

The State
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CHAPTER 18

JUVENILE JUSTICE

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“The only thing that stops a bad guy with a gun is a good guy with a gun.”
Wayne LaPierre¹

“For every complex problem there is a simple solution – neat, plausible and wrong.”
H.L. Mencken

I. INTRODUCTION

On December 14, 2012, a disturbed 20 year old young man shot his way into Sandy Hook elementary school in Newtown, Connecticut to slay 20 children and six adult staffers. He committed these murders after killing his mother and taking her Bushmaster rifle, of AR-15 design.

This was not the worst mass slaying of innocents by a madman in the United States. In 2007 a mentally ill Virginia Tech senior murdered 32 people at its campus in Blacksburg, Virginia, using two handguns. The slaughter of children at Sandy Hook was not the most murderous at an American elementary school. That dubious milestone was achieved by a disgruntled 55 year old school board member when he dynamited an elementary school in Bath Township, Michigan on May 18th, 1927. His premeditated placement of explosives around the school took the lives of 38 children when they detonated. Including adults the number of his victims totaled 44.²

The killings at Sandy Hook galvanized the nation, setting off national debates about the regulation of sale and possession of firearms by the nation’s citizens.

II. THE IMPACT OF SANDY HOOK ON THE SCHOOL TO PRISON PIPELINE

One proposed solution, however, supported by overwhelming public sentiment, is the wholesale placement of police officers in schools. In a country where the single largest institution other than law enforcement referring youth to the criminal justice system is its public schools, that proposal’s potential for harm to children is enormous.

This is not a new phenomenon. It has a short-hand characterization – the school to prison pipeline – and it has been building for well over 10 years. It was the subject of this chapter two years ago in *The State of Criminal Justice*.

Just two days before the killings at Sandy Hook, the U.S. Senate subcommittee on the Constitution, Civil Rights and Human Rights convened hearings to examine the school to prison pipeline phenomenon.

Chaired by U.S. Senator Dick Durbin, (D-IL), on December 12, 2012, about 400 participants convened to discuss the phenomenon and possible remedies.³ The committee learned from data compiled by the U.S. Office of Civil Rights that African-American children are disproportionately affected by harsh disciplinary policies such as “zero tolerance,” to extremes. In Illinois in 2006, 50 per cent of students expelled were African-American, even though they comprised a bare 10 per cent of the overall student population. In Georgia, they

comprised 68 per cent of students suspended, even though they account for 40 per cent of students in that state's schools.⁴

A study of nearly one million students in Texas followed for six years revealed that almost 60 per cent of them were suspended or expelled. Conducted by the Council on State Governments in collaboration with the Public Policy Research Institute at Texas A&M University, the study noted that a mere three percent of the disciplinary actions involved misconduct mandating suspension or expulsion under state law; the remainder were primarily in response to violations of local schools' conduct codes.⁵ One in seven had contact with the juvenile justice system over the six year period the students were followed.⁶

The study – remarkable for its breadth – comes on the heels of a previous analysis of school disciplinary practices in Texas, which found that one in three youth sent to secure juvenile facilities in Texas had already dropped out of school.⁷ That report also noted that a 2005 study conducted by Texas A&M's Public Policy Research Institute revealed that the single greatest predictor of a youngster's future involvement with the state's juvenile justice system was a history of school disciplinary referrals.

The increasing criminalization of youth in the U.S. is disturbing, if not alarming. A study published in *Pediatrics Journal* in January 2012 found that one in three youth in America are arrested by age 23.⁸ In 1965, the last time a similar study was conducted, the number was one in five. This likely owes in no small part to the increasing presence of police in schools.

The Justice Policy Institute reported in December 2011 that the number of school resource officers – school based police – increased 38 per cent in the 10 years between 1997 and 2007.⁹ Adding to the equation increased reliance on security hardware such as video cameras, security gates and radio-frequency ID tags, together with highly punitive disciplinary policies, no small wonder the authors of one recent study has hazarded that, after prison inmates, the most policed group in the country are students in U.S. schools.¹⁰

Unfortunately the slaughter at Sandy Hook has intensified calls for armed police, or even teachers, to protect students who might be vulnerable to a murderous madman. Mr. LaPierre was not the only public figure arguing to turn schools into armed camps. U.S. Senator Barbara Boxer (D-CA) introduced the "Save Our Schools" Act which would authorize the National Guard to protect public schools.¹¹

One would be hard-pressed to gainsay that this is hysteria. The number U.S. students stalked and killed by (mostly) men with guns pales in comparison to the number of youth who kill themselves with firearms. According to the Center for Disease Control, for the school year 2009-2010, there were 17 homicides among children from five to eighteen years old in U.S. schools, and of all youth homicides, fewer than two per cent occur at school.¹² This number has remained stable for years, and the CDC concludes that the vast majority of U.S. school students will never experience lethal violence at school.¹³

In contrast, the CDC estimates that 45 per cent of all youth suicides are committed by firearms.¹⁴ An analysis of its mortality reports shows that in 2009, a total of 800 young Americans ages 10-19 committed suicide with firearms, an increase of 5% from the 2006 total of 763 youth gun suicides, according to the Illinois Council Against Handgun Violence.¹⁵ Nearly two-thirds of all completed teenage suicides involve a firearm.¹⁶

III. POLICY APPROACHES TO GUN VIOLENCE BY YOUTH

Fifteen years ago, the American Bar Association urged states to adopt a comprehensive prevention-oriented approach to gun violence committed by youth at schools with school-based peer mediation programs, firearms education programs, increased efforts to prevent unauthorized or illegal access to firearms by youth, and enactment of firearm laws that emphasize prevention, adult responsibility, and safety.¹⁷

These policies are as relevant today as they were 15 years ago, despite the rush to place armed police officers in every school in America and its support in public opinion polls.¹⁸

Several organizations who have analyzed the school to prison pipeline phenomenon have urged against any such overreaction.

Together with the Advancement Project and two other education reform organizations, the NAACP Legal Defense Fund authored a white paper in January, 2013 which argues against the wholesale placement of police in schools.¹⁹ Chronicling the contemporary history of such reactions and its devastating impact on school discipline, these organizations urged that communities review and improve their school security plans for the short term without relying on hardware and police officers.²⁰ For the long term, they recommend that schools create a climate which promotes conflict-resolution and improved communication among students and their teachers.²¹

Likewise, the National Council of Juvenile and Family Court Judges argued against the movement to increase police and security forces in schools, knowing full well that any such increase would result in an overreliance on the juvenile courts enforce school discipline, with lasting consequences for the students.²² According to the council, those include increases in drop-out rates, disruptive learning environments and reduced employment opportunities.

In a formal statement to a U.S. Senate Judiciary hearing on gun violence, the American Civil Liberties Union also noted the overall effect of school-based policing brought on by Columbine and federal grants supporting the hiring of police for U.S. schools. The criminalization of the most trivial offenses of school children by such a move was well reflected by a study of three school districts just one hour from Newtown which took advantage of this funding, according to the ACLU:

In all three districts, the study found, very young students were being arrested at school, including numerous children in grade three and below. Among them, students of color were arrested at rates clearly disproportionate to their representation in the student population, and in some cases were even arrested for infractions when their white peers were not. Though statistics do not capture the full story, the numbers in Connecticut included the arrest of two Hispanic fourth graders for “insubordination,” the arrest of an African American first grader for “leaving school grounds,” and the arrest of a Hispanic kindergartner for battery.²³

The ACLU likewise argued against increasing the presence of police in U.S. schools to avoid further exacerbating the school to prison phenomenon, in favor of federal policies which would direct federal funding towards more productive school disciplinary policies.²⁴

As the ACLU recognized in its statement, the presence of police in schools is likely here to stay. There are measures, however, which can be taken by the institutions of both law enforcement and public education which can reduce significantly the numbers of children ejected from U.S. schools for minor misbehavior.

To begin with, in partnership with school administrators, police and other actors in the juvenile justice system can insist on the development of disciplinary procedures which do not rely on arrest as a first response to student misbehavior, and which divert minor offenses from

any referral to the juvenile courts. These are discussed more fully in this chapter in the ABA State of Criminal Justice 2011.²⁵

An example of such protocols may be found in one recently adopted in Denver, Colorado. On February 19, 2013, and despite the atmosphere engendered by the Sandy Hook killings, the Denver Police Department and the public schools of Denver entered an intergovernmental agreement to regulate the interplay between school resource officers and school discipline. The agreement stresses differentiation between minor pupil misconduct and actual crimes, de-escalation of incidents involving students, and importantly, routine training of school based police officers.²⁶

Professor Aaron Kupchik, whose thoughtful study of school discipline was the subject of this chapter two years ago, has researched and written extensively about the subject of school discipline and the use of school-based police to enforce order.²⁷ In a presentation to the Task Force Summit on Youth Violence Prevention convened by U.S. Congressman Robert C. “Bobby Scott (D-VA), in the wake of Sandy Hook, Professor Kupchik reiterated what other groups have urged schools and communities to do to actually make schools less violent and less inclined to expel children from school: abolish “zero tolerance” and other criminalization policies, promote a climate of communication and cooperation in schools, and improve classroom management skills for teachers.²⁸

He also urges heresy in the face of the nation’s misplaced fear of massacres of school children – that full time police officers be removed from most of the nation’s schools unless there is a clear showing of a demonstrated need for security.²⁹

IV. JUVENILE LIFE WITHOUT PAROLE

The United States Supreme Court continued its remarkably robust juvenile justice jurisprudence last term by abolishing mandatory life without parole sentences for youth who commit homicides.

In *Miller v. Alabama*³⁰ and *Jackson v. Hobbs*,³¹ decided June 25, 2012, the court reversed the life sentences of two young men who were convicted of murders committed when they were 14 years old. Evan Miller, along with a friend and fueled by alcohol and drug use, beat his neighbor and left him to die when they set fire to his mobile home. Kuntrell Jackson accompanied two other boys to pull off the robbery of a video store. One of them had a shotgun. While Jackson stayed outside for most of the robbery, he was in the store when his cohort shot and killed a clerk.

The laws of both Alabama and Arkansas required the sentencing court to impose a mandatory sentence of life, no parole.

Writing for a majority of five, Justice Kagan reviewed the court’s decisions in *Roper v. Simmons*,³² and *Graham v. Florida*.³³ *Roper* abolished capital punishment for youth who committed homicide while they were under the age of 18, and *Graham* abolished life without parole for children who committed serious offenses short of murder. Identifying the common theme in those cases – that children are different from adults and must be treated as such in the justice system – Justice Kagan reiterated the holding of *Graham* that a life sentence for a youngster is the equivalent of capital punishment. Holding that a sentencing scheme which fails to take into account considerations of culpability lessened by age and a young offender’s increased capacity for rehabilitation, Justice Kagan rejected such universally mandatory life sentences in favor of highly individualized sentencing decisions:

given all we have said in *Roper*, *Graham*, and this decision about children's diminished culpability and heightened capacity for change, we think appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon.³⁴

What will now follow from *Simmons* and *Graham* for the justice system is somewhat uncertain. Writing for the *ABA Journal*, Professor Erwin Chemerinsky observed that since the court has allowed the discretionary imposition of natural-life sentences for such offenders, rather than a strict prohibition of such sentences for non-homicide offenders, state courts will have to include procedural steps in their sentencing schemes to allow for these sentences.³⁵ Professor Chemerinsky argues that states will have to provide for a bifurcated penalty phase, when a jury must decide upon such a sentence, required by *Ring v. Arizona*.³⁶ He also points out that some states will have to provide for sentencing options short of capital punishment and mandatory life without parole for juveniles accused of homicide and tried as adults.³⁷

Left open as well is the question of whether the court's decision retroactively applies to those inmates currently serving such a sentence, as Professor Chemerinsky points out.

There are now 2,570 inmates in U.S. prisons who were sentenced to life without parole for participating in homicides when they were under the age of 18, the majority of those in just five states, according to the Campaign for Fair Sentencing of Youth.³⁸

There is hardly a clear consensus about whether *Miller* and *Jackson* are retroactive, requiring the resentencing of these prisoners. In Michigan, one of the states with the largest populations of these inmates, a U.S. District Court has held that these cases should apply retroactively.³⁹ A state court of appeals in the same state has held that *Miller* is not retroactive.⁴⁰ The Louisiana Supreme Court held that *Miller* was retroactive; the U.S. 5th Circuit Court of Appeals, which includes that state, held to the contrary.⁴¹

It will likely take some time before a consensus emerges, and the U.S. Supreme Court may have to revisit this issue to solve it.

In the meantime, the numbers of children and youth incarcerated in the nation's juvenile facilities have dropped dramatically in recent years, according to a report by the Annie E. Casey foundation released February 27, 2013. The foundation's Kids Count initiative produced a snapshot of the numbers of youth incarcerated showing 70,792 youth in secure juvenile confinement in the U.S., down from a peak in 1995 of 107,637 – a reduction by one third.⁴² According to the report, the annual rate of decline from 2006 to 2010 was roughly three times faster than the period from 1997 to 2006, which coincidentally was the year following the Supreme Court's decision in *Roper v. Simmons*.

It is also coincidental with a movement in juvenile corrections away from large, overcrowded and oppressive juvenile reform schools in favor of diversion of most juvenile offenders and smaller secure facilities with normalized environments stressing individualized treatment.⁴³ Known as the "Missouri model" of juvenile corrections reform patterned after that state's increasing emphasis on smaller facilities designed for 10 to 30 youth regionally located and providing rehabilitative services, other states have begun to replicate the approach to juvenile corrections.⁴⁴ The Casey Foundation report credits the Missouri model with at least some influence on the dramatic reduction in the number of youth incarcerated, but notes nevertheless that the U.S. still relies heavily on incarceration of children who commit crimes and racial disparity nonetheless abounds; African-American children are nearly five times more likely to be incarcerated than their white counterparts.

The solitary confinement of youth, particularly those who have been prosecuted as adults and incarcerated in adult facilities, is an emerging scandal. Although prompted by motives which are usually beneficent – protection of young, vulnerable offenders from older convicts – the effect of the practice can be devastating. The American Civil Liberties Union, together with Human Rights Watch, conducted studies and reported on the practice in October, 2012, in *Growing Up Locked Down: Youth In Solitary Confinement in Jails and Prisons Across the United States*.⁴⁵

The authors of the report estimate that there are more than 95,000 youth under the age of 18 held in adult jails and prisons, a population which is the result of 30 years of punitive policies towards the young. The researchers conducted interviews, surveys and other research around the country to conclude that youth are often confined in solitary for weeks and months, denied access to treatment and services, resulting in damage to their mental or physical health. As the report notes, many of these youngsters already suffer from mental illness in the first place.

The authors recommend the abolition of the practice, in favor of specialized settings which segregate these young people from adult offenders, with disciplinary policies appropriate for younger offenders and which provide therapeutic, educational and other services to this population.⁴⁶

V. DEFENSE OF CHILDREN IN THE COURTS

The National Juvenile Defender Center continues its exemplary role in improving the defense function in the nation's juvenile and criminal courts.

The Center recently formulated and disseminated national standards for attorneys representing children and young people in U.S. juvenile courts. Drawing from a repository of expertise represented by a number of accomplished defense attorneys around the country, the Center's standards outline the responsibilities of counsel to the young client from intake to adjudication to disposition, including youth who may be facing transfer to adult criminal court.⁴⁷

The standards are an outgrowth of the Center's involvement in the MacArthur Foundation's "Models for Change Initiative," a multi-year commitment by the foundation to support juvenile justice reform throughout the country, and the creation of the Juvenile Indigent Defense Action Network, or JIDAN, also supported by the foundation and led by the Center.

The standards are also an extension of the principles underlying competent and comprehensive juvenile defense services enunciated in *Ten Core Principles for Providing Quality Delinquency Representation through Public Defense Delivery Systems*, developed by the Center and endorsed by the American Council of Chief Defenders in 2004. The standards also amplify the work of the Center in its *Role of Juvenile Defense Counsel in Delinquency Court*, published in 2009.⁴⁸ The standards make reference to the IJA/ABA Juvenile Justice Standards Relating to Counsel for Private Parties, as well.

A comprehensive and well-regarded trial manual for representing children and youth in the juvenile court is also available at the Center. THE TRIAL MANUAL FOR DEFENSE ATTORNEYS IN JUVENILE DELINQUENCY CASES is a 900 page treatise on juvenile defense representation. Authored by Randy Hertz, Martin Guggenheim and Anthony G. Amsterdam, it is thoroughly researched and addresses the performance of defense counsel at virtually every stage of juvenile proceedings. Originally published by the ALI-ABA Committee on Continuing Professional Education in 1977, the work has been updated ever since, and the 2012 publication is available online at the Center at no charge.⁴⁹

In February, 2012, the Center received an award from the MacArthur Foundation as one of its “Creative and Effective Institutions,” an award bestowed by the foundation on organizations throughout the world which are considered key contributors in fields considered core to the foundation’s mission.⁵⁰ The Center got its start as a project of the American Bar Association Criminal Justice Section in 1999.

VI. FEDERAL ACTIVITY

Filling a vacancy of nearly four years’ duration, President Barack Obama named an experienced public defender in the juvenile courts of Philadelphia as the director of the federal Office of Juvenile Justice and Delinquency Prevention. Robert Listenbee, Jr. is the former head of the juvenile unit of the Defender Association of Philadelphia and was a member of the Federal Advisory Committee on Juvenile Justice at the time of his appointment.

The President was able to finally name a director for the office after a rules change in the U.S. Senate allowed the President to make the appointment without confirmation by the Senate, paralysis-stricken by filibuster.⁵¹

Mr. Listenbee takes over the agency at a time when, along with other federal agencies, his office, and federal juvenile justice support in general, funding will be constricted by the now-infamous sequester. The Coalition for Juvenile Justice, which is closely connected to the federal effort on juvenile justice, estimates the agency will experience an 8.2 per cent cut in funding, together with other core juvenile justice functions.⁵² Taking into account budget reductions to the various federal funding streams for juvenile justice, such as the Juvenile Justice and Delinquency Prevention Act and the Juvenile Accountability Block Grants to states, sequestration will contribute to a 56 per cent reduction overall to these programs dating from fiscal year 2002.⁵³

Despite the current climate of austerity in the Congress, U.S. Representatives Robert C. “Bobby” Scott (D-VA) and Walter Jones (R-NC) have reintroduced the Youth Prison Reduction through Opportunity, Mentoring, Intervention, Support and Education (Youth PROMISE) Act. The act would fund innovative programs to reach and serve youth as a crime prevention strategy, rather than incarceration. The legislation stresses a community-based approach to develop local plans for the reduction of gang activities, juvenile and adult crime. The bipartisan bill, H.R. 1318, was filed with 53 original co-sponsors.

VII. ABA ACTIVITIES

The Criminal Justice Section’s juvenile justice standards project is wrapping up its work on a new set of juvenile justice standards addressing the handling of youth who are the subject of dual or even competing jurisdictions involving youth in the juvenile court, and the relationship of the court with other youth-serving agencies, particularly child welfare, education and mental health agencies. These standards would augment the 20 volumes of juvenile justice standards developed by the ABA together with the Institute for Judicial Administration endorsed by the House of Delegates in 1979. The proposed standards will next be sent to the Criminal Justice Section council for review and approval, likely in the late Fall.

The section’s juvenile justice committee continues to explore ways of disseminating the existing standards, which will likely be highlighted when the new volume of standards is approved for dissemination. The standards address the entire continuum of the juvenile justice process, from police handling and intake, adjudication and disposition, juvenile corrections and

ancillary functions of the juvenile justice system. The standards were published in 1980 and are available at the ABA Criminal Justice Section website.

One issue the committee is now exploring is the paucity of appeals from trial courts around the country involving children and youth, particularly from the juvenile courts. The result is a vacuum of decisional jurisprudence in the juvenile justice system, in the eyes of the committee, and a void can be filled with an increased emphasis among trial and appellate defenders on identification of compelling issues, record preservation and appellate advocacy. Indeed, one of the ABA standards volumes is devoted to appeals, and the standards in general are an excellent resource for appellate research. The committee is developing initiatives to improve appellate defense of youth in the justice system.

VIII. CONCLUSION

The American Bar Association has long argued for balance in the need for public safety and security in a free society. This has been true in its approach to juvenile justice, as well as school safety. It must continue to exercise leadership in the debates about how best to keep children safe, whether in schools, homes or elsewhere. One source for that leadership is the association's standards for juvenile justice. Another is the policy-setting arm of the ABA House of Delegates. The need for the association to set the agenda for those debates is more acute than ever.

Endnotes, Chapter 18

¹ National Rifle Association director Wayne LaPierre, calling for the placement of armed police officers in every U.S. school at the NRA's first press conference in the wake of the Sandy Hook elementary school shootings, reported in the New York Times, December 21, 2012, at www.nytimes.com/2012/12/22.

² BERNSTEIN, BATH MASSACRE: AMERICA'S FIRST SCHOOL BOMBING (University of Michigan Press, 2009).

³ Reviewed at www.pewstates.org. Link to "stateline," and "headlines" for 12-14-12. See also www.publicintegrity.org, and link to "school to prison pipeline."

⁴ *Id.* The hearings are archived at [www. http://www.judiciary.senate.gov/hearings](http://www.judiciary.senate.gov/hearings). Link to the date of the hearing: 12-12-12.

⁵ See *Breaking Schools' Rules: A Statewide Study on How School Discipline Relates to Students' Success and Juvenile Justice Involvement*, available at www.justicecenter.csc.org, under "resources;" link to "juveniles."

⁶ *Id.*

⁷ *Texas School to Prison Pipeline: Drop-out to Incarceration*, Texas Appleseed, Austin, Texas (October, 2007), available at www.texasappleseed.net.

⁸ Brame, et al., *Cumulative Prevalence of Arrest From Ages 8 to 23 in a National Sample*, 129 *Pediatrics* 21 (January 21, 2012).

⁹ *Education Under Arrest: The Case Against Police in Schools*, Justice Policy Institute, Washington DC (November 2011), available at www.justicepolicy.org, under "research."

¹⁰ *Test, Punish and Push-Out: How 'Zero Tolerance' and High Stakes Testing funnel Youth into the School to Prison Pipeline*, The Advancement Project, Washington DC (March 2010), at p. 10. Available at www.advancementproject.org, under "resources;" link to "reports."

¹¹ S. 3692.

¹² See fact sheet available at www.cdc.gov/violenceprevention/youthviolence, under “school violence.”

¹³ *Id.*

¹⁴ www.cdc.gov/violenceprevention/pub/youth_suicide.html.

¹⁵ Available at www.ichv.org, under “facts.”

¹⁶ *Id.*

¹⁷ Report No. 10E, adopted by the ABA House of Delegates August 4, 1998. The policy resolution and report can be found at the ABA website, at www.americanbar.org, under its Standing Committee on Gun Violence; link to “policy.”

¹⁸ A poll conducted by the Christian Science Monitor and TIPP in early January found that 63 per cent of its sample of the public supported an increase in the presence of police in U.S. schools. Christian Science Monitor, January 9, 2013, at www.csmonitor.com. A Gallup poll conducted four days after Sandy Hook put that number at 53 per cent. www.gallup.com, December 18, 2012.

¹⁹ “Police in Schools Are Not the Answer to the Newtown Shooting,” A Joint Issue Brief of the NAACP Legal Defense Fund, The Advancement Project, The Alliance for Educational Justice and the Dignity In Schools Campaign, January 11, 2013, available at www.naacpldf.org under “publications.”

²⁰ For an example of police security measures and policies which rely on more than school resource officers, see International Association of Chiefs of Police, *Guide for Preventing and Responding to School Violence* (2d ed. (Alexandria VA 2009), available at www.theiacp.org, under “publications.”

²¹ *Id.*, at pp. 15-16.

²² Statement of Judge Michael Nash, President, National Council of Juvenile and Family Court Judges, January 15, 2013, found at www.ncjfcj.org, under “news.”

²³ Murphy, et al., Statement of the American Civil Liberties Union before the Senate Judiciary Committee, January 25, 2013, at p. 3 (citations omitted), available at www.aclu.org.

²⁴ *Id.* at pp. 5-7.

²⁵ *Juvenile Justice*, in AMERICAN BAR ASSOCIATION CRIMINAL JUSTICE SECTION, STATE OF CRIMINAL JUSTICE 2011 144 (Washington D.C. 2011).

²⁶ The agreement may be found at <http://safequalityschools.org> under “resources.” The organization is sponsored by The Advancement Project in Washington, D.C. which assisted a community based organization in Denver, Padres y Jóvenes Unidos, a highly effective group of parents and youth involved in improving that city’s public schools for 20 years.

²⁷ Professor Kupchik is the author of HOMEROOM SECURITY: SCHOOL DISCIPLINE IN AN AGE OF FEAR (2010), reviewed in “Juvenile Justice” at n. 23, pp. 141. He is also the author of JUDGING JUVENILES: PROSECUTING ADOLESCENTS IN ADULT AND JUVENILE COURTS (2006).

²⁸ Statement of Professor Aaron Kupchik, Task Force Summit on Youth Violence Prevention, convened by the House Democratic Gun Violence Prevention Task Force, January 22, 2013.

²⁹ *Id.*

³⁰ 567 U.S. ___, 132 S.Ct. 2455 (2012).

³¹ 567 U.S. ___, 132 S.Ct. 548 (2012).

³² 543 US 551 (2005).

³³ , 560 U.S. ___, 130 S.Ct. 2011 (2010).

³⁴ Miller v. Alabama, No. 10–9646, slip op. at 17 (U.S. June 25, 2012).

³⁵ *Graham v. Florida*, 560 U.S. ___, 130 S.Ct. 2011 (2010). struck down the imposition of a sentence of life without parole for youth who committed serious felony offenses under the age of 18, short of homicide.

³⁶ 536 U.S. 584 (2002), requiring that a jury, and not a judge, determine whether a defendant should be sentenced to death in a capital case.

³⁷ Chemerinsky: “Juvenile Life-Without-Parole Case Means Courts Must Look at Mandatory Sentences,” www.abajournal.com, August 8, 2012.

³⁸ www.fairsentencingofyouth.org, under “resources.” There is a dispute, however about the accuracy of this number. One authority puts this number at roughly half. STIMSON AND GROSSMAN, ADULT TIME FOR ADULT CRIMES: LIFE WITHOUT PAROLE FOR JUVENILE KILLERS AND VIOLENT TEENS 16, The Heritage Foundation (Washington DC 2009), available at www.heritage.org; link to “crime,” under “research.”

³⁹ Hill v. Snyder, 2013 U.S. Dist. LEXIS 12160 (2013).

⁴⁰ People v. Carp, (Mich. Ct. App.), 2012 Mich. App. LEXIS 2270.

⁴¹ State v. Simmons, 99 So.3d 28 (La., 2012); Craig v. Cain, 2013 U.S. App. LEXIS 431 (5th Cir. 2013).

⁴² “Reducing Youth Incarceration in the United States,” Kids Count Data Snapshot, Annie E. Casey Foundation, Baltimore MD, February 27, 2013, available at www.aecf.org,

⁴³ Long ago, the ABA argued for such an approach, controversial at the time. See IJA/ABA *Standards Relating to Architecture of Facilities*, at Standard 2.1 “Normalization,” and 2.2 “Small, Community-Based Facilities.”

⁴⁴ For a description of the state’s approach to juvenile corrections and its potential for implementation in other jurisdictions, go to www.mysiconsulting.org. For an analysis of the sometimes complex and multifaceted factors which can influence significant reductions in the number of youth in confinement, see *Common Ground: Lessons Learned from Five States that Reduced Juvenile Confinement by More than Half*, Justice Policy Institute (Washington DC February 2012), available at www.justicepolicy.org.

⁴⁵ Available at www.aclu.org, at “criminal law reform,” under “juvenile justice.”

⁴⁶ *Id.*, at pp. 92 – 94.

⁴⁷ Available at www.njdc.info, at “National Juvenile Defense Standards.”

⁴⁸ That publication may also be found at www.njdc.info, under ‘publications,’ as well as the *Ten Core Principles*.

⁴⁹ *Id.*

⁵⁰ For more, see www.macfound.org, under 2012 recipients.

⁵¹ Not all supporters of the office were in favor of the change, however, arguing that depriving the Senate of confirmation authority diminished the stature of the office and its mission under the Juvenile Justice and Delinquency Prevention Act. *See* <http://jjie.org>, under “archived news for August 29, 2012.”

⁵² *See* www.juvjustice.org; search “sequestration.”

⁵³ *Id.*