IN DEFENSE OF JUVENILES:
DUE PROCESS FAILURES IN THE UNITED STATES JUVENILE JUSTICE SYSTEM
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“All rise, the Juvenile Court of the Twenty-First Judicial Circuit in and for Daily County
is now in session. Court will come to order. Bailiff, please bring in the defendants.”
Through the door appears “the defendants”. A line of small children, some as young as
seven years old, standing all of four feet tall, and weighing less than sixty pounds. They
are all handcuffed and shackled, dressed in orange jumpsuits marked “juvenile detention
center” on the back. Their faces are stricken with terror and confusion, anxiously
anticipating the fate that awaits them.

As a Legal Skills Professor, tasked with training a new generation of lawyers for
children, I am deeply troubled by the juvenile injustice in a system that arbitrarily strips
children of their freedom and their futures. In our practice, I and my students encounter
on a daily basis deprivations of due process that deprive our young clients of the
fundamental rights to a fair trial. This essay will discuss how children are failed by the
state court juvenile justice systems of the United States. The failure to provide children
with due process or to give genuine consideration to their best interests, occurs in spite of
laws and decisions that direct courts to protect children’s due process rights and best
interests. I will explore the evolution of due process for children and its modern
application. Finally, I will discuss the devastating results that the system’s arbitrary
disposition of cases has on the children it is designed to serve.

Under the current legal system, children are not old enough to vote, to drive or to work,
yet they are old enough to be handcuffed, arrested, tried as adults and worst of all
sentenced to prison. We are faced with trying to determine at what point children should
be treated, tried and sentenced as if they were adults. Arguably the system seizes their
youth by enforcing adult penalties on offenders who are none-the-less children. The
consequences are grave, as recidivism increases, and delinquent children become career
criminals.

The Best Interest of the Child
In the United States, the Juvenile Justice System's initial focus was on the best interest of
the child. The "best interests of the child" is a phrase used to indicate that the purpose of
the juvenile justice system is not to determine guilt or innocence, or to allocate
punishment, but to do what is best for the child, taking into consideration tender years
and intellectual and emotional immaturity. The best interest of the child doctrine is
derived from the parens patriae doctrine. This doctrine grew out of the belief that the

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1 Barry C. Feld, The Juvenile Court Meets the Principle of the Offense: Legislative Changes in Juvenile
King was the symbolic father of the country and as such assumed absolute responsibility for the children of the country. Adoption of the parens patriae doctrine in the United States allowed the state to intervene and act in the best interest of the child whenever it was deemed necessary. State intervention was not limited to juveniles who had committed crimes ... any delinquent act or status offense could result in intervention. Factors used in determining the best interest of the child are the type of case, mental state of the child, severity of the crime, prior convictions, and the discretion of the court.

**Juvenile Justice v. Criminal Justice – the two become one**

Although the juvenile justice system once focused on the best interest of the child, it has evolved into a system of crime and punishment. The best interest of the child has become secondary to retaliation against the offender. As a result of the criminalization of the juvenile process, the juvenile justice system has become one where due process is detrimental, and is tragically often discarded. A government that deprives individuals of their freedom without due process of law also deprives them of their constitutional rights and operates in opposition to democracy. The case studies below will highlight the evolution of juvenile due process rights as well as the denial of due process in juvenile courts.

**Due Process - Denied**

**In Re Gault**

The 14th amendment to the United States Constitution states: “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

Generally, due process guarantees the following as it relates to criminal offenses:

- Right to a fair and public trial conducted in a competent manner
- Right to be present at the trial
- Right to an impartial jury
- Right to be heard in one's own defense
- Laws must be written so that a reasonable person can understand what is criminal

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3 Fritsch & Hemmens, supra note 9, at 19.

4 Id. at 20.

5 14th amendment to the U.S. Constitution

6 US Constitution.net
behavior

In the U.S., state law generally governs the procedures used in trials of children, but the Constitution overrides state laws that violate individual rights. In *Gault*, the Supreme Court held that a juvenile has a right to notice of charges, to counsel, to confrontation and cross-examination of witnesses, and to privilege against self-incrimination. 7

*In their zeal to care for children neither juvenile judges nor welfare workers can be permitted to violate the Constitution, especially the constitutional provisions as to due process that are involved in moving a child from its home. The indispensable elements of due process are: first, a tribunal with jurisdiction; second, notice of a hearing to the proper parties; and finally, a fair hearing. All three must be present if we are to treat the child as an individual human being and not to revert, in spite of good intentions, to the more primitive days when he was treated as a chattel.*

Gerald Gault and a friend were taken into custody in Gila County. At that time Gerald was on probation for having been in the company of a boy who had stolen a wallet from a woman’s purse. Gerald was again taken into custody as a result of a verbal complaint by a neighbor regarding lewd or indecent remarks that were made on a telephone call to her. When Gerald was arrested his parents were at work, and there was no notice left for them advising them that Gerald had been taken into custody. After searching for Gerald at the neighbor’s homes, Gerald’s parents discovered that he had been taken into custody.

When Gerald’s mother arrived at the detention home she was informed why Gerald was there and that there would be a hearing on the following day. A petition was filed with the court on the day of the hearing, however it was not served upon the Gaults. It made no reference to any factual basis for the judicial action which it initiated. It simply stated Gerald’s name, age, the fact that he was delinquent and in need of protection by the court, and requested a hearing regarding his care and custody.

At the hearing there were discrepancies regarding which child had made the lewd comments. Mr. and Mrs. Gault asked that the complainant be present so she could see which boy had done the dirty talking over the phone. The Juvenile Judge said she didn't have to be present at that hearing. At the conclusion of the hearing, the judge committed Gerald as a juvenile delinquent to the State Industrial School for the period of his minority (that is, until 21), for the charge listed as Lewd Phone Calls. It should be noted that the law which Gerald was found to have violated, provides that a person who in the presence or hearing of any woman or child uses vulgar, abusive or obscene language, is guilty of a misdemeanor. The penalty specified in the Criminal Code, which would apply to an adult, is $5 to $50, or imprisonment for not more than two months.

The Supreme Court reversed the decision and held that Gerald Gault and his parents were not provided adequate notice of the terms and purposes of the proceedings in which he was adjudged delinquent. The Court held that the Gaults were not advised of their rights to be represented by counsel; and no record in any form was maintained of the

7 *99 Ariz. 181, 407 P.2d 760.*

8 *Id.*
proceedings. The Court found that Gerald Gault was deprived of his liberty without due process of law.

The Court addressed the deprivation of freedom and liberty that takes place when children are incarcerated. “Ultimately, however, we confront the reality of that portion of the Juvenile Court process with which we deal in this case. A boy is charged with misconduct. The boy is committed to an institution where he may be restrained of liberty for years. It is of no constitutional consequence--and of limited practical meaning--that the institution to which he is committed is called an Industrial School. The fact of the matter is that, however euphemistic the title, a 'receiving home' or an 'industrial school' for juveniles is an institution of confinement in which the child is incarcerated for a greater or lesser time. His world becomes 'a building with whitewashed walls, regimented routine and institutional hours. 9 Instead of mother and father and sisters and brothers and friends and classmates, his world is peopled by guards, custodians, state employees, and 'delinquents' confined with him for anything from waywardness 10 to rape and homicide.

Juvenile Court and Due Process- Forty years later

In re Gault set the parameters for due process in the juvenile justice system nearly forty years ago. However, today the application of due process in many juvenile justice systems falls far short of the standards set by the court. Children are still pushed through the system with inadequate notice, and insufficient knowledge. Further, the prosecutors and the court often fail to consider children’s legal rights or their age. The following case studies will illustrate a disregard for juvenile due process despite the precedent of Gault. They will reveal how prosecutorial discretion is used as a weapon of intimidation in plea-bargaining. They will also reveal the mishandling of child witnesses and the use of coercion to illegally obtain incriminating evidence. Additionally, they will show the denial of participation in discovery due to the indigent status of a child. Finally, they will illustrate the intolerance of child like behavior in a juvenile system, and criminal labeling that inevitably follows children into adulthood.

Brown Case Study

A child I shall call Aaron Brown11, was nine years old when he was charged by petition with violation of Florida Statute 784.041, Felony Battery, a third degree offense. If adjudicated delinquent, Aaron could be held in a Juvenile Detention Facility until the age of twenty-one.

Aaron and his fourteen-year-old sister and twelve-year-old brother were left unattended with the two-year-old child of a neighbor. The two-year-old fell off of a bunk bed and


10 Cf. the Juvenile Code of Arizona, ARS s 8--201, subsec. 6.

11 I have used a fictitious name and changed some details in order to protect the child’s identity.
received serious and permanent injuries. The children called their mother at work and told her that the child had fallen off the bed and was not moving. The ambulance was called and the child was taken to the hospital. She was found to have retinal hemorrhaging and subdural hematomas in her brain. Because these injuries are often associated with “shaken baby syndrome”, and the person who had last been present in the room with the baby was Aaron, he was accused of violently shaking and throwing the child to the concrete floor.

**Plea v. Trial**

Aaron pled not guilty to the charge of Felony Battery, and began the trial process. The state threatened to direct file, or transfer Aaron's case to adult court if Aaron did not enter into a plea agreement, confessing he was guilty of the charges. Aaron's counsel advised Aaron and his mother of the consequences of accepting a plea agreement and of continuing on to trial. Whether Aaron accepted a plea, or went to trial, he would face sentencing by the court, in which the state would make a recommendation as to Aaron's sentence. Although the state’s recommendation is not binding upon the judge it is highly influential. The state’s recommendation would be more favorable if Aaron entered a plea instead of going to trial. Aaron maintained that he was not guilty. They agreed that Aaron had a strong case capable of being won, and that the entry of a plea would not be in his best interest. Aaron did not accept the state’s proposal and proceeded with the trial process.

**The Inability to Adequately Participate in the Discovery Process**

The next stage in the United States legal process is “discovery.” In the discovery process, Defendants are entitled to particular information and evidence related to their case, collectively called discovery. Discovery includes a defendant's statements, photographs or drawings, inspection of property obtained from the defendant, any tapes which the prosecutor intends to introduce at trial, exculpatory evidence (so-called Brady material) and the calibration of instruments in vehicle and traffic prosecutions. The prosecution is also required to turn over all prior recorded statements of their witnesses. This includes police complaint forms, the officer's memo book, witness statements and many other varied forms of police and district attorney paperwork.12

Rather than identify their witnesses, the state provided a witness list several pages long of parties that could potentially be called as witnesses. Because there were extensive medical records in the case, several of the witnesses listed by the state were doctors, nurses and other medical professionals who would require hourly compensation for their appearance at deposition. The child would be financially responsible for providing such compensation; otherwise the depositions could not be taken. Counsel on behalf of Aaron requested that the list of witnesses be narrowed down to whom the state thought it was most likely to call. The state declined to do so, and the court supported their decision. Aaron and his family were indigent, and unable to cover the cost of depositions. Fortunately for Aaron, his attorneys were able to draw upon privately raised funds held for the assistance of indigent clients. Still, they were not able to depose all of the states

12 Paszynsky, Salvatore Criminal Law Information nycdefense.com 2004
witnesses; therefore they selected what they believed to be the most important witnesses and conducted depositions. By refusing to narrow its list of witnesses, the state denied Aaron his due process rights.

Upon deposing the state’s witness it became abundantly clear that the medical personnel seemed to have formed a theory consistent with that of the state; which was that the injuries received by the child resulted from her being violently shaken and forcefully thrown to the ground. Further, they insisted that it was impossible for the injuries to have been a result of an accidental fall from the top of a bunk bed onto a concrete floor. The expert’s adamant exclusion of possibilities, in conjunction with Aaron’s continued plea of innocence, was unsettling. Discovery of the truth was vital to Aaron’s defense.

Counsel on behalf of Aaron again requested the use of the privately raised funds in order to consult with a neutral medical expert. The medical expert contradicted the state’s witness, and confirmed the theory of the defense that it was possible for the child to have fallen from the top of a bunk bed as Aaron stated, and received the same injuries. In his opinion, given the relative size and weight of the toddler and Aaron, the state’s shaken baby scenario was highly unlikely.

The Importance of Motion Practice
There were critical factual and evidentiary issues in Aaron’s case that demanded effective motion practice. The failure to file the motions discussed below would have been detrimental to his case. The failure of the child’s attorney to utilize motions has been identified as a professional or procedural factor that limits a juvenile’s access to legal counsel and the quality of legal services provided. Among the important elements of a zealous defense are pretrial motions and motions to suppress evidence on constitutional grounds. Only 30 percent of public defenders and court-appointed counsel surveyed by the ABA Juvenile Justice Center in 1995 said they filed pretrial motions. Of those who did file pretrial motions, many used “boilerplate” motions and standard form pleadings. In general, use of motions is the exception rather than the rule in most states studied by the ABA between 2000 and 2003. Even when motions are made, they usually are oral and not supported by legal briefs. However, the quality and quantity of motions varies by state and county, depending on caseload size and courthouse culture.

14 Id.
15 Id.
Sibling child witness interrogation
Among the witness' listed by the state was Aaron's twelve year old brother, whom the state intended to involuntarily force to testify against him. Aaron filed a Motion to Suppress his brother’s testimony based on the fact that it was coerced. The facts recited in the motion were as follows:

After the accident, Aaron and his siblings were taken to the police station and interrogated by a team of law enforcement officers for several hours. They were separated from their mother and each other, and shown devastating pictures of the child's injuries. The officers yelled at them and demanded answers for how the child was injured. The children asked to go to their mother and their mother asked to see her children. Each was denied their request. When the children gave their initial accounts of what happened, that the child had fallen from the bunk bed, the officers were not satisfied. They continued the hostile interrogation for hours until they received the answers they were seeking. At the conclusion of the interrogation, the officers reported that Aaron's brother had verified the state’s suspicion that Aaron had violently shaken the child and thrown her to the floor. Aaron’s brother denied he had made any such statement; rather that he nodded his head in agreement with the officer’s rendition of the facts in order to cease the intense questioning. Despite ready technology, no audio, video or transcript of the interrogation had been made.

Notwithstanding the overwhelming facts in favor of the motion, Aaron's Motion to Suppress was denied. Despite the traumatic chain of events that the children had already faced, and the terrible conflict that was created by forcing a child to testify against his own brother, the court required the sibling’s in court testimony. Upon subpoena, Aaron's mother produced his brother in court. Whenever he was asked any questions regarding the event he began to cry uncontrollably.

From a child advocate’s perspective, this questioning violated both siblings’ rights. The Rules of Criminal Procedure recognize a privilege of one spouse not to testify against the other. The sanctity of the family would be disrupted if married persons were forced to testify against each other. There should exist such a privilege for siblings in the juvenile justice system. Exposing children, especially those who have committed no wrong-doing, to interrogation and adversarial proceedings is traumatic in and of itself. Requiring children to testify against their siblings shows a lack of regard for their emotional well-being, and can produce no positive results. The devastation intensifies when that testimony is coerced. Too often, the juvenile justice system’s highest priority seems to be establishing guilt, rather than furthering the best interest of any child.

A Right to Speedy Trial
Aaron was taken into custody in August of 2002. Nearly one year later, the case continued to drag on. This unreasonable delay by the prosecution was clearly harmful to these children. Counsel on behalf of Aaron, reviewing the case records, discovered that the state had not
brought the case before the court for its initial Adjudicatory Hearing within the time period required by law. Counsel then filed a Motion for Speedy Trial or Discharge. Because of the overwhelming case law in favor of the motion, the court granted the motion and scheduled the trial to occur within ten days.

Prior to the trial, counsel on behalf of Aaron finally learned who would be the state’s chief medical expert—the surgeon who had operated on the child and saved her life. In the anteroom of the court, on the day of the trial, Aaron’s counsel was able to conduct a brief interview of the surgeon. The surgeon confirmed that the injuries could have been caused by a fall from a bunk bed, as the children had stated, in opposition to the testimony of the other medical witness the state would call. The case proceeded to trial. The states witness’ contradicted each other and the state’s theory could not stand. The court concluded that the state had not met their burden to prove its case. After months of laboring and a year of suffering for this family, Aaron was found to be not delinquent.

This case was a perfect example of how the best interest of the child can become secondary to the interests of over zealous prosecution. It would not have been in Aaron’s best interest to transfer his case to adult court, yet the state used this threat to coerce a plea. It was a violation of his right to due process to make him responsible for the payment of depositions that he could not afford. It was not in his brother’s best interest to force him to testify against his brother, especially after he testified how his prior statement was obtained coercively. Although Aaron had sufficient notice of the charges against him, and was equipped with competent counsel, his rights were violated by the financial and practical limitations placed upon his ability to participate in an effective discovery process. I would argue that none of these things would have been in the best interest of the child, and even more troublesome could have led to the wrongful conviction and placement in secure detention of an innocent child.

Childhood Pranks of yesterday become the Felony Offenses of today
Sadly, the punitive approach we saw in Aaron’s case is not an isolated phenomenon. There was once a time when children who were caught stealing, engaging in a fight or other inappropriate behavior at school, were sent to the principal’s office, reprimanded and possibly suspended. This was considered child-like behavior that was to be corrected as a part of the educational process. Today these incidents are not handled by the schools, but are referred to the juvenile justice system for prosecution. Again this is indicative of a movement towards the criminalization of childlike behavior, and movement away from consideration for the best interest of children.

Reynolds Case Study
Fifteen year old Jacob Reynolds16 was accused of pulling girls underwear up out of their

16 I have used a fictitious name and changed some details in order to protect the child’s identity
pants (commonly known as a wedgie) and snapping the straps of their brassiere's through their shirts from the back. These incidents took place on the school bus that the children rode together. None of the girls complained to authorities regarding the incidents, however another child reported that Jacob was touching girls inappropriately. The girls were then confronted by the school’s officials, and counseled by victim’s advocates. The girls then began to agree that Jacob had touched them inappropriately against their wishes. Jacob was charged with three counts of sexual battery.

While Jacob admitted that his actions were inappropriate, he believed them to be part of mutual roughhouse play that went on between several of the girls and boys who rode on the bus together. Jacob denied that the contact was sexual in nature. He also felt that the girls were not violated by his actions, because they were all friendly, and sat together on the bus daily despite his actions. This could have been a learning experience for Jacob about how horseplay can become harassment.

Because the statute only requires the touching of the clothing that covers the genital areas in order to be found guilty of sexual battery, once he was charged with a crime, Jacob was left without many options. He entered into a plea agreement with the state. As a part of the plea agreement Jacob was labeled as a “sex offender” and forced to undergo sex offender counseling where he would be made to admit to deviant sexual behavior.

The criminalization of inappropriate childhood behavior is not in the best interest of children. Jacob’s case illustrates a strong movement away from acting in the best interest of the child. It was not in Jacob's best interest to be labeled as a sex offender, and forced to admit to deviant sexual behavior, when the acts that he admitted to committing were playful as opposed to criminal in nature. Acceptable social behavior is learned, particularly in adolescents, behavior should be corrected in order to facilitate appropriate growth and development. Criminalizing behavioral problems leads only to “offenders” resentment of authority, destruction of self-esteem. It seeks only to punish instead of seeking to correct and teach socially appropriate behavior. Prosecuting children for childhood pranks implies that behaving in a childlike manner is unacceptable and suggests that children should be required to behave at adult levels of social maturity. Labeling a child who gives wedgies or snaps bra straps as a sexual offender produces absurd results and has long lasting effects that go far beyond the juvenile justice system. For example, certain schools have websites where the pictures of students that have been convicted as sex offenders can be found. If prosecuted as an adult, a child in Jacob’s position, labeled as a sexual predator could be required to register as a sex offender for the rest of his life, giving notice to everyone wherever he lives that he was previously convicted as a sex offender.

Counseling is often a healthy alternative, however, counseling that requires an admission of guilt to crimes that are statutorily and morally mismatched is of little assistance in healthy childhood development. Requiring Jacob to confess to a sex crime undercut any benefits of
counseling. The current juvenile justice system yields devastating results, and results in labels that have lifelong effects on children. In addition, it prevents children from learning socially acceptable behavior. A regression to a collaborative method of discipline between the parents and the educational system would more appropriately address the inappropriate behavior of children.

**Trend towards trying children as Adults**

The Supreme Court in Gault stated that juveniles charged with crimes should have the same due process rights afforded to adults charged with crimes. In recent years, prosecutors have established a pattern of prosecuting children in adult court, otherwise know as direct filing. Juvenile court only has jurisdiction to detain a child until they reach the age of twenty-one, regardless of the crime that they commit. Direct filing allows the creation of a legal fiction, calling a child an adult for the purpose of seeking enhanced sanctions—often referred to as “adult time for adult crime.” This system of fictitious labeling does not make a child any less of a child. A crime cannot be an adult crime, when it is committed by a child.

Florida courts have long established that children have no absolute right to be treated in a special system for juvenile offenders. 17 Often, the laws on charging a child as an adult seem arbitrary and capricious. The Florida Statutes, provide for adult sanctions for the youngest juvenile offenders who are charged by grand jury indictment, but permits a juvenile sanction for older offenders whose crime may have been committed with malice or premeditation because the law does not require an indictment. 18 Specifically, for fourteen or fifteen year olds, the transfer statutes give the state three options when the juvenile has no prior violent offenses and committed an offense that is punishable by life in prison: (1) the juvenile court retains jurisdiction; (2) the state may seek an indictment under section 985.225; or (3) the state can prosecute the juvenile as an adult by the direct filing of an information under section 985.227(1)(a). On the other hand, if the juvenile is under fourteen years of age, only the first two options are available.

Florida is one of 15 states that allow prosecutors—not a judge—to decide whether children arrested for crimes ranging from shoplifting to robbery should be dealt with in the juvenile justice or criminal justice system. Florida leads the nation in using prosecutors to make the decision to try children as adults. 19 Unfortunately, studies have shown that even though Florida transfers a large amount of cases to adult court, there has been no decrease in Florida’s juvenile court cases. Studies have also shown that youths referred to the adult court system have a higher

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17 State v. Cn, 381 So. 2d 1361, 1363 (Fla. 1980); Johnson v. State, 314 So. 2d 573, 576 (Fla. 1975)

18 Section 985.225, Florida Statutes

rate of recidivism than those who remain in the juvenile court system. Of those who reoffended, the youths that had been tried previously as adults reoffended sooner, and with more serious crimes. Experts believe that this higher rate of recidivism may be attributable to the increased exposure of the child to sexual assault, abuse, and adult crime in the adult system. Evidently, prosecuting children as adults does not serve as deterrent, and only increases the rate of recidivism because children are not capable of understanding the influences they encounter in the criminal justice system.

**Lionel Tate Case Study**

In discussing Florida’s use of prosecutorial transfer of cases to adult court, I would be remiss not to mention the case of Lionel Tate. Twelve-year-old Lionel Tate, was indicted by a grand jury and convicted of the first-degree murder of six-year-old Tiffany Eunick in 1999. The general verdict included charges of both felony murder, based on committing aggravated child abuse, and premeditated murder. Lionel’s conviction resulted in a mandatory sentence of life in prison.

The death of Tiffany Eunick is indisputably tragic. The life sentence imposed upon a fifteen-year-old boy is also tragic. It should be noted that during the trial several witnesses testified that Lionel had a diminished mental capacity. They testified that he had an IQ of about 90, a mental delay of three to four years, making him equivalent to a nine or ten year old, the social maturity of a six year old, and delays in inferential thinking.

On Appeal, the court reversed the judgment and sentence of the lower court, stating that “... in light of Tate's age, the facts developed pre-trial and post-trial; and his lack of previous exposure to the judicial system, a competency hearing should have been held, particularly given the complexity of the legal proceedings and the fact that he was denied this protection afforded children fourteen and older under section 985.226(2), Florida Statutes, which provides for a waiver hearing to determine whether the child should be tried as an adult. Further, the brief plea colloquy, taken alone, was not adequate to evaluate competency given his age, immaturity, his nine or ten-year-old mental age, and the complexity of the proceedings.”

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20 Id.
21 Id.
22 Id.
The imposition of a life sentence upon a fifteen-year-old child was a shocking reality of the current state of the law. Setting aside the diminished mental capacity of Lionel Tate, an average twelve-year-old child would not have the capacity to fully understand the intricacies of the criminal justice system and its consequences. Because a child is not an adult, imposing adult sanctions on children produces devastating results. For instance, the imposition of a life sentence on a child is a longer and harsher sentence than if imposed upon an adult. A life sentence for a child is longer because a twelve year old has a longer life expectancy than a thirty two year old, and is harsher because a child does not have the maturity to face the potential abuse and assaults that can be expected as a prisoner in the adult systems.

In conclusion, from *Gault* to *Tate* the juvenile justice system in the United States has continued to fail our children. Although Gerald Gault and Lionel Tate were able to escape the harsh sanctions that were initially imposed upon them, countless others have not been so fortunate. Studies have proven that this “no tolerance” approach to kids who commit criminal acts has not reduced juvenile crime, but has produced an increased rate of recidivism. Yet the juvenile justice system continues to arbitrarily strip children of their rights and their freedom; meanwhile judges and prosecutors continue to transfer children into adult court. The image of seven and eight year olds handcuffed shackled and being brought into the courtroom is all too common.

There are numerous possibilities as to why the system has elected to handle childhood offenses in this manner. There is undoubtedly some underlying good intention. The courts and prosecutors believe that by exposing children to adult sanctions they are helping the children to become prepared for the reality of facing the consequences for their actions as adults. In some instances they believe they are using the juvenile justice system to help children that are in need of services (i.e. counseling, additional supervision, foster care). Another motivation is political. Judges and prosecutors are elected, and are pressured to “crack down on crime”. This no tolerance approach appears attractive to a public that is not aware of the complete effects of its application. There are also racial motivations. With the exception of Gault, all of the case studies discussed above involved African American boys, as do the majority of the cases that come before the courts. Many studies have shown the disproportionate number of African American children that are arrested, prosecuted and whose cases are direct filed to adult court.

In order to prevent this systemic injustice towards children from becoming yet another regrettable social norm it is imperative that we revert to treating children like children, acknowledging their lack of maturity, and adjusting our expectations accordingly. Further that parents and schools must collaborate in order to teach acceptable behavior instead of criminalizing it. Finally, while it is imperative that every child receive due process, it is equally important that society abolish the movement towards trying children in adult court, and that offenses committed by children remain in juvenile court where they belong.