rehabilitation,” Justice Kennedy explained. “The penalty forswears altogether the rehabilitative ideal.”

This clear line is necessary to prevent the possibility that life without parole sentences will be imposed on juvenile nonhomicide offenders who are not sufficiently culpable to merit that punishment.

The Court’s decisions in Roper and Graham led to the Court’s decision in the aforementioned Miller v. Alabama decision in 2012. “Roper and Graham establish that children are constitutionally different from adults for purposes of sentencing,” Justice Elena Kagan wrote for the Miller majority. “Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features—
among them, immaturity, impetuosity, and failure to appreciate risks and consequences.”

**Montgomery and Other Future Cases**

The Court may not reach the merits of the Montgomery case. When granting review in the case, the Court directed the parties to address the following question: “Do we have jurisdiction to decide whether the Supreme Court of Louisiana correctly refused to give retroactive effect in this case to our decision in Miller v. Alabama?”

An amicus appointed by the Court to argue against the Court’s jurisdiction emphasizes that this case arose out of state collateral court proceedings rather than federal court. The amicus explains that federal law “does not impose any binding requirements on state collateral review courts.”

However, the United States, as amicus in support of Montgomery, argued the Court does have jurisdiction to correct any misapplication of the Supreme Court’s standards for retroactivity.

Even if the Court finds that it does not have jurisdiction in the Montgomery case, there are other juvenile justice cases on the Court’s docket.

Issues over juvenile justice are far from over.

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**Montgomery v. Louisiana: The Opinion**

The U.S. Supreme Court announced a decision in the case of Montgomery v. Louisiana on January 25, 2016, as this issue of Insights was going to print. The Court ruled in favor of Montgomery: the 2012 ruling in Miller v. Alabama, which declared mandatory life sentences for juveniles unconstitutional, may be applied retroactively to juveniles sentenced to life prior to 2012, including Henry Montgomery. Highlights from the Court’s opinion and dissents show how the 6-3 decision played out among the justices.

**Excerpts from the Majority Opinion, written by Justice Anthony Kennedy**

On juvenile life sentences issued prior to the Miller v. Alabama ruling:

“A penalty imposed pursuant to an unconstitutional law is no less void because the prisoner’s sentence became final before the law was held unconstitutional. There is no grandfather clause that permits States to enforce punishments the Constitution forbids. To conclude otherwise would undercut the Constitution’s substantive guarantees.”

On the notion that juveniles are different than adults:

“Henry Montgomery has spent each day of the past 46 years knowing he was condemned to die in prison. Perhaps it can be established that, due to exceptional circumstances, this fate was a just and proportionate punishment for the crime he committed as a 17-year-old boy. In light of what this Court has said in Roper, Graham, and Miller about how children are constitutionally different from adults in their level of culpability, however, prisoners like Montgomery must be given the opportunity to show their crime did not reflect irreparable corruption; and, if it did not, their hope for some years of life outside prison walls must be restored.”

**Excerpts from the Dissents:**

Antonin Scalia on the evolution of decency:

“Not until our People’s “standards of decency” evolved a mere 10 years ago—nearly 40 years after Montgomery’s sentence was imposed—did this Court declare the death penalty unconstitutional for juveniles. Even then, the Court reassured States that “the punishment of life imprisonment without the possibility of parole is itself a severe sanction,” implicitly still available for juveniles. And again five years ago this Court left in place this severe sanction for juvenile homicide offenders. So for the five decades Montgomery has spent in prison, not one of this Court’s precedents called into question the legality of his sentence—until the People’s “standards of decency,” as perceived by five Justices, “evolved” yet again in Miller.”

Clarence Thomas on the idea that a ruling may be retroactive:

“Today’s decision repudiates established principles of finality. It finds no support in the Constitution’s text, and cannot be reconciled with our Nation’s tradition of considering the availability of postconviction remedies a matter about which the Constitution has nothing to say. I respectfully dissent.”

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David L. Hudson Jr. is the author, co-author, or co-editor of forty books. He writes regularly for the ABA Journal and the ABA’s Preview of United States Supreme Court Cases. He serves as the Director of Academic Affairs at the Nashville School of Law and also teaches as an affiliate faculty at Vanderbilt Law School.
Learning Gateways

Juveniles and Life Without Parole: Taking a Look at Your State

The map below might be used to start classroom conversations about the current Supreme Court case, Montgomery v. Louisiana, and the sentencing of juveniles to life in prison without parole. It is available for download at www.insightsmagazine.org.

1. What information is shown on the map? What does the map tell you about your state?
2. Do you think a sentence of life without parole is appropriate for juvenile offenders? Why?
3. What other types of sentences might be appropriate for juvenile offenders? Why?
4. How might a ruling in Montgomery v. Louisiana affect laws in your state? Other states on the map?
Gail Chang Bohr

Gail Chang Bohr is a senior judge of the District Court of Minnesota. She is also an international consultant for the National Center for State Courts and is currently working on the Trinidad and Tobago Juvenile Court Project. The project seeks to transform the juvenile justice system in Trinidad and Tobago. As a former social worker, lawyer, executive director of Children’s Law Center of Minnesota, and district court judge, Gail has dedicated her career to justice reforms for children and youth in the United States and in the Caribbean, where she was born and raised.

Q: What goals do you hope to accomplish for establishing the first juvenile court in Trinidad and Tobago?

The goal of the Juvenile Court Project is to transform juvenile justice in Trinidad and Tobago to ensure a more rehabilitative and less retributive approach to youth who come in conflict with the law. There are issues in the country’s legal system that need to be addressed. For example, children are held on remand for excessively long periods of time, and there is no monitoring framework to guard against abuse of children and their legal rights. Some of the solutions that we are focusing on include alternatives to incarceration, such as probation and house arrest, improved access to trained mental health professionals, and access to facilities that are safe, adequate, and meet the needs of the children who are unable to go home. We will also explore fines and community service as well as expungement opportunities for young offenders. We have also been evaluating current intervention programs in Trinidad and Tobago to ensure they are consistent with the goals of the program.

Q: What drew you to working in the Caribbean?

I was born in Jamaica to Chinese parents. Being from the Caribbean, I have a connection with and profound understanding of the culture and its people. I am able to use my background, legal knowledge, judicial expertise, and experience as a former social worker to engage with children and youth caught up in the juvenile justice system in a part of the world that I know well.

Q: What are some of the most pressing juvenile justice issues in the United States? Do you see an overlap with your work in the Caribbean?

Yes, there is overlap. Here in the United States, we also need alternatives to holding children and youth in detention. Specifically, we can avoid locking children up while they wait for their court dates. Children are often kept in detention because of a concern that they will not show up for their court date. Here in the Twin Cities, as part of a Juvenile Detention Alternative Initiative, judges in Juvenile Court have found that when children and their families are given information and reminders, they are less likely to miss court dates.

In addition, we need mental health professionals who are experts in children’s mental health. When children with mental illness come in conflict with the law and are detained, the facility and resources are inadequate and inappropriate. Juvenile detention centers are poor environments for children with underlying mental health problems. I feel very strongly about having appropriate alternatives to detention. As judges, we also see children who get into fights at school—a symptom of the schoolhouse-to-jailhouse pipeline problem.

Q: According to the Children’s Law Center of Minnesota (CLC) website, the organization has represented more than 2,300 foster children since 1995. Can you give us an idea of the most common cases in which foster children needed legal representation?

Some of the most common cases we handled involved children not feeling safe in their placements. In addition, youth need help to transition out of foster care to independent living. They need help with finishing school, finding jobs, housing, handling their money, etc. Without resources, many end up homeless. CLC was an early advocate, statewide and nationally, to ensure that a transition plan and services were mandated. CLC also trained hundreds of lawyers to represent children, pro bono, in the child protection and foster care system.

Q: How can teachers, parents, and fellow students help in welcoming foster children into their schools and communities?

Because children in foster care tend to be moved so often, there are not always good school records of their grades and credits. The lack of school records can make it difficult for them to graduate from high school and apply for college. Teachers, foster parents, social workers, lawyers, and judges must help in finding those records. CLC advocated for an Education Passport where school records and information moves with the child.

Teachers should be aware of a homelessness child’s situation and understand that it often means they have no place to do homework. Children in foster care may need help with school work; they should be treated with patience.

Q: Did you enter the legal profession knowing that you will be highly involved in family and juvenile law?

Yes. I wanted to deepen my understanding of the laws that affect children and be a more effective advocate for them. As a judge, I am fortunate to be able to integrate my experience and legal training to continue to do the work that I love.
WHAT’S ONLINE?

Download Teaching Resources—
All of the handouts and other teaching materials referred to in this issue are available in this one location. Go get them!

Dive Deeper—
Find articles, exhibits, and podcasts related to the issue. Discover something new, guaranteed.

Juveniles at the Supreme Court—
Link to resources for teaching and learning about juvenile justice issues that have reached the Supreme Court.

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International Sports and the Law

As the world prepares for the next Olympic Games in 2016, Insights takes a moment to explore the legal systems, issues, and decisions behind international sports competitions. Rules and qualifications, doping codes, and social and political protests around the world all have influence on what otherwise appears to be play-by-play among the world’s most talented athletes.