I am faculty at Loyola Law School in Los Angeles, California.[1] Through my work at Loyola's Center for Juvenile Law and Policy, I am the co-director of a juvenile justice clinic. Within the clinic, I teach substantive classes on trial skills and juvenile law and I supervise law students representing clients in delinquency proceedings in Los Angeles. In addition, I teach Criminal Procedure and a seminar course on issues in criminal justice. Before joining the faculty at Loyola, I was a trial attorney at the Public Defender Service for the District of Columbia ("PDS"). At PDS, I represented three categories of clients: 1) children charged in delinquency court, 2) children charged as adults with serious and violent felonies, including homicide, and 3) adults charged with serious and violent felonies, including homicide. Prior to becoming a lawyer, I taught high school and ran an after-school volunteer program at the Maya Angelou Public Charter School in Washington, D.C. As a teacher, I worked with many youth who had been adjudicated delinquent and had spent time in juvenile correction facilities.

My testimony will describe how the school to prison pipeline has impacted three of the clients I have represented in juvenile delinquency court in Los Angeles. I have chosen stories to demonstrate a few important concerns about the school to prison pipeline: 1) children are punished twice, 2) timing is important to intervention on behalf of children with special education needs, and 3) increased police presence and increased funneling of children to delinquency courts for incidents occurring at *public* school[2] can have a negative, stigmatizing effect.

1) CHILDREN ARE PUNISHED TWICE – ONCE IN SCHOOL AND AGAIN IN DELINQUENCY COURT

Simply put, children who misbehave at school are subject to two punishments. The consequence doled out by the public school for the offense which occurs in school is immediate. A child is suspended, expelled, or given detention. Notice of the punishment is immediate, even if an expulsion hearing is required a few days later. The consequence which occurs in juvenile delinquency court, on the other hand, will happen at a later date and time, often at a much later time depending on the jurisdiction.

Young people benefit from consequences which are immediate. The impact of a consequence which is doled out months later is not as great as the consequence which immediately addresses the problematic behavior. School is the most appropriate place to deal with problems that occur in school. The connection is direct and the consequence can be immediate and therefore meaningful to the child. The passage of time is felt more acutely by children. A period of months feels longer to a child than it does to an adult.

[1] My testimony is offered in a personal capacity and is not a representation of either Loyola Law School or the Center for Juvenile Law and Policy.

[2] If a child is in private school, the police are not involved, so these concerns are for those students who attend public school only. In Washington D.C. and Los Angeles, California where I have taught and practiced as an attorney, public schools are disproportionately filled with poor children and children who belong to racial and ethnic minority groups.

Ben Lopez:[3]

On January 9, 2012, Ms. Johnson, a Los Angeles High School Assistant Principal suspended Ben Lopez ("Ben") for allegedly possessing a controlled substance, marijuana, on school grounds. Ben was fifteen years old at the time. On January 9th, Ms. Johnson took immediate action and suspended Ben from school. Ms. Johnson further directed Ben and Ms. Lopez, his mother, to go to the Los Angeles Police Department at some point. Ms. Johnson did not provide a specific date for them to appear at the police department and no citation was given to Ben on January 9th. Ben and Ms. Lopez both went to the Los Angeles Police Department on January 27, 2012. At that time, Ben was given a citation for allegedly violating California Health &Safety Code § 11357(e).

Ben and Ms. Lopez went to the Los Angeles Juvenile Court in March 2012, on the date they were cited to appear, they presented the citation, and they were informed that no case had been filed by the District Attorney at that time. They were turned away by court personnel. Neither Ben nor Ms. Lopez received further notice of a new court date.

On September 24, 2012, the District Attorney filed a petition against Ben. The petition alleged one count based on the alleged conduct on January 9, 2012: a violation of Health and Safety Code § 11357(e). Nothing in the discovery provided by the prosecution contained any rationale for (1) the failure of the District Attorney's office to prosecute Mr. Lopez when the offense originally occurred or (2) the delay in prosecution of the case from January 9th, when the incident occurred, to September 24th, when the District Attorney filed the petition.

Arraignment was scheduled for September 24, 2012. However, Ben and his family did not receive any notice of the scheduled arraignment. In Los Angeles juvenile delinquency courts, attorneys are not appointed by the court and do not meet their clients to commence representation until the date of the arraignment. As Ben's purported counsel, I contacted Ms. Lopez by telephone based on the information contained in the citation provided to me in discovery for the purpose of informing Ms. Lopez of the court hearing for Ben on that date. Ms. Lopez informed me that she had not received any notice of the September 24th appearance. I then represented to the Court that Ms. Lopez could bring Ben to court on September 26, 2012. The Court issued and held a bench warrant until September 26, 2012, the date of the continued arraignment in this matter.

Ben and Ms. Lopez were present in Los Angeles court for the arraignment on September 26, 2012. On September 26th, Ben entered a denial to the single charge for a violation of Health and Safety § 11357(e). On September 26th, I informed the Court of (1) the extraordinary delay of eight and a half months from the date of the offense to the date of both the filing of the

[3] Ben Lopez is not the name of the young man in this story. I have changed his name to protect attorney-client confidentiality. This case occurred within Los Angeles County. I have changed the name of the school administrator, the location of the offense, the school name, the police department name, and the courthouse where it occurred, but I have not changed exact dates or the length of time between dates.

petition and the arraignment and (2) the failure to notify Ben and Ms. Lopez about the court date of September 24, 2012. Ms. Lopez's address was correct on the citation and petition.

The next hearing in the case was scheduled for October 31, 2012. In advance of that hearing, I filed a motion to dismiss the case based on failure to prosecute,[4] speedy trial rights,[5] and in the interests of justice.[6] This was Ben's first and only ever case in delinquency court. He had not gotten into any trouble at school before or since this incident in January of 2012. Possession of marijuana in school is a misdemeanor offense in California carrying no confinement time.[7] The judge heard the motion and denied it.

By the time Ben had reached me as his attorney, it was too late for me to provide him with any assistance in the disciplinary procedures at Los Angeles High School. Due to this experience, he and Ms. Lopez decided he should go to another school and he had already transferred schools. Ben enrolled in a continuation high school instead of a traditional high

[4] Failure to prosecute or abandonment of prosecution is also called a motion for dismissal for want of prosecution.

[5] Speedy trial rights for criminal defendants arise out of due process concerns and trial rights. See Fifth Amendment to U.S. Constitution, Fifth Amendment to State Constitutions. Some courts have concluded that the nature of adolescence and the underlying rehabilitative goals of juvenile courts mean that speedy trial guarantees should be applied even more rigorously in juvenile delinquency court than in the adult criminal context, *see, e.g.*, *P.V. v. District Court in and for the Tenth Judicial District*, 199 Colo. at 360, 609 P.2d at 112 ("It is our view that the speedy resolution of juvenile proceedings brings about more significant benefits to a child and to society than are accrued through application of speedy trial rules in adult proceedings. Certainly the average juvenile is far more vulnerable to psychological harm during the pretrial period than the average adult would be."); *In the Matter of Benjamin L.*, 92 N.Y.2d at 667, 708 N.E.2d at 160, 685 N.Y.S.2d 404 (reasons for speedy adjudication "are even more compelling in the juvenile context [than in the adult criminal context]" because "a delay in the proceedings may undermine a court's ability to act in its adjudicative and rehabilitative capacities" and because the "nature of adolescence" may render a delay acutely prejudicial for the juvenile and his or her defense) Trial rights are also generally associated with the Sixth Amendment to the U.S. Constitution and the Sixth Amendment corollary to State Constitutions. Speedy trial rights guard against three separate injuries that can be suffered by an accused as a result of undue trial delay: (i) prolonged pretrial incarceration; (ii) inconvenience, indignity, and anxiety resulting from the pendency of unresolved charges for a protracted period; and (iii) prejudice to the respondent's ability to present defensive evidence at trial when the trial is not held promptly in relation to the events at issue. *See, e.g., United States v. Ewell,* 383 U.S. 116, 120 (1966) (Speedy Trial Clause is "an important safeguard to prevent 357 undue and oppressive incarceration prior to trial, to minimize anxiety and concern accompanying public accusation and to limit the possibilities that long delay will impair the ability of an accused to defend himself"). There are also California specific speedy trial timetables once a petition has been filed. CAL. WELF. & INST. CODE § 657(a)(1) (2012) (a juvenile has a right to a trial within 30 days of filing of a petition; and, for detained children, a right to trial within 15 days of the order of detention). In California, misdemeanors in adult criminal court have a statute of limitations of one year.

[6] The court's authority to dismiss a juvenile court petition in the interests of justice in California arises under CAL. WELF. & INST. CODE § 782. That section states in relevant part: "A judge of the juvenile court in which a petition is filed…may dismiss the petition…if the court finds that the interests of justice and the welfare of the minor require such dismissal or it finds that the minor is not in need of treatment or rehabilitation." CAL. WELF. & INST. CODE § 782 (2009). The court shall have jurisdiction to order such dismissal regardless of whether the minor is, at the time of such order, a ward or dependent child of the court. Cal. Wel. & Inst. Code § 782 (2009).

[7] See California Health & Safety Code § 11357(e).

school. When I met Ben almost nine months after the incident, I realized he presented with a number of issues that made me concerned that he was a child entitled to special education services. I referred Ben and Ms. Lopez to a special education lawyer and he is in the process of pursuing those services currently. Ms. Lopez had also already gotten Ben connected with counseling services to deal with his marijuana usage.

In early November, Ben received the opportunity to have probation. Some of the terms of his probation include community service, counseling, drug testing, performance in school, attendance at school, and consent to search.

2) TIMING IS IMPORTANT TO INTERVENTION ON BEHALF OF CHILDREN WITH SPECIAL EDUCATION NEEDS

Ben's story demonstrates how failure to have the services of an attorney at an early stage can lead to fewer legal resources to support a child subjected to disciplinary proceedings for a school event. It may also mean that the student changes to schools, disrupting their education. The impact of the absences of legal services is compounded when a child is entitled to special education services. A child with an Individualized Education Plan ("IEP") is entitled to a manifestation determination prior to the imposition of a school disciplinary consequence.[8] This procedure is designed to ensure that a child is not unfairly punished for an incident which was a manifestation of his or her disability.

Having a delinquency lawyer can help to link children and parents with resources.[9] For an example of what can occur when a child has the early intervention of a delinquency attorney and / or special education attorney, I will share information about a case where my client's behavior was a manifestation of her disability. I referred, Julia,[10] the client whose story I share below, to a special education attorney through my office.[11] The education attorney represented Julia at the manifestation determination IEP. However, as this case illustrates, even if a child wins a manifestation determination hearing, that determination does not have any meaning in delinquency court and the child will not receive a lesser or different punishment. Further, children with mental health issues should have an IEP and may have behavior problems in school due to their health.

[8] A child is entitled to special education services and an IEP under Individuals with Disabilities Education Act ("IDEA"), a federal law incorporated into state law in all fifty states and in the District of Columbia. Under the 1997 Amendments to the IDEA, school personnel seeking to exclude a child for discipline reasons must make additional steps. The school personnel must first determine whether the behavior in question was a manifestation of the child's disability. 20 U.S.C. § l415 (k)(4),(5). The IEP team, which includes parents and other "qualified personnel," makes the manifestation determination. 20 U.S.C. § 1415(k)(4)(B).

[9] Education rights belong to the parent and not the child.

[10] Julia is not the name of the young girl in this story. I have changed her name to protect attorney-client confidentiality. This case occurred within Los Angeles County. I have eliminated the name of the school resource officer, the teacher, the location of the offense, the police department name, the psychiatrist, and the courthouse. I have not changed dates.

[11] Ideally, service providers should function as we do in my office at the Center for Juvenile Law and Policy and as I did as an attorney at PDS, where defense attorneys in delinquency court and education attorneys work together to provide holistic support for clients we jointly represent.

Julia:

At fifteen years old, Julia first became my client in January of 2009 when she was arrested and detained for three offenses: (1) Second Degree Commercial Burglary, in violation of the PENAL CODE 459, a felony, (2) Resist, Obstruct, Delay of peace office or EMT, in violation of PENAL CODE, 148(A)(1), a misdemeanor, and (3) Battery in violation of PENAL CODE 242, (a) (1), a misdemeanor. In this case, Julia was accused of stealing beer from a liquor and convenience store (felony commercial burglary and battery). She was with an older boy at the time. He was not arrested. Julia managed to get out of the backseat of the police car where she was detained and ran away (resisting, obstructing, delaying a peace officer in execution of his duties). After getting away from the police, Julia then went to school. She was wearing handcuffs when she got there.

Julia presented with mental health issues, substance abuse issues, a history of neglect in the home, familial mental health history, difficulties in school, and emotional issues. I referred Julia to a special education attorney within my office. She was assessed, a process that took several months, and ultimately deemed eligible. Her special education placement and Individualized Education Program (IEP) began in October of 2009. Her IEP designation at that time was Other Health Impaired (OHI), and she was thought to suffer from ADHD. She then suffered several hospitalizations for self-injurious behavior.

Julia's second arrest was in March of 2010 for an incident which occurred at school. Julia was sixteen years old. She was charged with three offenses: (1) Burglary Violation of PENAL CODE 45, a felony, (2) Petty Theft, Violation of PENAL CODE 484(A), a misdemeanor, and (3) Vandalism Under $400 Damage-Damage/Destroy in violation of penal code 594(A). These charges arose out of an incident where Julia broke into the athletic office at her high school. She broke the window with her hands and crawled through the broken glass. Once inside, Julia took some money that was in the office.

When the teacher found Julia, she had alcohol on breath. Julia told the health clerk, "This is not the kind of life for me, no one listens to me, is this what I have to do in order to get someone's attention…?" The teacher requested that Julia be placed on a 5150 mental health hold because of her emotionally labile state and concern that Julia was at risk for self-harm.[12] Although the school police officer at the scene did not feel that Julia met 5150 criteria, and did not take her to a hospital, a psychiatrist I later got appointed through the Court conducted an evaluation of Julia and reviewed the school records of this incident in addition to hospital and IEP assessment records. The doctor believed that Julia's "comments and dysregulated behavior suggested that she would have likely benefited from psychiatric assessment and possible intervention on that date."

[12] CAL. WELF. & INST. CODE § 5150, states in part, "... an application in writing stating the circumstances under which the person's condition was called to the attention of the officer, member of the attending staff, or professional person, and stating that the officer, member of the attending staff, or professional person has probable cause to believe that the person is, as a result of mental disorder, a danger to others, or to himself or herself, or gravely disabled."

Julia shared with me as her counsel and with the psychiatrist that she broke in to the school because she was frustrated and upset, and that she found money on the desk which she took as an after- thought. Julia also explained that she was in a state of mind at the time where she was not thinking clearly and feeling depressed and not caring what happened to her. According to the psychiatrist, it was "clear from review of the police records and photos that Julia was in a state of distress and exercised poor judgment in breaking into the office. [Julia]'s depressive symptoms and history of self-injurious and impulsive behaviors likely impaired her judgment in appreciating the dangers in climbing though a broken glass window (i.e. sustaining multiple injuries)."[13]

At a manifestation determination, Julia's conduct in this incident was deemed a manifestation of her disability. In court, after a plea agreement in this case was reached, Julia was suitably placed in a residential treatment facility.

Julia was only identified as a child entitled to special education services *after* she was first arrested and became my client in juvenile delinquency court. Having an education attorney enabled her to have greater services provided through school. Her education attorney represented her interests and the interests of her parents at a manifestation determination IEP. Despite the fact that the school was on notice of Julia's issues and the teacher recognized her mental health needs, the officer in this case did not respond with an appreciation for Julia's mental health needs and did not show deference to the education professional.

3) INCREASED POLICE PRESENCE AND INCREASED FUNNELING OF CHILDREN TO DELINQUENCY COURTS FOR INCIDENTS OCCURRING AT *PUBLIC* SCHOOL CAN HAVE A NEGATIVE, STIGMATIZING EFFECT

While police and school resource officers are used differently in different school districts, in the large urban school district of Los Angeles, I have found that my clients are arrested and processed through juvenile delinquency court for offenses, no matter their age, special education status, mental health issues, or the circumstances of the event.

Mario:[14]

When Mario came to court, he set off the metal detector. Mario brought every trophy he had even earned with him to court to show the Judge. He was eleven.

Mario was a sixth grade student in middle school when he was arrested for hitting another student, Javier,[15] with a padlock in November of 2009. Mario was overweight and was

[13] Julia was diagnosed with the following Axis 1 DSM-IV DIAGNOSES: Major Depressive Disorder, Recurrent, Anxiety Disorder Not Otherwise Specified, ADHD Not Otherwise Specified, Parent Child Relational Problem and Poly-substance Use, R/O Eating Disorder Not Otherwise Specified.

[14] Mario is not the name of the young boy in this story. I have changed his name to protect attorney-client confidentiality. This case occurred within Los Angeles County. I have changed or eliminated the names of the teacher, school and police officers. I have not changed the dates or the length of time between dates.

teased for his weight. This incident occurred after a pattern of verbal attacks and unwanted touching by Javier, the student Mario hit. By all accounts, including the classroom teacher's account, Javier was the class bully.

According to the teacher, she was first alerted to an issue when Javier told her that Mario, who sat directly behind Javier, was kicking his chair and bothering him. The teacher told Mario to stop bothering Javier and to do his work. Shortly after, another student reported to the teacher that Mario was crying. She saw Mario crying and asked what was wrong. The teacher told the school resource officer that Mario suddenly got up and started hitting Javier in the back of his head with a padlock. The teacher immediately got in the middle and stopped Mario. Javier was taken to the hospital and needed stitches on his head.

Mario was detained, arrested, taken to the police station, booked, interrogated, and later released to his mother.

Mario was charged in a petition dated January 2010, with one felony, assault with a deadly weapon, a padlock, in violation of Penal Code §245(A)(1), and special allegation, Penal Code §12022.7 (bodily harm inflicted during commission of felony not having bodily harm as an element). In January 2010, Mario was arraigned, where he entered a denial to all charges. In February, I filed a motion to dismiss pursuant to Welfare and Institutions Code §782.[16] This motion was heard and denied in March 2010.

The officer who interrogated Mario claimed that he read Mario his Miranda rights and that Mario waived his rights because he really wanted to explain what really happened with Javier.[17] According to the officer, Mario told him that Javier had been bullying and "scooping" him since the beginning of November 2009. Mario explained that "scooping" was when someone "grabs another person by the tits and pulls on them." Mario told the officer that during 6th period around 1:00 pm Javier had come up behind him in the restroom while he was washing his hands and scooped him. Mario also told the officer that when Javier "scooped" him, it made Mario mad and he wanted to tell Javier to stop bulling and "scooping" him.

The officer reported that Mario told him he tried to get Javier's attention during 7th period by tapping him on the shoulder to tell him to stop "scooping" him, but Javier ignored him. According to the officer, Mario went on to describe that it really made him mad when Javier told the teacher about Mario bothering him. The officer claimed that when the teacher

[15] I have also changed the name of the bully / "victim" in this case in order to protect his privacy. His real name is not Javier.

[16] See infra note 6.

[17] In addition to Miranda warnings and waiver, because Mario was less than 13 years old, the officer was also supposed to complete what is called a "Gladys R." form. There was nothing in the police report about administering a Gladys R. with Mario, but there was a partially filled out Gladys R. Questionnaire attached to the crime report. It says it was completed by the school resource officer who was responsible for detaining Mario at the school. California law establishes a presumption that children under 14 are unable to commit crime and that may be defeated by *clear and convincing* evidence. *In re Gladys R.*, 1 Cal.3d 855, 464 P.2d 127 (Cal. 1970).

then told Mario to leave Javier alone, Mario was further aggravated. It was at this time that Mario took out his padlock, held it in his right hand, and hit Javier before the teacher stopped him. Javier needed medical attention and Mario told the officer that he was sorry that what he did meant that Javier had to go the hospital. The officer reported that when he asked Mario why he did not tell an administrator or the teacher about being "scooped", Mario said he did not want to tell on anyone and wanted to try to handle it himself.

When I met Mario at his arraignment in juvenile court, he was still eleven and a sixth grader. Mario appeared to be a shy and soft-spoken child. He enjoyed math and science. At the time, he said that he hoped to one day be a dentist because teeth fascinated him. Mario also has a history of depression and anxiety. At his previous school, Mario received many awards, which his mother saved, for things such as, being student of the month, perfect attendance, completion of assignments, good attitude, honor roll, certificate of citizenship.

After the alleged incident, Mario was forced to switch schools. Mario liked his new school because, in his words at the time, "no one is mean to me there." Mario also participated in an after-school program at his new school and maintained a 3.0 GPA.

Before this incident, Mario had no prior history of misbehavior either at home or at school, and he had no disciplinary problems since.

Several years prior to this incident, Mario's parents took him to a psychiatrist for treatment of depression for a period of about a year. His parents resumed Mario's counseling with the same psychiatrist after the incident with Javier and well before he got to court. His psychiatrist offered his opinion that Mario did not pose future anger management issues.

All of the foregoing mitigating facts and circumstances, many of which were contained in the police report, were presented to the bench officer[18] in an effort to obtain a dismissal in the interests of justice. Additionally, after investigating the case, I was able to present the prosecuting attorney and the bench officer with a letter from Javier and his parent expressing that they both did not want to see Mario charged in delinquency court for this incident. The bench officer denied the motion.

Mario successfully completed a period of probation and will be eligible at eighteen to seal his juvenile record. Should Mario seek employment prior to turning eighteen years old, he will have to declare that he was arrested.

To me, Mario should never have been forced to go to court. The child who he injured and his parent were not interested in prosecution. Mario and Javier could have both benefited from sitting down and working this out, perhaps with their parents. There were background issues in this case – bullying – that the school was best-suited to address. Mario should not have been subjected to the stigma of arrest, criminalization, and having to go to court. He

[18] In California delinquency courts, cases are heard by Judges, Commissioners, or Referees. This case was before a Commissioner,

should not have to deal with the consequences, even if only until he is eighteen, of having a juvenile record. I will never forget the image of him, at eleven, with his backpack of trophies.

CONCLUSION

I hope my experiences and those of my clients will suggest some questions that deserve greater research and attention in the committee's quest to understand the school to prison pipeline more fully. As a high school teacher and as a defense attorney for children in delinquency court, I have seen repeatedly that without opportunity for achievement, support, encouragement, and success in school, the greater the chances a child will wind up in the delinquency system. The children in juvenile delinquency court, and the adult offenders I have represented in criminal court, have presented with disproportionately high occurrence of special education needs in school, a history of school failure, and a history of educational neglect. In the jurisdictions where I have practiced, I have seen a number of children ushered through delinquency court without concern for whether juvenile court is the best place to address their issues and without concern for the stigma that goes along with arrest, criminalization, and processing through the court system.