IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent v. VINCE NGUYEN, Defendant and Appellant	S154847

Sixth District Court of Appeal No. H028798
Santa Clara County Superior Court, No. CC476520
Honorable Ray Cunningham, Judge

APPLICATION OF PACIFIC JUVENILE DEFENDER CENTER, JUVENILE LAW CENTER, JUVENILE DIVISION OF THE LOS ANGELES PUBLIC DEFENDER, ALTERNATE PUBLIC DEFENDER, NATIONAL CENTER FOR YOUTH LAW AND YOUTH LAW CENTER FOR LEAVE TO FILE AMICUS CURIAE BRIEF ON BEHALF OF APPELLANT NGUYEN AND BRIEF

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APPLICATION OF PACIFIC JUVENILE DEFENDER CENTER, JUVENILE LAW CENTER, *et al.* TO APPEAR AS AMICUS CURIAE

TO: THE HONORABLE RONALD GEORGE, CHIEF JUSTICE, AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

Pursuant to Rule 8.520, California Rules of Court, Pacific Juvenile Defender Center, Juvenile Law Center, Juvenile Division of the Los Angeles County Public Defender's Office, Alternate Public Defender, National Center for Youth Law and Youth Law Center respectfully request permission to file the attached brief as amicus curiae in support of defendant and appellant Vince Nguyen. The case at hand raises issues concerning whether the Sixth Amendment right to jury trial prohibits the use of a juvenile adjudication to enhance an adult sentence. This is an issue of great state-wide importance not only because of the constitutional issue it raises, but also because of its impact on the juvenile justice system itself.

1. *Amici* organizations work to advance the rights and well-being of children in jeopardy. *Amici* pay particular attention to the needs and rights of children involved in the juvenile justice system, children placed in juvenile detention and correctional facilities, or adult prisons. *Amici* work to ensure that the treatment of children by these systems is both fair and developmentally appropriate, and consistent with the goals and purposes of the juvenile justice system and its enabling legislation. A detailed description of each *amicus curiae* is provided in Appendix A.

2. In addition to representing individual California youth in delinquency proceedings, *Amici* include organizations that advocate for broad and systemic policy changes on behalf of youth in the juvenile justice

system. Several *Amici* have participated as *amicus curiae* in state and federal courts throughout the country, including the United States Supreme Court, in cases in which important rights and interests of children are at stake. Juvenile Law Center, for example, was lead counsel for over 50 advocacy groups nation-wide who participated as *amici* in *Roper v. Simmons*, 543 U.S. 551 (2005), in which the Supreme Court ruled that it was unconstitutional to impose the death penalty on children.

3. *Amici* also work to build the capacity of the juvenile defense bar and to improve access to counsel and quality of representation for children in the justice system. Pacific Juvenile Defender Center, for example, offers a wide range of integrated services to juvenile defenders, including training, technical assistance, advocacy, networking, collaboration, capacity-building and policy development to juvenile trial lawyers, appellate counsel, law school clinical programs and non-profit law centers to ensure quality representation for children throughout California and Hawaii.

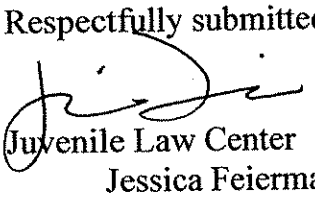
4. *Amici* help to facilitate a national dialogue on juvenile justice issues by conducting trainings at national conferences hosted by organizations such as the American Bar Association, National Council of Juvenile and Family Court Judges, Office of Juvenile Justice and Delinquency Prevention, the National Association of Council for Children, and the National Juvenile Defender Center.

5. The brief of *amici curiae,* attached here, addresses how the use of juvenile adjudications to enhance adult sentences under California's Three Strikes Law undermines the distinctive purpose of the California

juvenile justice system to treat and rehabilitate youth. The collective expertise of *amici* in juvenile law and adolescent development as well as federal and California constitutional law informs the arguments set forth here, and provides a perspective otherwise not presented to the court.

Dated: April 28, 2008

Respectfully submitted,



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National Juvenile Defender Center, *State Assessments,* http://www.njdc.info/assessments.php (last visited Apr. 28, 2008) 33

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Elizabeth S. Scott et al., *Evaluating Adolescent Decision Making in Legal Contexts*, 19 Law & Human Behavior 221 (1995) 28, 29

Elizabeth S. Scott & Thomas Grisso, *Evolution of Adolescence: A Developmental Perspective on Juvenile Justice Reform,* 88(1) J. Crim. Law & Criminology 137 (1997) 32

Christopher Slobogin et al., *A Prevention Model of Juvenile Justice: The Promise of Kansas v. Hendricks for Children*, 1999 Wis. L. Rev. 185, (1999) 29-30

Howard N. Snyder & Melissa Sickmund, Office of Juvenile Justice and Delinquency Prevention, *Juvenile Offenders and Victims: 2006 National Report* (2006), *available at* http://ojjdp.ncjrs.gov/ojstatbb/nr2006/downloads/NR2006.pdf 14

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Laurence Steinberg & Robert G. Schwartz, *Developmental Psychology Goes to Court, in Youth on Trial: A Developmental Perspective on Juvenile Justice* (Thomas Grisso & Robert G. Schwartz, eds., 2000) 30

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ARGUMENT

Many who labor on behalf of delinquent children in California justifiably take pride in our state's system of juvenile justice. It is a system which can produce positive, sustained, and life-changing benefits for the children who are subject to its care. California's provision of "care, treatment and guidance" that is consistent with the child's and the public's best interests can heal families who benefit from the positive development and reform of their children. Cal. Welf. & Inst. Code § 202(a) (West, Westlaw through Ch. 8 of 2008 Reg. Sess. and Ch. 6 of 2007-2008 Third Ex. Sess., and Props. 98 and 99). It can improve communities who profit from the transformation of delinquent children into productive and law-abiding citizens. As child advocates, Amici Pacific Juvenile Defender Center et al. recognize and support the rehabilitative ideals which have been an integral part of California's juvenile justice system for over a century. And while the system has transformed in recent decades to one that more closely resembles the adult criminal justice system, the ideals of education and reformation of the child remain at the juvenile system's core.

These benefits are not available to the many youth who are directly charged in or transferred to California's criminal courts. California has a comprehensive set of laws that provide for the arrest, prosecution and sentencing of certain juveniles as adults. These laws reflect California's

decision to withhold from certain juveniles the benefits of the juvenile court's focus on rehabilitation. Yet equally important is that these laws provide for the *retention* of those benefits for a substantial class of juvenile offenders who commit delinquent acts and remain in the juvenile delinquency system. It is the rights of this latter class of offenders, who remain in juvenile court and who therefore lack the right to a jury trial, that are at stake in this appeal.

Those juveniles who remain in juvenile court are there for a reason. Following the passage of Proposition 21, the Gang Violence and Juvenile Crime Prevention Act of 1998, prosecutors have the discretion to directly charge as an adult any youth age 16 or older who commits an offense listed in section 707(b) of the Welfare and Institutions Code. Cal. Welf. & Inst. Code § 707(d)(1); *Manduley v. Superior Court*, 27 Cal. 4th 537, 549-50 (2002). For a juvenile adjudication to qualify as a "strike" under California's Three Strikes Law, one statutory prerequisite is that the youth must have been adjudicated a ward of the court while age 16 or older for an offense specified in section 707(b). Cal. Penal Code § 667(d)(3)(D) (West, Westlaw through Ch. 8 of 2008 Reg. Sess. and Ch. 6 of 2007-2008 Third Ex. Sess., and Props. 98 and 99); *People v. Garcia,* 21 Cal. 4th 1, 4-5 (1999). In short, any youth prosecuted in juvenile court for an offense that would qualify as a "strike" is in juvenile court *because the prosecution*

consented to that choice of forum.[1] Amici expect that the prosecutor will make that choice following careful reflection about the circumstances of the offense, the nature of the offender, and the propriety of juvenile court treatment.

Thus, the youthful offenders eligible for prosecution in criminal court who remain in juvenile court are there because the prosecution, the court, or both have concluded that the youth is fit for juvenile court treatment—a less serious offender than a juvenile counterpart prosecuted as an adult. Yet this beneficence comes with an extraordinary cost: the loss of the right to a jury trial. That cost is magnified to an unconstitutional degree when those juvenile adjudications qualify as "strikes" under the Three Strikes Law.

The state cannot have it both ways: either there is a distinction between the juvenile and adult systems that justifies deprivation of a jury

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[1] Amici acknowledge that prosecutors may elect to initially charge a juvenile offender in juvenile court and then request a "fitness hearing" to transfer the case to criminal court. *See infra* Part III; Cal. Welf. & Inst. Code § 707. In most cases, the invocation of the "fitness hearing" transfer mechanism reflects a deliberate choice by the prosecution – a ceding of its authority to "direct file" a case, such as where the minor is age 16 or older and charged with an offense listed in Cal. Welf. & Inst. Code § 707(b). Cal. Welf. & Inst. Code § 707(d)(1). So while the prosecution may not "consent" to juvenile court treatment in the sense that the prosecution may argue at the fitness hearing that the minor is "unfit" for juvenile court, in such cases the prosecution has consented for the transfer decision to be made by the juvenile court.

trial, or there is not a distinction, and the state must afford that right. *See McKeiver v. Pennsylvania*, 403 U.S. 528, 545-47 (1971) (jury trial not constitutionally required for adjudicatory hearing; among other reasons, it would tend "to place the juvenile squarely in the routine of the criminal process.") Given the clear legislative choice to treat particular classes of juvenile offenders as adults and others as juveniles, equating a prior juvenile delinquency adjudication with a prior adult conviction for the purposes of the Three Strikes Law reduces California's transfer scheme to a mere formality, and makes a mockery of the historic trade-off between a more informal, treatment-centered juvenile court and the overtly punitive adult criminal justice system that is strictly bound by all federal constitutional mandates for due process.

I. FROM ITS INCEPTION, THE JUVENILE COURT DISTINGUISHED ITSELF FROM THE ADULT CRIMINAL JUSTICE SYSTEM, EMPHASIZING TREATMENT AND REHABILITATION OVER PUNISHMENT AND PROCEDURAL INFORMALITY OVER STRICT DUE PROCESS.

The juvenile court, first established over a century ago, was conceived as an experiment in treating children in a benign, non-punitive and therapeutic manner in order to 'cure' a child's delinquent behavior. Initially established in Illinois in 1899, the idea rapidly took hold and spread throughout the country. *In re Gault*, 387 U.S. 1, 14-15 (1967). As

originally imagined, the State assumed the role of 'parens patriae' and characterized its intervention as civil rather than criminal. *Id.* at 17. By removing children from adult criminal court jurisdiction, the founders of the juvenile court believed they could supervise and treat children and respond to their needs with greater flexibility. While the criminal justice system focused on punitive responses to crime, the juvenile system was developed in large part to facilitate the opportunity for juveniles to reform and become productive citizens. *Id.* at 15-16.

The court's rehabilitative focus was premised on the assumption that a juvenile's actions were primarily the function of his or her environment and therefore did not warrant a punitive response: "Reprehensible acts by juveniles are not deemed the consequence of mature and malevolent choice but of environmental pressures (or lack of them) or of other forces beyond their control .... [A juvenile delinquent's] conduct is not deemed so blameworthy that punishment is required to deter him or others." *McKeiver*, 403 U.S. at 551-52 (White, J., concurring). The rehabilitative ideal further rested on the belief that a child's character, not yet fully formed, could meaningfully be improved by intervention strategies geared to the minor's "best interests." Barry Feld, *The Transformation of the Juvenile Court—Part II: Race and the "Crack Down" on Youth Crime*, 84 Minn. L. Rev. 327, 337 (1999).

California's early juvenile court laws followed this model. Shortly after the passage of the Juvenile Court Law of 1909, this Court explained the rationale for the juvenile court:

> The main purpose of the act is to provide for the care and custody of children who have shown, or who from lack of care are likely to develop, criminal tendencies, in order to have them trained to good habits and correct principles. To accomplish this it gives additional jurisdiction and power to the superior courts of the state and provides the officers necessary for the execution of that jurisdiction and power.

Nicholl v. Koster, 157 Cal. 416, 419 (1910). The Court provided further explication shortly thereafter:

> [T]he [Juvenile Court Law of 1909] aims, as its principal object, at the proper custody and education of children who lack the care and control deemed essential to their right development, whether or not their situation be such as to be likely to lead them to actual crime. This is the purpose declared by the opening words of the title, viz., "an act concerning dependent and delinquent minor children, providing for their care, custody and maintenance."

Ex parte Maginnis, 162 Cal. 200, 204 (1912). California's juvenile courts were intended to "protect and train [minor defendants] physically, mentally, and morally" and to "benefit not only the child but the community also by surrounding the child with better and more elevating influences and training it in all that counts for good citizenship and usefulness as a member of society." *In re Daedler*, 194 Cal. 320, 329 (1924).

In *In re Daedler*, this Court held that the California Constitution

does not compel the provision of jury trials to children prosecuted in juvenile court. *Id.* at 332. The holding was grounded in two principles. First was the Court's holding that English chancery courts in 1850 had jurisdiction to declare juvenile delinquents wards of the court without a jury trial.[2] Second was the Court's conclusion that the processes and consequences of declaring a juvenile accused a "ward" of the court were far different and much less severe than a criminal proceeding and a criminal conviction. *Id.* at 329-330; *People v. Smith*, 110 Cal. App. 4th 1072, 1084-85 (2003) (Johnson, J., dissenting).

California's juvenile justice system has changed dramatically since *Daedler* was decided. Amendments to the Welfare and Institutions Code have expanded the statutory purpose of juvenile court beyond "the spiritual, emotional, mental and physical welfare of the minor" and the securing of "custody, care and discipline" equivalent to that which parents should

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[2] The California Court of Appeal, Second District, conducted an exhaustive historical analysis of this issue in *In re Javier A.*, 159 Cal. App. 3d 915 (1984), and concluded that the Court had erred in its historical analysis. The Court of Appeal held that *Daedler* wrongly concluded juveniles lacked the right to jury trial in England in 1850 when accused of violating a criminal law that could result in the loss of liberty for more than three months. *Id.* at 954. Nonetheless, the court was compelled to follow *Daedler* in affirming the trial court's denial of the minor's request for a jury trial pursuant to the doctrine of *Auto Equity Sales, Inc. v. Superior Court,* 57 Cal.2d 450 (1962). *See also People v. Smith*, 110 Cal. App. 4th 1072, 1086-87 (2003) (Johnson, J., dissenting) (concurring with *Javier A.* that *Daedler* was wrongly decided).

provide.[3] In 1975 the Legislature added a new and second purpose: the protection of the public from the consequences of criminal activity. Stats. 1975, ch. 819, § 1; *Javier A.*, 159 Cal. App. 3d at 958. In 1984, the Legislature authorized juvenile courts to impose punishment that is consistent with the rehabilitative objectives of juvenile court. Stats. 1984, ch. 756, § 2; *In re Charles C.*, 232 Cal. App. 3d 952, 960 (1991). In 1998, the purpose clause was amended to include the importance of redressing injuries to victims. Stats. 1998, ch. 761, § 1.

Despite these significant changes in recent decades, California's

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[3] The 1961 Arnold-Kennick Juvenile Court Law included the following statement of purpose:

> The purpose of this chapter (the Arnold Kennick Juvenile Court law) is to secure for each minor under the jurisdiction of the juvenile court such care and guidance, preferably in his own home, as will serve the spiritual, emotional, mental, and physical welfare of the minor and the best interests of the State; to preserve and strengthen the minor's family ties whenever possible, removing him from the custody of his parents only when his welfare or safety and protection of the public cannot be adequately safeguarded without removal; and, when the minor is removed from his own family, to secure for him custody, care, and discipline as nearly as possible equivalent to that which should have been given by his parents. This chapter shall be liberally construed to carry out these purposes.

Stats. 1961, ch. 1616, § 2; *In re Gladys R.*, 1 Cal. 3d 855, 870 (1970).

juvenile justice system has maintained a steadfast commitment to rehabilitation.

> In 1984, the Legislature amended the purpose of the Juvenile Court Law and put an increased emphasis on punishment. (§202.) However, the reference to punishment did not alter the overall rehabilitative aspect of the juvenile justice system. . . . The state's punishment of minors is a "rehabilitative tool," distinguishable from the criminal justice system for adults which has a purely punitive purpose separate from its rehabilitative goals.

Charles C., 232 Cal. App. 3d at 960 (internal citations omitted). California's focus on treatment, education, and care has remained constant even though the system has become more formal and more adversarial in the wake of the "due process" revolution catalyzed by *Gault*. Indeed, the United States Supreme Court has expressed its belief that providing due process rights to minors is fully consistent with, not an impediment to, the rehabilitative mission of the juvenile courts.

In *Gault,* the Supreme Court reviewed the history of the juvenile justice system and considered the original rationales for denying procedural protections to juveniles. Ultimately, the Court concluded that "unbridled discretion, however benevolently motivated, is frequently a poor substitute for principle and procedure" and found that the denial of procedural safeguards often resulted in arbitrary results rather than "careful, compassionate, individualized treatment." *Gault*, 387 U.S. at 18.

Rehabilitation remained the signature goal of the juvenile court system, and the Court recognized that process and procedure are critical requirements for achieving that goal. The Court therefore held that juveniles were entitled to counsel, advanced notice of charges, a fair and impartial hearing, the opportunity to confront and cross-examine witnesses, and the protection against self-incrimination. *Id.* at 31-57.

Three years later, in *In re Winship*, 397 U.S. 358 (1970), the Supreme Court held that the standard of proof for adjudications of delinquency must be "beyond a reasonable doubt" rather than "preponderance of the evidence." *Id.* at 364. As it did in *Gault*, the Court rejected the claim that requiring due process protections for delinquent youth would impede or derail the juvenile court's holistic mission. *Id.* at 365-66. The Court rightly held that the opportunity at disposition for the juvenile court to engage in a wide-ranging review of the child's social history, and to develop an individualized treatment plan, remained unimpaired. *Id.* at 366.

In *McKeiver*, the Supreme Court declined to hold that due process principles compel extension of the jury trial guarantee to juvenile court. 403 U.S. 528. While the *McKeiver* Court acknowledged some disappointment with the system's performance and recognition of its shortcomings, it found that extending the right to jury trials had the

potential to render the juvenile court unnecessarily adversarial and formal without ameliorating the court's deficiencies. *Id.* at 534, 543-44, 545.

Significantly, the Supreme Court in *McKeiver* reaffirmed the rehabilitative ideal of the juvenile justice system. The Court underscored the importance of protecting the system's "rehabilitative goals" and its focus on "fairness," "concern" and "sympathy." *McKeiver*, 403 U.S. at 545, 550. Justice White, concurring, observed that while guilty adults are found "blameworthy" and punished to deter them and others from crime, the juvenile's "conduct is not deemed so blameworthy that punishment is required to deter him or others. Coercive measures, where employed, are considered neither retribution nor punishment. Supervision or confinement is aimed at rehabilitation, not at convincing the juvenile of his error simply by imposing pains or penalties." *Id.* at 551-52. Similarly, Justice Brennan, concurring, concluded that "however much the juvenile system may have failed in practice," it remains "an ostensibly beneficent and noncriminal process for the care and guidance of young persons." *Id.* at 555.

Thus, the extension of certain constitutional safeguards to the juvenile court in *Gault* and *Winship* did not require abandoning the original rehabilitative focus of the juvenile justice system. As the Supreme Court has repeatedly emphasized, the juvenile justice system is fundamentally different from the adult criminal justice system. *See also Schall v. Martin,*

467 U.S. 253, 263 (1984). Both California's courts and its Legislature have likewise recognized the distinctly different purposes and goals which drive these two systems. Cal. Welf. & Inst. Code § 202 (purpose of juvenile court is to provide for treatment and rehabilitation, protection and safety of minor and public, and preservation of family); *In re Joseph B.*, 34 Cal. 3d 952, 954 (1983); *Charles C.*, 232 Cal. App. 3d 952; *In re Jose Z.*, 116 Cal. App. 4th 952 (2004); *In re Nan P.*, 230 Cal. App. 3d 751 (1991); *In re Teofilio A.*, 210 Cal. App. 3d 571 (1989). The inclusion of juvenile adjudications to enhance sentences under California's Three Strikes Law ignores this abiding principle of the juvenile court system.

II. THE USE OF PRIOR JUVENILE ADJUDICATIONS AS STRIKE "CONVICTIONS" IS INCONSISTENT WITH THE PURPOSE OF JUVENILE COURT AND DISREGARDS CALIFORNIA'S CAREFULLY DRAWN BOUNDARIES BETWEEN JUVENILE AND ADULT COURT JURISDICTION.

A bedrock principle of the juvenile justice system is that children adjudicated delinquent should be able to enter adulthood unencumbered by their childhood encounters with the justice system. California's commitment to this principle could not be clearer. California Welfare and Institutions Code section 203 articulates the fundamental difference between the juvenile justice system and the criminal justice system: "An order adjudging a minor to be a ward of the juvenile court shall not be

deemed a conviction of a crime for any purpose, nor shall a proceeding in the juvenile court be deemed a criminal proceeding." Accordingly, juvenile adjudications are *not* treated as adult convictions.[4]

The ironic tragedy that results from allowing juvenile adjudications to be used as strikes is that those youth who remain in the juvenile system—less serious offenders deemed undeserving of adult court transfer—are put in the same position as accused minors who were deemed unfit for treatment as juveniles, who were tried as adults, and who were the most serious offenders.

To remain in juvenile court despite being charged with an offense that qualifies for transfer to criminal court, a juvenile must traverse many screening stages where either the prosecutor (in choosing the forum for charging the youth, or filing a motion for the youth to be found unfit) or the juvenile court can determine that the youth should instead be tried in adult

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[4] In many instances, California courts have emphasized the fundamentally different nature of juvenile and adult court proceedings. In various contexts, the courts have refused to allow juvenile adjudications to be used to increase punishment for adults. For example, a juvenile adjudication may not be used as a basis for a five-year sentence enhancement under Cal. Penal Code § 667(a). *People v. West*, 154 Cal. App. 3d 100 (1984). A prior juvenile adjudication does not constitute a prior theft crime for purposes of Cal. Penal Code § 666. *In re Anthony R.*, 154 Cal. App. 3d 772 (1984). A prior juvenile adjudication may not be used as a prior "conviction" to bar an adult offender from receiving drug treatment pursuant to Proposition 36. *People v. Westbrook*, 100 Cal. App. 4th 378 (2002).

court.[5] These screening stages demonstrate California's commitment to distinguishing between the adult and juvenile systems, and reveal the care the legislature took to determine which children should be tried as adults and which should be tried as juveniles.

A. California's Statutory Scheme Allows for a Broad Range of Juvenile Offenders to be Tried in Adult Court.

The mechanisms by which youth may be charged and prosecuted as adults in California's criminal justice system include the following: (1) mandatory filing in adult court by the prosecutor; (2) discretionary direct filing in adult court by the prosecutor; and (3) fitness hearings conducted by the juvenile court.[6] Those youth who remain in the *juvenile* court are those who are implicitly (if not explicitly) deemed fit for prosecution in the juvenile court.

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[5] For an overview of state policies authorizing the prosecution of juveniles as adults, see Patrick Griffin, *State Juvenile Justice Profiles: Transfer Provisions* (2007), http://www.ncjj.org/stateprofiles/. Forty-five states have discretionary waiver, 15 states have presumptive or mandatory waiver, 15 states have concurrent jurisdiction, and 29 states have statutory exclusion for particular crimes. Fifteen states allow juvenile courts to impose blended sentences that include adult criminal sanctions; 17 states allow criminal courts to impose sanctions that otherwise are only available to offenders in juvenile court. *See* Howard N. Snyder & Melissa Sickmund, Office of Juvenile Justice and Delinquency Prevention, *Juvenile Offenders and Victims: 2006 National Report* 110-11, 113 (2006), *available at* http://ojjdp.ncjrs.gov/ojstatbb/nr2006/downloads/NR2006.pdf.

[6] Because these convictions are the result of *adult* court proceedings, the use of these convictions in future sentencing proceedings is not at issue here.

1. *Mandatory Direct Filing in Adult Criminal Court.*

Mandatory direct filing, also known as "legislative exclusion," requires the prosecutor to proceed under the adult general law in a court of criminal jurisdiction for a number of specified offenses. Any minor who is 14 years or older, charged with any one of the specified offenses, *must* be prosecuted in adult court. Cal. Welf. & Inst. Code § 602(b). These specified offenses include special circumstances murder where it is alleged that the minor personally killed the victim, and various aggravated sexual offenses. *Id.*

2. *Discretionary Direct Filing in Adult Criminal Court.*

Under "discretionary direct filing," the prosecutor may choose for certain categories of offenses to proceed either in adult court or juvenile court. Cal. Welf. & Inst. Code § 707(d). The prosecutor may proceed directly in adult criminal court in three broad categories of cases.

First, the prosecutor may file in adult court when the youth is 16 years or older, and is charged with an offense enumerated in Section 707(b) of the Welfare and Institutions Code. Section 707(b) currently lists 30 qualifying offenses, and has been expanded by legislative additions and judicial interpretation.

Second, a prosecutor may file in adult court when the youth is 14 years or older and either: (a) the offense would be punishable by life

imprisonment or death as an adult; or (b) the offense involved the personal use of a firearm in its commission; or (c) the offense is listed under Cal. Welf. & Inst. Code § 707(b) *and* (i) the minor has a prior 707(b) adjudication, or (ii) the case is gang-related, or (iii) the case violates Title 11.6, beginning with Cal. Penal Code § 4226 (hate crimes), or (iv) the victim is 65 years or older, or disabled, and the youth knew or should have known of the disability. Cal. Welf. & Inst. Code § 707(d)(2). The third method for discretionary filing is by means of a transfer or "fitness" hearing held in juvenile court, described below.

3. *Fitness Hearings.*

A fitness hearing requires the juvenile court to determine whether the minor is a "fit and proper subject to be dealt with under the juvenile court law" pursuant to Rule 5.766 of the California Rules of Court.[7] The

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[7] Cal. R. Ct. 5.766(a):

A child who is the subject of a petition under section 602(a) and who was 14 years or older at the time of the alleged offense may be considered for prosecution under the general law in a court of criminal jurisdiction. The prosecuting attorney may request a hearing to determine whether the child is a fit and proper subject to be dealt with under the juvenile court law, in one of the following circumstances:

(1) Under section 707(a)(1), the child was 16 years or older at the time of the alleged offense if the offense is not listed in section 707(b).

(2) Under section 707(a)(2), the child was 16 years or older at the time of the alleged felony offense not listed in section 707(b) and has been

prosecution may move the juvenile court to hold a fitness hearing in a broad array of cases. Indeed, if the youth is 16 or older, the prosecutor may file for a fitness hearing in *any case,* regardless of the seriousness of the charges. Cal. Welf. & Inst. Code § 707(a)(1). If the prosecutor chooses to file charges that fall within any of the categories of section 707(b), a fitness hearing may be held for any youth 14 or older, and the youth is *presumed unfit*. Cal. Welf. & Inst. Code § 707(c). For a non-serious offense, the court presumes fitness, but that presumption may be overcome by a preponderance of the evidence. Cal. Welf. & Inst. Code § 707; Cal. R. Ct. 5.770.

For all fitness hearings, the child's probation officer must submit a report evaluating the child's fitness and providing the court with a recommendation as to whether the juvenile court should maintain jurisdiction. Cal. R. Ct. 5.768. The report must include information "relevant to the determination of whether or not the child would be

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declared a ward of the court under section 602 on at least one prior occasion and:

(A) The child has previously been found to have committed two or more felony offenses; and

(B) The felony offenses in the previously sustained petitions were committed when the child was 14 years or older.

(3) Under section 707(c), the child was 14 years or older at the time of the alleged offense listed in section 707(b).

amenable to the care, treatment, and training program" of the juvenile court. *Id.* The report can also include social, family and legal history of the child, statements from the child or parent, or someone who has supervised the child. *Id.*

Whether the presumption is for or against fitness, the court must consider the following factors: (a) The degree of criminal sophistication the child exhibits; (b) whether the child can be rehabilitated prior to the expiration of the juvenile court's jurisdiction; (c) The minor's previous delinquent history; (d) the success of previous attempts by the juvenile court to rehabilitate the minor; and (e) the circumstances and gravity of the offense alleged in the petition. Cal. Welf. & Inst. Code § 707; *see also* Cal. R. Ct. 5.770.

B. Youth Remaining in Juvenile Court, like Appellant, are Those Whom the Court Has Determined Can Benefit from the Care and Treatment of the Juvenile Court.

The California transfer laws described above mirror the changes made to many juvenile justice systems across the country during the last forty years, particularly with respect to the jurisdictional boundaries and definitions of juvenile crime and delinquency. Following the expansion of procedural due process rights for juveniles in the 1960s and 1970s, the succeeding decades brought what some commentators have called a

"backlash" against the juvenile court. Steven A. Drizin & Greg Luloff, *Are Juvenile Courts A Breeding Ground for Wrongful Convictions*?, 34 N. Ky. L. Rev. 257, 265 (2007). 'Adult time for adult crimes' became the rallying cry for politicians across the country, leading to changes in the law in almost every jurisdiction...." *Id.* at 265-66; *see also* Lisa Forquer, *Comment, California's Three Strike's Law—Should a Juvenile Adjudication Be a Ball or a Strike?*, 32 San Diego L. Rev. 1297 (1995); Tonya K. Cole, *Counting Juvenile Adjudications as Strikes Under California's 'Three Strikes' Law: An Undermining of the Separateness of the Adult and Juvenile Systems*, 19 J. Juv. L. 335 (1998); David C. Owen, *Striking Out Juveniles: A Recommendation of the Right to Jury Trial in Light of California's "Three Strikes" Legislation*, 29 U.C. Davis L. Rev. 437 (1996).

Despite these consequential changes, California, like every other state, continues to maintain a separate juvenile court. California's legislative developments – like those in the rest of the country - allow for punishment and increased accountability and shift the boundaries of juvenile court to permit more juveniles to be charged, prosecuted and sentenced as adults. The state's unwavering support for a separate justice system for youthful offenders reflects our enduring commitment to rehabilitating young offenders and minimizing the consequences of

delinquency adjudications. California did not abandon the principles of a separate juvenile justice system. Instead, it preserved the juvenile court for particular classes of youth and particular categories of crimes. Using delinquency adjudications to penalize a child in a later sentencing proceeding eradicates boundaries between the juvenile and adult systems that the legislature itself has explicitly retained. As long as California continues to provide for juveniles to be tried and sentenced under a distinct *juvenile* judicial and legislative scheme, with procedural protections that deliberately fall short of the protections constitutionally required for adult criminal defendants, the distinctions between juvenile adjudications and adult convictions must be respected. Juvenile adjudications are not the equivalent of criminal convictions; this Court should honor the protective boundaries so carefully put in place by the Legislature.

III. THE UNITED STATES SUPREME COURT RECOGNIZES THE NEED FOR SPECIALIZED TREATMENT OF CHILDREN.

The United States Supreme Court recently reaffirmed the principles underlying the juvenile justice system in *Roper v. Simmons*, 543 U.S. 551 (2005), in which the Court held the juvenile death penalty to be unconstitutional under the Eighth and Fourteenth Amendments to the United States Constitution. The distinctive emotional and psychological status of youth was critical to the Court's analysis. In holding the execution

of offenders under the age of eighteen to be a violation of the Eighth Amendment's ban on cruel and unusual punishment, the Court relied on medical, psychological and sociological studies, as well as common experience, which all showed that children who are under age 18 are less culpable and more amenable to rehabilitation than adults who commit similar crimes. *Id.* at 568-76. Echoing the original founders of the juvenile court, the *Simmons* Court reasoned that because juveniles have reduced culpability, they cannot be subjected to the harshest penalty reserved for the most depraved offenders; punishment for juveniles must be moderated to some degree to reflect their lesser blameworthiness.

Three general differences between juveniles under 18 and adults were significant to the Court's analysis, and are also relevant to this Court's resolution of whether juvenile adjudications may be used as "prior convictions." First, "[a] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions." *Simmons*, 543 U.S. at 569 (citing *Johnson v. Texas,* 509 U.S. 350, 367 (1993)); *see also Eddings v. Oklahoma,* 455 U.S. 104, 115-116 (1982) ("Even the normal 16-year-old customarily lacks the maturity of an adult"). The second area of difference is that juveniles are more vulnerable or susceptible to negative influences

and outside pressures, including peer pressure. *Eddings*, 455 U.S. at 115 ("[Y]outh is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and to psychological damage"). The third broad difference is that the character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed. *Simmons,* 543 U.S. at 570. In light of these well-documented characteristics of adolescence, the Court concluded that youthful offenders are "categorically less culpable than the average criminal." *Id.* at 571.

These distinguishing factors are relevant to this Court's analysis. Because juveniles are less mature, more vulnerable and therefore less culpable than adults, it is irrational to use adjudications resulting from conduct committed at age 16 or 17 in the same manner as if the offender were an adult. The susceptibility of juveniles to immature and irresponsible behavior means "their irresponsible conduct is not as morally reprehensible as that of an adult." *Simmons,* 543 U.S. at 570 (quoting *Thompson v. Oklahoma,* 487 U.S. 815, 835 (1988) (plurality opinion). Their own vulnerability and comparative lack of control over their immediate surroundings mean juveniles have a greater claim than adults to be forgiven for failing to escape negative influences in their environment. *Simmons,*

543 U.S. at 570 (citing *Stanford v. Kentucky,* 492 U.S. 361, 395 (1989) (Brennan, J., dissenting)).

Indeed, in both civil and criminal law, youth are treated differently from adults. In addition to its recent Eighth Amendment jurisprudence, the United States Supreme Court repeatedly has acted to ensure that governmental power be constrained from harming juveniles, and that power be wielded to protect juveniles in light of their immature judgment. The Court's recognition of the differences between youth and adults has led it to uphold practices directed at youth that it would not countenance if directed at adults.

For instance, the Court has repeatedly held that Fourth Amendment strictures may be relaxed when dealing with youth in public schools because youth as a class are in need of adult guidance and control. The Court has upheld the constitutionality of warrantless searches of students' belongings by school officials upon reasonable suspicion that a student has violated school rules or the law, *New Jersey v. T.L.O.,* 469 U.S. 325, 341-42 (1985); upheld random, suspicionless drug testing of student athletes, *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 664-65 (1995); and upheld random, suspicionless drug testing of students engaged in extracurricular activities, *Board of Ed. of Ind. Sch. Dist. No. 92 of Pottawatomie Cnty. v. Earls*, 536 U.S. 822, 838 (2002). In California, a juvenile (but not an adult)

may be arrested by police without a warrant or any requirement that the offense be committed in the officer's presence. Cal. Welf. & Inst. Code § 625; *In re Samuel V.*, 225 Cal. App. 3d 511 (1990). Numerous California cases have upheld relaxed search standards in schools. *See, e.g., In re Cody S.*, 121 Cal. App. 4th 86 (2004) (search of backpack, precipitated by anonymous tip, was proper following minor's admission to possession of knife); *In re Latasha W.*, 60 Cal. App. 4th 1524 (1998) (upholding random metal detector searches of high school students against Fourth Amendment challenge).

In support of these Fourth Amendment rulings, the Supreme Court has noted, "[t]raditionally at common law, and still today, unemancipated minors lack some of the most fundamental rights of self-determination—including even the right of liberty in its narrow sense, i.e., the right to come and go at will. They are subject, even as to their physical freedom, to the control of their parents or guardians." *Vernonia,* 515 U.S. at 654 (citation omitted). This echoes the Court's earlier declaration in *Schall v. Martin*, in explaining the rejection of a constitutional challenge to the preventive detention of juveniles charged with delinquent acts, that "juveniles, unlike adults, are always in some form of custody. Children, by definition, are not assumed to have the capacity to care for themselves. They are assumed to be subject to the control of their parents, and if parental control falters, the

State must play its part as *parens patriae*...." 467 U.S. at 265 (citations omitted).

The Supreme Court has also allowed states to exercise power over juveniles in other arenas that would be unconstitutional if exercised over adults, based on the developmental differences between minors and adults. *See e.g.*, *Ashcroft v. American Civil Liberties Union*, 542 U.S. 656, 666-68 (2004) (finding compelling government interest in protecting young minors from harmful images on Internet); *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 273 (1988) (public school officials may censor school-sponsored, student publications); *Ginsburg v. New York*, 390 U.S. 629, 637 (1968) (states may prevent sale of obscene materials to minors); *Parham v. J.R.*, 442 U.S. 584, 603 (1979) (rejecting a constitutional challenge to Georgia's civil commitment scheme that authorized parents and other third parties to involuntarily commit children under the age of eighteen, and noting that "[m]ost children, even in adolescence, simply are not able to make sound judgments concerning many decisions....").

That minors are "different" is a principle that permeates our law. As Justice Frankfurter so aptly articulated, "[C]hildren have a very special place in life which law should reflect. Legal theories and their phrasing in other cases readily lead to fallacious reasoning it [sic] uncritically transferred to determination of a State's duty towards children." *May v.*

Anderson, 345 U.S. 528, 536 (1953) (Frankfurter, J., concurring). The juvenile justice system remains possibly the longest standing reminder of this principle of American jurisprudence. To deny juveniles the protections of this system by exposing them to the consequences of the Three Strikes Law turns this principle on its head.

IV. RECENT SOCIAL SCIENCE RESEARCH CONFIRMS THE DEVELOPMENTAL DIFFERENCES BETWEEN CHILDREN AND ADULTS.

The Supreme Court jurisprudence discussed in Part IV is consistent with social and scientific research in this area. Empirical studies have established that youth are developmentally different from adults. As recognized and relied upon by the Supreme Court in *Simmons*, this scholarship shows that adolescents are more likely than adults to engage in risky behavior; are more likely to consider only the immediate effects of their acts rather than the long-term consequences; and are far more susceptible to being overcome by external pressure from peers and authority figures than are adults, both in terms of how they evaluate their own behavior and in conforming their conduct. The scholarship also shows that because they live in the moment, adolescents feel that they have less of a stake in the future.

First, research has demonstrated that youth, compared to adults, are much less capable of controlling their delinquent behavior and,

consequently, they are less culpable than adult offenders. Adolescents are often characterized as more willing to take risks than adults and more likely to believe that they will avoid the negative consequences of risky behavior. Developmental psychology research supports this perception. Not only are adolescents more prone to engage in risky or sensation-seeking behavior, but, perhaps just as important, they may have different perceptions of risk itself. *See* Laurence Steinberg & Elizabeth Cauffman, *Maturity of Judgment in Adolescence: Psychosocial Factors in Adolescent Decision Making*, 20 Law & Human Behavior 249, 260 (1996) ("The few extant comparisons of adults and adolescents suggest that thrill seeking and disinhibition [as assessed via measures of sensation seeking] may be higher during adolescence than adulthood."). For example, adolescents appear to be unaware of many risks of which adults are aware, and they calculate the probability of positive and negative consequences differently than adults. The proven inability of juveniles as a class to appreciate the consequences of their actions, their propensity toward reckless behavior, their immature decision-making and, most importantly, their susceptibility to negative external influence, warrants different treatment of children adjudicated delinquent in juvenile court.

Moreover, adolescents are risk-takers who are more resistant to social control and less susceptible to deterrence. *See* Carl Keane et al.,

Deterrence and Amplification of Juvenile Delinquency by Police Contact: The Importance of Gender and Risk-Orientation, 29 Brit. J. Criminology 336, 338 (1989) ("We suggest that those adolescents who are risk-takers will be more resistant to familial and formal control ...."). Issues of risk perception are closely related to those of temporal perspective, sometimes described as future orientation. Generally, adolescents tend to focus more on short-term consequences and less on the long-term impact of a decision or behavior. *See* Elizabeth S. Scott et al., *Evaluating Adolescent Decision Making in Legal Contexts*, 19 Law & Human Behavior 221, 231 (1995) ("In general, adolescents seem to discount the future more than adults and to weigh more heavily the short-term consequences of decisions--both risks and benefits--a response that in some settings contributes to risky behavior") (citation omitted). This focus on the present makes sense: adolescents have less experience with long-term consequences due to their age, and they often experience uncertainty about what the future holds for them.

Adolescents are also more likely than adults to be influenced by others, both in terms of how they evaluate their own behavior and in their desire to conform to their peers. *See* Thomas J. Berndt, *Developmental Changes in Conformity to Peers and Parents*, 15 Developmental Psychol. 608, 615 (1979) (showing peak peer conformity at grade 9); Scott et al.,

Evaluating Adolescent Decision Making, supra, at 230. Because a majority of delinquent adolescent behavior occurs in groups, *see* Franklin E. Zimring, *Kids, Groups and Crime: Some Implications of a Well-Known Secret*, 72 J. Crim. L. & Criminology 867, 867 (1981), peer pressure may exert a powerful counterweight to the societal commands of the criminal law. Furthermore, peer involvement affects perceptions of the certainty and severity of sanctions. *See* Mark C. Stafford & Mark Warr, *A Reconceptualization of General and Specific Deterrence*, 30 J. Res. Crime & Delinq. 123, 132 (1993) ("[A]n intelligent offender might be tempted to draw stronger conclusions about the certainty and severity of punishment from the cumulative experiences of friends than from his or her own relatively narrow life experiences.").

This susceptibility to peer pressure is highlighted by an adolescent's position in society is different from that of an adult. Adolescent autonomy is more restricted than that of adults, and minors are less integrated into the pro-social responsibilities, roles, and relationships of adulthood. Indeed, "[i]n recognition of the comparative immaturity and irresponsibility of juveniles, almost every State prohibits those under 18 years of age from voting, serving on juries, or marrying without parental consent." *Simmons,* 543 U.S. at 569. Developmental psychologists have documented this reduced "stake in life." *See* Christopher Slobogin et al., *A Prevention*

Model of Juvenile Justice: The Promise of Kansas v. Hendricks for Children, 1999 Wis. L. Rev. 185, 199 (1999). Like adolescents' attitude toward risk and their foreshortened temporal perspective, this deficit may lead adolescents to underestimate the real costs of antisocial conduct. Stated another way, adolescents have had less exposure to the external constraints that create internal controls.

Finally, there is compelling social science evidence supporting the view that children generally have a greater capacity to rehabilitate than adults. *See* Laurence Steinberg & Robert G. Schwartz, *Developmental Psychology Goes to Court, in Youth on Trial: A Developmental Perspective on Juvenile Justice* 23 (Thomas Grisso & Robert G. Schwartz, eds., 2000) ("the malleability of adolescence suggests that a youthful offender is capable of altering his life course and developing a moral character as an adult"). The *Simmons* Court found that the "reality that juveniles still struggle to define their identity means it is less supportable to conclude even a heinous crime committed by a juvenile is evidence of an irretrievably depraved character" and, therefore, "[f]rom a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed." *Simmons*, 543 U.S. at 570 (citing *Johnson,* 509 U.S. at 368 (1993)). As juveniles mature into adults, "the impetuousness and

recklessness that may dominate in their younger years can subside." *Id.*

The research and studies set forth above and relied upon in *Simmons*[8] are equally relevant here in considering the use of juvenile adjudications to enhance adult sentences. *Cf. Simmons,* 543 U.S. at 570 (recognizing that juveniles' "own vulnerability and comparative lack of control over their immediate surroundings mean juveniles have a greater claim than adults to be forgiven for failing to escape negative influences in their whole environment").

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[8] The Court cited the following articles and studies in its opinion: Jeffrey Jensen Arnett, *Reckless Behavior in Adolescence: A Developmental Perspective,* 12 Developmental Rev. 339 (1992); Laurence Steinberg & Elizabeth Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty,* 58 Am. Psychologist 1009, 1014 (2003); Erik H. Erikson, *Identity: Youth and Crisis* (1968). In addition, there are numerous other studies that support the idea that the brain is not fully developed until at least age 25. *See* Elizabeth Cauffman & Laurence Steinberg, *(Im)maturity of Judgment in Adolescence: Why Adolescents May Be Less Culpable Than Adults,* 18 Behavioral Sciences & the Law 741-760 (2000); Elizabeth S. Scott & Thomas Grisso, *Evolution of Adolescence: A Developmental Perspective on Juvenile Justice Reform,* 88(1) J. Crim. L. and Criminology 137, 137-189 (1997); Elizabeth R. Sowell et al., *Mapping Continued Brain Growth and Gray Matter Density Reduction in Dorsal Frontal Cortex: Inverse Relationships during Postadolescent Brain Maturation,* 21(22) J. Neuroscience 8819, 8819-8829 (2001); National Institute of Mental Health, *Teenage Brain: A Work in Progress, A Brief Overview of Research Into Brain Development During Adolescence*, NIH Publication No. 01-4929 (2001); Kristen Gerencher, *Understand Your Teen's Brain to be a Better Parent*. Detroit Free Press, Feb. 2, 2005; Barry C. Feld, *Competence, Culpability, and Punishment: Implications of Atkins for Executing and Sentencing Adolescents*, 32 Hofstra L. Rev. 463, 515-522 (2003) (discussing scientific studies on adolescent neurological development).

V. JUVENILE ADJUDICATIONS LACK THE RELIABILITY OF ADULT CONVICTIONS.

Although it is not central to Nguyen's or Amici's argument, the differences between juvenile and adult court present practical impediments to equating juvenile adjudications to criminal convictions for the purposes of the Three Strikes Law. Frankly stated, a shadow looms over the reliability of juvenile adjudications which are not tested before a jury. This is not to say that juvenile court judges are not dedicated or are intentionally disregarding rules of law, evidence or procedure. But to equate the process in juvenile court with that of an adult criminal courtroom would require one to "wear blindfolds," as Justice Johnson noted in *Smith*, 110 Cal. App. 4th at 1093.

The differences begin with the fact that prosecutors in juvenile proceedings are generally free to charge whatever offense they wish, and among defenders it is a common perception that overcharging is all too often a regular practice of prosecutors. "Wobblers," offenses which could be filed as misdemeanors or felonies at the discretion of the prosecutor, and which would be filed as misdemeanors in adult court, are filed as felonies in juvenile court. Unlike adult court, there is no preliminary hearing for the testing of evidence. While a child who is detained may request a *Dennis H.*

hearing, such a hearing does not allow for the presentation of affirmative evidence and is solely geared to a determination of whether evidence exists sufficient to justify continued detention of the child. *In re Dennis H.*, 19 Cal. App. 3d 350 (1971).

Prior to adjudication and during the adjudicatory hearing itself, the defender's hands are often tied in terms of negotiating a disposition. Issues that would be aggressively litigated before a jury with the presentation of experts—the likelihood of a false confession or the reliability of an eyewitness, for example—may be seen by the juvenile court as a waste of time and resources, as the court may feel "it has heard it all before" and can judge those things on its own. *Cf.* Drizen & Luloff, *supra*. Defenders, sensing the futility of such arguments, may not even pursue investigation or the appointment of experts that would be routinely sought in adult criminal proceedings. National Juvenile Defender Center, *State Assessments*, http://www.njdc.info/assessments.php (last visited Apr. 28, 2008).

Moreover, even if the juvenile case does proceed to adjudication, the rules of evidence and procedure in adult criminal proceedings and juvenile hearings are simply not equivalent—accomplice testimony need not be corroborated, and interlocking confession evidence may be admitted in juvenile cases despite their strict exclusion from the trier of fact in jury proceedings. *See* Brief of Amicus Curiae California Public Defenders

Association at 30-31, 44-45, filed herein on behalf of Appellant Nguyen, for a full discussion of these differences.

Finally, in addition to these systemic problems that impede reliability of juvenile adjudications, the developmental and scientific research discussed in Part V, *supra,* and specifically relied upon by the United States Supreme Court in *Simmons* also underscore the heightened lack of reliability of a delinquency adjudication of a 16 or 17 year old youth who is required to make complex, difficult decisions about whether to challenge the evidence or admit a petition, with little comprehension of the long term effects of that choice. The research demonstrates that youth are simply unprepared and unable to make these complex, future-oriented judgments. Defenders know that a child removed from his or her home usually has one wish: to return home as quickly as possible. This solitary focus invariably colors the child's judgment. If the prosecutor or court offers a youth the choice between admitting to a "strike" offense and going home today, or waiting another week for a non-strike offense, the youth will choose to go home today. Defenders know it, prosecutors know it, and juvenile court judges know it. This does not mean that every plea or adjudication in juvenile court is suspect, but it must necessarily undermine any confidence this Court has in the validity or reliability of these proceedings.

CONCLUSION

For the foregoing reasons, Amici Pacific Juvenile Defender Center et al. respectfully request that this Court affirm the holding below, and confirm the historic and long-standing commitment of California to the specialized treatment and rehabilitation of its juvenile offenders.

Respectfully submitted,

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APPENDIX A

IDENTITY OF *AMICI CURIAE*

Juvenile Law Center (JLC) is the oldest multi-issue public interest law firm for children in the United States, founded in 1975 to advance the rights and well being of children in jeopardy. JLC pays particular attention to the needs of children who come within the purview of public agencies – for example, abused or neglected children placed in foster homes, delinquent youth sent to residential treatment facilities or adult prisons, or children in placement with specialized services needs. JLC works to ensure children are treated fairly by systems that are supposed to help them, and that children receive the treatment and services that these systems are supposed to provide. JLC also works to ensure that children's rights to due process are protected at all stages of juvenile court proceedings, from arrest through disposition, from post-disposition through appeal, and that the juvenile and adult criminal justice systems consider the unique developmental differences between youth and adults in enforcing these rights.

The **Pacific Juvenile Defender Center** (PJDC) is the regional affiliate for California and Hawaii of the National Juvenile Defender Center based in Washington, D.C. PJDC works to build the capacity of the juvenile defense bar and to improve access to counsel and quality of representation for children in the justice system. PJDC provides support to juvenile trial lawyers, appellate counsel, law school clinical programs and non-profit law centers to ensure quality representation for children throughout California and Hawaii.

PJDC offers a wide range of integrated services to juvenile defenders, including training, technical assistance, advocacy, networking, collaboration, capacity building and policy development. PJDC's Amicus Committee is composed of representatives from various children's advocacy agencies and defender organizations located throughout California and Hawaii. Collectively, our members represent thousands of children in delinquency and dependency courts.

The **Juvenile Division of the Los Angeles County Public Defender's Office** represents over 35,000 children in delinquency court each year. Stafffing ten branches, and twenty nine juvenile delinquency courts, the Division includes deputy public defenders, paralegals, investigators, psychiatric social workers, and special units of resource attorneys, DJJ

specialists, appellate and reentry advocates. Together they collaborate to provide effective, holistic representation of these children from the earliest stage of the juvenile delinquency proceedings through post-disposition planning.

The Law Offices of the **Alternate Public Defender** (APD) for Los Angeles County was created by the Board of Supervisors in 1993 as a cost saving measure to provide legal representation in Public Defender conflict of interest cases in all adult and some juvenile delinquency court cases. Additionally, the APD provides legal representation in the Los Angeles County Juvenile Mental Health Court. Our mission is to provide the highest quality of adult and juvenile defense representation. The Alternate Public Defender's Office has consistently been involved in legislative analysis and juvenile policy issues as well as being the attorney of record in two significant, recently published appellate decisions involving juvenile law. (Rene C. v. Superior Court (2006) 138 Cal.App.4th1; Tiffany A v. Superior Court (2007) 150 Cal. App.4th 1344). Since the APD's implementation in 1994, the office has grown from a staff of 35 to service a single courthouse, to a staff exceeding 300 servicing courts throughout Los Angeles County.

The **National Center for Youth Law** (NCYL) is a private, non-profit organization devoted to using the law to improve the lives of poor children nation-wide. For more than 30 years, NCYL has worked to protect the rights of low-income children and to ensure that they have the resources, support and opportunities they need to become self-sufficient adults. NCYL provides representation to children and youth in cases that have a broad impact. NCYL also engages in legislative and administrative advocacy to provide children a voice in policy decisions that affect their lives. NCYL supports the advocacy of others around the country through its legal journal, Youth Law News, and by providing trainings and technical assistance. NCYL has participated in litigation that has improved the quality of foster care in numerous states, expanded access to children's health and mental health care, and reduced reliance on the juvenile justice system to address the needs of youth in trouble with the law. One of the primary goals of NCYL's juvenile justice advocacy is to ensure that youth who do become entangled in the juvenile justice are treated fairly and consistent with their developmental capacity. The Nguyen case, challenging the use of juvenile delinquency adjudications as a "strike" in adult sentencing, raises an important issue that is of great concern to our organization.

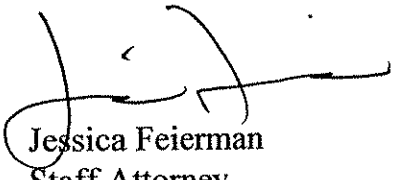
The **Youth Law Center** is a San Francisco-based national public interest law firm working to protect the rights of at-risk children, especially those at risk of or involved in the juvenile justice or child welfare systems. Since 1978, Youth Law Center attorneys have represented children in civil rights and juvenile court cases in California and two dozen other states. The Center's attorneys are often consulted on juvenile policy matters, and have participated as amicus curiae in cases around the country involving important juvenile system issues. Youth Law Center attorneys have written widely on a range of juvenile justice, child welfare, health and education issues, and have provided research, training, and technical assistance on legal standards and juvenile policy issues to public officials in almost every State. The Center has long been involved in public policy discussions, legislation and court challenges involving due process and the treatment of juveniles as adults. Center attorneys were consultants on the national MacArthur Foundation study of adolescent development, and have recently authored a law review article on juvenile competence issues. This case, challenging the use of juvenile "strikes" as priors, fits squarely with in the Center's long-term interest and expertise.

Certificate of Compliance

I certify that the attached Brief of Amicus Curiae Pacific Juvenile Defender Center, Juvenile Law Center, *et al.* uses a 13 point Times New Roman font and contains approximately 7,000 words.

Dated: April 28, 2008

Respectfully submitted,



Jessica Feierman
Staff Attorney
Juvenile Law Center

PROOF OF SERVICE

Case Name: **People v. Nguyen** **No.:S154847**

I, the undersigned say:

I am over eighteen years of age and not a party to the above action. My business address is 1315 Walnut Street, Suite 400, Philadelphia, PA 19107. On April 28th, 2008, I served the attached Application of Pacific Juvenile Defender Center, Juvenile Law Center *et al.* for Leave to File *Amicus Curiae* Brief and Brief on the following parties by causing true copies thereof in envelopes addressed to the same, sealed and placed for delivery by U.S. Mail at 1500 John F Kennedy Blvd, Philadelphia, PA 19102 that same day with postage prepaid, addressed as follows:

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I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 28, 2008, in Philadelphia, Pennsylvania