# Instant maturation for the post-Gault "hood"

Author: Francis J. Parker



Published in *Family Law Quarterly*, vol. 4, no. 2, pp. 113-129, June 1970

# Family Law Quarterly

Volume IV, Number 2
June, 1970

IN THIS ISSUE:



Section of Family Law
American Bar Association

# Instant Maturation for the Post-Gault "Hood"

FRANK J. PARKER, S. J.*

The American concept of the juvenile court has been caught in a jet stream. The body of the plane has gone past, leaving in its wake the powerful force and deadly fumes of the exhaust.

*Gault v. Arizona*[1] was such a fundamental departure from traditional American juvenile delinquency law that three years after the decision, the reaction is still settling. With such important questions as the right to jury and the necessity of being convicted beyond a reasonable doubt still to be decided, it is clear that the full implications of *Gault* still are unchartered. Actually it would be wrong to attribute all post-1967 developments in juvenile law to being tributaries of *Gault*. Acknowledging that the law must adjust to the changing conditions of life in the United States, it would be more correct to say that *Gault* is an important way-station on the road to erecting truly successful procedures for dealing with juvenile crime. This is not to undermine the brilliance or truly revolutionary character of *Gault*. The optimism of all that *Gault* will guide the American legal system on to a correct course in juvenile matters appears to be well founded. It is the purpose of this article to extend the conclusions of *Gault* in the hope of achieving a more successful approach than presently exists. Thus, even though the need for *Gault* is admitted and its conclusions heartily endorsed, there still remains a need for further modification and refinement.

Supreme Court Justice Fortas, at the start of the *Gault*

*J.D., Fordham University Law School, member of the Massachusetts Bar, Instructor, Boston College School of Management.

1. APPLICATION OF GAULT, 87 S. Ct. 1428 (1967).

case, gave a summary and critique of 20th Century American juvenile court justice that would be hard to surpass:

> The history and theory underlying this development are well-known, but a recapitulation is necessary for purposes of this opinion. The juvenile court movement began in this country at the end of the last century. From the juvenile court statute adopted in Illinois in 1899, the system has spread to every State in the Union, the District of Columbia, and Puerto Rico. The constitutionality of juvenile court laws has been sustained in over forty jurisdictions against a variety of attacks.
>
> The early reformers were appalled by adult procedures and penalties, and by the fact that children could be given long prison sentences and mixed in jails with hardened criminals. They were profoundly convinced that society's duty to the child could not be confined by the concept of justice alone. They believed that society's role was not to ascertain whether the child was "guilty" or "innocent" but "What is he, how has he become what he is, and what had best be done in his interest and in the interest of the state to save him from a downward career." The child—essentially good, as they saw it—was to be made to feel that he is the object of (the State's) care and solicitude," not that he was under arrest or on trial. The rules of criminal procedure were therefore altogether inapplicable. The apparent rigidities, technicalities, and harshness which they observed in both substantive and procedural criminal law were therefore to be discarded. The idea of crime and punishment was to be abandoned. The child was to be "treated" and "rehabilitated" and the procedures, from apprehension through institutionalization, were to be "clinical" rather than punitive.
>
> These results were to be achieved, without coming to conceptual and constitutional grief, by insisting that the proceedings were not adversary, but that the State was proceeding as *parens patriae*. The Latin phrase proved to be a great help to those who sought to rationalize the exclusion of juveniles from the constitutional scheme; but its meaning is murky and its historic credentials are of dubious relevance. The phrase was taken from chancery practice, where, however, it was used to describe the power of the State to act *in loco parentis* for the purpose of protecting the property interests and the person of the child. But there is no trace of the doctrine in the history of criminal jurisprudence. At common law, children under seven were considered incapable of possessing criminal intent. Beyond that age, they were subjected to arrest, trial, and in theory to punishment like adult offenders. In these old days, the State was not deemed to have authority to accord them fewer procedural rights than adults.
>
> The right of the State, as *parens patriae,* to deny to the child procedural rights available to his elders was elaborated by the assertion that a child, unlike an adult, has a right "not to liberty but to custody." He can be made to attorn to his parents, to go to school, etc. If his parents default in effectively performing their custodial functions—that is, if the child is "delinquent"—the state may intervene. In doing so, it does not deprive the child of any rights, because he has none. It merely provides the "custody" to which the child is entitled. On this basis, proceedings involving juveniles were described as "civil" not "crimi-

> nal" and therefore not subject to the requirements which restrict the state when it seeks to deprive a person of his liberty.
>
> Accordingly, the highest motives and most enlightened impulses led to a peculiar system for juveniles, unknown to our law in any comparable context. The constitutional and theoretical basis for this peculiar system is—to say the least—debatable. And in practice, as we remarked in the *Kent* case, *supra,* the results have not been entirely satisfactory. Juvenile court history has again demonstrated that unbridled discretion, however benevolently motivated, is frequently a poor substitute for principle and procedure. In 1937, Dean Pound wrote: "The powers of the Star Chamber were a trifle in comparison with those of our juvenile courts.***"
>
> The absence of substantive standards has not necessarily meant that children receive careful, compassionate, individualized treatment. The absence of procedural rules based upon constitutional principle has not always produced fair, efficient, and effective procedures. Departures from established principles of due process have frequently resulted not in enlightened procedure, but in arbitrariness. The Chairman of the Pennsylvania Council of Juvenile Court Judges has recently observed: "Unfortunately, loose procedures, high handed methods and crowded court calendars, either singly or in combination, all too often, have resulted in depriving some juveniles of fundamental rights that have resulted in a denial of due process."[2]

Justice Fortas used this summary as an introduction to his decision that juvenile court procedures denied minors their Constitutional rights. He stopped short of discussing whether it would be better to abandon the whole juvenile court system. As a result of the admitted lack of success in juvenile court administration, would it not be better to try juvenile offenders as adults? Whatever merits or demerits there are to this suggestion, it would be a guarantee of procedural due process. *Gault* successfully drew attention to the plight of juveniles. Yet, left unanswered and untouched by *Gault* is the question whether the best solution is to make procedural adjustments in the juvenile court system as *Gault* did, or to alter the substance of the juvenile court system even to the point of radically revising or abolishing the whole system. It will be the position of this article that radical revision of a nature that borders on total abolition of the present juvenile court system is the only possibly feasible solution at the present time. This article applauds *Gault* and endorses heartily all the demands

2. *Id.* p. 1437-1939.

for procedural "due process" for juveniles that are mandated by this case. However, it is feared that procedural safeguards are not sufficient. The logical path initiated by *Gault* eventually leads one to conclude that the defects that actuated *Gault* could be better addressed in the traditional legal situation than in the amalgamate which is the current juvenile court.

The thesis of this paper is that true crime committed by true criminals should be treated by the courts as just that, regardless of the age of the defendant. The converse of this thesis is that if the action is not truly criminal nor the actor truly responsible for his actions (whatever the reason), the criminal court process should not be actuated. In fact, even in the present juvenile court system it is wrong to actuate this process if the action is not truly criminal or the actor is not truly responsible for his action. This observation is made with the feeling that many actions of juveniles are indeed criminal and are committed by a willful, intentional, knowing juvenile actor-criminal.

A plea for severity in dealing with juvenile delinquents can, if not qualified restrictively, lead to misconceptions and outraged protests. Hopefully this situation can be avoided. In the thesis, emphasis was placed on "true" crimes and "true" criminals. This was done to avoid just this situation. In pre-*Gault* days, many communities overstepped their bounds and brought youngsters to task before a juvenile court for offenses of highly dubious criminality. Taking the standard measuring stick for a crime as an offense against society, it is highly questionable if truancy, being a stubborn child, or loitering qualify. Many times these offenses are the juvenile equivalent of vagrancy or disorderly conduct. If these charges are employed by the government for purposes unrelated to offenses against society, they do not belong. It would seem that there is a tendency to play parent in juvenile statutes. These offenses can be used as a check on potential juvenile criminals. It would seem that equal protection is abused in these cases.

Parents, school authorities, psychiatrists, clergymen and counseling services, all are more adapted to dealing with incipient delinquency than the courts. All the court can do is refer the case back to the appropriate authority. The offense is not serious enough to warrant action. In addition, court time is wasted and the child senses the judge's frustration and his desire not to give the child a record. Courts should not be parents or baby sitters. Their function is to deal with crimes that have been committed. It is the function of others to intercept incipient offenders and try to straighten them out. These other agencies have the advantage of working with the juvenile without the necessity of attaching the stigma of a record to the youthful offender. To sum up, leave true crime to the courts, and don't bother them with the rest.

It is wrong to talk concerning crime apart from a consideration of the motivating force for crime, the offender. Subjectivity must occur in this regard, especially when we are dealing with children. This subjectivity modifies the objectivity of our judgment as to whether a crime is, or is not, serious. Behind this paper is the conviction that many juveniles are thoroughly aware of what they are doing when they commit crimes. They know it is wrong and that they will be punished. Often they are thoroughly aware to what degree they as juveniles will be punished. We should have little sympathy for these precocious tots. This is not to exclude deviation in prosecution, punishment, and rehabilitation because of their age and the hope that their useful lives can be salvaged. However, the objective fact that murder is murder, arson is arson, rape is rape or robbery is robbery should not be forgotten because the little darling has not begun to shave. Still this objectivity as to the nature of the offense should not induce blindness or insensitivity to the fact that the motivating force is not an adult. Sometimes this can be a valid excuse or at least a mitigating circumstance. At some time or other most juveniles break the law. However, when one pauses to consider his income tax, parking regulations, and building codes, most adults do as well. Of course, the

degree of violation is most important. Just as an adult would be enraged if a truly incidental violation were prosecuted, the same standard should apply for children. In addition, immaturity could excuse or mitigate some juvenile crime. In these cases, other types of community supervision could be employed for first offenders. Likewise mental illness among juveniles should, if truly present, be treated outside the debilitating atmosphere of a court room. If the parent does not concur, care and protection proceedings could be instituted or, if necessary, an involuntary mental health commitment could be started. It would take the wisdom of Solomon to differentiate between cases in which community services should be used or a warning issued instead of the institution of criminal proceedings. However, an official policy encouraging alternates to criminal prosecutions whenever possible would be an aid. A criminal court judge could be assigned as a preliminary hearing officer to decide whether criminal prosecution was necessary. This would seem to be a better alternative than submission to a Grand Jury and would clearly be a permissible extra juvenile protection as sanctioned in *Gault* even though this protection would occur in an adult court.

Assuming that those offenses not worthy of an adult trial and those juvenile offenders who should not be tried as criminals have been severed, the remainder should be treated like any other criminal defendant. This has advantages and disadvantages for the juvenile in question. He will receive two important benefits beyond those granted by *Gault*. The juvenile would be entitled to be tried under a criminal burden of proof as opposed to a civil burden of proof. In other words, the state would have to prove guilt beyond a reasonable doubt rather than just the preponderance of the evidence standard that exists presently in the majority of states. Even more than restricting prosecution of juveniles to true crimes, this would give a juvenile defendant equal protection and the same rights as a criminal defendant. With the stigma presently attached to being declared a juvenile delinquent, it seems cruel to term this

a civil proceeding. A corresponding criminal protection presently denied, the right to jury trial, would also be secured for juveniles if they were treated as adult defendants. The objection that a juvenile would not be tried by a jury of his peers is fatuous. Lack of maturity is the greatest deficiency that would prevent juveniles from being included as jurors. Chronological equality among jurors has never been required. There has never been any more justification for this than having a jury of thirty-five year olds sitting in judgment of another thirty-five year old. This is not a Constitutional requirement.

The graduation of a juvenile offender to adult status carries with it a concommitant responsibility on the part of the state to see that no procedural disadvantages accrue because of the juvenile's status. Conversely the traditional extra privileges accorded a juvenile are subject to question. Has the time come that a juvenile defendant should be made to stand trial in open court? Of course this presupposes that only those juvenile offenses that are of a sufficiently serious nature and are committed by truly responsibile criminally oriented youth are prosecuted in criminal court. Along with a trial in open court would follow the fact that the record of the defendant would be made public. Granted these are serious alterations from the present system. Yet the failure of the present system of leniency and protection cries out for an immediate alteration. Juveniles commiting disruptive acts under the sponsorship of the radical fringe and juveniles who sell drugs[3] are two clear examples of types for whom protection is really a hindrance. Their basic alienation from society is so severe and fraught with long range harmful consequences that the only hope is to expose the perniciousness of their actions from the outset. The break down of the family structure in our country is so serious and pervasive that secrecy will often tend to increase the harmful complicity and duplicity of parents. Only a public

3. JOHN BIRMINGHAM, OUR TIME IS NOW: NOTES FROM THE HIGH SCHOOL UNDERGROUND. Praeger Co., New York, 1969.

manifestation of society's disapproval would hold hope for shocking the parents into action. In addition, an open court would debunk most effectively the folk hero mystique that many juvenile offenders yearn for and seek to cultivate.

The calling of a juvenile offender to public account should not in any way be confused with the judge's responbility to assign the sentence that will best protect the rights of society while at the same time containing the best possible chance of rehabilitation for the offending juvenile. Probation, mandatory sentencing to court clinics or court psychiatrists, commitment to special youth facilities, all are to be encouraged. In all penological situations, recognition has occurred that the rights of society are most often served best when the sanction is such as to provide the optimum chance of rehabilitation for the criminal. Nowhere is this flexibility of punishment in order to rehabilitate the criminal more to be stressed than at the juvenile level. The call for treating procedurally juvenile crime the same as any other crime should under no circumstances be interpreted as a recommendation that juveniles be punished as adults. This would deny the importance of the rehabilitative aspect of sentencing. With juvenile crime on the upswing rehabilitation must be emphasized not minimized. Yet it is essential for a smoothly functioning system that the seriousness of the offense not be minimized in a false attempt at indirect rehabilitation.

After the long history of the juvenile court, any strong plea for its abolition must be based on persuasive evidence. One should not lightly cast aside a system on which millions of dollars and countless thousands of hours have been spent in an attempt to make it function successfully. However the incredible blossoming of juvenile crime[4] has brought us to the point where we must doubt if this type of system holds promise for the future. The main reason to say that it does not succeed is because there is an inherent indistinctiveness and role confusion in the juvenile court system. A judge is called

4. APPLICATION OF GAULT, 87 S. Ct. 1440, ft. 26.

on to be an arbiter and social worker at the same time. The latin description *parens patriae*[5] was employed as an euphemism to disguise this conflict. When the whole tradition of the court system and the function of the judge in Anglo-American society are considered, it is naive to hope that a judge could assume the parental role of a combination discipliner and guardian. It is beyond the framework of the system and cannot succeed. The guardian aspect can be better handled by other agencies as a strong critic of our juvenile court system, David Matza, points out:

> Spokesmen for individualized judgment do not suggest the offense is irrelevant; rather that it is one of many considerations that are to be used in arriving at a sound disposition. Offense, like many other forms of behavior, is to be taken as an indication of the juvenile's personal and social character and by his individual "needs"...(It) results in a frame of relevance that is so large, so all inclusive, that any relation between the criteria of judgment and disposition remains obscured... Its consequences have been that hardly anyone, at least of all the recipients of judgment, ... is at all sure what combination of the widely inclusive relevant criteria yield what sorts of specific disposition.[6]

The eventual outcome of this awkward role for the juvenile court judge forces him to become an amateur psychiatrist, often with disastrous results. Hopefully, a strict segregation of mental disturbance cases from truly criminally motivated juvenile cases could be a great assistance. Today the juvenile offenses of emotionally disturbed children are far more involved in the juvenile court than they should be. A quick rerouting to the civil mental health field would be a great assistance. If abuses occur, equitable remedies and the use of *habeas corpus* proceedings would be a far better vehicle for seeing that the rights of the juvenile who is emotionally disturbed are protected than would be recourse to the juvenile court with its essentially criminal nature.

The necessity of permitting a judge to stay within his special realm of competence cannot be over-emphasized. Half-hearted attempts to fill judges with the latest psychological and psy-

5. *Id.* p. 1437.

6. DAVID MATZA, DELINQUENCY AND DRIFT, John Wiley and Sons, New York, 1964; pp. 114-115.

chiatric theories in order to have their judgments as rehabilitative in nature as possible are doomed to failure. This is not his, or any layman's field. It should be left to experts. Actually this statement applies not just to mental health areas but also to other areas. Often the juvenile judge is called upon to handle what could be accomplished better by probate court or a family court or by various community agencies. Often the problems of juveniles are intimately connected with parental problems and disorders. Matters of this type, if not criminally grave, can best be handled by a court or agency that has the ability and authority to deal with the parents as well.

Many juvenile cases should be treated in as serious a manner as possible. Yet the present juvenile court system at least implicitly tends to minimize the criminal aspects and treat every case as some sort of a psychological case study. This is a denial of society's right to be protected against criminal conduct whatever the source. An atmosphere that de-emphasizes guilt and culpability for juveniles sweeps under the rug problems that cry for an immediate resolution. This tendency is at odds with the *Gault* tendency toward adult protection for juveniles. If the juvenile criminal is to be protected in the same manner as an adult, it would seem to stand to reason that the same judge could hear either an adult or a juvenile prosecution. As mentioned before, only the sentencing would differ. Any properly instructed judge could do this. Of course, this presumes that a judge is called on to deal with truly criminal juveniles alone. If this is done, the post-*Gault* need for a separate juvenile court becomes problematic.

The proposed abolition of the juvenile court forces us to confront squarely the problem as to whether a truly criminal juvenile should be treated like any other criminal. The strongest reason for doing so is that more often than in the past the juvenile criminal knows exactly what he is doing when he commits a criminal act. Peer group knowledge is a remarkable educative tool. The experiences and opinions of contemporaries should not be undervalued nor should the effect that

radio, television, articles and movies have on children. All these forces have led to making this generation far more worldly cognizant than in the past.

Along with precocious intellectual enlightenment should come the concommitant responsibility associated with adults. This has not been true under the present system. The reprehensibility of the conduct has been minimized. This leads both to a lack of responsibility in the offender and status in the peer group as a reformer and establishment flaunter. If the schools, parents and community in general will not assume their responsibility, all that is left to protect society is the court system with its procedure of judgment, punishment and rehabilitation. Unfortunately this is often all that is left. Our government cannot stand long if a substantial segment defies it regularly. With the emergence of wide scale juvenile disrespect for the law, our society in self defense must strictly enforce our laws or face the real possibility of anarchy. Of course our government entails more than our courts. Youth can be channeled into constructive reformation of the law. However, if youth can deviate with immunity from legal forms of redress, our nation cannot long stand. In the end under a new violence-founded system the juveniles will be the worst losers. They will have to live under the new system that they have wrought. A strict implementation of the present laws could save them from themselves.

It is wrong to place all of the blame for crime and disrespect upon the present generation. The roots are deeper and must be in large measure attributed to the parents of today. For a complex group of reasons that psychologists and sociologists can only begin to fit into theories, these men and women who spent their formative teenage years in the late Forties and early Fifties seem, for the most part, to have rejected the strict matriarchal and patriarchal type of family structure to which they were exposed. Instead these post-war teenagers, when they became parents themselves, have permitted peer group pressure both at their own level (the actions of other parents)

and at their child's level (the actions of other teenagers) to influence their child-raising decisions far more than their parents ever did. This abrogation of parental control is hard to understand and even harder to justify. Lack of control and overprotectiveness are both evils. In combination, they are in large measure responsible for the present juvenile trouble. Somehow or other society must pick up this neglected parental burden, if only for the sake of self-preservation.

The present juvenile court system is in many ways an accomplice and helpmate to parental ineffectiveness and incompetence in child-raising. The judicially irregular atmosphere and the secrecy of the proceedings often fail to have the desired result as far as the parents are concerned. Underlying the juvenile court's dealings with parents is the implicit, but nonetheless ever present assumption that the child's being there is a mistake. Not only is the guilt of the child minimized or obviated, but the complicity of the parent is often disregarded. Now clearly it is the child that committed the crime and not the parent and no suggestion is being proffered that vicarious criminal liability should attach to the parent. However, the fact remains that parental incapacity is in some measure responsible for the situation. If the present juvenile court system does not serve effectively as a check on parents, this could be another reason for substituting open court criminal trial. Perhaps open court criminal trial for juveniles would serve more effectively to impress upon parents the absolute necessity of performing their child raising responsibilities as conscientiously and effectively as possible. Again, it is necessary to attach the caveat that every effort should be taken by the courts and those agencies whose facilities the courts utilize to insure that emotionally and mentally incapable children do not stand trial for crimes when their offenses really are not criminal. Too often today the seriousness of the actions performed by criminally capable juveniles is not brought home in a forceful enough manner to insure parents will institute corrective measures while there is still time for these measures to

have a beneficial effect. An open court trial might be the necessary prod to do so if for no other reason than that the embarrassment afforded by a public demonstration of their failure to bring up children properly might spur them into taking action to see that they are not so embarrassed again. If successful, the criminally inclined juvenile would be the beneficiary.

The necessity of involving parents in helping their children is another way of saying that the juvenile court and the agencies at its disposal cannot do the job alone. No matter how expert an agency is, it still is an agency. The workers are hindered by bureaucracy, low pay, and lack of resources and facilities. Except for mental and emotional problems, an agency can never substitute adequately for good parents. In those cases where a child is not really criminally inclined the agency has an important role. However, when the child really is criminally inclined, juvenile agencies treating him as if he were not criminally inclined do not help. Of course, in the abstract it does seem harsh to treat a youngster as a criminal; however, the ineffectiveness of the juvenile court system leads one to believe that it is worse not to treat a criminally motivated youth as just that. It does not seem that juvenile court auspices are able to do so.[7] It would seem to be a better solution to allow adult correctional and rehabilitative personnel attempt to help this type of child. This would leave those social service agencies that are not primarily trained for dealing with criminals free to work with youngsters whose problems are not primarily criminally induced. This recommendation is seconded in an article by two eminent psychologists, Mildred R. Chaitin and H. Warren Dunham:

> Here we are suggesting that whatever the merits or demerits may be of individualized treatment of maladjusted youth, such practices should not be tied to the courts but should be lodged in other agencies to which the court might refer cases. The court, then, not having the obligation to

7. Benedict S. Alper, *The Training School Stepchild of Public Education,* FEDERAL PROBATION, Dec. 1969, pp. 24-28.

> treat the child as well as control him, could return to its more important function, namely, social control and this would then become its true manifest and not its latent function.[8]

The advantages of treating a truly criminal juvenile as a criminal have been introduced piecemeal during this article. This would be a propitious place to coagulate them and present them in a unified manner. Most importantly a system of juvenile culpability would serve as an accurate warning of what is ahead if the juvenile proceeds down the road that he has chosen freely. Especially if actual punishment is omitted because of the youth of the offender, the adult trial would serve as an effective warning that in the future youngsters will not get off so lightly. This would be a far more effective deterrent than the present closed door juvenile system which too often treats a criminally motivated youth as if he were essentially a good boy with prankish tendencies. It is all well and good to extend the olive branch of mercy to a juvenile because of his youth and not because his criminal act is essentially a mistake, but if this merciful treatment to a youthful offender is so extended it should be labeled as a deliberate decision by society not to exact just punishment for a criminal act. Whether punishment is actually imposed or not, the ability to do so will enable courts to assign punishment that is more commensurate with culpability than they are able to do at the present time. This step will be beneficial to society. Again if juveniles are actually punished there is nothing to prevent continuing the separation from adult offenders that occurs presently. Except in rare instances, this separation with the attendant opportunity to attempt to rehabilitate the child in a more conducive atmosphere should be encouraged. Hopefully this suggested system will give juvenile offenders a clear picture of what is ahead so that they cannot slough it off and will also provide a climate in which these offenders can be helped by experts in this field before it is too late.

Using the adult court system will give others an example of

8. Mildred R. Chaitin, H. Warren Dunham, *The Juvenile Court In Its Relationship to Adult Criminality: A Replicated Study,* SOCIAL FORCES, v. 46, p. 114, 119.

what is in store for them. It will strip the glamour from the tales of offenders pertaining to their telling off the judge and police in closed door hearings. Peer group humiliation should act as a powerful deterrent to others. In addition, open societal condemnation may act as a spur to parents to increase their efforts in the future. Also, the court agencies will be able to deal exclusively with the problems of the criminally motivated child. This isolation will also permit these agencies to deal with parents of these children more effectively than at present. Under the present system parents often either do not or intentionally will not understand the gravity of the actions of their children and the extent to which society condemns these actions. The new system should help in this regard.

The final advantage to extending adult proceedings to juveniles is that it will give them all the protections that an adult defendant receives. This can be more beneficial to the juvenile than at first glance seems possible. If, for example, a sixteen year old and a fifteen year old break into a store under the present system in many states the fifteen year old would be denied a jury trial,[9] forced to defend against a preponderance of the evidence burden of proof[10] and be liable to a sentence as a juvenile far in excess of that received by an adult.[11] The sixteen year old who presumably should know better, will receive the more favorable treatment in each instance. Anomolies such as these will be ended if *Gault* is carried to its logical conclusion.

An article advocating a return to old time justice for juveniles (even if only for a few) must respond to many objections. The principal one, of course, is cruelty. Actually, this is debatable. Is it mere sophistry to point out the cruelty of the crimes committed by present day juveniles? If stronger deterrents are in fact needed to end this trend toward more serious juvenile

9. Commonwealth v. Johnson 234 A. 2d 9 (1968); *In Re Burros* 167 S.E. 2d 454 (1969).

10. In Re Ellis, 253 A. 2d 789 (1969); In Re Hill, 253 A. 2d 791 (1969); State v. Santana 444 S.W. 2d 614 (1969).

11. APPLICATION OF GAULT, 87 S. Ct. 1428, 1433, 1434 (1967).

crime, as this author contends, it would in the long run help the juvenile by impressing him at an early age with the gravity of his conduct. When he is an adult, it may be too late. If successful at a stage where juvenile detention and care can substitute for adult incarceration, a great service will have been done to the juvenile.

The second objection dovetails with the first. It is contended that early exposure to the adult court world would do psychological harm to the juvenile. This is highly questionable. Again it should be kept in mind that hopefully all mentally and emotionally disturbed children would have been isolated and not brought to trial. If a child is not unbalanced or totally immature, it would seem that if he were old enough to commit a crime, he is old enough to be held accountable for it in open court.[12]

The third objection is that early exposure to adult courts would lead to association with hardened criminals and foster a life of crime. Since each person is tried individually, it is questionable whether exposure to adult court would have any more of a deleterious effect than exposure to a juvenile court. In addition, judges will still be able to sentence juveniles to separate detention areas from adult criminals. A judge will have wide latitude as to sentencing, probation, parole, referrals, etc., in this area as he does in all other areas.[13] Using adult sentencing practices would preclude sentencing a juvenile to an indeterminate sentence of far longer duration than an adult could be sentenced for committing the same crime. This situation occurred in *Gault.*

Fourthly, there is the objection that notoriety and community opprobrium will attach to the parent and the child, if exposed to an open courtroom. After being subjected in juvenile court waiting rooms to a hoard of wisecracking, arrogant juveniles supported by equally defiant parents ready on cue to berate all authority for the unpardonable sin of calling their

12. H. Warren Dunham, *Contradictory Orientations In Processing Offenders,* LAW AND CONTEMPORARY PROBLEMS, v. III, summer 1958; pp. 508-527.

13. People ex rel Meltsner v. Follette 304 N.Y.S. 2d 624 (1969).

child to account, this author is of the opinion that a little more community notoriety and opprobrium would be a good thing. The fact that a child would be hurt by having the event made public ignores the fact that under the present system juvenile records invariably can be discovered by anyone interested enough to make a thorough inquiry. With the liberal pardon provisions in effect in most states, the same result would be attained under an adult system as presently occurs in actuality in a juvenile court system.

The fifth objection and the most serious is that it would be very hard for a judge to decide which cases should be treated in criminal court and which merit handling in mental health commitment hearings or should be referred to parental custody or community sponsored agencies. This is where the best aspects of the present juvenile court system could be utilized. The judge could use the opinion of the psychiatrists, psychologists, teachers, social workers, probation department investigators and anyone else that will aid him in deciding if this case should be referred to the civil process or, depending on the circumstances, sent to the criminal court or to the grand jury. This is the key area of the proposal. All possible steps should be taken to erect guidelines and procedures to see that this decision be made as wisely as possible.

This article rejects the idea that there is no such thing as a bad boy. Hopefully by treating him as one, it will not be necessary to treat him as a bad adult. The juvenile court has had ninety years to prove that its approach is best, and has failed. It is time for another procedure which tries to retain the good and eliminate the bad of the old system to be given an opportunity to succeed.