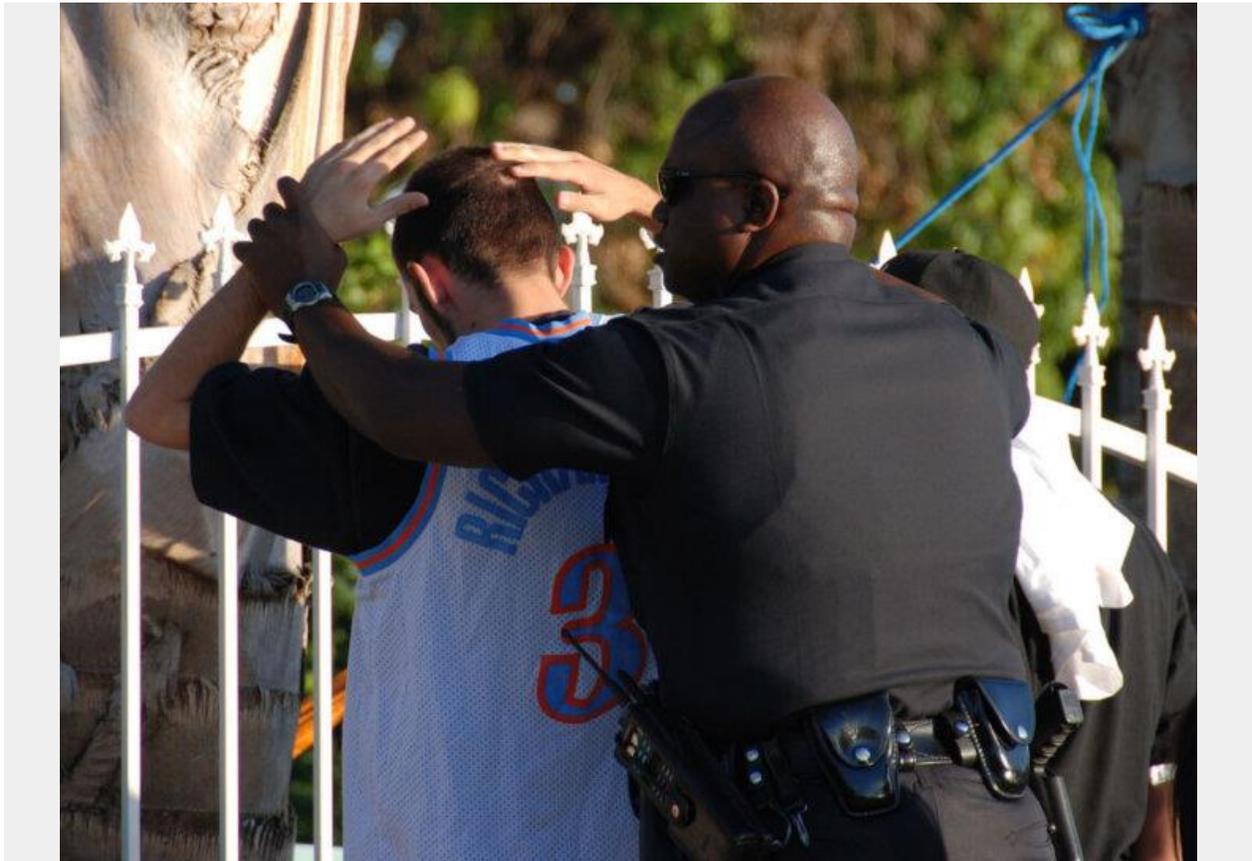


# Wanted: Judges Who Can Change the Way Police Treat Youth

By Lisa H. Thureau and Daniel Pollack | November 27, 2018



*Photo by Chris Yarzab via Flickr*

Adult to child: “You should know better.”

It’s time courts said something similar to law enforcement agencies.

The unusually large number of judicial appointments for openings on the federal bench this year

presents a unique opportunity to respond to calls for improved policies and better training for law enforcement in its interactions with youth.

The scientific evidence is clear: young people are developmentally different than adults. Yet courts routinely excuse police agencies

for failing to train officers to strategically handle routine interactions with youth.

Instead of requiring law enforcement agencies to adopt strategies reflecting an understanding of the limited maturity, poor impulse control and proclivity for risk-taking that is a hallmark of normal adolescent development, courts continue to ignore the unique legal status of youth by applying adult precedents.



*Lisa Thurau*

Youth harmed by the excessive use of force by police can sue for civil rights violations under 42 U.S.C. § 1983 and by bringing a so-called *Monell claim* against the respective agency or municipality. Generally, a *Monell claim* requires a plaintiff pushing for systemic change to allege “an underlying constitutional violation.”

Several rulings have established precedents for such claims.

In *Kitchen v. Dallas County, Tex.*, establishing “municipal liability” under section 1983 requires proof of: “(1) a policymaker; (2) an official policy; and (3) violation of constitutional rights whose moving force is the policy or custom.’

Supporting rulings were handed down in *Tunica County, Miss. v Hampton Co. Nat. Sur., LLC*.

In other decisions, the absence of policies for situations that should have been anticipated by law enforcement could also lead to a finding of liability.

Yet, only two courts have held law enforcement agencies and cities liable for failing to implement policies and training that would prevent police from inflicting harm on youth.

That’s an avoidable problem.



*Prof. Daniel Pollack*

*Monell* claims can succeed if courts mandate law enforcement agencies to integrate U.S. Supreme Court decisions regarding the “signature characteristics of youth” into their policies and practices. This would require police agencies to adopt the judicially recognized facts regarding youths’ developmental abilities.

Since 2005, there have been five U.S. Supreme Court decisions reiterating these facts and directing juvenile justice stakeholders to adjust their practices accordingly.

However, in the jurisprudence of *Monell* claims for law enforcement misconduct towards youth, the U.S. Supreme Court’s decisions on the legal obligations of system stakeholders are nowhere to be found.

Requiring the police to treat youth according to their actual functional and developmental abilities isn’t a new idea. Requiring the police to treat youth according to their actual functional and developmental abilities is hardly a new idea. In 1948, the Supreme Court ruled in *Haley v. Ohio*, that beating of a 15-year-old African-American boy to obtain a confession was improper.

The Court took special judicial recognition of age in its decision:

*“A 15-year old lad, questioned through the dead of night by relays of police is a ready victim of the inquisition...we cannot believe that a lad of tender years is a match for the police in such a contest. He needs counsel and support if he is not to become the victim first of fear, then of panic.”*

In 2005, in *Roper v. Simmons*, the Court forbade the use of the death penalty for youth who had committed a capital offense before turning 18. In that decision, the Court endorsed the judicial recognition of the “signature characteristics of youth” – including enhanced susceptibility to outside pressures and possession of characteristics not as well formed as those of an adult.

The Court reiterated these views in three cases between 2005 and 2016: *Graham v. Florida*; *Miller v. Alabama* and *Jackson v. Hobbs*; and *Montgomery v. Louisiana*. These cases abolished the automatic use of life without parole for youth, and permitted retroactive application of the ruling.

In 2011, the Court, in *J.D.B. v. North Carolina*, required that age

be considered when determining when to “Mirandize” youth:

*“In many cases involving juvenile suspects, the (Miranda) custody analysis would be nonsensical absent some consideration of the suspect’s age. (2405) In short, officers and judges need no imaginative powers, knowledge of developmental psychology, training in cognitive science, or expertise in social and cultural anthropology to account for a child’s age. They simply need the common sense to know that a 7-year-old is not a 13-year-old and neither is an adult (2407)...”*

So, we’re all on notice:

Lawmakers, judges, and police officers are legally bound to treat youth differently.

Recognizing these decisions would have helped several federal court judges promote improved training and policies for officers. Consider for instance, Judge Abdul Kallon’s 2015 decision in [J.W. v Birmingham Bd. of Educ.](#) In this case, school resource officers (SRO) deployed by the Birmingham Police Department routinely used Freeze +P (mace) over a five-year period, spraying over 100 students, including pregnant girls, for explanations that defied reason.

In one example presented to the court:

*“Without telling G.S. to calm down, that she was under arrest, or that he was about to spray her with Freeze +P, Officer Clark sprayed G.S. in the face, and G.S. fell to the ground.”*

SROs also failed to decontaminate youth who had been sprayed. The BPD’s policy allowed the use of chemical sprays on *adults* who resisted police commands. The court found that police violated the Constitution when they sprayed youth who verbally resisted commands or had not resisted at all.

Ye, it did not find either the police department or the city liable for their failure to train SROs, in spite of strong evidence of their long pattern of abusive use of chemical sprays on youth.

Instead, Judge Kallon sidestepped this opportunity by citing Eleventh Circuit precedent involving adults:

*“Although it seems “obvious” in the layman’s sense of the word that the circumstances at issue in this case would lead to an unconstitutional use of force, in light of the Court’s unwillingness to apply its aside in Canton, the court **declines to base its***

***conclusion on an obvious need for training.***” [emphasis added]

More recently, Judge Jane Stranch, in her concurring opinion in the U.S. Court of Appeals for the Sixth Circuit in *B.R. v. McGivern*, expressed her conviction that officers need to be trained to work with youth.

This case involved flagrant police mistakes regarding interrogation of an 11-year-old girl accused of the rape of three older girls. The investigating officer was aware from Facebook posts that the older girls had frequently bullied the 11-year-old.

Judge Stranch concluded:

*“...it is of unquestionable importance that law enforcement officers receive proper training and support in how to understand and interact with children – whether they are accusers or the accused – in a way that recognizes the unique needs and vulnerabilities of children.”*

Unfortunately, that’s as far as the Sixth Circuit went in coaxing law enforcement to improve their policies and training to protect other youth from similar harm.

Courts must put law enforcement on notice to guarantee the humane treatment of youth.  
Courts must go further.

They must insist that law enforcement agencies are on notice and must provide developmentally appropriate, trauma-informed policies and training to guarantee the humane treatment of youth.

Such policies recognize that children experience innumerable types of trauma in their lives, understand the influence of such trauma, and respond to its effects. They do exist and training for police in strategies for implementing them are available.

Courts need to do more to direct law enforcement agencies to avail themselves of these resources.

Courts to law enforcement agencies: “You should know better.”

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*They welcome readers’ comments.*