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The Impact of *Gault* on the Representation of Minority Youth

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Reflections on *Gault*

This past year it was fascinating to observe, and participate in the fortieth anniversary of the United Supreme Court's *Gault* [FN1] decision. Work of individual attorneys was honored, professional organizations critiqued impact of the decision, where gaps lay, and what important protections continue to go unfulfilled. What was often a celebration by many, and a surprise for some, was having a chance to mingle with Gerald Francis Gault throughout the year. Wherever he appeared, he was very generous with his time in speaking to others about the case, his experiences, and his involvement with efforts to reinforce the Supreme Court decision. Some were surprised because they either thought Gault was not the name of a real litigant, or-if real, he was not still alive. Good surprises all around, Gerald Gault continues to be very active. Some of his presentations have been recorded on DVD, and are now included in conference agenda, as a presentation by Gerald.

The theme of this paper was presented November 2, 2007 at a conference: In re: *Gault*: A 40-Year Retrospective on Children's Rights, at the University of Houston Law Center, sponsored by the Center for Children, Law & Policy. Since the conference, I have reflected on my notes, and expanded them for this journal article.

Gault's key provisions address the right to counsel, the right to notification of charges, the right to confrontation and cross examination, the privilege against self-incrimination, right to a transcript, and the right to appellate review. [FN2] Since *Gault* and its progeny, there are affirmations of the holding. Yet, to this day-failures to implement all of the protections held in the decision remain persistent and pervasive. Individual lawyers, public defender offices, advocacy groups, and professional organizations have *Gault*-related impact on individual cases, juvenile law policy, and indirectly with entities where collateral relationships exist. [FN3] Thus, my perspective in this article does not address whether children are better off because of *Gault*-because they are; nor, whether substantial *Gault*-related legal representation is being provided-because it is. We completely agree that more must be done, for more children needing legal representation. Here, we discuss another of the areas in need of *Gault*-related expansion, and that is the critical need that the *Gault* protections are provided to ethnic minority youth, and poor youth.

Minority youth are overwhelmingly and disproportionately represented in youth delinquency proceedings. Often the disparity does not show in arrest data. However, when you look at the race of youth at proceedings, and of those that appear in court, the further disproportionate number that are placed in out of home confinement, as a disposition outcome, these disparities are overwhelming. [FN4] Suffice it to say here, we now have very large numbers, of statistically significant research that refutes any claim that the disproportionate number of minority youth is simply a reflection of arresting the right person for breaking the law. [FN5] The data consistently show that at every level of decision making in our society on issues affecting youth (e.g., school, family, law enforcement, judges, juvenile justice system, program services, after-care and re-entry)-where there is

an opportunity for the professional decision-maker to exercise discretion, ethnic minority youth get neither the benefit of doubt that a least restrictive option should be considered, nor a comprehensive support plan that realistically provides them with services that address the delinquent behavior, and any secondary factors that predispose the youth to delinquent conduct.

Valid and reliable assessment and diagnosis of youth having problems at school, or with the juvenile justice system is possible. The good psychological evaluations are completed by competent clinicians, using the most widely respected (and recent) assessment tools, in an environment suitable for the assessment, with an examiner that is culturally sophisticated about the youth client being tested, and not only has working cognitive knowledge, but who also has demonstrated an ability to achieve successful rapport, and defined by the client, not the clinician. In this society we can, after a valid assessment, design a case management plan for the youth, his or her family, school, support services, and juvenile justice, that is, “curative” (addresses the needs) and affordable. There is a challenge, nationally, that we move beyond the current perspective of discrete agencies providing services, to a state where we see ourselves as communities, in an electronic data based service delivery system for the clients who receive services. Currently each program maintains its identity. Consider what we would see, if we took a snapshot of your city today. There is a critical need to develop resources for children and families—whether city county, state, federal, private (and combinations thereof) as member entities of an electronic service delivery continuum. What will be achieved is that all relevant agencies serve the client, and each can access basic non-confidential information in an approved (memorandum of understanding) relationship to provide services to the youth.

There are several very important legal protections for youth and families that must be considered in such an electronic environment. Certainly paramount among these considerations is whether all this “access” to their personal information sets them up for outcomes (or charges) that would not have been considered against the youth, but for this “shared” information environment? Also, important to resolve is whether comprehensive case management plans might go too far in some cases, resulting in treatment referrals for behaviors most youth grow out of, or being charged for a delinquent offense that may not have happened had the youth not been in a “treatment program” consequent to a condition of probation provision. I think if we use smart technological minds currently available, and if provide good training, as well as harsh sanctions for information abuse by any professional—we can design a programmatic and culturally effective wraparound services regime.

Further, on policy levels, it will imperative to create firewalls that prevent unnecessary additional charges or sanctions against youth that are associated with time they spend in treatment (charges such as contempt, disorderly conduct, assault, threats, etc.). The traditional approach to ensure such objectives is to create a set of standards, and implement regulatory compliance boards or agencies. Hospitals, for example, do this well. However, twenty-first century practice across professional domains is towards specialization. Thus, we see fewer, but larger, well run hospitals. In family, community, education, and social services—a big one stop “hospital” concept is not the right approach. Current local mixtures of city/county/state agencies, as well as mom-and-pop providers, meet many diverse needs. However, the historical approach of simply monitoring the effectiveness of these service delivery systems, identifying best practices practitioners, and providing technical assistance to programs not working is failing. This process is like herding cats. There are not enough good evaluators, paid to do this specific evaluation work; and there are far too many bad programs that need improvement. This is especially true for programs providing services to youth, who during their developmental years have such potential for healthy emotional, cognitive, and personality development. And, unlike often concluded, they are not throw away children, they simply live in environments where the adults in their lives do not get them the quality and consistency of the services they need.

This has been a somewhat lengthy discussion of psychological assessment and case management that may not appear to be Gault-specific. However, these thoughts were shared so that lawyers (and other professionals who work with lawyers) continue to think about the most effective way to help youth in trouble; particularly minority youth. Our historical perceptions of family, community, and extended family is often more figurative than true. Mobility of families, cellular and electronic communications, and less stable family relationships suggests that if the youth legal client is going to be truly helped, he or she will need a plan possibly designed at the direction of the youth's lawyer, that adults in the child's life can help actualize. Without a doubt, lawyers will have to use every possible legal tool to recommend services that do not lead to prosecution. Such challenges are fertile ground for the inter-disciplines of law and the social sciences. To continue the present approach that these ethnic minority clients will get better without our help is simply not realistic. And, we must be adamant to find a way to accomplish these objectives without net-widening. Thus, as lawyers keep an eye towards the Gault provisions, a mandatory parallel consideration must be whether there is a cultural perspective that requires addressing non-legal needs.

There is a serious disconnect between lawyers and many of the youth in the juvenile justice system. Often these are poor youth living in homes with lacking effective family management skills. Thus, the idea of "winning" the case, but not identifying and meeting the needs of these children is more likely to increase their chances for failure outcomes. I do accept, and vigorously support the view that the lawyer's job is done, once a youth's problems are clinically assessed and the youth is referred to a service provider. The lawyer should not have the extra-legal responsibility of monitoring these services. However, this is a gaping hole in how we currently respond to the needs of children who enter the juvenile justice system, and although this is not the lawyer's traditional role, we do need lawyers at the table helping to solve this problem in ways beyond only litigation.

Gault A dvocates

The National Juvenile Defender Center (NJDC) has compiled Key Facts Regarding Juvenile Indigent Defense. [FN6] They are delineated below. [FN7]

Most young people who go before the courts do not have qualified, well-resourced counsel. There are systemic issues, such as staggering caseloads, juvenile defense lawyers without practice specializations, and a more adversarial and punitive environment within the legal arena. Juvenile defense delivery systems across the country suffer from a crippling lack of resources. And, the culture of the juvenile court is often perceived as hostile to due process and vigorous representation. [FN8]

States have varied and inconsistent defense systems. The majority of states do not have statewide juvenile indigent defense delivery systems; most juvenile indigent defense systems are funded by county or local dollars, and most jurisdictions independently choose whether to establish county or state-based public defender offices, contract or court-appointed counsel, non-profit law centers, and/or law school clinical programs. [FN9]

Lack of qualified counsel has a lifelong, harmful impact on children caught in the delinquency system. Juvenile adjudications have serious collateral consequences, such as expulsion from school, limiting job prospects, disqualification and eviction from public housing, and ineligibility to serve in the military. Low-income ethnic minority children who are adjudicated face a much greater likelihood of out-of-home placement. Studies show that the time spent in detention actually increases the likelihood that the child will recidivate. [FN10]

Deficiencies in the juvenile defense system can be addressed in some of the following ways: juvenile defense must be viewed as a specialty and forced rotation out of juvenile court must be eliminated; model juvenile defender programs must be based on existing best practices; juvenile court rules must be amended to reflect best practices; additional data must be collected; monitoring and oversight must be put in place; juvenile defenders must have ongoing access to training and technical support; and no child should ever be permitted to waive counsel without prior consultation with such counsel. [FN11]

The National Juvenile Defender Center has published reports on the Assessment of Access to Counsel and Quality of Representation. [FN12] To date, these reports have been completed in thirteen states.

There are many other juvenile law organizations, foundations, and youth advocates involved assisting children, adolescents and their families receive competent legal representation. Yet, many ethnic minority youth live on a conveyor belt on the cradle to prison pipeline, and once involved in the system, live on a dizzying revolving door merry-go-round trying to exit unscathed.

Youth Coming Through the System

In addition to Gault, another watershed event in juvenile justice was federal passage of the Juvenile Justice and Delinquency and Prevention Act. [FN13] The Act created the Office of Juvenile Justice and Delinquency Prevention (OJJDP). This Act has created an entity for compiling national data on juvenile justice issues. OJJDP regularly publishes full reports, fact sheets, and resource information on such data. Among these publications are reports on delinquency cases in juvenile courts. Much of this research is completed and published by the National Center for Juvenile Justice, the research division of OJJDP. In the National Center for Juvenile Justice annual publication, *Juvenile Offenders and Victims* (2006 National Report), [FN14] the following observations are noted in Chapter 8: "Juvenile Offenders in Court."

[J]uvenile courts formally process more than 1 million delinquency and status offense cases annually. Juvenile courts adjudicate these cases and may order probation or residential placement or they may waive jurisdiction and transfer certain cases from juvenile court to criminal court. While their cases are being processed, juveniles may be held in secure detention. [FN15]

In 2002, U.S. courts with juvenile jurisdiction handled an estimated 1.6 million cases in which the juvenile was charged with a delinquency offense ... Thus, U.S. juvenile courts handled more than 4,400 delinquency cases per day in 2002. In comparison, approximately 1,100 delinquency cases were processed daily in 1960. [FN16]

Although a majority of delinquency cases handled in 2002 involved white youth (67%), a disproportionate number of cases involved blacks (29%), given their proportion of the juvenile population. [FN17]

In 2002, case rates for black juveniles were substantially higher than rates for other juveniles in all offense categories, but the degree of disparity varied. The person offense case rate for black juveniles (28.2 per 1,000) was nearly 3 times the rate for white juveniles (9.5), the public order case rate for black juveniles (23.4) was more than 2 times the rate for juveniles (11.4), and the property case rate for black juveniles (34.2) was nearly 2 times the rate for white juveniles (17.5). [FN18]

White youth accounted for the largest number of delinquency cases involving detention, although they were the least likely to be detained. [FN19]

In 2002, the likelihood of detention was greatest for black youth for all but public order offenses-youth of other races had a slightly greater percent of public order cases detained (24%) than black youth (23%). The over all percent of cases detained for blacks was 1.4 times than for whites and 1.2 times that for other races. The greatest disparity between blacks and whites or other races was in the likelihood of detention in drug cases-the proportion for blacks was more than two times that for whites and nearly two times that for youth of other races. [FN20]

Black youth account for a disproportionate share of cases at all stages of case processing. [FN21]

The overrepresentation of black youth was greatest for person offense cases. At most stages of case processing, the share of white youth was greater for drug-offenses than other offense categories. At all stages of the system, youth of other races made up 5% or less of the caseload. The proportion of cases that involved black youth was the same for adjudicated cases as for cases overall (29%). In fact, the racial profile of cases was similar at referral and adjudication for all offense categories. The largest proportion of black youth was found in detained and waived person offense cases, where black youth accounted for 41% of cases. [FN22]

Racial/ethnic disparities occur at various decision points within the juvenile justice system. [FN23]

When racial/ethnic disparities do occur they can be found at any stage of processing within the juvenile justice system. Research suggests that disparity is most pronounced at arrest, the beginning stage, and that when racial/ethnic differences exist, their effects accumulate as youth are processed through the justice system. One factor to consider in understanding overrepresentation in that outcomes often depend on the jurisdiction in which the youth is processed (Feld's concept of "justice by geography" [FN24]). For example, juvenile court cases in urban jurisdictions are more likely to receive severe outcomes (e.g., detention prior to adjudication, out-of-home placement following adjudication) than are cases in nonurban areas. [FN25]

The massive number of cases filed (although decreasing), nonetheless represents a lot of court processing, and "juvenile justice system time" for children. And, as the former data indicates, while many ethnic minority youth are disproportionately impacted, African American youth are most consistently, and pervasively overrepresented across the United States. This nation's hallucinogenic fear of children, fueled with legislative hysteria from the 1990s, has resulted in laws, policies, and practices that criminalize, demonize, and pathologize perceptions of children to such an extent that our version of "CPR" for kids is more akin to the use of handcuffs than psychiatry. [FN26]

A news article, representative of this legislative, policy and practice tsunami, appeared recently in the St. Petersburg Times. [FN27] The authors detail the following facts: A crime was committed on the playground of a middle school. The police officer called it felony strong-arm robbery. Two fourteen-year-olds waived their Miranda rights, confessed, and went to jail. The victim, a thirteen-year-old, was emptying his pockets into his binder before joining a basketball game. The fourteen-year-olds "swarmed him," knocked him down, and fled with his lunch money and candy, according to police reports. Regarding such events, the authors observed that it is unclear who is in charge (school administrators or School Resource Officers) when school-related problems arise. Once police begin an investigation, and decide a crime has been committed, principals have a hard time overriding such decisions. Police who have been assigned to schools as School Resource Officers (SRO's), by and large have not joined the staff as an education partner, but as representatives of an autonomous presence-much as police do in other public places-such as bus or subway stations, parks, or malls. The education process is an extraordinarily complex system-with a simple mission. However, interjecting variables (e.g., SRO's) not within the

schema of facilitated learning, invites unnecessary and unhelpful tension, suspicion, and intimidation within schools.

Now that police are in the schools, for the foreseeable future they will continue to be there. However, we certainly have the capacity to improve the dynamics of their presence there. Training of officers can help. But, foremost, school administrators must implement polices that put them in primary control of their campuses, and SRO's called by administrators when needed, rather than SRO's acting *sua sponte*. Police are reflexively being used where child and family services are needed. We must develop management information systems process that protect the child's rights, hold service providers accountable for incompetent services, and avoids the ruse which masks the child as the failure, rather than the program that has failed the child.

Until we get such comprehensive, nation-wide reform, the individual case-by-case battles will continue to be won. On Tuesday, January 29, 2008, U.S. District Judge Lawrence K. Karlton of Sacramento, California, issued a preliminary injunction requiring the state as of February 15, 2008, to appoint counsel for each juvenile offender facing a parole revocation hearing. [FN28] About 3,000 juveniles will benefit from these protections. About 170,000 adult prisoners in California already have these protections. [FN29] Sue Burrell, of the Youth Law Center of San Francisco, one of the attorneys representing the plaintiffs, was quoted as saying, "[A]ppointing lawyers more quickly could save the state money. For instance, some juvenile offenders might admit to parole violations earlier, getting them in and out of incarceration more quickly. Lawyers could raise alternatives to jail time, especially for technical violations." [FN30] Burrell noted that the state holds juvenile offenders an average of sixty days before granting them a parole hearing, at a cost of about \$36,000 per individual.

A fact sheet on the web site of the National Juvenile Defender Center [FN31] observes the following:

"In some jurisdictions, as many as 80 to 90 percent of youth waive their right to counsel." [FN32]

"Only eighteen states have a state public defender system providing trial level representation statewide in felonies, misdemeanors, and juvenile delinquency cases." [FN33]

"The National Advisory Commission on Criminal Justice Standards and Goals has set the following caseload limits for full-time public defenders: 150 felonies, 400 misdemeanors, 200 juvenile cases, 200 mental health cases, or 25 appeals." [FN34]

"While caseloads vary widely from jurisdiction to jurisdiction, situations in which public defenders are handling 1,400 juvenile cases a year-seven times the recommended maximum-have been documented." [FN35]

These facts remain. An overwhelming number of youth in the juvenile justice system are ethnic minority-yet the overwhelming majority of those who make decisions about their cases are not members of ethnic minority groups. We now explore how issues of race and culture compromise legal representation of youth in general, and implications for enforcement of Gault protections in particular.

How Issues of Culture Impact the Implementation of *Gault*

This conversation about lawyers representing ethnic minority children is not intended to exaggerate the cultural considerations between juvenile lawyers and their clients. To do so would undermine the efforts of many juvenile lawyers who provide quality, and much needed services for children. What is important to emphasize is that even the good lawyers often do not establish the kind of relationship needed with minority youth clients to

ensure the youth is an active, honest, problem-solving, future oriented partner in the decisions affecting their lives. As human services professionals have long known, unless and until the client establishes a transference [FN36] relationship with the “helper,” this is a dyad in name only. Respectfully, we say that the lawyer is the mouthpiece for the client. However, without this mutuality of purpose, what the lawyer does, in effect, is to proffer his or her substituted judgment for that of his or her client. Anyone who works with children will refute any claim that such youth are “distanced, non-involved, or non-verbal.” When one observes or interacts with these youth in an environment where they are comfortable, they have plenty (of relevance) to say.

What we must also negate is any cynical or patronizing posture that such an emphasis on transference or culture is nothing more than cosmetics in the practice of law. Consider the importance of the attorney-client alliance from this perspective. A not uncommon question from a lawyer to a client is, “What would you like as the outcome in this case?” To get a child involved in this cognitive agenda, the child must trust the lawyer. Even people with whom the youth has an attachment relationship (such as parents), an, “I don't know,” is a common retort. But, when a non-trusted stranger asks the question, the “I don't know,” is a shallow answer, when neither the time nor energy has been invested in a reply. With a person with whom the child has an attachment relationship, the child may in immature manipulation, trying to get their “parent” to beg them “to talk.” However, the unengaged child initially, never even hears this question from the lawyer. They often have such anger (or impotent resolution) to their life situation, frustration with school, and distrust of “the system,” that any conversation with someone who does not know and understand them is perceived by the youth as a waste of time. And, we must also be mindful that the criteria youth use to approve of an adult are mercurial. However, there is much comfort in knowing that genuine sincerity, like smiles and nods, appear to be a universal language. There is no course, workshop, training, or mentorship that can prescriptively help the lawyer gain cultural authenticity. The principle ever to be mindful of is that an emphasis on establishing a trust relationship and helping the client feel confidence that honest information is being conveyed is the threshold imperative.

A child living in a healthy and supportive home, who gets into trouble, needs the lawyer to make the case go away so that the family can, given this wake-up call (of a delinquent act), update their familial wrap-around services child management supports. This lawyer role may be analogous to having a cavity filled; or at worst, losing a tooth. A child whose household is in more disarray often has unrealistic expectations that the lawyer is going to make everything all right; this situation being more analogous to bringing the hospital home with him or her after discharge. When the child continues to have problems, the caregivers may externalize, and conclude the lawyer was not competent, or that they could not get a fair outcome from a racist system. If they internalize the blame they may assume they did not deserve the help, or they can not be helped. Many youth have unrealistic expectations of what the lawyer and juvenile justice system can do. Thus, this results in them not appreciating what must be done outside of the legal services arena. The earlier stage of this malaise is characterized by the youth's ennui (a feeling of weariness and dissatisfaction [FN37]), and without support, a progression to anomie (a state in which normative standards of conduct and belief are weak or lacking [FN38]). Such outcomes are not inevitable. The polar opposite result is that the lawyer helps the child get excited (involved) in the case. Often, when the child shows a positive response, it is contagious, and the adult care givers in the child's life also get excited. We are not naively suggesting such positive dynamics between client and family are a fortiori. Yet, they are in no way insignificant.

While our focus here is on the relationship between the lawyer and the youth, similar issues of cultural equilibrium exist between the lawyer and the child's parents. The following example is illustrative. About a month ago I saw a person I know entering a juvenile department. After exchanging greetings the person said she was there because their son was in detention. I shared a phone number and asked her to give me a call if there was

anything I could do to help. A few days ago (January 2008), the parent called. She said they were on the way to the detention center to pick her son up. In the course of describing to me what had occurred in the juvenile proceedings, the parent said that the son was diagnosed as bi-polar. After I shared my “dictionary definition” of what bi-polar meant, there was a pronounced silence on the other end of the phone. Then, I added that sometimes after an assessment is completed, those who know the child best do not agree that the evaluation accurately describes the child. This parent's response was classic (this parent is a professional, thus the response was emphatically sarcastic). The parent said, maybe it was something caught there while the son was locked up; that doesn't sound anything like what we have seen at home. I asked the parent if she shared this discrepancy to anyone she had talked to within the juvenile justice system. Her response is equally revealing. The parent said that she just felt like they (the court) were going to do whatever they wanted, so “we just waited until they told us we could come to pick him up!” Often parents feel like working with system professionals is like trying to problem solve with a person who speaks another language. There are only so many cognates, and gestures one can use, before a sense of resignation sets in. The practice of law is a specialized profession.

Attaining model standards, alone, requires a lot. In the thoughts which follow we share some tools for the lawyer's arsenal in creating a team relationship with the juvenile ethnic minority client.

Cultural Issues and Strategies

There are very troublesome issues that must be addressed in a conversation about having a youth's lawyer expand the traditional legal relationship towards a collaborative service-industry partnership which seeks to ameliorate needs of the youth, particularly those that may predispose the youth towards new, or recidivist delinquent behavior. An example of the potential negative consequences was noted recently in commentary appearing in the Denver Rocky Mountain News:

Delbert Elliott of the University of Colorado's Center for the Study and Prevention of Violence thinks that keeping track of all troubled youth, whether arrested or not, in one huge database accessible to schools, police, social services and juvenile justice is a good idea (“Plan in Jeffco would align teen services,” Jan. 21). This may be researcher Elliott's dream to have such a database, but it should look like a nightmare to any parent. It is already bad enough that many nonviolent youth are subjected to zero-tolerance-style arrests with serious felony charges that are often reduced or dismissed, but this proposal paints ever more so-called troubled youth with the bad-apple brush. It has been proven that just “being in the juvenile justice system” brings a harsher look from juvenile officers, judges, schools and colleges. Being in this database can only harm the child. Furthermore, as a physician, I have seen that electronic medical records often contain errors and cause doctors to avoid looking at the patient in front of them and taking a fresh history. So it will be with this database accessible to literally thousands of people who work with youth, who will not take a fresh look at the child in front of them. Additionally, will these records become cyber-permanent or somehow find their way to the Internet? Jefferson County officials would be wise to deep-six this harmful plan. [FN39]

Such is a potent example of harm management of youth's data can create. This is at a macro level. A micro level example is the following all too common problem facing youth data. A juvenile lawyer seeks suggestions from other lawyers on this issue:

We currently have a piece of legislation we are working to amend. The law currently requires that juvenile court inform the school district if a child has been placed in detention (even one day / even pre-adjudication).

While the original intent was to ensure children are provided educational services while they are in detention the backfire potential is overwhelming (i.e., stigmatized kids, children's placement changer from regular to alternative school, lack of confidentiality, etc.)“ [FN40] Psychologists also struggle with casual uses of confidential information, and resolutions thereto. Mary Fisher wrote, “All psychologists must uphold the same ethical standards about confidentiality even though each state imposes different legal limits on their ability to protect clients' confidences. The resulting ethical-legal confusion is exacerbated by legally based confidentiality training that treats legal exceptions as if they were the rule and fosters the impression that attorneys are now the only real experts about this aspect of practice.” [FN41]

Until these draconian unintended consequences can be resolved, it is best not to create such any such database. But, we still pay a price. Here is the current state of affairs, using a hypothetical set of facts. A thirteen-year-old African American male child gets into a fight at school. The person he fought suffered some injuries that required a few stitches. The school has on campus, “School Resource Officers.” The youth was arrested, and charged with assault, battery, disorderly conduct, resisting arrest, terroristic threats, and battery on an officer. During a detention hearing the following facts emerge. Until fourth grade this youth was a good student, not presenting behavioral problems, and earning good grades. His mother is a single mother, with other young children. She works full time, and also some part-time work. The youth who was arrested is often a babysitter for his siblings. Over the past two years this youth's school performance has deteriorated, and his negative behaviors have increased. Educational testing shows the youth capable of performing grade level requirements. Psychologically, this youth has a poorly developed attachment relationship with his mother-who was often working since he has been born. The father has no contact with the youth. He regularly smokes marijuana. And, though not affiliated with any gang, he does mimic gang behaviors (dress, language, threats).

In an ideal outcome for this youth, the lawyer gets all charges dropped except disorderly conduct. This kid wins! He can go home. But what has he in fact won? If we fantasized about a wish list, we would get he, his mother, and siblings comprehensive wraparound services, coordinated by a case manager who is assigned to this family until the mother, too, is an effective parent, case manager, and advocate for herself, and her children. But, in the real world, if this thirteen-year-old's lawyer is a public defender, with a high caseload, chances are this “optimal” outcome is not likely. Thus, in the real world, what are the chances that the mother-who now has all of the behavioral, educational, and psychological information presented at the detention hearing will personally solicit the wraparound services that she and her children need? Where does she begin? Who is their case manager? Working full time, and part-time, when will she schedule, and keep, all of the appointments necessary to get the services the family needs? And, we know-for the most part-when she visits different agencies, they will ask her to complete the same intake process, even if she were prudent enough to have copies of some of this information from other agencies she has visited. Therefore, the thirteen-year-old, whose zealously effective counsel had this child return home on probation for disorderly conduct, is the poster child case of the school-to-prison phenomenon. I am making negative assumptions here of a worst case scenario regarding the detention hearing outcome. There are, of course, children whose brush with the law is not perpetual, and the wakeup call is sufficient. However, the numbers of disproportionately represented ethnic minority youth in the juvenile justice system squash any notions that good things happen to most children who come through the system.

We are thus left with a justice system that understandably protects the confidentiality of the youth. And, we have a human service system that is often disconnected, wasteful of fiscal resources (in a duplicate way), not comprehensive in meeting all of the identified needs, often not physically close to where the client lives, and often does not meet the client cultural needs or expectations. While we protect the confidentiality of the youth, we really need parallel best minds, best practices challenging the justice and human services to find a better way.

Lawyers and clinicians cannot stick their heads in the sand championing confidentiality, and celebrating Gault in the same breath. This state of affairs continues to unnecessarily destroy the lives of vulnerable children and their families-where professionals are not protectors-but conversely, complicit in being more an advocate for legal purity than meeting the basic developmental needs of their child and adolescent clients. This is particularly true for ethnic minority clients. Although the focus on this dialogue has been on African American youth, I think we now this is true for Hispanic youth, Native American youth, Asian youth (especially for refugee versus immigrant families), and also poor white youth.

African American youth are distrustful of what is often referred to as “the system.” The system represents any environment where people make decisions about others lives, when those that make the decisions about you do not look, or act like you. Thus, the black church is not viewed as the system. But, schools, employers, professionals, etc., are. Now, has a juvenile lawyer enter the African American youth's life as an advocate. More than likely this lawyer is white. Therefore, the youth is, by culture, suspicious and distrustful. [FN42] Through sincere and well-intentioned relationship building, the lawyer earns the youth's trust. At this point, for a person who does not know how the system works, or how to work the system-the youth is likely to attribute an extraordinary degree of empowerment to the lawyer. I do not think it matters how circumscribed the lawyer defines what the youth should expect. Chances are if the youth believes in the lawyer, winning the case is not what the he or she wants. This kid wants, and needs someone to fix their broken lives. By the time the child figures out that is not what lawyers do, they are in another emotional state of disappointment at best, and a recidivist at worst. For those who feel my perspectives are polemic, I only ask that we revisit the disproportional numbers; in juvenile justice, in education, in child welfare. And, I am not in this to be argumentative; if there is a clearer explanation, I am all ears, and willing to change the focus of my advocacy on these issues that I engage in across this country in trainings, writings, and speeches.

The Juvenile Forensic Attorney

If the aims of Gault and beyond Gault are to be achieved, maybe we should consider a specialty within juvenile justice: the juvenile forensic attorney (JFA). The juvenile forensic attorney would represent a caseload of youth who need zealous advocacy, but who also are much more likely to be successful adolescents, and adults, if they get all the help they need when they are first involved in the juvenile justice system. The imperatives of confidentiality are not to be compromised in working with a JFA. The lawyer's goal remains the same, to win delinquency proceedings for the youth. But, once the legal case is resolved, the lawyer, in preexisting collaborative relationships the lawyer has established, ensures the youth receives the behavioral, educational, psychological, familial, peer, and medical services they need. The JFA should monitor this service delivery process because many youth who would need such a specialized attorney are probably on probation, and the failure to meet the conditions of probation often result in the youth penetrating more deeply, and restrictively, into the justice systems. The “fire wall” envisioned in this JFA model is that the legal issues are managed by the lawyer. The social services network is not a part of the case file; these services are independent of case disposition. Of course, the JFA will need to win a set of probation conditions that: (1) is not a laundry list of things juvenile court judges now often impose, and (2) the conditions imposed state what the child's needs are, but do not identify who, or how the needs are to be met. Therefore, the JFA can, in their collaborative relationships, have a social services professional / clinician be the youth's case manager-a relationship that can remain confidential, and without the negative net widening, all competent and caring youth advocates desire.

If the Gault imperatives are to be realized by minority youth, their lawyers must increasingly relate to these

clients culturally. This is not in the “diversity class” cultural definitions. Since there will not be any significant change in the race or ethnicity of the majority of lawyers who represent children, the most efficient strategy is to provide at the many excellent legal and juvenile justice conferences and continuing education forums, structured, intentional, and measurable behavior changing strategies and techniques for bridging the cultural gaps between mostly poor minority clients, and their lawyers. The term “culture” casts a wide net. Here, there are implications for culture in, for example: briefs, developmental research, brain research, educational performance, education practice, normative behavior, psychopathology, parenting, religion, fatalism, superstitions, reasoning, appreciation of consequences, moral judgment, etc.

Yes, these challenges are wide spread. But, the alternative is to perpetuate children who graduate from juvenile justice to adult prisons, with all of the concomitant broken lives and destroyed potential along the way. We can do this hard system reform work, or, we can celebrate stare decisis victories.

We can do less, but we should not.

We must do more, and we can.

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[FN1]. *Application of Gault*, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967).

[FN2]. *Gault*, 387 U.S. at 31-59.

[FN3]. See, e.g., Annie E. Casey Foundation; Center for Children's Law and Policy; Juvenile Law Center; MacArthur Foundation; National Council on Crime and Delinquency; National Council of Juvenile and Family Court Judges; National Juvenile Defender Center; Sentencing Project; W. Haywood Burns Institute; Youth Law Center.

[FN4]. Office of Juvenile Justice and Delinquency Prevention's Online Statistical Briefing Book, *Juvenile Offenders and Victims: 2006 A National Report 94* (2006) [hereinafter OJJDP Online Statistical Briefing Book], available at <http://ojjdp.ncjrs.org/ojstatbb/nr2006/downloads/chapter4.pdf>.

[FN5]. See, e.g., Arizona Juvenile Justice Advisory Council, *Equitable Treatment of Minority Youth* (Governor's Office for Children, Phoenix, 1993); G.S. Bridges et. al., *Racial Disproportionality in the Juvenile Justice System 77-78* (Department of Social and Health Services, Olympia, Wash., 1993); T.S. Bynum et al., *Disproportionate Representation in Juvenile Justice in Michigan* (School of Criminal Justice and Institute for Public Policy and Social Research, Michigan State University, 1993); D.P. Kurtz et. al., *Georgia's Juvenile Justice System: A Prospective Study of Racial Disparity* (School of Social Work, University of Georgia, Athens, 1992); Maryland Department of Juvenile Justice, *The Disproportionate Representation of African-American Youth at Various Decision Points in the State of Maryland 34* (Maryland Department of Juvenile Justice, 1995); South Dakota Juvenile Justice Advisory Council and South Dakota Department of Corrections, *Disproportionate*

Minority Representation in the South Dakota Juvenile Justice System (1995).

[FN6]. http://www.soros.org/initiatives/justice/articles_publications/publications/gault_20070503/juvenile_20070503.pdf [hereinafter Key Facts].

[FN7]. The delineation in the text paraphrases these “Key Facts” and partially quotes them, with quoted material identified only by indentation.

[FN8]. Key Facts, *supra* note 6.

[FN9]. Key Facts, *supra* note 6.

[FN10]. Key Facts, *supra* note 6.

[FN11]. Key Facts, *supra* note 6

[FN12]. www.njdc.org.

[FN13]. Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, 42 U.S.C. §§ 5601 *et. seq.*, as amended.

[FN14]. Howard N. Snyder & Melissa Sickmund, Juvenile Offenders and Victims: 2006 National Report (Mar. 2006), available at <http://ojjdp.ncjrs.org/ojstatbb/nr2006/downloads/NR2006.pdf> (hereinafter Snyder & Sickmund)

[FN15]. Snyder & Sickmund, *supra* note 14, at 155.

[FN16]. Snyder & Sickmund, *supra* note 14, at 157.

[FN17]. Snyder & Sickmund, *supra* note 14, at 163.

[FN18]. Snyder & Sickmund, *supra* note 14, at 165.

[FN19]. Snyder & Sickmund, *supra* note 14, at 169.

[FN20]. Snyder & Sickmund, *supra* note 14, at 169.

[FN21]. Snyder & Sickmund, *supra* note 14, at 176.

[FN22]. Snyder & Sickmund, *supra* note 14, at 176.

[FN23]. Snyder & Sickmund, *supra* note 14, at 188.

[FN24]. Barry C. Feld, Justice by Geography: Urban, Suburban, and Rural Variations in Juvenile Justice Administration, 82 J. Crim. L. & Criminology 156 (1991).

[FN25]. Snyder & Sickmund, *supra* note 14, at 188.

[FN26]. See, e.g., John J. Dilulio, Jr., The Coming of the Super-Predators, *Wkly. Standard*, Nov. 27, 1995, at 23; Paul McNulty, Natural Born Killers: Preventing the Coming Explosion of Teenage Crime, 71 *Pol. Rev.* 84

(1995); James Q. Wilson & George L. Kelling, Broken Windows: The Police and Neighborhood Safety, *Atlantic Monthly*, Mar. 1982, at 29.

[FN27]. Tom Marshall & Jonathan Abel, When Students Are Suspects, Lines Blur, *St. Petersburg Times*, Jan. 20, 2008, available at http://www.sptimes.com/2008/01/20/State/When_students_are_sus.shtml.

[FN28]. Linda Rapattoni, State Must Appoint Counsel for Juvenile Parolees, Judge Rules, *Daily J.*, Jan. 31, 2008, available at <http://www.ylc.org/articleDetail.php?id=42&type=article>.

[FN29]. *Valdivia v. Davis*, 206 F. Supp. 2d 1068 (E.D. Cal. 2002).

[FN30]. Rapattoni, *supra* note 28.

[FN31]. www.njd.c.org, General Juvenile Justice Facts & Figures (hereinafter General Juvenile Justice Facts & Figures)

[FN32]. General Juvenile Justice Facts & Figures, *supra* note 31.

[FN33]. General Juvenile Justice Facts & Figures, *supra* note 31.

[FN34]. General Juvenile Justice Facts & Figures, *supra* note 31.

[FN35]. General Juvenile Justice Facts & Figures, *supra* note 31.

[FN36]. Paul A. Dewald, *Psychotherapy: A Dynamic Approach* (1969).

[FN37]. *Webster's New Collegiate Dictionary* 397 (1997) (hereinafter *Webster's*).

[FN38]. *Webster's*, *supra* note 37, at 47.

[FN39]. Louise Benson, Troubling Proposal for Troubled Youth, *Denver Rocky Mountain News*, Jan. 25, 2008, available at <http://www.rockymountainnews.com/news/2008/jan/25/troubling-proposal-for-troubled-youth/>.

[FN40]. Anonymous, for confidentiality.

[FN41]. Mary Alice Fisher, Protecting Confidentiality Rights: The Need for an Ethical Practice Model, 63 *Am. Psychol.* 1 (2008).

[FN42]. This reality should not be confused with those youth who seem to “like” their lawyer. Although I fully accept the following as both an overgeneralization and a stereotype, I do think that often this “liking” is reflective of the youth's need for attention, and such needs override, and supersede the more typical wariness.

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