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Community Lawyering in the Juvenile Cellblock: Creative Uses of Legal Problem Solving to Reconcile Competing Narratives on Prosecutorial Abuse, Juvenile Criminality, and Public Safety

*David Dominguez**

I. INTRODUCTION

A. *Maria's Sad Tale: "Why are they treating me so badly?"*

We, a team of law students in Community Lawyering¹ and I, meet Maria² in a juvenile cellblock.³ This is her first experience with secure confinement. She is fourteen years old, a Spanish-speaking, recently arrived immigrant. She is wearing a nondescript faded-blue jumpsuit, way too big for her small frame. Her orange plastic sandals complete the picture of someone who appears to have no identity. Her hair has been pulled back in a ponytail, a style she later says she never uses.

Maria is somber, quiet, of few words. We ask if she is okay and her eyes well up with tears. She says that she is afraid and does not know what to do. She says she has done nothing wrong and has never been in trouble with the law or at school (a fact we later verify). She says that the first thing the detention center did, once the police officer took off her handcuffs, was to have her step inside a shower room and strip off her clothes while a female staff member looked on. She says she had to prove that she was not concealing any contraband in any bodily cavity.

"What happened," we ask, "that a police officer brought you here?" She says that a classmate at school told the principal that she had a black marker like the kind used recently to vandalize bathroom walls with graffiti and gang insignia.

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1. Community Lawyering actively enlists the legal problem-solving resources of the community at large to resolve immediate disputes as multifaceted public concerns and not simply as isolated law problems. It is taught as a one-semester clinical seminar. See David Dominguez, *Getting Beyond Yes to Collaborative Justice: The Role of Negotiation in Community Lawyering*, 12 GEO. J. ON POVERTY L. & POL'Y 55 (2005).

2. For the most part, Maria's circumstances in juvenile detention, as reported here, represent one actual case. Rather than relate many other, quite similar cases, I added a few extra details to Maria's case to make her experience illustrative of countless other situations.

3. Technically, jail facilities and cellblocks for minors are called "youth centers."

The resource officer (a police officer assigned to the school) found Maria in the hall and demanded that she open her backpack.⁴ She did so and the officer found the marker. He escorted her to the principal's office where she was told to empty the contents of her backpack. A folder fell out bearing gang insignia similar to that on the walls. She was asked directly if she was responsible for the graffiti, and she said she had nothing to do with it. She explained to the principal and officer that she and others liked to pretend on their folders that they too could write such insignia like the bad kids did on the walls.

According to Maria, the officer said that in his experience he could tell she was lying to him. Without speaking to any other student to better determine the truthfulness of Maria's denial and with no other corroborating evidence, he decided to arrest Maria. He charged her with vandalizing school property, graffiti, and obstructing justice by falsifying information (i.e., her denial of any wrongdoing). With these three accusations of misdemeanor conduct in hand, the officer had sufficient legal grounds to place Maria in secure confinement. He arrested Maria, placed her in handcuffs, and drove her to the detention center where she was put in a cellblock to await her first hearing with a detention judge within forty-eight hours.⁵

Did she have any idea of what to expect at that hearing, how best to prepare? Had she been in contact with her parents? Had she been informed of the charges and of her right to legal counsel? "No," she said.

*B. Another Side of Maria's Story from the Perspective of Her Parents:
"Our daughter used to be such a good girl until she started middle
school!"*

Maria's parents illuminate a longer account of Maria's slide from top student and dancer in elementary school to one who lost interest in academics and her community dance program once she started middle school. Surrounded by a new peer group, she began to skip class periods and then entire days of school, barely achieving passing grades. She stopped hanging out with her former friends in favor of a new crowd of notorious drug users involved in drug dealing and gang activity. Her mother reports that Maria's former elementary school friends have been coming to her home to tell her that they are very worried about Maria because she has been bragging of late about how much she enjoys doing "bad stuff," including smoking marijuana and sneaking out late at night to spray graffiti gang signs around town. Maria's father says that they fear they have lost their daughter.

4. Among the legal issues arising from these circumstances, some may argue that the resources officer did not have reasonable suspicion of criminal conduct sufficient to warrant search and seizure of Maria and her backpack even though the search and seizure occurred on school grounds during classes. See generally *N. J. v. T.L.O.*, 469 U.S. 325 (1985).

5. As discussed *infra* pp. 23-25, the police practice of "stacking charges" against a juvenile ensures at least a short stay in detention. Utah Rules of Juvenile Procedure 9(b) requires a hearing within forty-eight hours of placement in secure confinement. UTAH R. JUV. P. 9(b) (1995). However, the unlucky few who are placed in detention just before the onset of a holiday could wait twice that long, ninety-six hours, or four nights, before seeing a judge. See *id.*

Then the parents add another dimension to the narrative, not altogether surprising: Maria's older brother has also been subject to incarceration in the juvenile justice system. Given his expulsion from school and criminal history, we ask the parents what they did differently to prevent the same thing from happening to Maria? What could they do, they ask? Are there younger siblings, we inquire? Yes, three more children. There is a long period of silence as we give the parents time to fight back tears.

We conclude our time with the parents by asking the questions on legal due process that we posed to Maria: did they have any idea of what to expect at Maria's detention hearing, how best to prepare? Had they been in contact with the juvenile probation officer assigned to Maria's case? Had they been informed of the charges against Maria and of their right to legal counsel to protect their custodial interests? "No," they said.

C. The Official Version as Told by the School Police Officer and Principal: "We finally caught this troublemaker!"

The police officer assigned to the middle-school says Maria is a classic case of a "wannabe" gang member becoming a "full-fledged" gangbanger. She wears gang apparel,⁶ throws gang signs, and is suspected of "showing how tough she is" to her new set of friends through drug use, graffiti, and sexual activity. The police officer says, along with the school principal, that there have been numerous reports of Maria writing graffiti on school walls, but up to this point there has been no way to pin school vandalism on her. Although they have been keeping their eyes on her, she was caught this time only because classmates reported the incident, and it was corroborated by various students who overheard Maria's account of how satisfied she was with her latest artwork on the bathroom wall.

My students and I ask the school police officer and school administrators (and later, managers of the juvenile correctional system and local community agencies) what, if anything, could we have done differently, given our respective professional duties, to anticipate and prevent Maria's slide into criminal misconduct? Once it was believed that Maria was starting down the path of "wannabe" gang member, what should we have done differently to intercept the earliest stages of Maria's juvenile delinquency and thus keep her from following her brother into a life of crime? How do we *act now* to prevent her younger siblings from meeting the same fate? What have we learned from Maria's case after all?⁷

Maria's case in the juvenile justice system—a jumble of disconnected half-truths of labels, finger-pointing and blame, legal rights, and therapeutic treatment—is becoming far too commonplace. Children who earlier in the day were

6. It turns out Maria's parents were not aware that Maria took another set of clothes to school and changed into them during the day, returning to her family clothes when returning home.

7. An update: Since our first meeting, Maria has fulfilled certain promises she made to the Community Lawyering team. For example, she has taken advantage of family mediation and tutorial services, renewed her ties to the community dance program, and struck up a new relationship with a college mentor (Maria would like to become a nurse someday). She is far more communicative with her parents, and they have resolved issues such as curfew and clothing. But she is still struggling to remove herself from gang activity and was placed back in juvenile detention for "being at the wrong place at the wrong time with the wrong people."

sitting among classmates at school are accused by police and other authorities of multiple acts of low-level misconduct, and become enmeshed in the juvenile justice system for the first time. They are transported to a cellblock in secure confinement, a facility housing dangerous detainees with long histories of delinquency.⁸ For this reason there is an urgent need to teach law students how to question and sort out competing narratives of prosecutorial abuse, institutional bureaucracy, family trauma and disintegration, juvenile criminality, and public safety. Law students need to learn how to handle a specific legal dispute over alleged juvenile delinquency in such a way to challenge routine, *pro forma*, and steadily growing incarceration of youth who are awaiting trial—"pre-adjudicated" children in the jargon of juvenile justice.⁹ As they do so, law students working with children and their families need to see that at-risk children need far more than legal experts; they need a community of legal problem solvers—family members, extended relatives, detention staff, juvenile probation officers, lawyers, teachers, and police officers—to restore troubled children to constructive and responsible membership in society.¹⁰

This article describes a law school clinical effort to address the plight of pre-adjudicated juveniles, especially those experiencing their first brush with the juvenile justice system.¹¹ Throughout the United States, every morning from Monday through Friday, thousands of pre-adjudicated children like Maria, between the ages of ten and seventeen are paraded through a summary juvenile detention hearing on whether or not they should remain jailed until the charges made against them can be heard in a regular session of juvenile court.¹²

The overwhelming majority of these children have no understanding at all of what will happen at that hearing, or what to say, or why the first proceeding is so

8. When I first learned of these cases regarding allegations of misdemeanors, stacked charges, and referral to detention, I could not understand why school-based discipline, such as suspension, was not an intermediate step until evidence could be gathered and weighed and the determination made whether any punishment was justified. If the child presents no threat of physical harm or violence at school, why even resort to a short-term suspension, let alone impose the ultimate form of restraint, especially when we educate children that under our system of justice we are innocent until proven guilty? Has the criminal law enforcement paradigm become so integrated in public schooling that it has corrupted the education paradigm? See generally AUGUSTINA H. REYES, *DISCIPLINE, ACHIEVEMENT, RACE: IS ZERO TOLERANCE THE ANSWER?* (2006); ADVANCEMENT PROJECT, *EDUCATION ON LOCKDOWN: THE SCHOOLHOUSE TO JAILHOUSE TRACK* (2005); Marilyn Elias, *At Schools, Less Tolerance for 'Zero Tolerance,'* USA Today, Aug. 10, 2006, at 6D.

9. According to a recent study by the Office of Juvenile Justice and Delinquency Prevention (OJJDP), the number of delinquency cases involving detention increased 11% between 1990 and 1999. James Austin, Kelly Dedel Johnson, & Ronald Weitzer, *Alternatives to the Secure Detention and Confinement of Juvenile Offenders*, OJJDP JUVENILE JUSTICE BULLETIN (U.S. Dept. of Justice- Office of Juvenile Justice & Delinquency Programs, Wash. D.C.) September 2005, at 2. Another highly reputable nationwide study conducted by the Annie E. Casey Foundation, the JUVENILE DETENTION ALTERNATIVES INITIATIVE (JDAI), found that between 1985 and 1995 the number of youth placed in secure confinement increased by 74%. Rochelle Stanfield, *Pathways to Juvenile Detention Reform: The JDAI story: Building a Better Justice System* (Annie E. Casey Found., Balt., Md.) 1999, at 6, available at <http://www.aecf.org/upload/PublicationFiles/jdai%20story.pdf>. The JDAI also found that less than one-third of the detainees had committed a violent offense. *Id.*

10. See Theresa Hughes, *A Paradigm of Youth Client Satisfaction: Heightening Professional Responsibility for Children's Advocates*, 40 COLUM. J.L. & SOC. PROBS. 551 (2007).

11. See STEVE LISS, *NO PLACE FOR CHILDREN: VOICES FROM JUVENILE DETENTION* (2005).

12. *Id.*

pivotal. Indeed, according to one scholar, even a short stay in detention has serious, long-lasting, negative impact on youth:

Moreover, we now know that detention, all other things controlled for, is a stronger predictor of future delinquency and criminality, more powerful than gang affiliation, weapons possession, or family dysfunction. Detention also exacerbates the numerous and disproportionate disadvantages these youth bring with them, whether those are untreated health and mental health problems, poor educational attachment, or immersion in a delinquent culture.¹³

Our law school clinical outreach is to all children in this predicament, but with particular attention to the increasingly disproportionate number of poor immigrant children and ethnic minority youth¹⁴ who have “holdable allegations of delinquency” pending against them in the State of Utah, have been arrested and placed in a secure confinement facility for the first time, and now await trial in Utah’s Fourth Juvenile District.¹⁵

As surprising as it may be for many Americans to learn of this pervasive practice, tens of thousands of children are being locked up in secure confinement every year, often on the basis of accusations of trivial to low-level misconduct. Referred to as cases involving “technical non-compliance with behavioral restrictions,” children are routinely picked up from home, school, or neighborhoods for acts ranging from being outside and playing basketball, using their computer or a cell phone, speaking to someone on the “no-contact” list, or skipping class.¹⁶ Another group of children, much like the story of Maria, are placed in secure confinement on the basis of accusations involving minor mischief (e.g., several acts of stealing bicycles, retail theft, or other forms of petty larceny).¹⁷ While these children may have committed the minor offenses for which they are charged, they are removed from their classrooms and stuck in a cellblock alongside hardcore criminal youth with long histories of serious juvenile delinquencies (e.g., aggravated bodily assault, aggravated sexual assault, and distribution of controlled substances).

These pre-adjudicated children are presumed innocent under the Fourteenth Amendment to the United States Constitution. Also, pursuant to the ban on cruel

13. Bart Lubow, *Reducing Inappropriate Detention: A Focus on the Role of Defense Attorneys*, JUV. JUST. UPDATE (Civic Research Institute, New York, N.Y.), Aug./Sept. 2005, at 2.

14. Stacey Gurian-Sherman, *Back to the Future: Returning Treatment to Juvenile Justice*, 15 CRIM. JUST. MAGAZINE 30 (2000).

15. The 4th District covers Utah, Millard, Juab, and Wasatch Counties and serves a total population of approximately 484,109 according to the U.S. Census Bureau population estimates for 2005 available online at <http://www.census.gov>. The 4th District does not cover Salt Lake City.

16. In a one-day count performed by the Annie E. Casey Foundation in 1995, pursuant to the Juvenile Detention Alternatives Initiative (JDAI), the majority of the cases brought into detention were for status offenses, many of which included technical violations. See Paul DeMuro, *PATHWAYS TO JUVENILE DETENTION REFORM: CONSIDER THE ALTERNATIVES: PLANNING AND IMPLEMENTING DETENTION ALTERNATIVES* at 5 (Annie E. Casey Found., 1999), available at <http://www.aecf.org/upload/PublicationFiles/consider%20the%20alternatives.pdf>.

17. Technical non-compliance cases and cases involving allegations of several low-level misdemeanors are steadily increasing and are more and more the norm, not the exception, among cases set for detention hearings.

and unusual punishment found in the Eighth Amendment, the United States Supreme Court ruled recently that the Constitution prohibits execution of juveniles, no matter how deliberate or vicious or heinous the crime committed.¹⁸ The Supreme Court found there is no way a child can formulate the most extreme level of culpability deserving the most extreme level of punishment.

Thus, the State cannot take the life of a minor. The very worst punishment that can be imposed on the very worst of youthful criminals is depriving them of liberty—incarceration. So if the worst that can be done to punish a child is to imprison him, how can this be the recourse routinely used in cases where the child has yet to have a day in court and is alleged to have engaged in technical noncompliance with behavioral rules (e.g., smoking or truancy) or three minor misdemeanors? Indeed, as a matter of public policy, premature use of detention for presumptively innocent children is counterproductive. “Throwing the book” at a child for relatively minor misdeeds means we have nothing left to impress the seriousness of aggravated criminal acts. What more can we do as a society if the child weathers our strongest public censure and becomes immune to the harshest punishment we can lawfully impose? How are we teaching children to understand and respect foundational building blocks of our criminal justice system—e.g., presumed innocence and proportionality—when we surround an impressionable child with hardened criminals with long rap sheets?

Equally troubling, the United States Supreme Court has ruled that there is no constitutional requirement for allowing for the posting of bail in the juvenile justice system as there is in the adult system.¹⁹ Consequently, in states such as Utah where there is no provision for bail,²⁰ when the child appears before the judge at the initial detention hearing to determine whether he remains confined or is allowed to return home pending the trial date, the power invested in the judge alone is enormous. So how long does a typical detention hearing last for a child who is

18. *Roper v. Simmons*, 543 U.S. 551, 574-75 (2005).

19. *In re Gault*, 387 U.S. 1, 14 (1967). *C.f.* UTAH CODE ANN. 78-3a-102 (2007): The purpose of the Utah’s Juvenile Justice Services is to,

(5)(b) order appropriate measures to promote guidance and control, preferably in the minor’s own home, as an aid in the prevention of future unlawful conduct and the development of responsible citizenship; (f) remove a minor from parental custody only where the minor’s safety or welfare, or the public safety, may not otherwise be adequately safeguarded; and (g) consistent with the ends of justice, act in the best interests of the minor in all cases and preserve and strengthen family ties.

20. UTAH CODE ANN. §78-3a-114(12) (Supp. 2007). Ironically, should the child be accused of committing certain egregious crimes, Utah provides for a certification process that allows the State to prove, *by a preponderance of the evidence*, that it would be in “the best interests of the minor and the public” for the district court to take jurisdiction and treat the matter as though the defendant were an adult. Thus, the youth qualifies to post bail! UTAH CODE ANN. §§78-3a-603(2)(b), 78-3a-603(11) (Supp. 2007).

presumed innocent,²¹ has been deprived of liberty, has no bail provision, and has no legal counsel to assist him? Maybe two minutes.²²

Although scholarly critics of the history and direction of juvenile detention practice are not hard to find,²³ practical solutions have proven difficult. This article explains how Community Lawyering, my clinical course at Brigham Young University Law School, is working to create alternatives to routine placement and extended stays of pre-adjudicated youth in secure confinement.²⁴ Community Lawyering can be defined as lawyering without opponents. It offers a different vision of equal justice for all Americans, one that does not require more partisan attorneys to represent more legal claims. While attorneys play an essential role in Community Lawyering, so does everyone else. Rather than rely on expensive legal expertise or a legal system riddled with arcane, inaccessible formal proceedings to provide equal justice, Community Lawyering offers a new legal structure that challenges people, including lawyers, to find and use their problem solving capability in creative, collaborative ways. Community Lawyering, therefore, is lawyering not just “for the rest of us” who cannot afford the present system but for all of us eager to embark on a different system of legal problem solving. It intervenes with the conviction that all Americans—poor and rich, immigrant and native, uneducated and degree-holding professional—want more from the law than another “ending” to another legal problem; we want to build a new system of equal justice.

Having written that, let me be candid and assure the reader that it is very tempting to put creativity to one side and to simply do whatever is necessary to rescue vulnerable children from the clutches of a broken bureaucracy. As presently operated, the juvenile justice system does not fulfill either of its twin missions, failing to accord legal due process to detainees and withholding treatment services needed to achieve *parens patriae*. There is practically no legal information and assistance offered to incarcerated children, and little time and effort is expended to

21. *In re Winship*, 397 U.S. 358, 363 (1970), provides that “[T]he Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of “every fact necessary to constitute the crime charged.” *Id.* at 364. “The standard provides concrete substance for the presumption of innocence—that bedrock ‘axiomatic and elementary’ principle whose ‘enforcement lies at the foundation of the administration of our criminal law.’” *Id.* at 363.

22. When the court docket is jammed with detention hearings, especially those days when there are fifteen or more hearings scheduled, it is not uncommon for some of these proceedings to last less than one minute.

23. For examples of scholarly articles, see, e.g., Bart Lubow, *Reducing Inappropriate Detention: A Focus on the Role of Defense Attorneys*, JUV. JUST. UPDATE (Civic Research Institute, New York, N.Y.), Aug./Sept. 2005; Douglas E. Abrams, *Reforming Juvenile Delinquency Treatment to Enhance Rehabilitation, Personal Accountability, and Public Safety*, 84 OR. L. REV. 1001 (2005); Sacha M. Coupet, *What to Do with the Sheep in Wolf’s Clothing: The Role of Rhetoric and Reality about Youth Offenders in the Constructive Dismantling of the Juvenile Justice System*, 148 U. PA. L. REV. 1303 (2000); Carol Bombardi, *Juvenile Detention Hearings: A Proposed Model Provision to Limit Discretion During the Preadjudicatory Stage*, 12 FORDHAM URB. L.J. 285 (1983); Claudia Worrell, *Pretrial Detention of Juveniles: Denial of Equal Protection Masked by the Parens Patriae Doctrine*, 95 YALE L.J. 174 (1985).

24. See, David Dominguez, *Equal Justice from a New Perspective: The Need for a First-Year Clinical Course on Public Interest Mediation*, 2006 UTAH L. REV. 995; David Dominguez, *Getting Beyond Yes to Collaborative Justice: The Role of Negotiation in Community Lawyering*, 12 GEO. J. ON POVERTY L. & POL’Y 55 (2005).

even interview the detainee at length to see what resources the child and family have to make better choices.

The power imbalance in juvenile legal proceedings is so lopsided that children and families are routinely overpowered and intimidated by administratively-convenient processes and outcomes. I fully understand (and at times envy) the zealous legal advocate who champions his young client's cause and "makes the system pay." But I have found over my years of Community Lawyering that zealous advocacy can become so critical of institutional error that it burns problem solving relationships and destroys the chance to negotiate for mutual gain and structural reform. Zealous advocacy can win at the detention hearing and force the juvenile justice system to release a dangerous child who poses a severe risk to himself or to the community. Zealous legal services can provide the "cure" that kills the patient, especially if the child proceeds to use his freedom to injure himself or others.

Thus, while my law students and I agree that it is noble to serve children in their hour of need and courageous to challenge systemic deficiencies in juvenile detention practices, Community Lawyering requires that we push ourselves beyond the traditional standard of zealous advocacy. For this reason, Community Lawyering is a legal problem solving method that is informed not only by zealous advocacy but by responsible advocacy on behalf of the entire community. By responsible advocacy, Community Lawyering signifies to the public that as we seek to vindicate the legal interests of the individual child before the current operations of juvenile justice, we also intend to work with others in the community to realize the vision of a collaborative system of juvenile justice. This system forges new problem solving partnerships and uses more of the family's, school's, and community agency's decision-making resources to resolve juvenile misconduct without resorting to formal charges of delinquency and referral to secure confinement.²⁵ As we help more and more pre-adjudicated children accused of juvenile delinquency, we seek to use the occasion to prod key decision-makers and other interested parties to consider long-term structural improvements in detention policies and practices.

This article also articulates our clinical strategy for gaining the support of the juvenile justice system and the larger community for comprehensive reform of detention practices and policies. To this end, we have promoted a new conversation in Utah County to promote our common interest in law and order that is fair and just. Based on our interviews with pre-adjudicated children in the cellblock, we are enriching the new conversation with important insights bearing on public education, juvenile criminality, immigration, race relations, and other aspects of public health and safety. We attend public gatherings—e.g., municipal council, school board, local organizations, neighborhood watch, etc.—present our findings,

25. There are times when interagency discussions lead to sharp disagreement as to what is in the best interest of the child. Should parental rights be terminated in favor of an extended relative pursuing legal guardianship? Should the child transfer to a different school or placement program? Should medications be increased? At times when there are strongly held positions and opposing views among erstwhile community partners, the parties look to the active listening/mediation/negotiation skills of community lawyers to refocus the conversation on shared interests and practical next steps. See David Dominguez, *Getting Beyond Yes to Collaborative Justice: The Role of Negotiations in Community Lawyering*, 12 GEO. J. ON POVERTY L. & POL'Y 55 (2005).

and offer recommendations.²⁶ Specifically, we ask diverse members of the community to meet with us to further explore improvement in detention practices by achieving better balance among the following three public interests: institutional integrity of the juvenile justice system; dignitary interest of the pre-adjudicated child and his family; and community safety.

1. Institutional Integrity

Concerning institutional integrity of the juvenile justice system, there is consensus that we desire detention practices that adhere closely to constitutional and statutory mandates. If we want children to respect and obey the law, we need to lead by example.²⁷ Yet, as discussed below, there are serious questions about whether detention practices are faithful to, for example, the requirement under the United States Constitution and Utah Constitution concerning separation of governmental powers. A detention case originates with the Executive Branch (arrest by police officers and initial custody by detention staff). There is no legal statute or code provision that expressly guides the transfer of prosecutorial authority away from the Executive Branch. It is debatable whether legal justification exists for the Judiciary, through its complement of probation officers, to assume prosecutorial responsibility at the initial detention hearing of a pre-adjudicated detainee who is not on probation.²⁸ In the same way, there is a clear statutory requirement that the State must free the detainee and return him to the care and custody of his parents unless it can prove that parents are incapable or unwilling to keep certain risk factors at an acceptable level.²⁹ Yet the sad fact is that there is no recognition of this statutory rule at detention hearings.

Therefore, in our quest to hold the institution of juvenile justice accountable to the law, Community Lawyering poses hard questions to interested parties, including: How do we as a community provide a check and balance on the juvenile justice system, ensuring that it maintains integrity throughout its operations, particularly the incarceration of presumably innocent children? Why should the juvenile justice system or any other governmental authority, be trusted as it removes parental custody before any hearing is held? What is our role as a citizenry in auditing the exercise of prosecutorial power and defending and enforcing proce-

26. Law students are taught to prepare a Community Impact Report (CIR) on each case they handle. After completing their own CIR, the students compare classmates' CIRs and come to class ready to discuss key lessons and implications arising from CIRs. The students and I then prepare to attend public meetings to disseminate our findings and to promote the new county-wide conversation on reforming detention practices. The problem solving skill we use among ourselves and at these public meetings is *public interest* mediation. See David Dominguez, *Equal Justice from a New Perspective: The Need for a First-Year Clinical Course on Public Interest Mediation*, 2006 UTAH L. REV. 995.

27. "Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy." *Olmstead v. U.S.*, 277 U.S. 438, 485 (1928) (Brandeis, J., dissenting).

28. The legal status of probation officers in Utah does not exist until it is "created by court order following an adjudication on the ground of a violation of law. . . . When the court has placed a minor on probation, a probation officer shall be assigned to supervise the minor." UTAH CODE JUD. ADMIN. R. 7-304 (2005). See full discussion *infra* pp. 24-26.

29. UTAH CODE ANN. §78-3a-113; UTAH CODE ANN. §78-3a-114; UTAH R. JUV. P. 9(a)(1)-(9) (1995).

dural and substantive protections of the state code and the guarantees of the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution? How do we join forces to make the juvenile justice system worthy of our respect and allegiance?

2. Dignitary Interest

Concerning the dignitary interest of the pre-adjudicated child, we all agree that children are not simply short adults. The juvenile justice system is premised on the belief that children need to be viewed in a different light than adults. Children have underdeveloped capacities when it comes to cognition and emotional stability, relational maturity, and so on—which is why, of course, we do not permit them to drive, drink alcohol, vote, serve on juries, enlist in the military, etc., until a certain age. It is precisely because they are developing, growing, and changing that we believe we can still reach them with an educational and rehabilitative message, not simply a correctional one.³⁰

As we focus on the dignitary interest of a pre-adjudicated child and his family, Community Lawyering tries to remind everyone that we are dealing with real families broken apart by detention practices. What more must we do to honor the humanity and personhood of pre-adjudicated children in their larger cultural and relational context, especially as members of real families and real homes?³¹ This in turn calls to mind the impact of detention on marital relations and in turn the strain on innocent siblings. How do we better preserve the family and protect younger children from trauma—and perhaps scorn and humiliation from peers—when the older son/brother or daughter/sister is in jail? Indeed, the health of many marriages and many children, beyond those in lock-up, are adversely affected by detention practices.

There is also the dignitary interest of victims to consider. Although this point folds into the third major interest of community safety, we are seeking to do more to help victims, as fellow neighbors, find justice that is timely and meaningful. As discussed below, one key way to assist victims is through victim-offender mediation. This form of mediation, which is strictly voluntary, not only arranges for offenders to make restitution for injuries and damages they caused, but also provides a safe forum for victims to be heard in their own words, dignifying the reality of their unique context and circumstances. At its best, victim-offender media-

30. See Michael M. O'Hear, *Faith, Justice, and the Teaching of Criminal Procedure*, 90 MARQ. L. REV. 87, at 89 ("All human beings are children of God. . . . [and] possess[] an essential and irreducible dignity that must be respected by all other people. Jesus provides our great model here. . . . teach[ing] that all of us—including, perhaps most notably for my purposes, those who violate our criminal laws—have intrinsic value in the eyes of God, regardless of social prejudices to the contrary." [footnotes omitted]).

31. As a form of temporary cessation of parental authority and custody in favor of the State's complete control, detention raises the specter of full-blown dependency proceedings and permanent removal of the child from the home based on accusations of neglect, if not abandonment. While this case is not the typical outgrowth of a "front-end" detention case, I have a growing sense of alarm that poor, immigrant, and ethnic minority parents are disproportionately impacted by the snowballing effect of detention leading to further acting out by the child. This detention then triggers state intervention by child welfare services. All of this happens without the state taking account of its lopsided, heavy-handed advantage when dealing with poor immigrants who are afraid of the system.

tion brings healing and closure to the sad episode of juvenile delinquency and looks to complete restoration of community life.

3. Community Safety

The aforementioned concerns with upholding institutional integrity and preserving human dignity and family unity must be balanced with equal concern for public safety. With so many more sensationalized reports of crimes committed by youth in the news, people are increasingly fearful that their safety, along with law and order, hang in the balance each time a school, police, or a judge appear lax in a disciplinary decision. How do we as a community better respond to the frustrated outcry: "We are giving kids too many second chances! They are getting away with mayhem and vandalism!"? Plainly, the victims of juvenile crime are not limited to those directly harmed, but to all who become more anxious, if not panicked when out in public among tough looking youth.

We, as Community Lawyers, assure our diverse audiences that we are listening and that when we interview detainees and their families we will impress the public's deep-felt consternation over the erosion of community safety. As described below, we make it a point during interviews to ask such questions as, "Do you appreciate how much harm you have inflicted? Do you understand how you have devastated the trust of family members and wreaked havoc on relationships among family members? This isn't just about you. There are real people who are now suffering, who are hurting from the pain you caused. Do you see the far-reaching effects of your criminal activity?"

Another effort to promote public safety, described at length below, is an ambitious project undertaken by Community Lawyering to train juvenile detention staff to perform our role and offer similar services to pre-adjudicated children. Currently, Community Lawyering is assisting two or three children before each detention hearing, meaning that we are not able to serve the rest of the children awaiting their detention hearings the following morning. Plainly, the public keenly desires that all pre-adjudicated children meet with a trained and caring individual who will use the occasion not only to provide legal information and assistance but also to help the family design a community safety plan that will connect them to needed resources and support.³² Accordingly, in a creative attempt to reach all the children in the cellblock, we have begun to show detention staff how to interview all the children; design the community safety plan in collaboration with the family; provide assistance before, during, and after detention hearings; and thus increase the likelihood that every one of these children will become law abiding and productive citizens.³³

This article proceeds, therefore, as an examination of the progress Community Lawyering is making to uphold, balance, and advance institutional integrity, dignity of the detainee and victim, and public safety at the three stages of detention practice. It will discuss how my law students and I are pursuing creative legal

32. A copy of the Community Safety Plan may be obtained from the author.

33. To render at least minimal legal assistance to the other kids, Community Lawyering produced a video and brochure that provide basic information for understanding the detention hearing and preparing for effective participation. These materials are discussed *infra* note 34.

problem solving methods before the detention hearing (review of intake documents, interview of child and family, preparation for child and parents “finding voice as community members” at the hearing, and offering a community safety plan to satisfy the judge), during the hearing (assisting the child and parents in finding voice at the proceeding and conversing with the judge about the proposed community safety plan), and immediately following the hearing (developing the community safety plan in light of the judge’s comments, especially with the goal of connecting the child, siblings, parents, and extended relatives to needed community resources).

II. THE EVENING BEFORE THE DETENTION HEARING

One of the teams of three or four law students arrives at the detention center at approximately 6:00 P.M. For the past weeks they have watched me demonstrate the intervention of Community Lawyering in detention practices. I am eager to see how they will take over and stretch our role. To what extent will they perform the role as a mirror image of my work, and to what degree will they add new ways of legal interviewing and new dimensions of legal counseling?³⁴

The team’s first act is to review the docket of cases scheduled for detention hearings the following morning. As is customary, there are far too many cases for us to assist every child and family. So we need to make difficult decisions. How will my students select among pre-adjudicated children when all deserve to be helped? In light of the three public interests we use to guide our work, we choose cases that most advance institutional integrity, detainee dignity, and public safety.

Discrepancy Cases: As to the first interest, holding juvenile justice accountable for the exercise of its power, we look for cases that reveal a glaring discrepancy between what the juvenile justice system purports to be and what actually transpired in the case at hand. We examine the intake documents for substantive or procedural irregularity. We check to see if the substantive charges actually amount to “holdable offenses” under the statute. For example, we recently handled a case where a child was booked into detention for “gang enhancement” which requires that the child act in concert with at least two others. This charge could not possibly be supported or justified by the underlying facts since there was only one other child involved. Another case accused the child of breaking into a “dwelling and causing damage in excess of \$5,000,” a felony which all by itself amounts to a “holdable offense.” The problem was that the underlying incident report spoke of vandalism perpetrated on an old, inoperative, abandoned car left in the middle of a forsaken lot.

Penitent Cases: As to the second interest, we try to work with those children who are openly asking for help to change their lives; children who are plainly remorseful and contrite. If a child has a hardened attitude and brags about his ability to manipulate the juvenile justice system, we move on to a child who desires most of all to put this episode in the past and to restore healthy relationships

34. From the first day of Community Lawyering, students are put on notice that they are expected to construct the learning experience as a new phenomenon of professional growth and service, not simply absorb an old one. I fully encourage them to be creative, innovative, and improvisational. For example, the newly produced video and brochure explaining detention procedures are products of student imagination. A copy of these materials may be obtained by contacting the author.

in the home and at school. These children tend to be more forthright and truthful in their communications with us and more willing to accept responsibility and consequences for misdeeds. What they learn from us during the interview prepares them (and later their families) to speak up forcefully at the detention hearing the following morning.

Community Scholarship Cases: My students and I cannot help all the detainees scheduled for their detention hearing the following morning. From the typical ten or so cases on the docket, we can only assist between three and five youngsters. Since we must often choose among equally deserving detainees needing legal information and assistance, we make it clear to the ones we choose that we are offering what is, in effect, a scholarship donated by the community at large. For this reason, we look for detainees who are interested, once they return to family, school, and the neighborhood, in becoming active participants in community programs designed to promote obedience to the law among adolescents. We are aware that detainees often face difficult challenges and temptations once released from jail. To counteract the likelihood that the youngster will return to negative and anti-social behavior, we impress upon the detainee that we are assisting him, and not others, because he has been chosen as a "community scholar." In our effort to get the child to see himself in a new light, as a valued peer instructor and role model, we explain that our voluntary legal assistance should be seen by the detainee as a scholarship awarded by the community in the hope and expectation that the child wants to leave secure confinement with a commitment to pro-social behavior.³⁵

A. Interview with the Child

Having reviewed intake documents and having chosen two or three cases among the ten or so on the court docket, the Community Lawyering team is now set to meet with the incarcerated youth for the first time. We begin the interview by introducing ourselves as volunteers working at the detention facility offering free legal assistance and information to help prepare for the detention hearing.³⁶ We follow our Interviewing Guidelines for Juvenile Detention Practice and make certain that the child (and, later, the parents) fully understand the difference between our non-partisan role as Community Lawyers and the advocacy role of privately-retained legal counsel.³⁷ To ensure this understanding, we explain carefully how our limited involvement is to be distinguished from that of an attorney who would represent legal interests zealously and who would offer specific legal

35. From time to time, the penitent/community scholarship cases also include detainees with long "incident reports" (rap sheets). The probability of these kids engaging in far more criminal mischief is high. Usually, there is very little we can do for them. But occasionally we meet a child who appears ready, finally, to use his talent in new ways, to do whatever is necessary to leave the criminal life behind and to become a solid citizen. Redirecting a child toward pro-social behavior and helpful community resources is a boon for public safety and goes a long way toward restoring hope in the community that even children with extensive histories of juvenile delinquency can rehabilitate and rejoin their families, schools, and neighborhoods.

36. We also explain that the participation of the child is voluntary and that he is free at any time to end our conversation.

37. A copy of Community Lawyering Interviewing Guidelines for Juvenile Detention Practice may be obtained from the author.

advice on how the child and family ought to proceed with the underlying legal charges and whether they ought to negotiate a plea bargain or go to trial. We then memorialize this understanding by having all parties sign and date the Consent and Authorization for Access and Release of Information (Consent)³⁸ which provides, *inter alia*:

Professor Dominguez and his law students are providing legal information and assistance to me and CHILD for free, without any financial cost to me or CHILD:

-To prepare me and CHILD for our participation in the detention hearing;

-To explain to me and CHILD the legal procedure and statutory rules of the detention hearing;

-To explain to me and CHILD how the detention hearing differs from other juvenile court hearings on the merits of the charges;

-To explain to me and CHILD the right we have to obtain legal counsel and the role of an attorney if we choose to retain an attorney;

Whether or not I choose to receive this legal information and assistance is purely voluntary and that I am under no obligation to agree to this Consent and Authorization for Release of Information or otherwise cooperate with Professor Dominguez and his law students.

Professor Dominguez and his law students are NOT acting in the role of my private legal representative.

The role of Professor Dominguez and his law students is to help not only me and CHILD, but also 4th District Juvenile Court Judges, Lightning Peak, Slate Canyon Youth Center, and their representatives fulfill the legal, educational, and corrective goals of Juvenile Justice Services in general, detention policies and practices in particular.³⁹

38. The Consent Form is attached as Appendix A.

39. The Utah Division of Juvenile Justice Services is committed to a balanced model of correction and education best represented by an equilateral triangle. Each side represents one of the missions of JJS and shares equal status with the other two. See <http://www.jjs.utah.gov/approach.htm>. Indeed, JJS likes to say that each side is dependent on the strength of the other two sides. These three missions are Community Protection, Offender Accountability, and Offender Competency Development. Trying to balance these missions means that juvenile justice cannot remain in the realm of abstract concept or noble ideal. "Justice" for juveniles is a down-and-dirty, in-the-trenches, working, nitty-gritty proposition of constant balancing and re-balancing, of "tight-ropeing" to find an equilibrium that serves the institution's interest in integrity, the community's interest in safety, and the child's dignitary interest in being deemed worthy as a fellow member of society. For a critical view of this balanced model, see Sharon Levrant et al., *Reconsidering Restorative Justice: The Corruption of Benevolence Revisited?*, 45 CRIME AND DELINQUENCY 3 (1999).

NOTE REGARDING CONFIDENTIALITY: In order to support and improve the benefit of treatments and services of Juvenile Justice Services for me and CHILD, Professor Dominguez and his law students, when they interview me and CHILD in preparation for CHILD's detention hearing, may gather information from me and CHILD that they will share with 4th District Juvenile Court Judges, Lightning Peak, Slate Canyon Youth Center, and their representatives, probation officers, and juvenile judges so that together they can offer the best help they can to me and CHILD."

After the Consent is signed and dated, we explain the workings of the pertinent sections of the criminal code, what is about to transpire procedurally and substantively the following morning at the detention hearing, and how that hearing differs from juvenile court proceedings on the merits of the charges.⁴⁰

During this first interview we enlist the help of the detainee to delve into institutional integrity: e.g., what happened during school disciplinary proceedings, arrest, and placement into detention that should be questioned or otherwise brought to the attention of the authorities? Has the child been informed of his rights? Does he know whether his parents have been contacted and notified of the charges and detention hearing the next morning? If, after reviewing intake documents we determine that this is a "discrepancy case," we closely examine the arrest and intake procedure, and the styling of the charges, to see if they make legal sense in light of the evidence.

In 1967, the United States Supreme Court held in *In Re Gault*⁴¹ that the Due Process Clause of the Fourteenth Amendment of the United States Constitution guarantees children certain procedural protections in connection with any deprivation of liberty, including notice of charges, the right to counsel *at every stage of the proceedings*,⁴² the privilege against self-incrimination, and the rights of confrontation and cross-examination.⁴³ Yet the sad fact is that the vast majority of children arrested and placed in secured detention facilities are processed through

40. For example, most children instinctively figure that the hearing the next morning will require them to plead guilty or not guilty to the charges (i.e., an arraignment). Consequently, they spend considerable time in the cellblock developing an explanation, defense, or excuse to submit to the judge the next morning. The children are surprised, at times shocked, to learn that the judge at the detention hearing will not be interested in whether the detainee committed the acts for which he is accused. It is critical, therefore, that the detainee receive correct legal information on the nature of the detention hearing and the specific statutory criteria that the judge will use to decide whether the child ought to remain in detention or returned to the custody of his parents while awaiting trial. The statutory criteria place the burden on the state to prove at the detention hearing that the incarcerated child poses a substantial risk to his own safety, the safety of others, or presents an unacceptable risk of not appearing for his court date (a "flight risk") and that the parents are not capable of reining in those risks to a level acceptable to the State. See UTAH CODE ANN. §78-3a-114(1)(a) (Supp. 2007).

41. 387 U.S. 1 (1967).

42. *Id.* See UTAH CODE ANN. §78-3a-913(1)(a) (Supp. 2007).

43. See generally 387 U.S. 1 (1967). Also, note the Court's discussion of fundamental legal interests of two separate parties that are at risk: Juvenile delinquency hearings are proceedings "in which a youth's freedom and his parents' right to his custody are at stake." *Id.* at 34 (emphasis added). See also *In re Castillo*, 632 P.2d 855, 856 (Utah 1981) ("[T]he ideals of individual liberty which . . . protect the sanctity of one's home and family . . . [are] essential in a free society."); *In re Walter B.*, 577 P.2d 119, 124 (Utah 1978) (The plurality opinion found that a parent has a "fundamental right, protected by the Constitution, to sustain his relationship with his child.").

intake, stripped searched, and brought into detention hearings without contact with legal counsel⁴⁴ To make matters worse, a disproportionate and growing number of these children are poor immigrant children and youth representing disadvantaged minority groups, many of whom do not speak English and whose parents fear participating in the legal process on account of their undocumented status in the United States.

At the same time, to honor the child's dignitary interest, we spend a considerable amount of time during the interview getting to know the child at a deeper level. We ask about his life in the home, at school, in the neighborhood. How many siblings are in the home? Do extended relatives or other families live in the home as well? How well does he get along with them? Does he have hobbies? Does he have a part-time job? What are his future goals? Where does he see himself in five, ten years?

B. Turning the Interview Toward "Pre-Mediation"

We then deliberately turn the interview from a conversation to "pre-mediation"—that is, we intentionally begin to set the stage for meaningful and productive parent-teen mediation the following week, when the trained mediator can open and widen viewpoints on the bigger picture of family relationships, helping parents and child to remember times of mutual support and harmony.⁴⁵ Anticipating that mediation session, we use the interview to help the child explore alternative ways to understand and reframe previous observations and answers so that new possibilities for constructive relationships in the home and pro-social behavior at school become evident. For example, we ask about the relationship he has with his mom and dad and ask, "Tell me something you like about your mom and dad. Tell me about a time when you remember a wonderful or fun experience with your mom and dad. Give me examples of your mom and dad caring for you." For those teenagers experiencing intense dislike of or disassociation from parents, pre-mediation gauges how difficult it will be the following week for the trained mediator to cover necessary topics and to arrive at a workable agreement.⁴⁶

44. What makes the absence of legal counsel so pernicious is that allegations of wrongdoing may be "stacked" so that they permit the police officer to place the kid in detention to "teach him a lesson" or "to set an example for other kids." When the officer uses the same facts of a street fight to state multiple charges of misdemeanors (criminal mischief, disorderly conduct, reckless endangerment, assault) he has set in motion the likelihood that the child will be satisfied—even glad—when a number of allegations are removed from consideration and the remaining charges stick as part of a plea bargain. The child now has a juvenile record that will be used against him time and again in various settings for the rest of his youth.

45. Our interview questions are adjusted or reworded to show sensitivity to the detainee's actual circumstances at home and school and to the myriad arrangements of today's families.

46. Our relationship to the trained mediator is integrated to the point that we can alert the mediator with a "pre-mediation" report on where "family landmines" are located. There is no indication that this arrangement has compromised the mediator's role or handling of the mediation—i.e. by subjecting the mediator to possible self-fulfilling prophecies by predisposing the mediator's expectations—when meeting with the family. Also, once the mediation is completed and an agreement is reached, the original copy of the signed agreement is returned to Community Lawyering, and we ensure that it is filed with the detainee's court documents.

C. Finding Voice As an Integral Member of Family and Community

The importance of treating the interview as pre-mediation cannot be overstated. When Community Lawyering students enter the cellblock to meet with a detainee, he is alone. If we are not careful, our eyes trick us into seeing the child as though he were nothing more than one isolated life. Caught in our tunnel vision, we focus not on the real life of a real child but instead on a case. Riveted on the legal predicament, we see and do what is most familiar to us, engaging in legal analysis of the facts and applicable law and preparing the matter for the following morning's detention hearing.

But the child is not alone. He is never alone. Given the real life of a real child, there are others in the room, a gathering of communities. Together they ask us if we will help them sustain the viability of various critical, life-giving communities, including those of the detainee's family and extended relatives, school, neighborhood, musical group, sports team, church, and other important relationships. In this sense, the word "community" in Community Lawyering describes legal problem solving that removes our blinders and opens our eyes to communities of relationships that are at risk of being needlessly damaged by prolonged incarceration.

For this reason, Community Lawyering students are trained to use cellblock interviews to impress upon the detainee that his life has never belonged to just him alone, and it does not now. Transcending pure legal analysis, we strive to help the child recognize that all the years of his life up to this point have created and tightened a unique web of loving, supportive relationships that are now in danger of being shredded. We then take the opportunity to recruit him—and later those communities—to embark on a new problem solving partnership that holds each other accountable as needed, vital partners in protecting and restoring their community bonds.⁴⁷

Indeed, returning to the central concern of human dignity in the cellblock, Community Lawyering chooses to believe in the child as a fellow community member even when he does not believe in himself or see his role as anything other than a troublemaker.⁴⁸ Even assuming the child engaged in the criminal acts he is

47. When, at the start of the semester, my students realize that I am serious about this audacious objective of Community Lawyering in the juvenile cellblock, their response is something to the effect, "Outrageous! We are not social workers, marriage counselors, family therapists, or otherwise qualified or trained to offer such services either in the cellblock or later in meetings with parents or other 'communities of relationships.' We cannot do this! You are asking the impossible!" I agree with my students, assuring them that I too see this work as "impossible." Then I gently remind them that at BYU Law School we all claim to be Christians and that our testimony of faith comes first—that is, we are Christians who happen to be offering legal assistance, not the other way around. Thus, if we are to succeed, if these goals are to be achieved, it will not be because of who we are but in spite of who we are, for what is impossible for us is possible for God. Thus, the question is not whether we are "big enough" to get the job done but whether the God we believe in is Big Enough to get the job done. Assuming God is that big, the only thing we have to decide is whether we will make ourselves available.

48. By situating the child in historical community relationships, we try to prevent the danger of Community Lawyering believing *so much* in the child that he becomes a person of our imagination, thereby impinging upon the human dignity of a real life. We also do this to lessen the risk of the converse, namely the kid looking to us as his heroes, expecting far too much out of our role and far too little out of his own. If we are not careful, the child wants us to assume responsibility for his care and

accused of perpetrating and deserves to be punished, he deserves the opportunity to avoid the reductionistic label of “juvenile delinquent.” While it is our job to hold the child’s feet to the fire,⁴⁹ it is also our task to let him know that he is capable of making wise decisions that support and strengthen community life in the home, school, and neighborhood. We do not minimize the need for the youth to accept responsibility for wrongdoing and to make amends, but we make every effort to illuminate the emerging human story that is vastly more complex and promising than one bad act would indicate.

The pre-mediation session ends with our effort to help the child find his voice as an integral member of family and community in preparation for the detention hearing. To this end, we design in collaboration with the child a community safety plan that will speak to the judge’s concern and, ideally, prompt a give-and-take exchange at the detention hearing. We stress that the outcome of the hearing may very well turn on whether the child (and the parent) design a detailed community safety plan that accounts honestly and openly to the judge about what they are prepared to do differently, with the support and commitment of community resources, to assure the court that no more criminal behavior will take place pending the trial on the merits. We inform the child that the typical proceeding, in effect, ignores and silences the child and parents, both individually and as a family. Unless they find their voices as a community and interrupt the routine flow of the proceeding, the judge will see family members and extended relatives as the probation officer paints them, no more and no less. Are the child and parents willing to create a community safety plan that covers the statutory criteria? Can they explain in their own words how they will better connect with supportive relationships, and why, given the help of those communities, the child presents minimal risk of hurting himself, others, or of running away and skipping out on his court date?⁵⁰

D. Interview with the Parents

1. Institutional Integrity

We then meet face to face with the parents or call them on the phone for an interview. We verify that they were notified by detention staff concerning their child’s arrest and placement in secure confinement. We then ask them a series of questions and engage them in a conversation:

well-being. As much of an “ego-rush” as this provides, it teaches the child nothing—except to think even less of his ability and to wait for others to rescue him.

49. It is useful to remember that many of these kids have been engaging in criminal misconduct, but only now, for the first time, have been apprehended. Although they may be in denial, trying to discount their misdeeds or proclivity toward lawlessness, they must learn from us that they need to be honest and tell the truth, because sooner or later they will be found out and the whole story will come out—and perhaps in front of someone who is far from sympathetic.

50. In order to truly prepare the detainee for the experience of finding his voice as a fellow community member, we perform role plays, being much harsher in the role of probation officer and judge so that the next morning’s proceeding is a “relief.”

Were they asked by detention staff if incarceration would amount to a deprivation of needed medical treatment or other essential services due to their child suffering from severe mental illness or psychological disorder?

Do they understand that their child will remain incarcerated until the judge decides at the next morning's detention hearing whether to release him to his parents?

Do they understand the criteria that the judge will use to decide that question? Do they understand what will be required of them at the detention hearing as to procedure or possible outcomes and do they know how best to participate?

Do they understand how the next morning's detention hearing differs from a later court date where the judge will adjudicate the pending charges?

Do they realize that the governing statute calls for least restrictive placement? Have they been given an opportunity to offer a suitable alternative such as detention at home or with extended relatives or with a trusted, competent adult?

Do they understand the right to legal counsel?

Invariably, the parents' answers to these and other such questions is "no."⁵¹

2. *Dignitary Interest, Finding Voice as Members of Family and Community*

As before, when interviewing the child in the cellblock, the interview is structured so that the parents can also find their voice as family and community members in preparation for the hearing. We impress upon the parents how important it is for them to speak to the judge about their willingness as a family, supported by others in the community, to pursue short-term steps to improve family dynamics (e.g., participation in parent-teen mediation) as well as long-term plans to get

51. That this would be the case anywhere would be frustrating, but what is truly mystifying is that this is happening in Utah, a state that goes out of its way to protect the sanctity of family and home. The Utah Supreme Court, in *In re J.P.*, made perhaps the strongest statement when it comes to a parent's fundamental right to custody over their child: "This parental right transcends all property and economic rights. It is rooted not in state or federal statutory or constitutional law, to which it is logically and chronologically prior, but in nature and human instinct." 648 P.2d 1364, 1364, 1373 (Utah 1982). Not surprisingly, this sentiment is reflected in the pertinent statute governing detention hearings: "A minor may not be placed or kept in a secure detention facility pending court proceedings unless it is unsafe for the public to leave the minor with his parents, guardian, or custodian and the minor is detainable based on guidelines promulgated by the Division of Juvenile Justice Services." UTAH CODE ANN. §78-3a-114(1)(a) (Supp. 2007).

involved with community resources. We try to take full advantage of this opportunity to dignify the parents by engaging them in a conversation about parenting styles and the frustration of trying to be a good parent, the difficulty of knowing how much supervision is enough, the challenge of determining when it is best to override their child's decision in friends or activities, and learning how to communicate honestly with a moody teenager.

3. Community Safety

When we speak to the parents about the need to assure the detention judge (and, by extension, the public) the following morning that their child is not a menace and is safe to return to the family, school, and neighborhood, we enter the most intense and difficult exchange of the evening. Our aim is to suggest, as strongly as we can without being offensive, that the parents might want to use this occasion to examine their parenting skills and to take advantage of community resources to better supervise not only the child in trouble but also their other children.

Where this conversation becomes almost unbearable is when we are speaking (in Spanish) to an immigrant family where the parents are working two jobs apiece just to make ends meet. As if the deck is not stacked against them already, we become the bearers of more bad news when we explain that they must take steps now to avoid the "older brother syndrome," where younger brothers and sisters become so distraught and troubled by the older brother being sent to jail (or, unfortunately, so enamored by the older brother's life as a lawbreaker and jailbird), that they too start acting out in school and become subject to school-based discipline. We explain that when the "older brother syndrome" plays out in recently-arrived immigrant families, not only are younger siblings at risk but extended relatives, grandparents, and perhaps other families and children sharing the living space.

When we visit with the parents at the detention facility or place the call, we try to ask questions that will naturally lead to a discussion of parenting skills and the connection between those skills and public safety, including: "How do you feel about your child being locked up in detention? Does this surprise you? Did you see it coming?" No matter how the parents answer these questions, their answers permit us to open up a wide-ranging conversation on immediate next steps to improve parenting (e.g., parent-teen mediation) and longer-term plans (e.g., community resources). For instance, the parents might say that they are shocked at the turn of events since their child is a great child and never gets into trouble—proving that they are basically clueless or in denial. They might be at the other extreme saying, "I am so glad he was arrested. This is great! This will teach him a lesson that there are consequences for his misbehavior! Yes, keep him in detention!"—which proves that parents are overreacting from anger and do not really understand the role of detention for pre-adjudicated youth, or what life is like on the cellblock, and thus have little idea that the negative influences from hardened criminal youth could make the child even more ungovernable.

III. MORNING OF THE DETENTION HEARING

The Community Lawyering team that interviewed the child and parents the evening before arrives at the detention center at 8:00 A.M., even though hearings do not start until 8:30 A.M. If all goes well, the parents arrive shortly thereafter, and for the next half-hour we discuss with them once again what is about to transpire and how they can make the most of the opportunity to find their voice before the judge.

Often at this point there is a noticeable change in the relationship we have with the parents. They were plainly not expecting us to be so concerned or sympathetic. They tend to be more trusting and willing to speak more openly to sensitive issues concerning family life in general, problems with the detainee, and siblings in particular. We answer their questions as best we can and refer to our Community Resources Guide, checking to see if there are local programs that may be of service.

With this new level of candor and comfort, we return to an item we broached the night before during our first interview: the importance of parent-teen mediation. If the parents are agreeable, we get them to sign a Promise to Appear at Mediation and inform them that this document will become part of the court records.⁵²

At some point during the half-hour while we wait for the hearings to begin, typically closer to the 8:30 A.M. mark, the probation officer assigned to the case enters the building and retrieves the intake documents, the same documents that my students and I spent two hours reviewing and processing the evening before. The probation officer is entrusted with quick perusal of the intake documents, distilling and assembling key information on the matter, and setting forth a recommendation at the hearing for the judge's consideration and order. After a few minutes sizing up the intake documents, the probation officer steps into the hallway where we are standing alongside the parents. He explains to the parents what his recommendation will be, either to release the child to the parents' custody without conditions, release the child to the parents' custody with conditions such as placement in a diversionary program, or to retain the child in secure confinement until such time as the probation officer is satisfied that the child is not a risk to his own well-being, the safety of others, or to run away from home.

When the probation officer finishes his comments and announces his recommendation, he expects the parents to defer to his professional perspective. At that point he will either proceed to the cellblock to let the detainee know what his recommendation will be, or he will walk back to the sealed-off area where probation officers congregate, waiting for the case to be called.

Once the probation officer informs the parents about his recommendation, a critical moment presents itself. There are times when parents and Community Lawyering teams see eye to eye with probation officers' recommendations, but there are times when we do not. In situations where we disagree, we try to make a difference in the recommendation (and the decision of the judge) by impressing

52. Once the parent-teen mediation is conducted and an agreement is reached, the original copy of the terms of the mediation agreement, bearing the signatures of the parties, is also submitted to the court.

upon the probation officer the need to consider more carefully the “full story” of (extended) family and community support. After all, given our intervention at detention the evening before and during the morning, we possess far more information on the child, family, and case than does the probation officer. Our goal, therefore, is to help probation officers benefit from our discoveries, insights, and suggested alternatives to an extended stay in detention. Although we will not expressly refer to the three major policy goals of institutional integrity, detainee dignity, and public safety, our statements and observations to the probation officer will be informed by those concerns.

In addition to providing the full story of the family’s community relationships, we try to focus the consultation with the probation officer on the community safety plan and how it addresses the governing statutory criteria (risk to self/others/taking flight).⁵³ The community safety plan becomes especially useful when we hear from the probation officer that his recommendation for a pre-adjudicated detainee rests on such non-statutory justifications as, “The child needs time to slow down and to think things over, to see that his bad decisions will be met with immediate consequences, to be taught a lesson, to give him time to consider his choices of friends and activities, etc.” We try as gently as we can to remind the probation officer that the United States Supreme Court ruled in *Schall v. Martin*⁵⁴ that such considerations are impermissible under the Fourteenth Amendment, and it is, therefore, illegal to incarcerate a pre-adjudicated youth in order to impose such punishment.⁵⁵

In fact, the one case that we explain on a regular basis to probation officers and detention staff is *Schall*, where the Court approved of New York State’s juvenile detention system on the grounds that it was not punitive in nature but rather designed to protect the pre-adjudicated child from hurting himself or others.⁵⁶ To make its ruling crystal clear, the Court expressly prohibited the use of secure confinement of pre-adjudicated youth for purposes of punishment. Consequently, pre-trial incarceration is illegal when used to “teach the kid a lesson” or “to give him a chance to think about his life” because the youth has yet to be found guilty of any offense. To the contrary, the child must be released from jail pending trial on the merits unless secure confinement is being used to prevent the child from committing a future act of harm to self or others.⁵⁷ Hence, Community Lawyering is trying mightily to revitalize the day-to-day importance of *Schall* by selecting cases where we can show that holding the child in detention is plainly to punish him for allegations of past acts and not to prevent a future safety risk to self or others, or the risk of running away.

At first, probation officers were caught off-guard when we disturbed their routine and proceeded to lengthen what were customarily short visits with pre-adjudicated children and their parents. But it did not take long for them to see that we were open with helpful information and were serious about advancing not only institutional accountability and dignitary interests but public safety as well. The more they understood that we were not there to “get our way” or to simply critic-

53. UTAH CODE ANN. §78-3a-114.

54. 467 U.S. 253, 253 (1984).

55. *Id.*

56. *Id.* at 274.

57. *Id.* at 269.

ize their work but instead to hold all parties accountable to the mission of juvenile justice, they saw the participation of Community Lawyering as very useful both toward strengthening the basis for their recommendation and in helping with follow-up on the case after the hearing.

Still, there is no question but that we find ourselves all the more determined by our experiences to point out to all who will listen that detention is used inordinately when a suitable alternative exists. We are admittedly biased in our belief that too often detention is used prematurely, in hasty reaction to a school-based misdeed or relatively minor misconduct in the neighborhood, well before other alternatives have been considered or tried. Probation officers sense this, perhaps keenly, and help us see other reasons why detention is more appropriate than we thought at first. Indeed, during these pre-hearing consultations with probation officers we find that there is still much to consider regarding public safety and the teaching-learning relationship we have established is truly a two-way street.

A. At the Hearing

The child walks into the hearing room from one side of the detention facility while the parents enter from the other side. For anyone seeing this for the first time, the moment is heart-wrenching. Both child and parents appear to be “deer caught in the headlights.” They look around the hearing room and see not only the judge but the bailiff, the recorder, the supervisor over probation officers, the director of the local diversionary program, and members of the detention staff. All this because the child is accused of stealing from several stores in the mall?

The judge asks the probation officer for a status report on the case and a recommendation of whether the child should be returned to the cellblock or allowed to return home. The probation officer often says something to the effect that the charges are serious (without enumerating the charges) and that he will need more time to determine the extent of the child’s risk to community safety before he would feel comfortable recommending release to the custody of the parents. He then often requests, and is granted “authorization of prior release,” signifying that the judge empowers the probation officer to release the child within the next seven days if certain conditions are met. If those conditions are not met and seven days transpire, another detention hearing is automatically scheduled to satisfy the governing statute.

If the child and parents have been prepared for the hearing by Community Lawyering, however, the case is distinguishable from those that proceed in typical fashion. First of all, they last longer, maybe four or five minutes, to allow for child and parents to find their voices as a family and as an integral part of community life. Secondly, the consultation among probation officer, parents, and Community Lawyering before the hearing almost certainly produces a consensus recommendation informed by meaningful consideration of institutional integrity, dignitary interest of the detainee, and public safety. Thirdly, the information supplied by Community Lawyering to the probation officer will result in a recommendation that permits immediate release based on the community safety plan, notably such new information as parental commitment to supervise home detention; willingness of the detainee’s part-time employer to allow the detainee to resume employment; the detainee’s commitment to provide day care for younger siblings, to attend school, and resume constructive school-based activities; and the

jointly signed Promise to Appear at Mediation that commits the family to parent-teen mediation and/or victim offender mediation the following week.⁵⁸

*B. Should Detention Staff, Not Probation Officers, Process Pre-Adjudicated Cases Where the Detainee is in Detention for the First Time?*⁵⁹

It is important to stop and ask why it is in detention hearings that the judge has no real choice but to show inordinate deference to the recommendation of a probation officer. Why is the probation officer involved in pre-adjudicated cases involving first-timers, much less given a pivotal role?

1. The Constitutional Argument for Increasing the Role of Detention Staff

The Utah Constitution requires that the three branches of government remain separate and distinct. The status of a probation officer is purely a creation of the judiciary “created by court order *following an adjudication*. . . .”⁶⁰ By definition, the pre-adjudicated detainee has yet to have his charges adjudicated. If there is no previous juvenile record (and thus no past adjudications) and no other previous contact with the probation department, there is simply no legal justification for a probation officer to make a recommendation to the detention judge involving a case of a pre-adjudicated detainee. Unless and until the judge adjudicates the finding of guilt, the matter remains strictly a case for the Executive Branch to process. The Executive Branch arrested the youth and placed him in detention. The Executive Branch processed the child through intake and assumed responsibility for custody and care while in detention.⁶¹ It is constitutionally suspect for the Executive Branch to abdicate its responsibility for preparing the case for the detention hearing and to transfer that authority to a probation officer without any legal right to do so. In adherence to Utah’s Constitution, the matter must remain strictly a case for the detention staff, operating under the authority of the Executive Branch, to permissibly handle until the charges are adjudicated.

2. The Public Policy Argument

This argument is rooted not only in the Constitution but in public policy. It is premature and dangerous to assign a child to a probation officer—as though the child has something to “prove” under the supervision of a “probation” officer—

58. The mediation services provided by my colleague, Professor Tamara Fackrell, and her law students are exceptional in quality and commitment, *often resulting in several follow-up mediations*.

59. I am thankful for astute questions raised and observations made by Community Lawyering student Joseph Shaha that prompted my interest in the probation officer’s role at detention hearings.

60. UTAH CODE JUD. ADMIN. R. 7-304 (2005) (emphasis added).

61. Detention Staff already have a statutory mandate under UTAH R. JUV. P. 9(b) to complete certain duties: “The officer in charge of the detention facility shall notify the minor, parent, guardian or custodian and attorney of the date, time, place and *manner* of such hearing.” *Id.* (emphasis added). One could argue that “manner” requires the Executive Branch to provide such legal information and assistance currently being provided by Community Lawyering.

when the child remains innocent in the eyes of the law.⁶² There has been no legal due process, no day in court.⁶³ The last thing society needs is for a child to believe that legal process is essentially meaningless because the system has already decided that he needs a probation officer. We are ill-served as a society when we deliver a message to an impressionable child with no criminal history that the system is getting ready for the child's "career" with juvenile justice supervision. Instead, it is good public policy for that child to hear the message loud and clear that we are expecting him to work closely with his family and community to grow into a responsible adult, to behave himself in compliance with the law, and that intermediate measures such as youth court, mediation, community service, etc., will give him, as a first-time offender, a second chance to prove that he has learned his lesson and can reform his ways.

3. *The Pragmatic Argument*

Finally, the reason that detention staff need to assume responsibility for making the recommendation at the detention hearing for the first-timer is for practical reasons. It makes much better sense for detention staff to take over for probation officers in these cases. Probation officers typically get the file just minutes before the detention hearing and routinely recommend "authorization for prior release while further investigation takes place and more information is obtained, including the full police report." Detention staff, on the other hand, work full shifts at the detention center and thus have far more time to carefully examine the intake documents, meet with the detainee, and prepare him for the hearing. With proper training in law and interviewing methods,⁶⁴ detention staff could perform the services Community Lawyering presently performs the evening before the detention hearing (e.g., reviewing intake documents for procedural errors or substantive discrepancies such as stacked/unfounded charges;⁶⁵ formulating and designing with the child and parents a responsible, responsive recommendation to the judge, including a community safety plan); the morning of the hearing, encouraging the family to speak directly to the judge as much as possible; and, following the hearing, assisting the family with comprehensive assessment/arrangement of immediate and long-term family resources, including parent-teen mediation.

62. How does this safeguard the presumption of innocence under the 5th, 6th, and 14th Amendments? In 1895, the US Supreme Court recognized in *Coffin v. US*, "[t]he principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law." 156 U.S. 432, 453 (1895).

63. How does this honor fundamental liberty interests of kids and families under the Due Process Clause of the 14th Amendment?

64. I dare not deny or minimize the concern for a potential violation of constitutional protections guaranteed by *Miranda v. Arizona*, 384 U.S. 436 (1966). Detention staff would need to appreciate the difference between supplying legal information and pursuing custodial interrogation of a minor. The detainee would need to understand that he has a right to remain silent and that incriminating statements could be used against him.

65. UTAH CODE ANN. §§ 78-3a-113(5)(b)(i), (c), & (d) (Supp. 2007) require detention intake staff to review the legal basis for placing a minor in secure confinement and to determine whether detention or some other shelter is more appropriate. Despite these statutory mandates, it is exceedingly rare that detention intake staff will contest the arresting officer's reason(s) for placing a child in lock-up.

While Community Lawyering continues to sort out with responsible officials the question of which branch of government ought to handle the first-time detainee, we have embarked on a training program to teach detention staff how to perform our role.

IV. FOLLOW-UP AFTER THE DETENTION HEARING

A. *Parent-Teen Mediation (Initial and Check-up Sessions)*

Community Lawyering's intervention, after the hearing, is two-pronged. The first is micro-supervision of the child and family as we track their participation in parent-teen mediation and their compliance with the terms. Parent-teen mediation as currently taught and provided by my colleague, Professor Tamara Fackrell and her law students, supplies very helpful—at times, miraculous—follow through after the detention hearing. This approach to mediation carefully explores areas of improvement in parenting styles, depending on whether a parent tends to be too permissive or too disciplinarian. At the end of the mediation session, an agreement is entered into that sets forth a plan for stronger family life, academic achievement, and compliance with the law. These plans increase the likelihood of the offender as well as peers/younger siblings staying in school, getting connected with excellent community resources and mentors, graduating and pursuing higher education, all the while reducing the likelihood of these children committing crimes or causing unrest in their communities. Finally, since mediation is provided in several sessions (at times as a hybrid of victim-offender mediation/anger management/etc.), parents can practice better communication techniques and develop better parenting skills during follow-up sessions.

We remind the child that even though he is no longer in secure confinement, he still has a court date set on the charges, and the judge, should she find the child guilty of the charges, could sentence the child to serve an amount of time in detention. To motivate the child all the more to take mediation very seriously, we impress upon the child that mediation is the child's way of proving to juvenile justice that he intends to keep his promises and that his word is reliable. The court wants to see if he will demonstrate that he is prepared to assume more and more adult-like responsibility (especially if the youth is about to reach his eighteenth birthday). Can he prove that he has learned from the detention experience and that he is now worthy of being trusted and relied upon?

Another way we increase the child's incentive to take parent-teen mediation seriously is to explain how the mediation procedure and agreement, in addition to helping the family for the long-term, can help the child in the short-term with the handling of the charges by the prosecutor. Since the county prosecutor will not turn to this case and decide what to do with it for at least two to three weeks, the child has time to establish that he has changed his ways and is living up to the terms of the mediation agreement—e.g., attending school regularly, earning passing grades, avoiding contact with certain negative associates, and otherwise doing what he can to demonstrate good-faith commitment to a law-abiding life.⁶⁶ By

66. Family mediation agreements may contain a wide variety of terms, and will often specify dispute de-escalation procedures, chores at home, childcare responsibility for younger siblings, part-time

offering such proof of rehabilitation and restoration, it is not hard to imagine that the prosecutor might be persuaded to hold in abeyance any further proceedings on the charges with the expectation of dismissal of the charges after six months of no further acts of juvenile delinquency.

B. New County-wide Conversation on the Appropriate Use of Detention

In addition to “micro” follow-up on each family, Community Lawyering is pursuing a macro, county-wide effort to foster public dialogue on unjust incarceration of presumably innocent children. We are working closely with a community-based organization, Community Dispute Resolution Services (CDRS), which is also determined to increase public safety.⁶⁷ Through the course of this partnership, Community Lawyering has been able to strengthen the message of CDRS by contributing compelling life stories of children restrained in cellblocks and other useful information distilled from our intervention at the detention facility. We have also illuminated larger patterns and trends.⁶⁸

The emerging partnership between Community Lawyering and CDRS seeks to tighten the connection between juvenile crime reduction (increasing public health and public safety) with improvements in Utah County’s public education pipeline (eliminating the academic achievement gap between white students and ethnic minority students, especially immigrant children). To this end, CDRS and Community Lawyering are working with community-based mediators and a local high school to establish a parents center that will provide culturally responsive parent-teen mediation to the whole immigrant family living together in multigenerational homes.⁶⁹ By inviting all members of the household to attend the mediation, the parties can design an agreement that favorably impacts all the children in the home and, by extension, other children at school and in the neighborhood. We hope that our experiment in parent-teen mediation, especially as developed through follow-up sessions, will increase the likelihood of peers/younger siblings staying in school, getting connected with excellent resources and mentors, graduating, and pursuing higher education, all the while reducing the likelihood of these children committing crimes or causing unrest in their communities. As far as the dignitary interest of the children and parents participating in parent-teen mediation, one key goal is for Latino families to learn how to contribute more of their talents and assets toward the well-being of Utah County; for example, asking grandparents to help with Neighborhood Watch, using their time to report updated

employment, selection of music, curfew, hair length, choice of clothes, how many times the parents and child will spend time together each week comparing notes and for how long, etc.

67. The Board of Directors of Community Dispute Resolution Services, on which I serve, is an amazing cross-section of diverse and highly respected community leaders, representing local government, police, clergy, courts, public education, juvenile justice, ethnic organizations, and universities.

68. We have explained, for example, the “older brother” syndrome. *See supra* p. 20.

69. The initial focus of this partnership is on measurable improvement in the area of truancy remediation since chronic absenteeism is a serious issue for both law enforcement agencies (Provo Police and Juvenile Justice Services) as well as for public education. As the parents center becomes more firmly rooted and better known, other school-based delinquent acts, in addition to truancy, will be referred to parent-teen mediation, thereby establishing an intermediate option to avoid premature and unnecessary referral to detention.

information to Spanish speaking neighbors, keeping a eye on the community and knowing how to report suspicious activity to the police, etc.⁷⁰ To this end, it will be critical for the parents center to collect information on participating families, to identify ways for them to help the school achieve the specific goal of reduced truancy, and to help the community achieve the goal of reduced crime.⁷¹

V. CONCLUSION

The traditional role of the lawyer calls for defending Constitutional rights and statutory safeguards no matter how unsavory or despicable the client may be. Whatever the merits of this approach when the client is an adult, legal problem solving must assume a different role when the client is an adolescent charged with juvenile delinquency and placed in secure confinement, especially for the first time. There is no question that the professional duties of legal counsel for a child in jail include enforcing procedural and substantive due process protections afforded by the Constitution. It is incumbent upon us as attorneys for incarcerated, pre-adjudicated children that we hold the juvenile justice system accountable to the Constitution and thereby reduce legal and social costs of unnecessary placement in detention.

But legal problem solving in these situations also involves shaping a young life and crafting a new story of healing and achievement. While legal counsel may be an expert on the law, no attorney acting alone can reach the goal of therapeutic justice without the help of the child, the family, and the community. For this reason Community Lawyering in the juvenile cellblock uses creative problem solving methods to vindicate constitutional safeguards while at the same time working with the larger community to restore the child to full membership in society.

70. Another suggestion along the lines of shared responsibility for improved public education and increased public safety is for families, after participating in mediation and follow-up sessions, to be recruited to serve on "parent advisory panels" that would provide intermediate review of truancy cases—i.e., a form of "informal family court" that would help the high school determine, for example, if a medical excuse should excuse an absence even though the student did not see a doctor and does not have a doctor's note.

71. When Community Lawyering began its intervention at the detention facility, cultural competency was understood very narrowly—i.e., as a blanket criticism of the juvenile justice system, school districts, and other public systems for failing to appreciate the difficulty of the minority or immigrant experience in American society. In effect, this criterion made us vigilant in demanding that public officials grow in cultural sophistication and make their systems more accessible (e.g., translating materials into Spanish). We have learned that viewing cultural competency so narrowly tends to make us too ready to accept excuses and to forgive wrongdoing because systems are "racist." We have learned that to forge public partnerships with powerful institutions and to set a stage for a new conversation on detention practices requires that we turn "cultural competency" into a two-way street. We now emphasize with our clients, as members of historically marginalized or immigrant communities, that it is also incumbent upon them to engage in bridge-building from their side, and to show good faith in their effort to assimilate and acculturate. Public institutions of Utah County are far more receptive to negotiating structural change to better accommodate "outsiders and strangers" when they know that newcomers are also trying their best to integrate in American life.

APPENDIX A

Consent and Authorization for Access and Release of Information

I, _____, as parent or legal guardian of _____ (CHILD), _____ (Date of Birth), do hereby sign and date this document to give Slate Canyon Youth Center, 4th District Juvenile Court, and Lightning Peak, and their representatives, my consent and authorization to release information in their files on CHILD to David Dominguez, Professor of Law, Brigham Young University Law School, and his law students enrolled in Community Lawyering, for the purpose of helping me and CHILD prepare for detention proceedings before the 4th District Juvenile Court.

I specifically authorize the release of information pertaining to Slate Canyon's detention hearing paperwork on CHILD, including contact information for me and CHILD; Juvenile Referral and Request for Detention, Presenting Offense Episode (Narrative of Facts in support of the Request for Detention), and CHILD's Incident History Report.

I understand and agree that Professor Dominguez and his law students need access to CHILD's information for the following reasons:

To prepare me and CHILD for our participation in the detention hearing;

To explain to me and CHILD the legal procedure and statutory rules of the detention hearing;

To explain to me and CHILD how the detention hearing differs from other juvenile court hearings on the merits of the charges;

To explain to me and CHILD the right we have to obtain legal counsel and the role of an attorney if we choose to retain an attorney;

To supply information on Legal Equity for Minority Youth (if the child is a member of an ethnic minority group), the Public Defenders Office (assuming the family qualifies under the financial guidelines), and other ways to find legal counsel (e.g., referral services through the Utah Bar Association).

I further understand and agree that:

Professor Dominguez and his law students are providing legal information and assistance to me and CHILD for free, without any financial cost to me or CHILD.

Whether or not I choose to receive this legal information and assistance is purely voluntary and that I am under no obligation to agree to this Consent and Authorization for Release of Information or otherwise cooperate with Professor Dominguez and his law students.

Professor Dominguez and his law students are NOT acting in the role of my private legal representative.

The role of Professor Dominguez and his law students is to help not only me and CHILD, but also 4th District Juvenile Court Judges, Lightning Peak, Slate Canyon Youth Center, and their representatives fulfill the le-

gal, educational, and corrective goals of Juvenile Justice Services in general, detention policies and practices in particular.

NOTE REGARDING CONFIDENTIALITY: In order to support and improve the benefit of treatments and services of Juvenile Justice Services for me and CHILD, Professor Dominguez and his law students, when they interview me and CHILD in preparation for CHILD’s detention hearing, may gather information from me and CHILD that they will share with 4th District Juvenile Court Judges, Lightning Peak, Slate Canyon Youth Center, and their representatives, probation officers, and juvenile judges so that together they can offer the best help they can to me and CHILD.

I hereby release 4th District Juvenile Court, Lightning Peak, Slate Canyon Youth Center, and their representatives, from any and all liability for disclosure and release of such information. I understand that I may revoke this Consent and Authorization for Release of Information at anytime by informing in writing 4th District Juvenile Court, Lightning Peak, or Slate Canyon Youth Center, or any of their representatives, of my decision to do so.

Witness

Date

Parent or Legal Guardian

Date

CHILD Signature

Date