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YOUTH COURTS: LAWYERS HELPING STUDENTS MAKE BETTER DECISIONS

GREGORY VOLZ*

DAVID KELLER TREVASKIS*

RACHEL MILLER*

“Perhaps the sentiments contained in the following pages, are not yet sufficiently fashionable to procure them general favor; a long habit of not thinking a thing wrong, gives it a superficial appearance of being right, and raises at first a formidable outcry in defense of custom. But the tumult soon subsides. Time makes more converts than reason.” – Thomas Paine¹

INTRODUCTION	200!
I.! ! DISCONNECTED YOUTH.....	202!
II.! ! ZERO-TOLERANCE SCHOOL DISCIPLINARY POLICIES	204!
III.! ! RESPONSES TO THE SCHOOL-TO-PRISON PIPELINE	205!
A.! Youth Courts and Racial Justice.....	205!
B.! Kids for Cash and the Interbranch Report	207!
C.! A Response from the Pennsylvania Bar Association	209!
D.! A Federal Partnership	210!
IV.! ! AMERICAN VALUES—PAST AND PRESENT	211!
V.! ! FLASH MOBS	213!
VI.! ! YOUTH COURTS	214!
A.! A Historical Context.....	214!
B.! Peer Pressure and Restorative Justice.....	218!

* Gregg Volz is a Stoneleigh Foundation Fellow and public interest lawyer.

* David Keller Trevaskis is the Pro Bono Coordinator of the Pennsylvania Bar Association and a champion of public education about the law.

* Rachel Miller is a third year law student at the University of Pennsylvania Law School, pursuing a career in the public interest.

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¹ THOMAS PAINE, COMMON SENSE AND OTHER POLITICAL WRITINGS 5 (2003).

C.! Operational Issues.....	219!
D.! Impact.....	219!
VII.!! YOUTH COURT BENEFITS.....	220!
A.! A Constellation of Justice and Educational Benefits.....	220!
B.! Need for Benefit-Cost Analysis.....	221!
C.! The Student Voice and Empowerment.....	222!
VIII.!! YOUTH COURT CHALLENGES.....	224!
IX.!! ROLE FOR THE LEGAL PROFESSION.....	226!
X. ! A YOUTH COURT PLAN FOR PENNSYLVANIA.....	227!
A.! Participants.....	228!
B.! Plan Content.....	229!
XI. ! CONCLUSION.....	231!

INTRODUCTION

The motto of the Chester Youth Court is “Students Helping Students Make Better Decisions.” For five years, lawyers, working with a variety of community partners, have been helping Chester students achieve this objective and in the process, have given them a voice to advance not just disciplinary justice, but also educational and economic justice. In this pursuit, lawyers have successfully achieved the highest aspirations of our profession and provided youth with the tools to successfully protect and defend themselves. Student empowerment is the fundamental touchstone of youth courts.

Currently, eleven million youth between the ages of sixteen and twenty-four are neither in school nor employed.² For these “disconnected youth,” America is hardly a “Land of Opportunity”; the “American Dream” is no more than a distant memory from their father’s generation.³ America’s greatest strength has always been our democratic values and institutions. Society’s current inability, or unwillingness, to inculcate these values in our nation’s youth threatens our democracy. Public schools were created to inculcate these values of citizenship.⁴ That promise has been forgotten at many schools. Quality youth courts can instill those values.

The unacceptably large number of disconnected youth is fed by highly ineffective juvenile justice and educational systems. Youth who fail to complete high school lack skills needed to compete in the global economy. Although the current economic crisis greatly increased

² *Disconnected Youth: An interview with David Dodson*, MDC, <http://www.mdcinc.org/docs/DYfinal.pdf> (last visited Nov. 11, 2011).

³ Adrienne L. Fernandes & Thomas Gabe, *Disconnected Youth: A Look at 16- to 24- Year Olds Who are Not Working or in School*, CONGRESSIONAL RESEARCH SERV. (Apr. 22, 2009) (defining “disconnected youth” as “noninstitutionalized youth ages 16 through 24 who did not work or attend school during a previous year and are presently not working or in school . . .”); see also *Disconnected Youth in the Research Triangle Region: An Ominous Problem Hidden in Plain Sight*, MDC, 3 (Aug. 2008), available at <http://www.mdcinc.org/programs/durham.aspx>.

⁴ See 22 PA. CODE § 4.11(b) (“Public education prepares students for adult life by attending to their intellectual and developmental needs and challenging them to achieve at their highest level possible. In conjunction with families and other community institutions, public education prepares students to become self-directed, life-long learners and responsible, involved citizens.”) (emphasis added).

the number of disconnected youth, the problem itself has existed for decades.⁵ The fact that America's attention has only recently focused on this public policy crisis is a testament to the correctness of Paine's words. Overcoming embedded resistance to change is never easy and requires persistent effort.

To restore equal opportunity to all of our young people, we must acknowledge and defeat the "school-to-prison pipeline" (STPP), which describes a complex downward spiral of poverty.⁶ One of the primary causes of the STPP is zero-tolerance school disciplinary policies.⁷ These punitive practices cause youth to be "pushed out" of school. In 2011, a Philadelphia-based youth group called Youth United for Change issued a report on the dropout crisis in Philadelphia.⁸ The youth who wrote the report were either out-of-school or attending alternative schools and programs.⁹ They wrote the report so future students would not be pushed out of school as they had been.¹⁰ They preferred the term "pushed out" of school because they felt that "the term 'dropout' suggests that people leave school because of individual mistakes and poor decisions; the term neglects the larger, systemic problems that lead to young people leaving school."¹¹ Former students gave various reasons beyond their control for not being in high school, including problems transferring credits from prior schools, overcrowded classroom conditions, and lack of books.¹² These problems, coupled with the "get tough" zero-tolerance school policies, put "pushed out" youths on the streets, where they may turn to crime and feed the pipeline. The downward spiral seems endless.

Alienated, bored, and disconnected youth demonstrate little respect for our democratic values. Flash mobs are a new public policy nuisance as large groups of Philadelphia youth assemble and disrupt commerce and cause bodily injury.¹³ Is this new phenomenon the future of disconnected youth, or will society work to develop new solutions to this disturbing reality?

The threatening image of destructive flash mobs, discussed *infra* Section VI, can be contrasted with peer justice youth courts. Youth courts are alternative school or juvenile justice disciplinary systems in which students are trained to hold disciplinary hearings, and deliberate to form an appropriate disposition for student offenders. Youth courts are highly participatory,

⁵ Michael Wald & Tia Martinez, *Connected by 25: Improving the Life Chances of the Country's Most Vulnerable 14-24 Year Olds* n.2 (William and Flora Hewlett Foundation Working Paper, Nov. 2003).

⁶ Nancy A. Heitzig, *Education or Incarceration: Zero Tolerance Policies and the School to Prison Pipeline* FORUM ON PUB. POLICY, 1, <http://www.forumonpublicpolicy.com/summer09/archivesummer09/heitzeg.pdf> (defining "school to prison pipeline" as a "growing pattern of tracking students out of educational institutions, primarily via "zero tolerance" policies, and, directly and/or indirectly, into the juvenile and adult criminal justice systems.").

⁷ *Are Zero Tolerance Policies Effective in the Schools? An Evidentiary Review and Recommendations*, 63.9 AM. PSYCHOLOGIST 852, 852 (2008) (defining "zero tolerance" as "a philosophy or policy that mandates the application of predetermined consequences, most often severe and punitive in nature, that are intended to be applied regardless of the gravity of behavior, mitigating circumstances, or situational context.").

⁸ *See generally* PUSHED OUT: YOUTH VOICES ON THE DROPOUT CRISIS IN PHILADELPHIA, YOUTH UNITED FOR CHANGE (2011), available at http://www.dignityinschools.org/sites/default/files/001_Pushed-Out.pdf.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *See, e.g.*, Michael Sheridan, *100 Teens Turn Snowball Fight into Violent Flash Mob Outside Philadelphia Macy's Store*, N.Y. DAILY NEWS, Feb. 17, 2010, http://www.nydailynews.com/news/national/2010/02/17/2010-02-17_100_teens_turn_snowball_fight_into_violent_flash_mob_outside_philadelphia_macys.html.

inexpensive to operate, and follow restorative, not punitive, justice principles.¹⁴

We can continue the “get tough” sanctions of the past in both juvenile justice and school discipline, but we should expect the same dismal outcomes. Alternatively, we can empower our youth to become part of the solution. Youth, trained by legal professionals and teachers, can use positive peer pressure and restorative justice to reduce errant behavior within their own communities. In the process, students acquire valuable cognitive and coping skills. Youth courts reduce the number of disconnected youth, end formulaic zero-tolerance policies, blunt the STPP, and teach democratic principles. In addition, they provide academic, socialization, and civic engagement skills to our youth. Most importantly, youth courts give youth a voice. Direct quotes from youth court members we have worked with over the past five years follow several of the section headings in this article.

I. DISCONNECTED YOUTH

“Youth court is the most interesting thing I experience in school.”

Over a million and a half juveniles are charged with crimes annually in the United States.¹⁵ This tidal wave of juvenile offenders overwhelms the courts.¹⁶ One out of every four people now in prison in the world is incarcerated in the U.S.¹⁷ We now lead the world in the number of incarcerated prisoners.¹⁸ Pennsylvania is unfortunately contributing to this increase, as the number of inmates in state prison has grown from 8,000 in 1980 to over 51,000 in 2011.¹⁹ This is an ironic reality in a nation founded on the principle of human freedom, and historically referred to as the leader of the free world. Moreover, the economic costs of this human tragedy are staggering. The total economic cost to society of one career criminal is between \$1.5 and \$1.8 million.²⁰ At a time of reduced government funding, there is now another major reason to consider youth courts as an effective disciplinary strategy—we simply cannot afford to continue more expensive and punitive policies.

Long before the recent economic meltdown, income inequality resulted in the inability of millions of Americans to meet their basic needs.²¹ Exacerbated by the loss of an additional eight

¹⁴ See Gordon Bazemore & Lode Walgrave, *Restorative Juvenile Justice: In Search of Fundamentals and an Outline for Systemic Reform*, in RESTORATIVE JUVENILE JUSTICE: REPAIRING THE HARM OF YOUTH CRIME 45, 48 (1999) (defining restorative justice as “a process whereby parties with a stake in a specific offence [sic] collectively resolve how to deal with the aftermath of the offence and its implication for the future.”).

¹⁵ *Crime in the United States*, FBI, http://www2.fbi.gov/ucr/cius2009/data/table_38.html (last visited Nov. 9, 2011).

¹⁶ See generally IRENE SULLIVAN, RAISED BY THE COURTS: ONE JUDGE’S INSIGHT INTO JUVENILE JUSTICE (2010).

¹⁷ Adam Liptak, *U.S. Prison Population Dwarfs That of Other Nations*, N.Y. TIMES, Apr. 8, 2008, available at <http://www.nytimes.com/2008/04/23/world/americas/23iht-23prison.12253738.html?pagewanted=all>.

¹⁸ *Id.*

¹⁹ Stewart Greenleaf, *Prison Reform in the Pennsylvania Legislature*, 160 U. PA. L. REV. 179, 180 (2011).

²⁰ See generally MARK A. COHEN, THE COSTS OF CRIME AND JUSTICE (2005); see also Christopher Reinhart, *Cost of Incarceration and Cost of a Career Criminal*, OLR RESEARCH REPORT (Feb. 2008), <http://www.ega.ct.gov/2008/rpt/2008-R-0099.htm>.

²¹ See generally Carmen DeNavas-Walt, Bernadette D. Proctor, & Jessica C. Smith, *Income, Poverty, and Health Insurance Coverage in the United States: 2007*, U.S. CENSUS BUREAU (Aug. 2008), <http://www.census.gov>

million jobs, America no longer can ignore the human misery.²² A sustained level of nine percent unemployment—the greatest since the Great Depression—has fed the highest youth unemployment rate since World War II.²³

For more than twenty-five years, William Julius Wilson chronicled the disturbing disappearance of jobs in American urban communities and the loss of strong institutional organizations to support civic life.²⁴ The accompanying “white flight,” loss of a sufficient tax base, and schools with more than fifty percent of students failing to graduate, have all contributed to the alarming rise of disconnected youth.²⁵ Wilson speculated that only a multi-racial coalition can succeed in expanding opportunity to all, but he saw little chance of that occurring.²⁶

In 2000, over three million students in the United States were suspended, and over 97,000 students were expelled.²⁷ These statistics have caused alarm—leaders have compared them with the numbers of high school students ending up in prison.²⁸ Annually, approximately 1.3 million high school students across the country drop out of school.²⁹

Despite these shocking statistics, and the obvious and disturbing relationship between educational failure and subsequent contact with the criminal justice system, there has been no successful public policy response to this problem. The problem Wilson warned us about in the 1980s and 1990s now threatens our society. What was an inconvenient, but somewhat hidden truth for decades—that large numbers of America’s youth were not receiving the nurturing they needed to succeed—has now become an incontrovertible and publicly acknowledged fact. The failure to utilize our human capital is alarming, and its challenge to a free society has long been noted, and portends problems far beyond the walls of academia.³⁰

/prod/2008pubs/p60-235.pdf.

²² *Job Loss, Health Care and Bankruptcy*, FACTCHECK.ORG, <http://www.factcheck.org/2011/01/job-loss-health-care-and-bankruptcy/> (last visited Nov. 9, 2011).

²³ Seth Fiegerman, *Youth Joblessness Plays Role in Protests*, THE STREET (Oct. 21, 2011, 12:15 PM), http://www.thestreet.com/story/11285003/1/youth-joblessness-plays-role-in-protests.html?cm_ven=RSSFeed (quoting an International Labour Organization report that the unemployment rate for American youth stood at 18.4% in 2010, an increase of 8% from the 2007 rate). Today, 55 percent of Americans between the ages of 16 and 29 are not working. Zachary Roth, *Only 55 Percent of Young Americans Have Jobs, Lowest Since WWII*, THE LOOKOUT (Sept. 22, 2011), <http://news.yahoo.com/blogs/lookout/battered-downturn-young-americans-put-off-adulthood-160406776.html>.

²⁴ See, e.g., WILLIAM JULIUS WILSON, *THE TRULY DISADVANTAGED* (1987); WILLIAM JULIUS WILSON, *WHEN WORK DISAPPEARS: THE WORLD OF THE NEW URBAN POOR* (1996).

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Dismantling the School-to-Prison-Pipeline*, NAACP LEGAL DEFENSE AND EDUC. FUND (Oct. 10, 2005), available at <http://naacpldf.org/publication/dismantling-school-prison-pipeline>.

²⁸ Julie Golihue, *‘School-to-Prison Pipeline’ Discussed*, THE INDEPEN. COLLEGIAN, Mar. 18, 2010, available at <http://www.independentcollegian.com/news/school-to-prison-pipeline-discussed-1.2194924#.Trce1E9Eaoo>.

²⁹ *Dropout Prevention*, AMERICA’S PROMISE ALLIANCE, <http://www.americaspromise.org/our-work/Dropout-Prevention.aspx> (last visited Nov. 6, 2011).

³⁰ See, e.g., Abraham Lincoln, Address before the Wisconsin State Agricultural Society (Sept. 30, 1859) (“No country can sustain, in idleness, more than a small percentage of its numbers. The great majority must labor at something productive.”).

II. ZERO-TOLERANCE SCHOOL DISCIPLINARY POLICIES

The American Psychological Association Zero Tolerance Task Force (Task Force) conducted an extensive review of school disciplinary research and found little data exists to even test the fundamental assumptions on which zero-tolerance policies are based.³¹ In fact, it found that the available data contradicted those assumptions.³² It also found that zero-tolerance policies both conflict with scientific data on adolescent development, and negatively affect education.³³

Specifically, the Task Force found that there was no evidence that zero-tolerance increased the consistency of school discipline or the clarity of the disciplinary message to the offending student.³⁴ Not only did zero-tolerance policies fail to create a school environment more conducive to learning for the students who remain, but schools with higher rates of school suspensions and expulsions have less satisfactory ratings of school climate and spend a disproportionate amount of time on discipline.³⁵ A fundamental assumption of zero-tolerance policies is that by removing the offending students, school-wide academic achievement will increase.³⁶ In fact, a negative relationship was found. Increased use of school discipline actually decreased school-wide academic achievement.³⁷ To summarize, zero-tolerance policies not only do not improve school climate, they worsen it.

The Task Force cited research demonstrating that brain development occurs much later in adolescents than earlier believed, accounting for greater risk-taking and less reflection on consequences of behavior by youth.³⁸ Many youth behavioral problems are not appropriate to be dealt with by punitive measures. The report also found that zero-tolerance policies had affected the “delicate balance” between the educational and juvenile justice systems and that “many schools appear to be using the juvenile justice system to a greater extent and, in a relatively large percentage of cases, for infractions that would not previously have been considered dangerous or threatening.”³⁹ There were concerns that zero-tolerance may “accelerate negative mental health outcomes for youth by creating increases in student alienation, anxiety, rejection, and breaking of healthy adult bonds.”⁴⁰ Restorative justice practices were recommended as a preferred alternative to zero-tolerance.⁴¹

³¹ American Psychological Association, *Are Zero Tolerance Policies Effective in the Schools? An Evidentiary Review and Recommendations*, 63 AM. PSYCHOLOGIST 852, 852 (2008), available at <http://www.apa.org/pubs/info/reports/zero-tolerance.pdf>.

³² *Id.*

³³ *Id.*

³⁴ *Id.* at 853-54.

³⁵ *Id.* at 854.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.* at 855.

³⁹ *Id.* at 855-56.

⁴⁰ *Id.* at 856.

⁴¹ *Id.* at 858-60.

III. RESPONSES TO THE SCHOOL-TO-PRISON PIPELINE

“The Law is - when they indict you for something you did not do.”

A. Youth Courts and Racial Justice

Despite an absence of research that zero-tolerance policies work, inflexible and punitive disciplinary measures are still in effect in many Pennsylvania schools. Only recently has the Philadelphia School District acted to modify its harsh policies.⁴² Many youth are pushed out of school by formulaic disciplinary policies, turn to crime, and then feed the massive prison-industrial complex when they are caught by law enforcement.⁴³

Some youth encounter the justice system directly by committing crimes in school settings, while others encounter the justice system after dropping out, or being “pushed out,” of school. Regardless of the situational context, first arrests have devastating consequences for youth. Youth arrested in high school almost double their odds of not completing high school.⁴⁴ For youth who actually go to court, school dropout rates increase by four hundred percent.⁴⁵ Contact with the justice system significantly decreases chances of youth finishing school.

Surprisingly, although our interest in youth courts stems from a search for a better disciplinary system than zero-tolerance and mass arrests, when we visited the Washington D.C. Time Dollar Youth Court in October 2007, we learned that the genesis of that youth court was *law enforcement frustration* with the justice system. We learned that forty percent of young people who were picked up by police for minor offenses in Washington D.C. were not being processed (“no papered”).⁴⁶ The prosecuting attorneys dropped the charges for various reasons including: belief the offense was too trivial to pursue, the police had not accurately completed the required paper work, or the facts did not rise to “proof beyond a reasonable doubt.”⁴⁷ Word on the street was that youthful offenders got three “freebies” before law enforcement took the offenses seriously.⁴⁸ The Time Dollar Youth Court was created because legal authorities believed that initial offenses should neither be ignored nor lead to the stigma of a criminal record.⁴⁹ The challenge was to create a program that made first contact with the law one that was truly life-

⁴² Susan Snyder, *Philly Schools Modify “Zero Tolerance” Policy*, ABOUT.COM (Sept. 16, 2011), http://articles.philly.com/2011-09-16/news/30183198_1_expulsions-zero-tolerance-discipline-policy/3.

⁴³ John Schmitt, Kris Warner, & Sarika Gupta, *The High Budgetary Cost of Incarceration*, CENTER FOR ECON. AND POLICY RESEARCH, 2 (2010) (“In 2008, federal, state, and local governments spent about \$75 billion on corrections, the large majority of which was spent on incarceration.”).

⁴⁴ Gary Sweeten, *Who Will Graduate? Disruption of High School Education by Arrest and Court Involvement*, 23 JUST. Q. 462, 473 (2006).

⁴⁵ *Id.*

⁴⁶ Email from Edgar S. Cahn, Founder, Time Dollar Youth Court, to Gregory Volz (Jan. 31, 2012, 08:52 EST) (on file with author).

⁴⁷ *Id.* See also EDGAR S. CAHN, NO MORE THROW-AWAY PEOPLE 105-09 (2d ed. 2004); Edgar S. Cahn & Cynthia Robbins, *An Offer They Can’t Refuse: Racial Disparity in Juvenile Justice and Deliberate Indifference Meet Alternatives That Work*, 13 UDC/DCSL L REV. 71, 98-99 (2010) [hereinafter Cahn & Robbins, *An Offer They Can’t Refuse*].

⁴⁸ *Id.*

⁴⁹ *Id.*

changing.⁵⁰ Everyone felt it was important to make the first offense *the last offense*.⁵¹ The Youth Court was created as a diversion program and gradually expanded until it processed almost seventy-five percent of all first time juvenile offenders in Washington D.C.⁵²

When we observed the Time Dollar Youth Court (an appreciation of youth court requires actual observation of a youth court), we saw firsthand the power of peer approval and disapproval. We were impressed by the direct participation of the peer jury, who asked probing questions to draw out the facts of the case and understand the personal facets of the offender's home and school life. We learned that the youth court had a recidivism rate below ten percent (the comparison group's recidivism rate is around thirty-five percent) and was supported by the courts, community, police, and prosecutors.⁵³ The most intriguing part of the sentence was a mandatory requirement that offenders perform ten sessions of jury duty. Each offender experienced justice from two perspectives: the point of view of a juvenile offender who needed to accept responsibility for his/her actions, and the point of view of a citizen contributing to community improvement by sitting in judgment of others.

This early connection to the Time Dollar Youth Court led to an opportunity for two Chester High School youth court members to testify before the Pennsylvania Senate Judiciary Committee and the Pennsylvania House Committee on Children and Youth in 2010.⁵⁴ Hearings were being held to identify best practices in the field of juvenile justice, with a particular focus on alternatives to juvenile detention. State officials in Harrisburg were notified by attorneys working under a Racial Justice Initiative grant funded by the Kellogg Foundation that significant promise was being shown by school-based youth courts in Chester City. The Racial Justice Initiative was created by Professor Edgar Cahn, the founder of the Time Dollar Youth Court. Cahn based the Initiative on a new legal theory he had developed.⁵⁵ The theory directly addressed the Supreme Court's mandate in *Washington v. Davis* that racial disparity resulting from official practice did not merit judicial intervention unless it was intentional.⁵⁶ The Racial Justice Initiative is premised on the idea that future intent can be proven by providing a choice between present practice and alternatives.⁵⁷

The Racial Justice Initiative was a way to put the justice system on formal notice of alternatives that reduced racial disparity, were less expensive, and had more effective outcomes. If those in charge of the justice system then rejected the use of those cheaper and better alternatives, by persisting in using past practices, that would constitute intentional perpetuation of racial disparity. Youth court is far less expensive than formal court proceedings and detention, reduces racial disparity, and achieves lower recidivism rates than current practices.

Cahn met with and convinced leadership in both the Pennsylvania House and Senate to

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ Cahn & Robbins, *An Offer They Can't Refuse*, *supra* note 47.

⁵⁴ *Testimony of Chester High School Youth Court Members*, STONELEIGH FOUND., <http://stoneleighfoundation.org/content/testimony-chester-high-school-youth-court-members> (last visited Feb. 3, 2012).

⁵⁵ Cahn & Robbins, *An Offer They Can't Refuse*, *supra* note 47.

⁵⁶ Edgar S. Cahn, Keri A. Nash & Cynthia Robbins, *Public Notice Forums: Choosing Among Alternatives to Confront the Intent Requirement*, 44 CLEARINGHOUSE REV. 165 (2010).

⁵⁷ Edgar S. Cahn, Keri A. Nash & Cynthia Robbins, *A Strategy for Dismantling Structural Racism in the Juvenile Delinquency System*, 20 POVERTY & RACE (Mar./Apr. 2011), available at <http://prprac.org/newsletters/marapr2011.pdf>.

showcase the most effective juvenile justice practices for two reasons: 1) to showcase the considerable accomplishments of the Pennsylvania juvenile justice system at a time when the Luzerne County “kids for cash” scandal had brought that system into disrepute, and 2) put the juvenile justice system on notice about best practices which could also save Pennsylvania vast amounts of public dollars. Representatives from both the Time Dollar Youth Court and the Chester Youth Court testified at those hearings.⁵⁸ They provided a platform that triggered ongoing interest in youth courts at the highest levels of Pennsylvania state government. Senator Greenleaf went on record to express the impact the hearings had on his awareness of alternatives to detention and the promise of youth courts, and subsequently requested assistance from author Gregory Volz in drafting youth court legislation for Pennsylvania.⁵⁹

B. *Kids for Cash and the Interbranch Report*

As previously argued, the phrase STPP is intended to convey a punitive and harsh disciplinary system applied to youthful offenders. However, rarely have even the most vocal advocates for a more restorative and rehabilitative disciplinary system actually argued that government officials *deliberately intended* to move youth from school to prison. Although advocates of alternatives to zero-tolerance and punitive youth discipline believe the current system does unjustly punish youth, they do not argue that judges, police, and law enforcement officials intend to deny youth their rights. Rather, they believe that inflexible and rigid policies and practices act like a type of systemic straitjacket, giving inadequate discretion to legal and school authorities who feed the STPP. As Cahn points out, the inflexible system is an indictment of those in policy forming positions who realize that the consequences of their system fall disproportionately on racial minorities, and despite this awareness, fail to correct the disparity.

However, Pennsylvania actually had an unjust and criminal STPP in operation that caught the nation’s attention in 2009. It became known as the “kids for cash” judicial scandal. In Luzerne County, Pennsylvania, two judges sentenced thousands of youth to private detention centers that were run by their friends who paid cash in return for the sentences.⁶⁰ The youth sentenced, some as young as ten, who had committed trivial offenses in school and/or their communities, were not only deliberately deprived of their freedom by corrupt judges, but were left with a lasting legacy of disrespect for the rule of law.⁶¹ An investigation into the causes of the scandal was conducted by representatives from all three branches of state government, and in May 2010, the Pennsylvania Interbranch Commission on Juvenile Justice Report was released.⁶² The report examined the connection between the public schools and the juvenile justice system and issued recommendations for reform.⁶³

⁵⁸ *Testimony of Chester High School Youth Court Members*, *supra* note 54.

⁵⁹ Youth Court Advisory Board Meeting Minutes, Pennsylvania Bar Association (June 15, 2011).

⁶⁰ See John Hurdle & Sabrina Tavernise, *Former Judge is on Trial in ‘Kids for Cash’ Scheme*, N.Y. TIMES, Feb. 8, 2011, <http://www.nytimes.com/2011/02/09/us/09judge.html> (“[Judge] Ciavarella, . . . sentenced thousands of young people, funneling them into two private detention centers prosecutors say were run by his friends who slipped him payments in a “cash for kids” scheme.”)

⁶¹ See *Pennsylvania Judge Gets 20 Years in ‘Kids for Cash’ Case*, MSNBC, (Aug. 11, 2011), http://www.msnbc.msn.com/id/44105072/ns/us_news-crime_and_courts#Trs82k9Eaop.

⁶² *Interbranch Commission on Juvenile Justice Report*, INTERBRANCH COMMISSION, (May 2010), available at www.courts.state.pa.us/NR/...B7FD.../ICJJFinalReport_100604.pdf.

⁶³ *Id.* See also *Juvenile Justice*, STONELEIGH FOUND., <http://stoneleighfoundation.org/solutions/juvenile->

The Interbranch Report criticized both zero-tolerance school policies and the isolated juvenile justice and education systems.⁶⁴ Although the key figures were two judges, the report identified multiple systemic failures with both systems.⁶⁵ It issued key recommendations for educational reform including:

[S]chool referrals made under zero-tolerance policies were integral to the overall scheme as they provided an easy removal of children from their homes and schools and a constant stream of children to be placed into detention. *The commission believes that zero-tolerance and allowing schools to use the justice system as its school disciplinarian has no place in the education process or in the juvenile court system.* To that end, it is recommended that the entities identified above develop and expand programs that would support at-risk students and expand affordable and available diversionary programs, while at the same time reduce unnecessary and inappropriate school referrals.⁶⁶

The Commission noted that neither the Department of Education nor Luzerne County school officials understood the workings of the juvenile justice system.⁶⁷ They criticized treating the education and juvenile justice systems as separate “silos.”⁶⁸ Failure of each system to understand how the other functioned had created a school environment in which authorities shifted responsibility for processing rule-breaking, and juvenile authorities left children with emotional scars that will last a lifetime. Noting that law enforcement, the District Attorney, and others in the justice system did not understand how schools handled disciplinary problems committed on campus, they recommended:

[T]hese groups collaborate to create an educational program necessary to assure that all stakeholders are fully aware of how each of these organizations operate. Additionally, resources must be available to achieve the stated and aspirational goals of both the Department of Education and the juvenile justice system. It is

justice (last visited Nov. 6, 2011). This article assesses the role juvenile detention plays in the school-to-prison pipeline, and finds:

Juvenile detention has devastating consequence on life outcomes for youth. While youth in detention are often viewed as perpetrators, they are more than twice as likely to be victims of violent crime as the population as a whole. Truancy is often a path to detention, with studies showing that 75-85% of serious juvenile offenders have been chronically truant. A young person involved with the juvenile justice system is more likely to drop out of high school, struggle with mental and behavioral disorders or learning disabilities, and is at alarming risk for sexual abuse. Once having entered the system, these young people return to their home communities with dim prospects for graduation or gainful employment. With limited opportunity and earning power, there is little hope to break cycles of substance abuse, violence and involvement with the criminal justice system.

Id.

⁶⁴ *Interbranch Commission on Juvenile Justice Report*, *supra* note 62, at 59.

⁶⁵ *Id.* at 6.

⁶⁶ *Id.* at 59 (emphasis added).

⁶⁷ *Id.*

⁶⁸ *Id.*

suggested that the Department of Education consider partnering with the Pennsylvania Bar Association to assist in the creation and implementation of these programs, especially since the PBA has a focus on law-related education and has experience developing programs that protect, motivate and educate Pennsylvania's children.⁶⁹

C. A Response from the Pennsylvania Bar Association

Responding to the specific Interbranch recommendations, the Pennsylvania Bar Association (PBA) engaged several of its committees, which then endorsed implementation of a youth court strategy as a response to the issues the Luzerne County debacle had made public, and to better protect children and foster their youth development.⁷⁰ In March 2011, a legal publication by the PBA published a feature article on the evolution of the youth court movement in Pennsylvania.⁷¹ Following publication of this article, in May 2011 the PBA unanimously passed perhaps the most powerful state bar resolution in support of youth courts in the United States.⁷² The resolution called for development of a PBA Youth Court Advisory Board, for all counties to create school-based and juvenile justice-based youth courts, for passage of a youth court bill, and for a public-private partnership to support youth courts.⁷³

In June 2011, the PBA convened the Youth Court Advisory Board as called for in its May youth court resolution.⁷⁴ Chaired by Third Circuit Appeals Court Judge Marjorie Rendell, with leadership from PBA President-Elect Thomas Wilkinson and Stoneleigh Foundation Director Cathy Weiss, the group discussed issues relevant to implementation of the PBA Youth Court Resolution.⁷⁵ Lawyers from throughout the state, including representatives from law enforcement, justice officials, nonprofit leaders, and others, reflected on next steps.⁷⁶ They discussed dividing the work among sub-committees given the large number of issues that required attention.⁷⁷ It was also felt that more individuals needed to be brought into the planning process to ensure a diverse and expert board.⁷⁸

In June 2011, PBA legislative office staff and law students helped complete research on youth court legislation in other states and assisted the drafting of a youth court bill which was submitted to three elected state officials for introduction in the PA General Assembly.⁷⁹ Last fall, PBA staff (including author David Trevaskis) assisted the Delaware County Bar Association in conducting the first formal youth court training for lawyers who sought to assist youth courts in

⁶⁹ *Id.*

⁷⁰ Greg Volz, *Youth Courts: An Idea Whose Time has Come?* THE PA. LAWYER, 19 (Mar./Apr. 2011), available at <http://www.youthcourt.net/wp-content/uploads/2010/12/YouthCourts.pdf>.

⁷¹ *Id.* at 16-18.

⁷² *Pennsylvania Bar Association Resolution on Youth Court* (2011), available at http://stoneleighfoundation.org/sites/default/files/PBA%20resolution%20on%20Youth%20Courts_0.pdf.

⁷³ *Id.*

⁷⁴ Youth Court Advisory Board Meeting Agenda, Pennsylvania Bar Association (June 15, 2011).

⁷⁵ Youth Court Advisory Board Meeting Minutes, *supra* note 59.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ Youth Court Advisory Board Meeting Minutes, *supra* note 59.

Delaware County. PBA staff from the Law-Related Education and Pro Bono Offices have assisted author Gregory Volz in providing significant advice and technical assistance about youth courts to lawyers, bar associations, and foundations in Allegheny, Blair, Chester, Philadelphia, and York counties.

D. A Federal Partnership

In July 2011, the federal government responded to the STPP by announcing a “Supportive School Discipline Initiative” which called for an innovative collaboration between the U.S. Departments of Justice and Education.⁸⁰ Its intent is to support positive discipline practices that “foster safe and productive learning environments in every classroom.”⁸¹ Intended to end practices that “push out” students with behavioral problems, Attorney General Eric Holder stated:

Ensuring that our educational system is a doorway to opportunity – and not a point of entry to our criminal justice system – is a critical, and achievable goal . . . [and] [b]y bringing together government, law enforcement, academic, and community leaders, I’m confident that we can make certain that school discipline policies are enforced fairly and do not become obstacles to future growth, progress, and achievement.⁸²

Department of Education Secretary Arne Duncan stated:

Maintaining safe and supportive school climates is absolutely critical, and we are concerned about the rising rates and disparities in discipline in our nation’s schools . . . [b]y teaming up with stakeholders on this issue and through the work of our offices throughout the department, we hope to promote strategies that will engage students in learning and keep them safe.⁸³

Accordingly, both Pennsylvania and federal policy on zero-tolerance and the STPP continues to move in a direction to find a more humane and just alternative to these discredited, rigid, and punitive disciplinary systems. They no longer have official endorsement within either the juvenile justice or educational systems. Schools need to keep students in school and engaged, where they can develop the tools to prosper. Juvenile justice systems should develop youth courts as an alternative to more punitive programs. Locally, the U.S. Attorney’s Office in Philadelphia has expressed interest in youth courts and shown a willingness to support their development.⁸⁴ United States Attorney Zane David Memeger has stated:

⁸⁰ *Attorney General Holder, Secretary Duncan Announce Effort to Respond to School-to-Prison Pipeline by Supporting Good Discipline Practices*, U.S. DEP’T OF JUSTICE (July 21, 2011), <http://www.justice.gov/opa/pr/2011/July/11-ag-951.html>.

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ E-mail from Zane David Memeger, U.S. Attorney, E. Dist. of PA, to Gregory Volz (Nov. 9, 2011, 09:33 EST) (on file with author).

I have . . . decided to take the unique step of devoting office resources to training Youth Court students, and also hope to “adopt” and run a Chester Youth Court in the future. It is my fervent hope that by involving my office in the Chester Youth Courts program, we can take advantage of this rare and rich opportunity to address youth disciplinary problems, build relationship within this community, teach citizenship and civic engagement to at-risk youth, and enhance the students’ academic and socialization skills so that they may be better prepared for a future as productive members of this community.⁸⁵

Consensus is developing that a powerful public-private partnership is needed to replace the remnants of the STPP and restore the original mission of schools—to provide a quality education to children, preparing them to provide for themselves and their families. The emerging private bar leadership can draw inspiration from American values that have always promoted opportunity for our children. It is to this issue that we now turn.

IV. AMERICAN VALUES—PAST AND PRESENT

*“The American Dream is leaving your home in the morning
and not thinking you are going to get shot.”*

We want all American children to learn the “story of America” and the values that dominated the American experience: opportunity, freedom, and equality. At an early age children learn that when any one of these values is denied, there is injustice. There are few more powerful words in the American psyche than opportunity, freedom, equality, and justice. Yet, they must be more than mere platitudes to the past. They must be true in the present, and inspire us into the future.

Even before the birth of our republic, John Adams knew that education was vital to advancing opportunity—to this intellectual giant it was common sense.⁸⁶ As Adams said, “[L]aws for liberal education of youth, especially for the lower classes of the people, are so extremely wise and useful, that, to a humane and generous mind, *no expense* for this purpose should be thought extravagant.”⁸⁷ Adams’ prescient statement of the value of educating *all* our children was further clarified four score years later by Abraham Lincoln’s eloquent expression of the government’s role in ensuring equal opportunity:

This is essentially a people’s contest . . . a struggle for maintaining in the world that form and substance of government whose leading object is to elevate the condition of men; to lift the artificial weights from all shoulders; to clear the paths of laudable pursuit for all; to afford all an unfettered start and a fair chance in the race of life.⁸⁸

Fairness in the “race of life” is equal opportunity, and equal opportunity in contemporary America

⁸⁵ *Id.*

⁸⁶ DAVID MCCULLOUGH, JOHN ADAMS 103 (2001).

⁸⁷ *Id.* (emphasis added).

⁸⁸ President Abraham Lincoln, Message to Congress in Special Session (July 4, 1861).

requires quality education.⁸⁹

Although post-Civil War Constitutional Amendments (the Thirteenth, Fourteenth, and Fifteenth Amendments) were enacted to expand equality, Reconstruction's failure and two infamous nineteenth century U.S. Supreme Court cases limited that right.⁹⁰ The retreat from a national will to advance equal opportunity to citizens of all races occurred even as the Statue of Liberty held her beacon high, espousing a vision of inclusivity:

Give me your tired, your poor,
Your huddled masses yearning to breathe free,
The wretched refuse of your teeming shore.
Send these, the homeless, tempest-tost to me,
I lift my lamp beside the golden door!⁹¹

America's message to the world was freedom and opportunity, but for many of our own citizens this promise rang hollow. Although American state governments slowly began to pass laws that supposedly would provide education for all youth, Black Codes, Jim Crow laws, and segregation denied black youth equal educational opportunities.⁹² All youth were not free; opportunity was severely limited by the color of one's skin.

The crisis of the Great Depression (1929-1941) fostered deeper thinking about freedom, opportunity, and equality. Political freedom without accompanying economic freedom (the ability to meet basic necessities) was not true freedom.⁹³ Franklin Roosevelt told us freedom was not a "half and half" thing and necessitous men are not free.⁹⁴ He advanced the idea that citizens were entitled to an economic bill of rights to ensure their economic security.⁹⁵ Roosevelt was responding to prevailing sentiment by Americans that they wanted their government to play a stronger role to help them achieve economic security.⁹⁶

⁸⁹ See President Abraham Lincoln, First Political Announcement (Mar. 9, 1862) ("Upon the subject of education, not presuming to dictate any plan or system respecting it, I can only say that I view it as the most important subject which we as a people can be engaged in.").

⁹⁰ See, e.g., *Plessy v. Ferguson*, 163 U.S. 537 (1896) (establishing the "separate but equal" doctrine regarding racial segregation); *The Slaughter-House Cases*, 83 U.S. 36 (1873) (limiting the application of the Privileges and Immunities clause of the Fourteenth Amendment to rights of United States Citizenship).

⁹¹ Emma Lazarus, *The New Colossus* (1883).

⁹² See generally, AUGUST MEIER, *NEGRO THOUGHT IN AMERICA 1880-1915* (1988); JAMES ANDERSON, *THE EDUCATION OF BLACKS IN THE SOUTH 1860-1935* (1988).

⁹³ See generally CASS SUNSTEIN, *THE SECOND BILL OF RIGHTS: FDR'S UNFINISHED REVOLUTION AND WHY WE NEED IT MORE THAN EVER* (2004) (chronicling several speeches by FDR from 1932 to 1944, and describing a transformation of citizen rights which grew out of the economic crisis caused by the Depression).

⁹⁴ *Id.*

⁹⁵ *Id.* at 71 (Every man has a "right to life," which includes "a right to make a comfortable living.").

⁹⁶ See LIZABETH COHEN, *MAKING A NEW DEAL: INDUSTRIAL WORKERS IN CHICAGO, 1919-1939* 281-82 (1991). Fortune magazine asked Americans of all income levels in 1935, "Do you believe that the government should see to it that every man who wants to work has a job?" Yes, replied eighty-one percent of those considered lower middle class, eighty-nine percent of those labeled poor, and ninety-one percent of blacks, whereas less than half of the people defined as prosperous shared this view. The editors of Fortune concluded somewhat aghast, "public opinion overwhelmingly favors assumption by the government of a function that was never seriously contemplated prior to the New Deal." *Id.*

Accordingly, Roosevelt's economic direction was not ahead of the American people as some have suggested; in fact, he was merely keeping pace with public sentiment. Americans expected the government to help them achieve economic as well as political freedom. In today's information age, denial of quality education denies equal opportunity. Recognizing they are being denied the "tools" needed to succeed in society, some alienated youth use advanced technology to collectively vent their frustration in new ways that our forefathers could have scarcely imagined.

V. FLASH MOBS

"Before youth court I was an immature thug."

Flash Mobs first garnered attention after seemingly spontaneous choreographed dances occurred in shopping malls and other public spaces.⁹⁷ With inexpensive advances in social networking technology, young people are at the forefront of these impromptu gatherings.⁹⁸ However, in Philadelphia and other cities, these informal gatherings by youth have turned violent—a reflection of disengagement, lack of hope, and insufficient respect for the values that tie society together.⁹⁹

Innocent bystanders were beaten during the first flash mob in Philadelphia, on May 30, 2009, when a group of young people gathered on South Street, brought together by text messages and social networking websites.¹⁰⁰ In February 2010, police arrested fourteen of the one-hundred teenagers who participated in a flash mob in a Center City store, and all the youths were from three local high schools.¹⁰¹ Thirteen juveniles along with three adults were charged in March 2010 with felony rioting for fighting near city hall.¹⁰² On July 29, 2011, youth "descended on Center City after dark" and attacked passers-by.¹⁰³ Philadelphia Mayor Nutter created a 9:00 p.m. curfew for minors, with fines for families of youth who failed to comply.¹⁰⁴ In a sermon to fellow churchgoers, Mayor Nutter, who is black, placed blame on black families, telling parents to stop acting like human ATMs and telling youth to pull their pants up.¹⁰⁵

Many disagree with Mayor Nutter's tough stance. They believe the problem was caused partly by a lack of adequate after-school programming for youth. There has been a significant drop in state and local funding for after-school violence prevention programs, which are

⁹⁷ Ian Urbina, *Flash Mobs are Born as Word Grows by Text Message*, N.Y. TIMES, Mar. 24, 2010, <http://www.nytimes.com/2010/03/25/us/25mobs.html>.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ Robert Moran, *Philadelphia Police Make First 'Flash Mob' Arrest*, PHILA. INQUIRER, June 13, 2009, <http://www.freerepublic.com/focus/f-news/2271032/posts>.

¹⁰¹ Sheridan, *supra* note 13.

¹⁰² *Felony Charges in Philly Flash-Mob Riot*, CBS NEWS, Mar. 4, 2010, <http://www.cbsnews.com/stories/2010/03/04/national/main6267141.shtml>.

¹⁰³ Dave Boyer, *Philadelphia Mayor Talks Tough to Black Teenagers after "Flash Mobs,"* WASH. TIMES, Aug. 8, 2011, <http://www.washingtontimes.com/news/2011/aug/8/mayor-talks-tough-to-black-teens-after-flash-mobs/?page=all>.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

instrumental in both engaging youth and curbing unsupervised free time.¹⁰⁶

Youth court instruction could help to counteract flash mobs. Today's disconnected youth need to be trained about our democratic values and legal system. They need to understand that they have rights, and a stake in our democracy. Many students lack basic knowledge about rules, consequences, and accountability. They are not learning enough about these things in the existing school curriculum, and in-class and after-school youth courts could address that gap.

Failure to properly inculcate this knowledge in our youth leads to disconnected youth, some of whom demonstrate a callous disregard for property, public safety, or the rules of civil society. This is a clarion call to provide instruction about American values. We will show that youth courts are a practical, effective, and cost efficient way to provide that instruction.

VI. YOUTH COURTS

A. *A Historical Context*

It is unclear when youth courts first appeared, though anecdotal information suggests that they have been around for a long time.¹⁰⁷ Central Philadelphia High School, the second oldest public school in the country, had a youth court in 1947.¹⁰⁸ Its Chief Justice at the time, Norman Zarwin, is now a successful Philadelphia attorney.¹⁰⁹

Growing slowly but incrementally, there were fewer than eighty youth courts in the United States in 1994.¹¹⁰ Yet sixteen years later, youth courts grew to over one thousand.¹¹¹ They were viewed not just as an alternative program for juvenile justice, but also as an excellent

¹⁰⁶ Urbina, *supra* note 97.

¹⁰⁷ E-mail from Norman Zarwin, Attorney, to Gregory Volz (Nov. 3, 2011, 22:37 EST) (on file with author).

I became a candidate for the Central High School Chief Justice of the Student Court for the school year Sept 1947 thru [sic] June 1948. I won the election. The Court had 6 other associate justices. The Court met monthly or more frequently as might be necessary, usually after school hours. Central students, []then all boys, were generally studious and followed the school rules of conduct. But there were exceptions involving disorderly conduct, smoking, occasional fist fights and arguments among themselves or even with teachers. Our cases were sent to us generally by school counselors, teachers and from the principal's office . . . If the Court decided an infraction occurred, punishment included a warning or a detention or multiple detentions meaning staying after school for a certain number of hours for 1 or more days. I can't recall any cases which might be considered criminal under the law. The process was fun and gave the opportunity to argue about whether an offense occurred and if it did what form of punishment should be meted out. At each session at most there were no more than 2-3 cases to handle. The decision would be sent to a designated school person who informed the outcome to the student and who arranged the enforcement. No appeals were in the process. Today I suspect that infractions might be deemed far more serious than during that time but today life is far different than 1947-1948 in school life based on what I read and hear in the media.

Id.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Facts and Stats*, NAT'L ASS'N OF YOUTH COURTS, http://www.youthcourt.net/?page_id=24 (last visited Nov. 7, 2011).

¹¹¹ *Id.*

teaching instrument for law curriculum and civics.¹¹² The National Association for Youth Courts lists registered youth courts on its website, and currently lists over one thousand youth courts in the U.S., with California having 93, Texas 57, New York 91, Florida 61, and Illinois 126.¹¹³ Pennsylvania, with only fifteen youth courts, is the largest state in the U.S. without a robust youth court system.¹¹⁴ Several states with considerably smaller populations have far more youth courts than Pennsylvania: Wisconsin with 39, North Carolina with 49 and Arizona with 75.¹¹⁵ However, a recent Pennsylvania canvas of youth courts showed the number of youth courts in Pennsylvania is projected to grow by one hundred percent, from fifteen to almost thirty, with most being school-based.¹¹⁶ As even more parents, lawyers, schools, and justice systems become aware of youth courts, the numbers will increase.

The number of supporting organizations and entities promoting the expansion of youth courts is encouraging. The National Association of Youth Courts (NAYC) is interested in providing assistance to the eighteen existing state youth court associations and stimulating the development of state youth court associations where they have not yet been organized.¹¹⁷ NAYC leaders hope that Pennsylvania's youth court movement will result in a strong and sustainable state youth court association, and NAYC supports Pennsylvania's focus on evidence-based research with the offer to collaborate on designing a cost-benefit analysis concept paper.¹¹⁸

The York County Bar Association is promoting youth court development.¹¹⁹ Author Gregory Volz participated in a summer judicial internship program for youth court students housed in Delaware County. The Allegheny Bar Association has adopted a youth court project as its focus for a 2011-2012 young lawyer project.¹²⁰

Law students at the University of Pennsylvania are supporting development of a youth court at a Philadelphia High School.¹²¹ Law students from four law schools (Temple's Beasley

¹¹² Hannah Klein & Gregory Volz, *A Snapshot of Pennsylvania Youth Courts*, 8-9 (2011) (on file with authors).

¹¹³ *Youth Courts in the United States – Active Programs, August 2011*, NAT'L ASS'N OF YOUTH COURTS, <http://www.youthcourt.net/wp-content/uploads/2010/05/Active-no-emails.xls> (last visited Feb. 9, 2012).

¹¹⁴ Klein & Volz, *supra* note 112, at 9.

¹¹⁵ *Youth Courts in the United States*, *supra* note 113.

¹¹⁶ *Id.* at 1.

¹¹⁷ *Significance of Youth Courts*, NAT'L ASS'N OF YOUTH COURTS, http://www.youthcourt.net/?page_id=559 (last visited Jan. 25, 2012).

¹¹⁸ Email from Jack Levine, Program Dir., Nat'l Ass'n of Youth Courts, Inc., to Gregory Volz (Jan. 31, 2012 21:20 EST) (on file with author).

¹¹⁹ *Birdsall County Bar Impact Grants*, PA. BAR ASS'N, <http://www.pabarfoundation.org/Programs%20and%20Awards%5CBirdsall.aspx> (follow 2011 Birdsall Grant Recipients hyperlink) (last visited Feb. 3, 2012).

¹²⁰ E-mail from William H. Stewart, Vuono & Gray, LLC, Pittsburgh, to Gregory Volz (Nov. 9, 2011 13:57 EST) (on file with author).

After learning about the success of other youth courts in Pennsylvania and throughout the country and the growing truancy problem in Allegheny County, the 2011-12 BLI Class chose the creation of the Allegheny County Youth Court as its year-long class project with a desire to effect positive change in the local community by addressing the issue of truancy directly at its source, believing that youth involvement with this program will be a catalyst for behavioral change, educational opportunities, and enhanced public safety.

Id.

¹²¹ Klein & Volz, *supra* note 112, at 9.

School of Law, the University of Pennsylvania Law School, Villanova Law School, and Widener Law School) have provided support to youth court students in prior years.¹²² Swarthmore College students volunteered to support youth court students at a Chester high school in 2010-2011.¹²³ They developed lesson plans for public speaking and conflict resolution.¹²⁴ They then honored the accomplishments of the youth court students by planning and implementing a celebration at the end of the school year.¹²⁵

Author Gregory Volz, supported by the Pennsylvania Bar Association Pro Bono Office and various committees of the PBA, has spent five years developing and implementing youth courts in Chester. Despite recent state and national attention to the lack of adequate funding for Chester teachers, the Chester youth courts have continued to operate with continued interest and support from students.

Although the Chester youth courts have stimulated new interest in youth courts statewide, there has been a peer jury program run by the Erie County juvenile court since 1982.¹²⁶ At least a half dozen other active youth courts function throughout the state including Clearfield County, Warren County, Blair County, and Pottstown.¹²⁷ Communities in Schools of Philadelphia, Inc. has sponsored the South Philadelphia High School youth court for over ten years and has plans to develop several more this year.¹²⁸ York County has been funded by the Pennsylvania Commission on Crime and Delinquency (PCCD) and has plans to start two to three youth courts.¹²⁹

What is new in Pennsylvania is a systemic effort to create new youth courts and find support for existing ones. Several courtrooms especially built for teen courts in Philadelphia schools in the 1990s are currently being used to store school supplies, in stark contrast with the vibrant youth court operating at South Philadelphia High. A longstanding program operated by the Northampton County Probation Office is on hiatus waiting for funds,¹³⁰ and Clinton County has planned youth courts on hold.¹³¹ A former youth court in West Chester no longer operates.¹³² A survey of Pennsylvania youth courts listed on the NAYC website reveals more than half no longer are functioning.¹³³ Pennsylvania needs an organization to support and sustain high-quality youth courts.

The Pennsylvania Coalition for Representative Democracy (PennCORD), the civics education outreach of Third Circuit Judge and former Pennsylvania First Lady Marjorie Rendell, was founded by the Pennsylvania Department of Education, the National Constitution Center, and

¹²² *Id.*

¹²³ Email from Jennifer Koch, Co-President, Chester Youth Court Volunteers, to Gregory Volz (Feb. 2, 2012 0:54 EST) (on file with author).

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ Klein & Volz, *supra* note 112, at 6.

¹²⁷ *Id.* at 2-7.

¹²⁸ *Id.* at 2-3.

¹²⁹ *Id.* at 4.

¹³⁰ Letter from William J. Rossnock, Chief Juvenile Probation Officer (Jan. 10, 2011) (on file with author).

¹³¹ Based on author David Trevaskis' personal experience.

¹³² Klein & Volz, *supra* note 112.

¹³³ *Id.* Many of the courts listed on the NAYC website no longer function.

the Pennsylvania Bar Association.¹³⁴ PennCORD has played a lead role in bringing organizations together to promote youth court. PBA Law-Related Education and Special Project Coordinator Susan Etter has supported youth court work.¹³⁵ Special PBA-sponsored youth court trainings were held at the Statewide Pro Bono Conference in 2011 and in spring 2011, IOLTA sponsored programs with assistance from the Montgomery County Child Advocacy Project.¹³⁶

Physicians for Social Responsibility has started a youth court at Kensington Culinary High School in Philadelphia.¹³⁷ Keith Bailey has returned to the neighborhood where he first formed a youth court at Kensington High School 12 years ago.¹³⁸ His current work is supported by his former Kensington youth court students who are assisting in training a new generation of student-citizens.¹³⁹ EducationWorks is in its third year of providing AmeriCorps members with the opportunity to assist youth courts in Chester and Philadelphia.¹⁴⁰ This support has been an invaluable asset to the growth of youth courts in Chester, and EducationWorks is interested in playing a larger role with youth courts as they expand into Philadelphia.¹⁴¹ The Children's Hospital of Philadelphia seeks funding to conduct research on youth court outcomes.¹⁴²

The Stoneleigh Foundation has provided both leadership and financial support to the youth court movement in the Commonwealth.¹⁴³ They are interested in youth courts because of

¹³⁴ *PennCord: The Civil Mission of All Pennsylvania Schools*, NAT'L CONSTITUTION CTR., http://constitutioncenter.org/ncc_edu_PennCORD.aspx (last visited Jan. 25, 2012).

¹³⁵ Youth Court Advisory Board Meeting Minutes, *supra* note 59.

¹³⁶ Based on author David Trevaskis' personal experience.

¹³⁷ Interview by David Trevaskis with Keith Bailey, in Philadelphia, Pa. (Sept. 19, 2011).

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ Based on author Gregory Volz's personal experience.

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ E-mail from Cathy Weiss, Exec. Dir., Stoneleigh Found., and Diana Millner, Program Officer, Stoneleigh Foundation, to Gregory Volz (Nov. 10, 2011 13:14 EST) (on file with author).

Stoneleigh Foundation was established to help improve the well-being of children and youth. Focused on work that promotes change in our country's youth-serving systems, we meet our mission through fellowship awards that support outstanding individuals whose work unites research, policy and practice. In 2009, the Stoneleigh Foundation awarded attorney Gregg Volz a three-year fellowship to expand school-based youth courts as a promising alternative disciplinary system, both in the Chester Upland School District (CUSD) and state-wide. Zero tolerance programs, the school disciplinary policy adopted throughout the Commonwealth and in CUSD, have proven to be counterproductive and harmful to youth. Gregg's fellowship is designed to provide an alternative discipline process and build a movement for expanding the use of youth courts in Pennsylvania.

Stoneleigh believes in the power of an individual to effect change, and the importance of taking the "risk" that other sectors of our society simply can't. We cultivate and seed promising ideas by investing in promising leaders. At a time of limited resources, philanthropy has an important role to play in advancing promising practices and demonstrating impact. Our investment in research to inform policy and practice change can serve as the R&D for the more robust funding and policy-making bodies.

We didn't fully know why Pennsylvania hadn't advanced the youth court model, making it one of the largest states with the fewest number of operating youth courts. Yet, at the time our grant was made, it was the most replicated diversionary justice model in the country and research clearly

their utility to benefit both the fields of education and juvenile justice, while simultaneously empowering youth.¹⁴⁴

B. *Peer Pressure and Restorative Justice*

In general, youth courts are meant to only process youth who admit they committed the offense of which they are accused. Therefore, they are actually “sentencing courts.” The power of youth court lies in peer pressure. Most parents recognize that during adolescence many youth are far more concerned with what their peers think of them than what adults think. The power of positive peer pressure should not be underestimated—it is the distinguishing feature that separates youth court from other disciplinary programs. This peer pressure, coupled with the fact that student offenders are compelled to reflect about their own behavior, largely accounts for the power of youth court.

Progressive youth courts employ restorative justice and focus on repairing harm that the offender created, rather than focusing on punishment. The objective of Pennsylvania’s juvenile justice code is restorative justice, but overcrowded juvenile justice dockets are not always conducive to the full application of those principles.¹⁴⁵

linked educational failure with criminal justice involvement—one of the two outcomes Stoneleigh exists to prevent. While little data was available to “prove” that youth courts improved educational outcomes, we felt certain that school-based youth courts could help dismantle the school to prison pipeline that zero tolerance produces, and that if we could support this demonstration, perhaps policy and practice would be changed.

In the 2010-11 academic year, CUSD youth courts involved over 100 Chester Upland student volunteers and received hundreds of referrals from Chester schools. With Stoneleigh’s support, Mr. Volz has attracted a constellation of individuals and entities impressed by what they’ve seen at CUSD and committed to youth courts, including state senators, Delaware County judges, the US Attorney’s Office and a federal Judge, Villanova and Widener University and Swarthmore College students and faculty, faith-based leaders and national youth court leadership, to name a few. In fact, much of the positive press coverage of Chester City over the past few years has featured youth courts. Stoneleigh believes our investment is paying off on many levels.

However, the question of evidence or proof is one that looms over youth courts. As an initial investor, Stoneleigh Foundation recognized its unique role in demonstrating the impact of youth courts in Chester. Thus, Stoneleigh is currently funding a third party assessment of youth courts in Chester to better understand the school-based model and to ascertain the benefits to students who participate in youth courts. We believe school-based youth courts are an effective and efficient intervention to prevent delinquency and to foster school engagement—perhaps even to improve educational outcomes. Funders have a unique capacity to embrace the risk often involved with testing promising ideas, such as investing in leaders and supporting critical research. We can also convene other funders and stakeholders to build shared-learning platforms that can most effectively support long-term and sustainable change. We feel this has been a key factor in the expansion of youth courts in Pennsylvania.

Id.

¹⁴⁴ *Id.*

¹⁴⁵ 42 PA. CONS. STAT. § 6301 (2008) (guiding Pennsylvania’s juvenile justice system by a balanced and restorative justice philosophy, “the protection of the public interest, to provide for children committing delinquent acts programs of supervision, care, and rehabilitation that provide balanced attention to the protection of the community, the imposition of accountability for offenses committed, and the development of competencies to enable children to become

Neuroscience now reveals that adolescent decision-making capacity is less developed than in adults; youth are less able to resist coercive influences, and their character is not fully formed.¹⁴⁶ This causes youth to make errors in judgment that adults would not make.¹⁴⁷ Hence, both law and science provide a foundation for our argument that punishment should not be the primary objective of youth discipline. Rather, repairing the harm and helping the offender develop skills to avoid future bad behavior should be our primary goals.

C. Operational Issues

Youth courts can operate in schools or within the juvenile justice system. Within the school setting, youth courts can operate as an after-school program or within the school curriculum.¹⁴⁸ Ideally, a small group of students (18-20) are trained on court processes and roles by a team of professionals including teachers, lawyers, and law students. Our experience has shown that students can learn to operate a youth court relatively quickly. A series of fifteen forty-five minute lesson plans is sufficient for most students to learn court roles, processes, and administrative functions.¹⁴⁹ In Chester's youth court, the primary roles are youth judge, bailiff, juror, jury foreman, youth advocate, and clerk. Youth court training includes mock hearings in which students practice skills in preparation for a "live" hearing.¹⁵⁰

The actual youth court hearing closely follows formal court proceedings in Pennsylvania but without complex legal technicalities. After everyone swears to keep knowledge of the court proceedings confidential, the judge establishes the rules of the court. After an opening statement by the youth advocate, the jury begins questioning the respondent (student offender). This phase of the youth court hearing usually does not last more than ten minutes. After the jury completes the questioning, the youth advocate makes a closing argument. The respondent is removed from the hearing room while the jury deliberates to impose a just disposition. Possible sanctions include a letter of apology, a written essay, community service, and mandatory jury duty. The decision is announced to the respondent when he returns to the hearing room. The time given to the respondent to complete the disposition is usually short—between one and two weeks.

D. Impact

Author Gregory Volz reports that the number of Chester youth courts grew from one in 2007 to five in the spring of 2011. The number of students trained annually increased from twenty-five in 2007-2008 to over 125 in 2010-2011. The number of cases referred to youth court increased from fifty in the first year to over 550 in the fourth year. As courts expanded, support

responsible and productive members of the community.”).

¹⁴⁶ Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, AM. PSYCHOLOGIST 1009, 1011 (2003).

¹⁴⁷ *Id.* at 1014.

¹⁴⁸ In Pennsylvania, youth courts comply with state curriculum standards and currently operate in both social studies and English courses.

¹⁴⁹ See Gregory Volz & Sofia Saiyed, *Youth Court Coordinator's Manual* (Sept. 2011), available at <http://stoneleighfoundation.org/content/youth-court-coordinators-manual> (containing detailed youth court training lesson plans).

¹⁵⁰ *How to Run a Youth Court*, STONELEIGH FOUND., <http://stoneleighfoundation.org/content/how-run-youth-court> (last visited Nov. 6, 2011) (showing training videos of mock hearings).

increased from Chester-Upland School District school disciplinary officials, students, the local bar association, and the judiciary. What we experienced locally is mirrored by the attention youth courts garnered nationally, including two articles in the *New York Times* in less than a week.¹⁵¹

According to the American Bar Association, youth court “has quietly emerged as the most replicated—and fastest growing—juvenile justice intervention program in the United States. Based on documented growth rates, estimates that youth court could be handling as many as twenty-five percent of all juvenile arrests by 2015 are not unreasonable.”¹⁵²

VII. YOUTH COURT BENEFITS

Many Students Did Not Know the Century the Constitution Was Adopted.

A. A Constellation of Justice and Educational Benefits

Youth courts provide many benefits that only close and regular observation will reveal. They are normally viewed as benefitting school and/or juvenile justice disciplinary systems. As we argue in this Article, they are preferred alternatives to zero-tolerance school policies and blunt the STPP. They provide benefits to both systems—keeping students in school and out of the stigmatic justice system.

The low costs to run youth courts are very attractive. They are far more economical than other juvenile justice and school discipline programs. Florida contributes the most public financing for youth courts of any state in the United States with an annual appropriation between \$7-9 million.¹⁵³ Their youth court advocates estimate they save Florida \$50 million yearly.¹⁵⁴ Locally, South Philadelphia High School students process 200 cases annually at a total cost of a mere \$180.¹⁵⁵ “Youth as resources” provides a new asset to respond to errant behavior.

The benefits of youth courts must be appraised for both respondents and youth court volunteers. Research is ongoing in seven New York City youth courts by the Center for Court Innovation to measure benefits to respondents.¹⁵⁶ Research is being conducted by Research for Action in several Chester youth courts (right outside of Philadelphia) to evaluate benefits to both respondents and youth court members.¹⁵⁷ Research data may be available by September 2012 for Chester City¹⁵⁸ and early 2013 for New York City.¹⁵⁹

¹⁵¹ Tina Rosenberg, *For Young Offenders, Hope in a Jury of Their Peers*, N.Y. TIMES, Oct. 13, 2011, <http://opinionator.blogs.nytimes.com/2011/10/13/for-teen-offenders-hope-in-a-jury-of-their-peers/?hp>; Tina Rosenberg, *Where Teenagers Find the Jury isn't Rigged*, N.Y. TIMES, Oct. 18, 2011, <http://opinionator.blogs.nytimes.com/2011/10/18/where-teens-find-the-jury-isnt-rigged/#more-108409>.

¹⁵² *Youth Cases for Youth Courts: A Guide to the Typical Offenses Handled by Youth Courts*, AMERICAN BAR ASS'N, ii (2006), available at http://www.youthcourt.net/wp-content/uploads/2010/09/ABA_YouthCourtcases.pdf.

¹⁵³ Volz, *supra* note 70, at 19-21.

¹⁵⁴ *Id.* at 21.

¹⁵⁵ E-mail from Carl Murset to Gregory Volz (Nov. 9, 2011, 17:12 EST) (on file with author).

¹⁵⁶ *High School Youth Court Project Evaluation*, CENTER FOR COURT INNOVATION (on file with author); *Center for Court Innovation, Institutional Review Board: Application for Initial Review (School-Based youth courts in New York City: A New Tool for School Safety and Discipline?)*, CENTER FOR COURT INNOVATION (on file with author).

¹⁵⁷ E-mail from Eva Gold, Senior Research Fellow, Research for Action, to Gregory Volz (Feb. 1, 2012, 20:15 EST) (on file with author).

¹⁵⁸ *Id.*

Youth courts provide students with an opportunity to express their voice, to become empowered by participating in the design and administration of youth courts, and to gain self-respect, confidence, judgment, and critical thinking skills. They engage students, and some students have their interest in school reignited by youth court. Since the major reason many youth drop out of school is boredom, this engagement is potentially profound.¹⁶⁰ All of the youth court students at Chester who became regular members of the court graduated from high school. In a high school that struggles to graduate fifty percent of its students in four years, this achievement alone is extraordinary.

Some youth court members have advanced their literacy scores on standardized tests. Youth courts positively impact student opinions about the criminal justice system. Youth court teaches students about the law and legal processes. Research suggests that youth court has “long-term potential to minimize the negative impact of the STPP and to serve as a mechanism for increasing trust in the justice system among [Chester High School] students.”¹⁶¹

Socialization skills are developed by youth court members. Because the jury process requires an orderly sequence of questioning, jurors must learn patience. They learn to listen to other points of view, and work as a team in order to successfully run a youth court. All these skills will be used by students for the rest of their lives.

Student offenders are eligible to join youth court after satisfactorily completing their disposition. Nationally, youth court advocates estimate that up to one-fourth of respondents become youth court volunteers after they complete their disposition.¹⁶² Although our experience in Chester has not been that high, some of our most gifted youth court members initially came to youth court as respondents and not as volunteers. Offenders who volunteer to work in youth courts after completing their disposition are providing a high form of praise.

B. *Need for Benefit-Cost Analysis*

As identified above, youth courts provide benefits to respondents in both juvenile justice and educational systems. They also provide benefits to youth court members (youth who operate the courts) in both systems. Finally, youth courts are far less expensive to operate than current school or justice-based disciplinary systems since their major resource is youth, not expensive staff. Youth courts are the most replicated disciplinary program in the last several years, and we are in an economic climate where effective and efficient systems should be more at a premium than ever. Why has no benefit-cost analysis of youth court ever been conducted?

The NAYC has created a framework for an evaluation design and has attempted to secure funding for a full scale evaluation over the past two years, but to date no funding has been secured.¹⁶³ Hopefully new leadership from the legal and educational community can help secure the needed assessments. When this occurs, the issue of the “student voice,” *infra* Section c, should not be overlooked—it may be the greatest benefit of all.

¹⁵⁹ Center for Court Innovation, *Institutional Review Board: Application for Initial Review*, *supra* note 156.

¹⁶⁰ See e.g., *Pushed Out: Youth Voices on the Dropout Crisis in Philadelphia*, *supra* note 8.

¹⁶¹ Nancy Hirschinger-Blank, Lori Simons, Gregory L. Volz, Raymond Thompson, Laura Finely, & Joseph Cleary, *A Pilot Assessment of a School-Based Youth Court in a Resource-Poor African-American Urban School District: Lessons Learned From Youth Court Volunteers*, 60 JUV. & FAM. CT. J 31, 46 (2009).

¹⁶² Email from Jack Levine, *supra* note 118.

¹⁶³ *Id.*

C. The Student Voice and Empowerment

Youth courts are a powerful platform for youth empowerment. By giving students a role in determining how the school community responds to incidents of harm and offense, youth court increases students' sense of ownership in their school environment, and their capacity to directly influence it. Of course, the extent to which youth courts actually empower students varies based on the model and specific context of implementation.¹⁶⁴ In order to realize their potential for youth empowerment, youth court programs must be shaped by students' experiences of the school disciplinary system. This can be achieved by surveying the student body directly about their experiences and attitudes towards the existing disciplinary system. This information can inform officials how youth court best fits into their school. Such a survey is being conducted this year in the Chester-Upland School District.

The Chester High School youth court grew out of a preliminary survey administered in 2007 to test the attitudes of students concerning the causes of student truancy.¹⁶⁵ The three causes of truancy that students gave were: 1) family problems, 2) irrelevant curriculum, and 3) inconsistent discipline.¹⁶⁶ After considering these causes, the students decided they could have little or no impact on the first two factors.¹⁶⁷ However, they felt a youth court, controlled by students, might be a mechanism by which students could improve the consistency of school discipline.¹⁶⁸

Various Philadelphia-based youth-led organizations, such as Youth United for Change (YUC),¹⁶⁹ the Philadelphia Student Union (PSU), and the coalitional Campaign for Nonviolent Schools,¹⁷⁰ provide inspiring models for centering student voice and developing student

¹⁶⁴ E-mail from Sofia Saiyed, AmeriCorps Member, to Gregory Volz (Nov. 10, 2011 16:21 EST) (on file with author).

For instance, if youth court takes the shape of a pre-professional program for students interested in legal careers, it risks being less a vehicle for youth empowerment than an arm of the school administration in which students learn technical aspects of rule enforcement. Another way that youth courts can lose their legitimacy as a forum for student empowerment is if the program is spearheaded by the administration and school disciplinarians. At one public high school in Philadelphia, members of the administration initiated the youth court program as a class, chose students for the class without the students' input, and assigned a school disciplinarian to be the teacher. During the training, whenever students expressed that a certain rule or manner of enforcement was not fair, the teacher would respond by explaining why the discipline policy was legitimate and why the student was wrong. This model, rather than amplifying student's voices, effectively silences students and seeks to make them docile enforcers of the school administration's policies.

Id.

¹⁶⁵ Email from Raymond G. Thompson, Faculty Advisor, Chester High School youth court, to Gregory Volz (Jan. 27, 2012, 10:37 EST) (on file with author).

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ The school-based chapters of YUC conduct "surveys and listening campaigns to identify students' most urgent concerns." Additionally, YUC's Pushout Chapter conducted participatory action research to publish "Pushed Out." See *Pushed Out*, *supra* note 8.

¹⁷⁰ Platform, CAMPAIGN FOR NONVIOLENT SCHOOLS (2011), available at <http://www.campaignfornonviolentschools.org/wp-content/uploads/2011/03/CNS-platform.pdf> (drawing from student experiences to produce a

leadership in campaigns for school reform. This approach allows those most affected by school policies to guide reforms rather than relying solely on outside “experts” and policy analysts. Youth courts should follow this example if they wish to see the full impact of student empowerment.

Finally, teachers believe youth court is more relevant to students than a textbook curriculum because youth court promotes the development of judgment and critical thinking skills.¹⁷¹ In 2010-2011, a social studies teacher trained his class to operate a youth court and at the end of the year he offered the final assessment of the experience:

At first, it seemed that [the student offenders] were the ones primarily benefiting from the experience. But, as I saw more cases, I realized how important youth court was to the growth of its members . . . a great deal of organization is needed. Students were required to keep respondent paperwork and referrals organized to ensure the successful operation of the court. Second, youth court provides more opportunities for a student to work on their public speaking skills than any class I ever had in high school or college. The youth court requires students to communicate with the respondent, each other, and adults about the case. While conducting a hearing, students are improving their listening and communication skills. They have to work together, using words, to question the respondent and reach a consensus for the disposition. Many of them enter youth court with very poor skills when it comes to working with others. Youth court gives them the experience they need to improve these skills.

One of the most important benefits of youth court is the improvement of behavior and character it provides the members. I think the members see the actions of the respondents and the negative effects they create. Their observation of these effects makes them think when acting in the future. They see how people, including the respondent, are harmed by these actions, which leads to them making better decisions. I am not positive, but I do not believe a youth court student who signed up for the class received a referral this year.

The youth court experience prepares members for their future better than most academic classes. The skills improved and experiences are all required to be successful in any post-secondary education or job setting. Youth court keeps students on the right track and helps them make better decisions. Without it, I think many of the members would have left high school with less of a chance to be successful. This is not to say that only youth court students can be successful after high school. Simply put, youth court increases that chance.”¹⁷²

platform calling for specific reforms related to student voice, discipline, student support and student services and classroom engagement, and calling for restorative practices, training for teachers and staff, limited use of out of school suspensions, allowing students to perform meaningful community service as a means of restitution, and full implementation of restorative practices in all neighborhood schools, including restorative justice circles, peer mediation, and teen court).

¹⁷¹ John Simmons, *Chester Youth Court End of Year Assessment* (June 2011) (on file with author).

¹⁷² *Id.*

VIII. YOUTH COURT CHALLENGES

“All Men Are Created Equal” is a Phrase Many Youth Have Never Heard.

There are several challenges to successful youth court expansion in Pennsylvania. One is to ensure that all potential benefits (see *supra*, Section VIII) are identified and calculated. We believe a full calculation of all benefits requires a very comprehensive project design. As an example, we point to the belief some have that youth courts have great potential to improve student attitudes towards the legal system. This was first suggested by research conducted by Widener University Professor Nancy Blank.¹⁷³ Niklas Hultin, a lawyer and a lecturer in the Global Development Studies in the Anthropology Department at the University of Virginia, believes further research is needed to show that youth courts improve these attitudes.¹⁷⁴ If youth court can be shown to improve student attitudes towards law enforcement specifically and the legal system generally, that benefit by itself would justify youth court creation.

Another challenge is to determine the average cost of processing both a juvenile justice case and a school discipline case. Without this information, we cannot compare youth court costs with existing disciplinary costs. Hence, cost savings can't be determined. Our attempts to secure this information from government officials in Pennsylvania have not been successful. The NAYC seeks the same data and has worked with us to identify a strategy to find financing to measure youth court costs and benefits.¹⁷⁵ With strong bar/education leadership, we should be able to finally determine these costs.

Many adults still embrace the aphorism that “children should be seen and not heard.” The greatest resource youth courts have is their ability to be a platform to empower youth to express their voice, gain self-esteem and actively contribute to a better environment. We must encourage youth to participate in youth court planning. Only they can share their real life and unique perspective on what goes on in their school and neighborhoods. Yet our experience has shown that people in positions of authority often resist change and fail to listen to the voice of youth. The phrase “paradigm shift” is overused, but to really listen to youth and give their input the respect it deserves truly is a paradigm shift, and it is fundamental to successful youth court

¹⁷³ See *generally Pushed Out*, *supra* note 8.

¹⁷⁴ E-mail from Niklas Hultin, Anthropology Lecturer in Global Development Studies at the University of Virginia, to Gregory Volz (Nov. 9, 2011 9:17 EST) (on file with author).

At the moment, the scholarship on youth courts, limited as it is, does not adequately show whether or not one of the basic goals of youth courts are met. Inasmuch as youth court proponents argue that the promotion of a sense of citizenship is a benefit of youth court participation, we need to understand whether attitudes toward institutions such as the judiciary and law enforcement are indeed affected by youth court participation. Sociologists and anthropologists of law have demonstrated the importance of attending to how such perceptions are expressed through narratives of personal experience and daily life (so-called “legal consciousness scholarship”). Accordingly, among the many different kinds of research needed on youth court is qualitative, in depth, interview based, research on youth court participants’ attitudes toward legal institutions.

Id.

¹⁷⁵ In 2010, a meeting was held in Philadelphia with child advocates to examine how to secure this information, and the Project Director of the National Association of Youth Courts was present. We have asked justice officials, legislative aides and public interest organizations for this information. None of them had an answer and almost all asked us to contact them if we were ever able to determine the cost.

operations.

Ensuring that all court roles in youth court (judge, bailiff, clerk, jury foreman, etc.) are performed by students will probably require that students explain to adults why this is so important. Nationally, youth court advocates believe that the best youth courts are the ones where the students have the most control over all operations. The more students invest themselves in the court, the more they are interested in its successes. Ceding authority to students will not be easy for adults used to controlling school and justice programs, but letting youth have control of the court is one of the most important factors to youth court success.

Another challenge is to explore how law students, lawyers, law firms, and bar associations can work with teachers and other professionals to create youth court training teams. This may also require some financing, and in recognition of this, the Pennsylvania Bar Foundation has provided modest funding for youth courts in York and Delaware counties.¹⁷⁶ The Pennsylvania Commission for Crime and Delinquency has also awarded Chester and York counties youth court grants.¹⁷⁷ Finding a dedicated funding stream for youth courts is a major challenge to youth court expansion.

Another major challenge will be to ensure that only interested and competent teachers are assigned to provide youth court training. Pennsylvania needs more youth courts, but it will not profit from poorly functioning youth courts. Youth court coordinators should not have the dual responsibility of operating a punitive disciplinary system and suspending/expelling students, while concurrently teaching students to operate youth courts, which are restorative in nature.¹⁷⁸

The youth court bill that has been drafted needs to be introduced before the Pennsylvania General Assembly and become law. It should mandate that all Pennsylvania youth courts must employ restorative justice principles, and judges must be students, not adults. Although restorative justice has been the law in Pennsylvania for more than fifteen years, too often our juvenile justice and education systems do not follow its mandate. Punitive dispositions are harmful to immature youth and inconsistent with the juvenile code in Pennsylvania.¹⁷⁹

¹⁷⁶ *Birdsall County Bar Impact Grants*, *supra* note 119.

¹⁷⁷ Based on authors Gregory Volz and David Treskvaskis' personal experience.

¹⁷⁸ E-mail from Rekha Nair, former teacher and current law student, to Gregory Volz (Nov. 8, 2011 06:30 EST) (on file with author).

As youth courts expands it will be important to consider how it expands. Is the goal just to have a youth court in every school? Or is the goal to ensure that any youth court that is implemented is effective? If it is the former, the task is fairly easy. If it is the latter, which I believe it should be, there needs to be safe guards to ensure some sort of quality control. I believe this should be the goal because youth courts can only become a widespread alternative if they are indeed effective and live up to their promise. To that end, I think the most important factor is to have a good teacher. This teacher need not be an expert on law, but rather must be good at implementing a lesson plan and providing connections from one lesson to the next. The teacher must believe in the power and capabilities of the students in the class regardless of their academic achievement or behavioral history. Perhaps most importantly, the teacher must be good at creating buy-in from the students and building a culture in the classroom that says, "yes, we students, can make create positive change at this school." It is probably preferable that the teacher is not the school disciplinarian. Obviously outside forces cannot make staffing decisions for the school, but including a guide to choosing the appropriate teacher in the youth court manual may be a way to influence this decision and help ensure that youth courts are effectively implemented.

Id.

¹⁷⁹ *See* 42 PA. CONS. STAT. § 6201(b)(2) (2008) ("Consistent with the protection of the public interest, to

Another challenge is how lawyers, law students, and other professionals can gain entry into high schools and middle schools. The current assault on public education in Washington, D.C., in Harrisburg, Pennsylvania, and in the media has greatly damaged the spirit and morale of teachers, administrators, and school board officials. They are increasingly cautious and hesitant to implement new concepts. It will take a diplomatic strategy for lawyers and law students to gain the confidence of professional educators to allow them into their buildings to create youth courts, no matter how much we believe youth courts can help educational systems.

None of these challenges is insurmountable. Each requires reflection and planning. However, once we meet these challenges, we will be poised to help Pennsylvania craft the most effective youth court plan in the United States. Our children deserve no less.

IX. ROLE FOR THE LEGAL PROFESSION

"If it were not for youth court, I would be in a gang."

As the Pennsylvania Bar Association youth court resolution¹⁸⁰ (discussed *supra*, Section C) demonstrates, lawyers are currently leading the youth court movement. Although leadership within the educational community is needed to supplement that from lawyers, we need to examine why lawyers really must be the dominant professional class on this issue.

In 2004, the Journal of Poverty Law and Policy published a special edition on economic issues. One author was a minister who wrote that poverty was more of a justice issue than an economic one. He wrote, "[O]ur society has the economic capacity to do almost anything to which it grants importance. We have the economic capacity to address poverty. What seems to be lacking is the political will; poverty is simply not granted priority."¹⁸¹

In exploring where leadership might come from to establish the "will" to promote poverty as a national priority, the minister explored various professional sectors and dismissed them before turning to the legal community:

That leaves the legal profession. Whether it has the political will to assume leadership in addressing minority poverty, or the capacity to capture the attention of the populace, may depend upon public-interest lawyers bringing the remaining members of the legal profession into the discussion. Up until now, the faith community seems to have abdicated much of its responsibility; the legal profession cannot so easily shrug this burden. On the contrary, the legal profession is not just one vehicle that can create and drive the partnerships needed to address a national consideration of institutionalized poverty; in my judgment, it appears to be the *only one*.¹⁸²

The call for leadership from the legal community was based on the minister's belief that

provide for children committing delinquent acts programs of supervision, care and rehabilitation which provide balanced attention to the protection of the community, *the imposition of accountability for offenses committed and the development of competencies to enable children to become responsible and productive members of the community.*") (emphasis added).

¹⁸⁰ See Pennsylvania Bar Association Resolution on Youth Court, *supra* note 72.

¹⁸¹ Timothy Suenram, *Minority Poverty and the Faith Community*, 37 J. POVERTY L. & POL'Y 154, 157 (2003).

¹⁸² *Id.* (emphasis added).

the legal profession specifically exists to advance justice. Since he felt poverty was unjust, he felt the legal profession had a responsibility, and the expertise, to address it. His analysis is even more persuasive when applied to promoting youth courts as a strategy to restore opportunity to disconnected youth. The legal profession has always had authority over criminal and civil misbehavior. Hence, any new disciplinary system (youth courts) should fall within the province of the legal profession.

Similarly, denying our youth the tools needed to succeed in the global economy (can anybody deny that the fiscal crisis in the Chester-Upland School District deprives those children of equal educational opportunity?) is inconsistent with the historical promise of America—that opportunity is available to *all*. The legal profession, by its very nature, must be concerned with the injustice of lack of opportunity, failed educational systems, and racially disparate disciplinary systems. If we are not concerned with these injustices, then we must admit that economic opportunity is no longer the birthright of all American youth. Our professional rules state that lawyers have a duty to participate “in activities for improving the law, the legal system or the legal profession.”¹⁸³ Youth courts are properly the responsibility of lawyers, and the legal community.

Lawyers also have influence. We have access to individuals who run government agencies, serve as in-house counsel to major corporations, sit as judges, and manage law firms. Lawyers are connected to the levers of power in our society. We can advocate for youth courts and secure support from individuals in power.

The historical role of attorney as advocate is suited to helping youth find their voice and deliver their message. Lawyers as youth court instructors is an appropriate application of pro bono service. Lawyers as mentors is a laudable pursuit. Lawyers helping youth succeed in the race of life is public service at its finest.

Lawyers play another vital role, as caretakers of our historical legacy and gatekeepers of our Constitution. Better than many other professionals, we understand the evolution of opportunity, freedom and equality as they emerged, were debated, legislated, litigated, and interpreted. We recognize that conflicts between values often are resolved in compromise legislation. We are problem-solvers.

Who is more qualified than lawyers to understand the political realities within which competing values struggle? Who is better qualified to create effective programs to end zero-tolerance school policies and the STPP? If we have successfully made our case, the final issue is how best to develop an operational plan to expand youth courts in Pennsylvania.

X. A YOUTH COURT PLAN FOR PENNSYLVANIA

*“With Public Sentiment, Nothing Can Fail; Without It, Nothing Can Succeed.”*¹⁸⁴

Pennsylvania is well positioned to take advantage of the “best practices” being used in our existing youth courts and those in other states. However, we will need a comprehensive plan with input from multiple sectors to create the best youth court system in the nation, which should be our goal. We need to identify the structure needed (preferably a Pennsylvania Youth Court Association) to provide the kind of support to expand and sustain high-quality youth courts in our

¹⁸³ 204 PA. CODE § 81.4 (rule 6.1) (1980).

¹⁸⁴ President Abraham Lincoln, Debate with Judge Douglas (1858).

schools and juvenile justice systems. We need to acknowledge that the STPP is so deeply embedded, with so many interest groups profiting from its continuation, that our plan to dismantle it will be vigorously resisted. Youth court advocates need to articulate a clear message—youth courts are not the entire solution to STPP, but a vital preliminary strategy to halt its pernicious impact.

A. Participants

Youth must be included to provide valuable information about their school climate. If we recognize the importance of youth being involved in design of local youth courts, then we must understand their importance to help develop the state youth court plan. Some may argue that ensuring youth participation will be difficult, time-consuming or even inappropriate. Although it may be difficult and time-consuming, it is not inappropriate. In fact, if we fail to include youth, we condemn our effort before it begins. Often the very people intended to be the beneficiaries of well-intended programs (in this case our youth) are not invited to participate in the planning. This frequent mistake from the past should not be repeated again.¹⁸⁵

Parents, teachers, and school administrators need to be brought into the planning process. The preferred model of youth court instruction is to train students in social studies classes first, and then these same students can volunteer to operate juvenile justice youth courts processing juvenile offenses. This creates a buy-in from the educational community that the school-based youth courts are a vital part of the juvenile justice-based youth courts, and resources can be shared between the two systems.

The PBA Youth Court Advisory Board should be expanded to include law students and college students who have youth court experience.¹⁸⁶ We have seen the contribution they can make in Chester. In addition, retired baby boomers should also provide a fertile pool of professionals interested in contributing their expertise. The Chester youth courts received help from retired lawyers, teachers, and social workers. Retired judges and other professionals are another source of expertise.

Representatives from law enforcement and probation have already been invited to help plan. Ensuring representation from both dominant political parties must be achieved. Philanthropists, foundations, corporations, health systems, and faith-based organizations all have

¹⁸⁵ See generally Gregory L. Volz, David E. Robbins, & Vanessa E. Volz, *Poverty in the Aftermath of Katrina: Reimagining Citizen Leadership in the Context of Federalism*, 2 TENN. J.L. & POL'Y 487 (2006). Several years ago an analysis of a Housing and Urban Development document called the Consolidated Plan was conducted. This Plan detailed how jurisdictions distribute federal community development and housing dollars. This Plan requires the development of an anti-poverty plan. *None* of the plans that were reviewed mentioned including poor citizens in the discussions of poverty solutions. Can you imagine not including the very people who were poor in the development of a plan to help them become self-sufficient? See also *Testimony of High School Youth Court Members*, STONELEIGH FOUND., <http://stoneleighfoundation.org/content/testimony-chester-high-school-youth-court-members> (last visited Nov. 10, 2011) (showcasing the persuasive testimony of Chester students who testified at state hearings in June 2010, compelling elected officials to decide that Pennsylvania needs youth court legislation).

¹⁸⁶ Swarthmore College students have provided training, research and organizational support for youth courts since 2005. In 2010, University of Pennsylvania Law students performed legal research, helped craft proposed youth court legislation, and helped a Philadelphia high school start a youth court. Four years ago, students at Widener and Villanova University Law Schools trained youth court students. University of Texas Law students are currently training youth court students in a social studies class at a middle school in Texas. Students at other law schools have either provided assistance to youth courts or expressed an interest in initiating pro bono law school support for youth courts.

considerable resources to contribute. A suburban Philadelphia church has provided youth court support, providing a model for other faiths.¹⁸⁷ In Chester, a nonprofit organization called the Unity Center has devoted years of financial and staff support to youth courts, and to Gregory Volz, one of the authors of this Article.¹⁸⁸ Led by its board members, who are partners in a successful law firm, the Unity Center has set a model for replication by other law firms, or organizations in which lawyers play a dominant role.

This youth court advisory board participant list is merely a starting point. There must be a large number of invitees given the need to resolve numerous and complex issues. Hence, the advisory board would benefit from breaking up into a subcommittee system as suggested by Judge Rendell at the organizational meeting of the PBA Youth Court Advisory Board last June.¹⁸⁹

B. Plan Content

The PBA youth court resolution calls for creation of a youth court advisory board, youth court expansion throughout the Commonwealth, a public private partnership to support youth courts, and youth court legislation.¹⁹⁰ Pennsylvania is a large state with 500 public school districts and sixty judicial districts.¹⁹¹ If each school district had two youth courts (high school and middle school) there could be as many as 1,000 youth courts in Pennsylvania. Between 18,000 and 20,000 youth would annually receive direct youth court instruction, since the average

¹⁸⁷ E-mail from George Aman, parishioner at Wayne Presbyterian, to Gregory Volz (Nov. 5, 2011, 15:23 EST) (on file with author).

The Social Justice Team of the Wayne Presbyterian Church has been supporting the youth court movement in several ways. First it has worked to inform the Congregation about the value of youth courts through speakers and publicity. Second, in that process the Team is recruiting members of this Church who are lawyers, teachers and others to participate in the training of youth court members. Third, it is providing advice and financial support for the formation of a youth court at Bartram High School in Philadelphia. Finally the Team has reviewed the proposed Pennsylvania legislation on youth courts and has consulted with legislators about it.

These activities have been motivated by members' concern for the future of youth in this State who sometimes have been victims of an inadequate juvenile justice system. The Team sees youth courts as a system which avoids having students become involved in the juvenile justice system over minor offenses and provides constructive rather than punitive remedies. Youth courts also motivate students operating the courts to see themselves as possessing power and responsibility in the operation of the school they attend. The courts also have the wider effect of improving the atmosphere of the school. Educationally the students who learn how to operate a court are also learning about the legal basis of society and government. The Team believes that youth courts would be helpful in many public schools throughout the State, and so it intends to advocate with legislators directly and through other associations such as the Pennsylvania Bar Association for the enactment of legislation encouraging and regulating youth courts.

Id.

¹⁸⁸ *Chester Youth Courts*, UNITY CTR., http://unitycenterofpa.org/chester_youth_courts/chester_youth_courts.html (last visited Feb. 5, 2012).

¹⁸⁹ Youth Court Advisory Board Meeting Minutes, *supra* note 59.

¹⁹⁰ *See Pennsylvania Bar Association Resolution on Youth Court*, *supra* note 72.

¹⁹¹ *See About the Courts*, THE UNIFIED JUDICIAL SYS. OF PA, <http://www.courts.state.pa.us/Links/Public/AboutTheCourts.htm> (last visited Nov. 11, 2011); *see also Pennsylvania School Districts*, SUNSHINE REVIEW, http://sunshinereview.org/index.php/Pennsylvania_school_districts (last visited Nov. 11, 2011).

size of a youth court training class is between 18 and 20. Chester had an eighth grade youth court last year. Allegheny County has had a seventh grade youth court for years, and two new middle school youth courts are planned.¹⁹²

Since we have examples that youth courts can be operated by middle school aged youth, we should focus more attention on developing them. Teaching middle school aged youth is a bit more challenging because of maturity issues but the payoff is huge. Youth court students who begin in seventh or eighth grade have years to contribute to their school culture and juvenile justice system.

Although the number of courts we propose is ambitious, it pales in comparison to the entrenched forces that support the STPP. Our plan must be audacious if we value the future of our youth, and the future of our society.

The content of the youth court plan should cover all issues identified in the proposed youth court bill including:

a) Assessing “best youth court practices.” The Center for Court Innovation in New York City recently published an assessment of their state’s youth courts with recommended “best practices.”

Pennsylvania should review this work, conduct a literature search of best practices in other states, and publish its own recommendations;

b) Establishing standards for school-based and juvenile justice-based youth courts in Pennsylvania (*e.g.*, type of court model used, required training curriculum, specific court roles to be performed by youth, number, and type of cases to be referred, governance, and administrative structure, etc.);¹⁹³

c) Explaining how full implementation of the youth court plan would create a youth court system with adequate resources to combat zero-tolerance, STPP, and the crisis of disconnected youth;

¹⁹² See, *e.g.*, E-mail from Kathryn S. Atman, Associate Professor Emeritus, University of Pittsburgh, to Gregory Volz (Nov. 8, 2011, 19:40 EST) (on file with author).

Youth courts at the middle school level can accomplish three objectives: 1) extend restorative justice principles to troubled youth who flaunt the Rule of Law, 2) provide an opportunity to strengthen each student’s resolve to act as a responsible citizen in society and 3) expand each student’s potential for developing brain-based Executive Function processes such as goal setting, planning, monitoring one’s own behavior and inhibiting inappropriate behavior. The goal for every youth court in Pennsylvania must be to promote behavior change in the students that the court serves. Time is of the essence. We must find a way to reach the increasing number of youth who are turning their backs on responsible behavior as a stabilizer in their personal life space. In-school youth courts provide a viable means of stemming the tide that is eroding the Rule of Law. We all have a stake in that foundational piece of our country’s heritage.

Id.

¹⁹³ Consistent with the best practices utilized in other states, Pennsylvania will benefit from a set of standards that ensure quality youth courts, but with the least intrusive oversight possible to ensure local control and flexibility.

- d) Forming a fundraising strategy that includes dedicated funds from both the public and private sectors for operations and data collection;
- e) Recommending the preferred regional or state structure/entity to provide professional services to youth courts in Pennsylvania;¹⁹⁴
- f) Securing research data so all youth courts are high quality.

XI. CONCLUSION

*“Some men see things as they are and say why.
I dream things that never were and say why not.”¹⁹⁵*

Quality youth courts keep students in school and out of the stigmatic juvenile justice system. As a youth development platform, they help students acquire life and citizenship skills they will use for the rest of their lives. With its vast higher education and law school network, Pennsylvania has ample resources to expand youth courts and at a cost far less than currently expended on disciplinary programs.

In quality youth courts, students apply American values to real life disciplinary situations that occur in their environment. They learn that civic education is relevant to their lives, and that restorative justice advances Lincoln’s vision: to afford all an unfettered start, and a fair chance, in the race of life.¹⁹⁶

¹⁹⁴ Services to be provided would include youth court training, fundraising, research gathering, and networking assistance. Lacking such a supporting mechanism, the current youth court movement will never reach its full potential.

¹⁹⁵ Senator Edward Moore “Ted” Kennedy, Eulogy at Robert F. Kennedy’s funeral (June 6, 1968) (referencing Robert Kennedy’s vision for a more just America and quoting George Bernard Shaw).

¹⁹⁶ President Abraham Lincoln, Message to Congress in Special Session (July 4, 1861).