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# Justice Talking Radio Transcript

**Juvenile Justice 40 Years After *In Re Gault*—Air Date: 12/24/07**

*In 1967, 15-year-old Gerald Gault was sentenced to six years in prison for making a lewd phone call, without written notice of the charges, witnesses, or an attorney. In its landmark decision, the U.S. Supreme Court ruled that juveniles accused of crimes have the right to due process protections under the 14th Amendment, including the right to an attorney. But today in some parts of the country a disturbing number of juveniles waive their right to an attorney, leading some to argue that the justice system has not made adequate progress in implementing these protections. Join us on this edition of Justice Talking as we look at what *In re Gault* has meant for juvenile justice over the last 40 years and ask if today's system does enough to protect young defendants.*

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MARGOT ADLER: From NPR, this is Justice Talking. I'm Margot Adler. On today's show, juvenile rights in the courtroom. Forty years ago, the Supreme Court for the first time guaranteed a minor, young Gerald Gault, the right to a vigorous defense.

UNIDENTIFIED MALE: Specifically in Gault's case, he was sent away for six years for making, or allegedly making, a lewd telephone call. If an adult had been accused of that, the maximum sentence would have been 60 days.

MARGOT ADLER: But so many decades later, many juveniles go to court without a lawyer.

UNIDENTIFIED FEMALE: They gave me a piece of paper that had blank, like, where people's names go and stuff, and they told, asked me, did I have a lawyer representing me today? And I said no. And they said sign here. And I did. Well that was the paper that said I don't want a lawyer.

MARGOT ADLER: Juvenile rights in the courtroom coming up after the news.

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MARGOT ADLER: This is Justice Talking from the University of Pennsylvania's Annenberg Public Policy Center. I'm Margot Adler. This year marks the 40th anniversary of a watershed ruling in the U.S. Supreme Court. The Gault Decision of 1967 transformed the nature of juvenile justice in America guaranteeing to minors important elements of due process for the first time. But in the decades since, has the promise of Gault been realized? Today on Justice Talking, the right to a fair day in court for minors. Is the juvenile justice system living up to its obligations? The Gault decision centered on the plight of a 15-year-old Arizona boy; Gerald Gault was blamed for a lewd phone call a friend made from the Gault family home, one summer morning in 1964. Contradictory testimony makes it unclear if Gault knew his friend's plan or participated in making lewd comments. But what is clear the teenager was in state custody by the end of the day where he remained for three years until the Supreme Court ruling changed the law of the land. Speaking at a conference earlier this year commemorating the Supreme Court decision, Gerald Gault remembers walking into the courtroom for his first appearance, not knowing the charges against him, with no lawyer to defend him.

GERALD GAULT: I didn't know, but I knew my parents were there and I knew they'd protect me. So, then whenever the judge said, that I was a delinquent, that he was going to put me in jail for seven years, then I really started shaking and scared. But what really made me angry and my father hopping mad was whenever my mother asked if she could give me a kiss goodbye — the judge told my mother, "No, white trailer trash does not have that right." That really scared me because I've never been away from Mama to this time, you know. It's frightening. People in this society needs to realize that these children that we are putting behind bars without counsel are our next leaders. They ... I have a 7-year-old grandson that is going to be our next leader. If we don't give them the chance to a proper defense, the right to counsel, what kind of leaders are we bringing up?

MARGOT ADLER: Gerald Gault spent almost three years in juvenile detention, a place he describes in nightmare-like details. He came out of there, in his words, "mean, angry, and ready to fight." Now in his 50s, Gault credits his wife of 35 years for the rich life he says he has now with his grown sons and grandchildren. He also credits the lawyers who fought to get him out. Norman Dorsen represented Gault before the Supreme Court. His arguments led a majority of the justices to conclude, quote "under our Constitution the condition of being a boy does not justify a kangaroo court." Besides Gault's release, the ruling mandated new guarantees for minors in the courts. They must be informed of the charges against them, of their right to an attorney, of their right against self-incrimination, and of their right to cross-examine witnesses.

Today, Gault's lawyer Norman Dorsen teaches at the New York University School of Law. He says before those rights were guaranteed, juvenile justice didn't exist in practical terms.

NORMAN DORSEN: There were simply no constitutional right that a person accused of juvenile delinquency had. The whole thing was handled as part of social work, as part of treatment rather than criminal justice. Now that sounds possibly good to some people, but the

trouble is that there were no protections for juveniles and they could be put away for many, many years without any constitutional protections.

MARGOT ADLER: In one Supreme Court case from that same period, the juvenile system was described as the worst of both worlds. And I've also heard you use that phrase. What do you mean by that?

NORMAN DORSEN: What I meant by that was that the person was subjected to the kind of incarceration and basically criminal penalties that adults were. But at the same time, they didn't have the protections of the Bill of Rights that adults had if they were accused of the same thing as a crime.

MARGOT ADLER: Um hmm.

NORMAN DORSEN: Specifically in Gault's case, he was sent away for six years for making, or allegedly making, a lewd telephone call. If an adult had been accused of that, the maximum sentence would have been 60 days.

MARGOT ADLER: So I gather that if you go back to the origins and the history of the juvenile justice system, that the thinking was that the court wasn't there to punish the child, but to rehabilitate him so that a juvenile didn't need any rights. So it started out with really good intentions.

NORMAN DORSEN: Absolutely, and you put your finger right on it. They wanted to treat the juvenile, rehabilitate the juvenile, and they did it out of kindness and concern. This was at the turn of the century, the 20th century. But they failed to realize as time went on, that the system would have a momentum of its own and that juveniles would be put in situations where they didn't get treatment, but what they did get was incarceration. And therefore they got the worst of both worlds.

MARGOT ADLER: I'd like to play an audio excerpt of the oral arguments in the Gault case which I think reveal some of this. This is you over 40 years ago arguing before the Supreme Court about why Gerald Gault should have the right to a lawyer. You're essentially responding to an earlier ruling by the Arizona Supreme Court, that argued that Gault, as a juvenile, didn't need an attorney because his parents or even the probation officer would have his best interests at heart, and could represent him. So this is Norman Dorsen in 1966, arguing before the Supreme Court.

[BEGINNING OF TAPED RECORDING] NORMAN DORSEN: Now of course, if the parent himself were before the court as a defendant he would be entitled to a lawyer because on the theory that he couldn't defend his own case. But when the child is in the position of the defendant, when the child is before the court with up to six years of his freedom to be lost, somehow the Arizona Supreme Court finds that the parent can satisfactorily act on behalf of the child as a lawyer would. And as far as the suggestion that Officer Flagg act as the lawyer, the probation officer in this case, it seems to us that this is even less realistic and less fair. It is a flat conflict of interest. Flagg is the person who signed the petition. He signed the petition on behalf

of the state, in which he said that he is informed and believes, and therefore alleges, that Gerald Gault is a delinquent. That's on page 80 of the record. Flagg did not do a thing for Gerald Gault. It's well established that he didn't invite, inform Gerald Gault of any of his rights, any of his rights throughout the proceeding. [END OF TAPED RECORDING]

MARGOT ADLER: You were challenging a kind of paternalism here, weren't you?

NORMAN DORSEN: That's right. And, uh, I'm really very glad to have heard my words from 40 years ago.

MARGOT ADLER: Is that the first time?

NORMAN DORSEN: First time. And —

MARGOT ADLER: Really?

NORMAN DORSEN: Really. Well, I'm not curious enough. I also don't know how to manipulate my computer well enough. But in any event, um, that was the basic point — that Gerald Gault was not given written notice of the charges. His parents weren't given written notice of the charges. He wasn't given the right to a lawyer. He was not given the right to call witnesses in his defense or to cross-examine witnesses against him. It was really a kind of pathetic proceeding.

MARGOT ADLER: This was in the mid-1960s. Earl Warren, a liberal, was the Chief Justice of the Supreme Court and it was an era of expanded civil rights. Did the win here, in other words, the time when this all took place, contribute to the way Gault turned out?

NORMAN DORSEN: Well, I think it probably did because there were so many other things going on in what you call a "liberal" direction in the criminal justice system, as well as many other areas like freedom of speech or separation of church and state. But this whole area was an underdeveloped area. And the question is, if it had come up eight, 10 years previously before the Warren court, whether the majority of the justices would have done the same thing and protected Gault by incorporating constitutional law into the juvenile system. But it certainly made it much easier that the Court was in a more constitutionally sensitive stage. Bear in mind that my former boss, Justice Harlan, voted in a concurring opinion on behalf of Gault even though he didn't accept everything that Justice Fortas wrote in the majority. So except for Justice Stewart, it was really an 8-to-1, it was an 8-to-1 decision in favor of Gault.

MARGOT ADLER: I've heard you say that you were certain you'd win the case. Why?

NORMAN DORSEN: Well, partly because of what we've just been talking about, that the, uh, that the era was one of expanding constitutional rights. But secondly, because the facts in Gault and the proceedings in Gault were so outrageous that it seemed inconceivable to me that the court would affirm the judgment of the Supreme Court of Arizona. All the things I mentioned before: No written charges, no lawyer, no opportunity for witnesses, no cross-examination, no

privilege against self-incrimination, no transcript. It just seemed inconceivable that the case could be lost.

MARGOT ADLER: So to what extent do you feel that the promise of Gault has been realized?

NORMAN DORSEN: Well that's a question better put to the current experts in the field. My own impression from the reading I've done and speaking with them but without personal experience in the front lines, is that the promise of the case has not been close to realization; that we are still dealing in the very unfortunate context in which constitutional rights are not provided in the way they should be. I recognize that people who are concerned with law and order or who are concerned about crime say we have all this juvenile delinquency. There are budgetary issues. We can't do everything. But that's the issue that the country faces.

MARGOT ADLER: Professor Norman Dorsen argued the Gault case before the Supreme Court. He teaches law at the New York University School of Law which he has done for almost 50 years. Thank you so much for coming on our show.

NORMAN DORSEN: Thank you.

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MARGOT ADLER: Gault's hard-won release from confinement in 1967 promised a new era of constitutional protection for children in court. But advocates say too many minors waive these rights, sometimes without even knowing it. Coming up on Justice Talking, would Gerald Gault be treated differently today?

UNIDENTIFIED FEMALE: Children go away to these facilities and they never come home until they're 18 years old. That's what happens to all of these children.

MARGOT ADLER: And a public defender says all minors must have their rights protected.

UNIDENTIFIED FEMALE: It's a big problem. Even guilty children, even children who recognize that they need help, if they feel that they've been sold up the river by the court they're going to resist, resist, resist.

MARGOT ADLER: Stay with us.

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MARGOT ADLER: This is Justice Talking, the public radio show about law and American life. I'm Margot Adler. Today we're talking about the status of legal rights for juveniles, 40 years after the Supreme Court's Gault decision which guaranteed minors the right to an attorney and other bedrock legal protections. But juvenile justice advocates say an alarming number of minors and their families waive these rights or get poor quality legal assistance. One mother has a cautionary tale to tell. Grace Bauer helped lead reform efforts in Louisiana after her son was swept into the juvenile justice system in the late 1990s. Bauer says her son, Corey, was

diagnosed with depression and was in and out of trouble in his early teens. Usually his misbehavior was related to smoking and drinking. Ultimately, he was caught stealing a stereo from a truck. Bauer says law enforcement officials told her she could avoid a harsher sentence for her son, and they offered a 90-day treatment program at a juvenile detention center.

GRACE BAUER: And it turned out that it was not really a program at all, but a prison.

MARGOT ADLER: I gather that you went along for quite a long while without really sort of seeing the reality of your situation. What was the moment when you realized you had no options?

GRACE BAUER: I went to see an attorney. We returned from seeing Corey after the — I guess it was three weeks into his stay in the state facility — and we went to see him. And he had reported to me on the phone that he had been hurt. But then when we got there and I saw the bruises on him and the scratch marks on him, I returned there on a Sunday and went to see an attorney in town on a Monday. And when I went to see this attorney, he said, you know, I'm really sorry for what's happened to you here, but essentially you've lost your rights as a parent. Your son's been adjudicated delinquent and he's going to remain in the Department of Corrections custody until the age of 18. And I said, but this is only a 90-day program. He said, I know what they said to you, but I'm telling you what the reality of this situation is. Children go away to these facilities and they never come home until they're 18 years old. And he said, another thing that you should be aware of is that when your son is released, you might as well buy him a ticket to Angola — which is Louisiana's penitentiary — because that's where your son's going to be going.

That's what happens to all of these children. And I said, but this is not what I've been told, I've been misled. And you know, I was naïve, but my son shouldn't pay for my stupidity. And he said, I'm telling you what the reality of the case is. Your son is gone until he's 18 years old. And the more checking I done, the more I found out that this man was absolutely correct.

MARGOT ADLER: If you had had a lawyer from the beginning, how would Corey's situation have differed?

GRACE BAUER: Kids do much worse when they step into the system. So if we would have had a lawyer that would have said to us, this is the kind of facility ... and it wasn't that people didn't know this was the kind of facility, how — you know, what was happening inside this facility. Human Rights Watch was in Louisiana, looking at the Tallulah facility when my son was sentenced to the Tallulah facility. There had been a lawsuit filed against the state of Louisiana for conditions of confinement inside the Tallulah facility when my son went there. The judge and the people around my son knew very well what kind of situation they were sending him into. Had there been one person looking out for Corey's best interest, who knew what was going on, such as an attorney or a youth advocate, and someone would have said this is the kind of situation your son's going into, I guess we would have sold whatever we had to get him into private mental health care. There's no way I would have let him go into a system.

I willingly let him go into a system, because I believed that system represented the help that we couldn't afford without private insurance and without help from the state. So if we would have had someone that would've said to us, wait a minute; you know, this is the kind of facility that your son's going to go into if he gets adjudicated delinquent. We didn't even understand what "adjudicated delinquent" meant. We had no idea that that meant to us that we had no say in the well-being of our son or the way our son was taken care of. Even that would've made a difference if we could've understood what exactly was happening.

MARGOT ADLER: You've become an activist now on these kinds of issues. You helped bring about some reforms. How is the system different now than when your son got involved?

GRACE BAUER: There's a lot of ways the system's different now. In Louisiana, there's been a cultural shift where administration, the government, and folks that are running detention centers — local detention centers — are beginning to look at these children in a whole new light. That there are programs that we can offer. That the chances for better outcomes are in fact based in community-based alternatives and facilities close to home, not in state secure beds, hours and hours away from families' homes. There have been some reforms, but we're not all the way there yet. I mean the recidivism rate is very high and so we've not been effective in just locking children up. That's not an effective method for public safety, it's certainly not for the kids. But it's not even for public safety outcomes as well.

MARGOT ADLER: Her son's experience led Bauer to take part in an effort that successfully closed one of the more notorious juvenile detention centers in Louisiana. The state also reduced the number of incarcerated children from more than 1,500 to about 500. Bauer has relocated to Baltimore. She says her son plans to enroll in college, but he will be trailed forever by a record as a convicted felon.

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MARGOT ADLER: We turn now to a discussion about why so many minors do not make use of the right to a vigorous defense, guaranteed by the Gault decision. Joining me are Marsha Levick of the Juvenile Law Center, a Philadelphia non-profit dedicated to protecting and advancing children's rights; and Amanda Powell, a juvenile public defender in Ohio, a state which has a poor record of ensuring a juvenile's right to an attorney. Welcome both of you to Justice Talking.

AMANDA POWELL: Thank you.

MARSHA LEVICK: Thank you.

MARGOT ADLER: Amanda, why do so many children waive their right to counsel?

AMANDA POWELL: My experience talking to children face-to-face is that they don't understand the value of an attorney and they've been encouraged by those in the court — and by their parents — to get through the process as quickly as possible. And the numbers in Ohio that we have from a 2002 study, is that between 60 and 80 percent of all children in juvenile

delinquency proceedings in Ohio waive their right to counsel. The bigger problem that exists is that there's not a lot of attorney visibility in courts — that juvenile defense attorneys don't always understand their role as advocates, as legal advocates. And there's a lack of understanding with the youth and their parents about the process. I think all too often courts instruct children that if they've committed the offense, or if they've done something wrong, it's best if they take responsibility and get through the process as quickly as possible. Too many juvenile judges see defense attorneys as an impediment to that swift execution of what they see as justice.

MARGOT ADLER: Marsha, do you think there are cases in which a child doesn't need a lawyer, situations in which having a lawyer isn't really necessary, and doesn't really make much of a difference to the outcome of the case?

MARSHA LEVICK: Well, I'm going to respond to the way that you asked the question. I don't think that I can ever imagine a situation where it's not necessary to have a lawyer. There are situations, as in adult court, where cases may appear clear-cut. The infraction may be quite minor, but the fact remains that today there are consequences for everything that a child does that lands them in juvenile court and oftentimes there are consequences that will follow them into their adult life. So that I don't think we're in a position really to imagine situations today where some assistance of counsel and consultation wouldn't be essential before a child subjects himself to the jurisdiction of the juvenile court.

MARGOT ADLER: Amanda, I've heard that the problem is not limited to kids who waive the right to counsel — that even when children do receive lawyers that counsel is often under-qualified, ill-equipped to deal with juvenile cases. Has this been your experience? And if so, what special skills are these lawyers lacking when it comes to dealing with kids?

AMANDA POWELL: I don't want to disparage my colleagues who are defense attorneys in juvenile court. But I do read transcripts for a living and unfortunately I do see something less than full zealous representation of, for the legal interests for children in juvenile court. I think that because so many juvenile defense attorneys also represent kids in abuse, neglect, dependency proceedings, and other proceedings that aren't truly legal, and aren't criminal, you know, quasi-criminal in nature. Too many defense attorneys in juvenile court are willing to entertain best interest-type considerations, and that often trods upon the legal interest of the juvenile.

MARGOT ADLER: Marsha, what's your own thought about the whole question of counsel, whether many are unqualified or ill-equipped to deal with juvenile cases?

MARSHA LEVICK: I think that the question is really best answered by looking not exclusively at the lawyers, but at the culture of juvenile court, and what we often talk about is the prevalence of still seeing what we would call the pre-Gault court. When the Supreme Court decided Gault, it was looking at a system that had been designed 67 years earlier as a very benevolent system that was preoccupied and concerned, it thought, with the treatment and best interests of children. And, unfortunately, today there are not only defense attorneys, but there are many juvenile judges throughout the country who still see juvenile court that way and so they perpetuate a

culture in which zealous advocacy is not rewarded. And there is a willingness to sacrifice the child's legal rights purportedly in the interests of providing services or treatment to the children that come before the juvenile court.

AMANDA POWELL: I just wanted to follow up on one thought that Marsha was just talking about. Gault instructed us 40 years ago that unless appropriate due process of law is followed, even the juvenile who has violated the law may resist the rehabilitative efforts of the court if he feels he hasn't been fairly treated.

MARGOT ADLER: Do you see that happening?

AMANDA POWELL: Absolutely. In my office we do a legal orientation and once the children see that their legal rights have been violated, once we teach them what their legal rights are, even though they understand that, you know, they want to do their time because they've committed the bad act, when they feel that justice hasn't been served, when they feel that they've been unfairly treated, they focus too much on the injustice and they can't focus on the rehabilitative efforts that are being provided for them. It's a big problem. Even guilty children, even children who recognize that they need help, if they feel that they've been sold up the river by the court, they're going to resist, resist, resist.

MARGOT ADLER: Amanda, how big of a deal is a criminal juvenile record? I think there's a sort of tendency for people to be under the impression that these records get expunged when the kid becomes an adult. What's the reality?

AMANDA POWELL: The reality is that there are many juvenile offenses that cannot be expunged in Ohio. Certainly the serious offenses like murder, sexually oriented offenses, and some of the violent offenses cannot be expunged. Just today I had a father call me. His son was sexually abused as a child and the family took the child in and adopted him. He committed a sex offense on one of the members of the family and was released from prison just about a week ago. The parole officer took this child to the local grocery store to get a job and Marceo did very well in training, did very well in interviewing. And once the other kids let the word out of what Marceo had done and why he had been gone from their community for a year or so, his manager at work brought him in and said, do you have a juvenile record? And we always instruct the kids that if they are asked directly if they have a juvenile record or if they have been adjudicated, um, they need to answer those questions honestly. The effect of Marceo's answering those questions honestly today — he was fired from his job, and it's almost impossible for me to imagine how he can succeed in his community when his juvenile record is far from secret. It's far from sealed.

MARGOT ADLER: Marsha, you want to talk about that nationally?

MARSHA LEVICK: Yes. I think one of the other issues that is unfortunate with respect to children going into juvenile court without lawyers and having to face the consequences of juvenile court adjudications without the assistance of counsel is that in many jurisdictions those juvenile adjudications can be used, and are used, to enhance adult sentences. So that if they unfortunately wind up in the adult criminal justice system, even in some states, a minor offense that they committed, which resulted in a juvenile adjudication, will be used against them to

significantly increase the adult sentence that they will receive. So that is another indication and another example of how critically important the assistance of counsel can be in these cases.

MARGOT ADLER: Amanda, in your opinion what is the legacy of Gault, and what needs to happen to fulfill this legacy?

AMANDA POWELL: I believe that the legacy of Gault is that juvenile proceedings must be fair. Juvenile proceedings are civil, however — they contain criminal aspects that we can't ignore. And I believe that the legacy of Gault is that children who appear in juvenile court will have the same protections as adults who appear in criminal court. How we can make Gault live in Ohio, our office believes, is to litigate cases in the courts of appeals and to allow the Supreme Court to weigh in and ensure that these rights are very zealously guarded for children in Ohio.

MARGOT ADLER: Marsha, the legacy of Gault and what needs to happen to fulfill this legacy?

MARSHA LEVICK: I think the legacy of Gault, um, first of all is that Gault stands for the proposition that there can be no substitute for constitutional rights and that children, like adults, must have their constitutional rights afforded to them. But I would also put Gault in another historical context and that is to perceive it as one bookend, the other bookend being *Roper v. Simmons*, the juvenile death penalty case. *Roper* being a case in which the court, two years ago, struck down the juvenile death penalty. That we have a constitutional framework in this country which both says that children's constitutional rights must be honored and must be enforced, but which also recognizes that children are children and that they are different from adults. And that, as we subject them to the processes of juvenile and criminal court, we must both honor and respect their constitutional rights and we must do it in a way that respects the particular differences and characteristics of childhood.

MARGOT ADLER: Marsha Levick is co-founder and legal director of the Juvenile Law Center, a non-profit based in Philadelphia. Amanda Powell is the assistant state public defender in the Juvenile Section of the Office of the Ohio Public Defender. Thank you both for talking with me and coming on Justice Talking.

MARSHA LEVICK: Thank you, Margot.

AMANDA POWELL: Thank you.

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MARGOT ADLER: These advocates are not the only ones who say minors need to know their rights and use them. Coming up, juveniles who are facing charges learn about what the Gault decision could mean for them.

UNIDENTIFIED MALE: We teach them anything from how to deal with their attorney to constitutional law.

UNIDENTIFIED MALE: Let's talk about some things that were unfair, that seem to have been unfair in the Gerry Gault case.

UNIDENTIFIED MALE: They didn't notify his parents.

MARGOT ADLER: And an Arizona judge says some juvenile justice systems are working hard to get it right.

UNIDENTIFIED MALE: It is a balancing act and it is a difficult one. Community safety is number one and it's just a matter of being aware that we're looking at children and that we're dealing with children.

MARGOT ADLER: Stay with us.

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MARGOT ADLER: This is Justice Talking where we make the connection between law and American life. I'm Margot Adler. Today we're talking about a landmark ruling by the Supreme Court known as the Gault decision. The 1967 ruling turned 40 this year, and guarantees juveniles their right to due process. But advocates say today few minors who get in trouble know their rights or understand how important they are. But at the Federal Courthouse in Washington, D.C., teenagers facing gun-related charges gather on a recent Saturday afternoon to learn those vital facts. It's a regular workshop run by a group called Street Law.

[SOUNDS OF PAPER IN CLASSROOM SETTING] UNIDENTIFIED MALE: Okay, good morning, I mean, good afternoon everybody. Basically what we're here to talk about is a case which set up the whole juvenile justice system as you know it. The name of this case is called the Gerry Gault case. My name is Charles Lauture. I'm an instructor for the Street Law program. What we do is teach juveniles that have been, you know, included in the juvenile justice system different various topics.

CHARLES LAUTURE: We range from, we teach them anything from how to deal with their attorney to constitutional law. Let's talk about some things that were unfair, that seemed to have been unfair, in the Gerry Gault case.

UNIDENTIFIED MALE: They didn't notify his parents.

UNIDENTIFIED FEMALE: My name is Fahima Seck, and since 2002 I started out as a volunteer and then eventually when one of the other attorneys left, I filled the position. I think I'm the only social worker with these counselors here.

FAHIMA SECK: Gerry Gault was denied one particular thing. Does anybody know what that thing is?

CHARLES LAUTURE: I think at first they don't, they don't really understand the wide-reaching affects of the Gerry Gault case, because I think they may look at it as a history lesson.

FAHIMA SECK: When you get to the point where you tell them this is a real case, and they say, wow, okay. Then you tell them that this is a case that went all the way up to the Supreme Court and essentially gave you the body of rights that you currently have. And some of them, you know, it piques their interest, and they begin to engage in a dialogue around that.

UNIDENTIFIED MALE: Well, what do they mean about making an obscene phone call? What is —

CHARLES LAUTURE: Obscene means what?

UNIDENTIFIED MALE: A prank phone call.

UNIDENTIFIED MALE: A prank phone call will give you six years?

CHARLES LAUTURE: A prank phone call, obscene phone call. Looks like this guy is going to spend six years.

UNIDENTIFIED MALE: What about if he called the wrong number?

CHARLES LAUTURE: [LAUGHS] Exactly.

UNIDENTIFIED FEMALE: If he had had a hearing, those could have been things that would have been on here.

CHARLES LAUTURE: Right. These are some things his attorney could have been saying. Right?

UNIDENTIFIED MALE: What attorney? He had no attorney.

CHARLES LAUTURE: Exactly. So he had no attorney.

CHARLES LAUTURE: Basically the way that you usually see progress is, you know, sometimes a kid for the first half of class he'll be an introvert. He won't say anything. He'll, you know, you may ask him a question, and he might even ignore you, or tell you he doesn't know. And, you know, but by the second half of the class, the kid opens up. The kid actually begins to participate, gets interested in what we're talking about. [ADDRESSING THE CLASSROOM] So think about what we were just talking about and I'm going to give everybody one chance to shine.

FAHIMA SECK: You're going to name something that you learned today.

UNIDENTIFIED MALE: I know what I learned – that everybody has the right to due process.

FAHIMA SECK: When you see the light bulb go off in their head, and also the interaction that some of our kids had today, um, they shared what they know. Stuff that they didn't know that

they know. We're here to help them empower themselves; help them arm themselves with information with respect to their rights, and also their responsibilities.

UNIDENTIFIED MALE: Did he beat his case?

FAHIMA SECK: Well, the decision of the lower court was overturned and, yes.

UNIDENTIFIED MALE: Because he was deprived of due process. So they overturned the case.

UNIDENTIFIED MALE: They let him go?

UNIDENTIFIED MALE: And then they set rules, like the backbone to the whole juvenile court stuff now.

UNIDENTIFIED MALE: Based on the system now...

CHARLES LAUTURE: I think one of the urban myths about Gerry Gault, though, is that we always thought Gerry Gault was African American but actually Gerry Gault was Caucasian. So, you know, a trailblazer from the late '60s happens to be, you know, a Caucasian person, which affects the system now that, you know, unfortunately usually deals with a lot of African-American, and Latino youth. So I think that's also something interesting that they find out and that, you know, and they sort of, like, wow — I didn't know that was the case. I didn't know.

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MARGOT ADLER: This is just one of several know your rights programs operating around the country, where young people can learn some startling information. One pamphlet explains how pleading guilty to delinquency may lead to detention. The court may stay involved in your life for years to come. You can lose your privilege to drive, be made to take drug tests, or be forced to end friendships. The pamphlet goes on to say that an adult with a juvenile record may be excluded from getting financial aid or barred from joining the military. And having a proper defense can make the difference. That's information a 15-year-old named Hillary wished she had had. The Pennsylvania teen found herself in hot water after her web page on MySpace collected increasingly hostile postings about a school administrator. Hillary's mother said she had little warning her daughter was in trouble.

HILLARY'S MOTHER: I came home from work. The phone was ringing, I answered it. An officer identified himself and told me that he was coming to arrest my daughter for making a MySpace page.

MARGOT ADLER: Hillary was charged with harassment and ordered to serve three months in detention. Hillary's mother says she didn't know she had passed up a right to a lawyer.

HILLARY: They gave me a piece of paper that had blank, that was typed up, but there was blanks, like, where people's names go and stuff, and they told, asked me, did I have a lawyer representing me today? And I said no. And they said, sign here. And I did. Well, that was the

paper that said I don't want a lawyer. Soon after, I arrived at court, in April and, I was sent away. I was adjudicated from that point without ever speaking to a lawyer.

MARGOT ADLER: Hillary was released from detention after three weeks because lawyers from the Juvenile Law Center agreed to take her case. When they challenged her detention, she ended up with probation.

HILLARY: You find out that, you know, a lot of people just assume that, you know, it's all the bad kids that are getting sent away, but it's really just victims of circumstance and kids that, you know, weren't informed of their rights. So one thing that I guess I know is that, and as cliché as this sounds, is that, you know, having a lawyer is definitely a good idea.

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MARGOT ADLER: But not every minor is getting a bad deal in court, says one juvenile judge. Steven Rubin sits on the bench for the Pima County Juvenile Court in Tucson, Arizona. He's also a former president and trustee of the National Council of Juvenile and Family Court Judges. Welcome to Justice Talking.

STEVEN RUBIN: Oh thank you, Margot. It's nice to be here.

MARGOT ADLER: Where would you say the juvenile courts are falling short?

STEVEN RUBIN: One of the arguments that I've heard, in our many discussions about this issue on at the National Council of Juvenile and Family Court Judges level, has been an issue of finances. And you know with counties or courts, just merely saying if we had to provide an attorney for every child charged with every misdemeanor offense or felony offense, that there was we would go broke. So that's one of the arguments that is made. And the other is a practical one, in the sense of certain misdemeanors and certain offenses that are committed by children that are not designed to deprive a child of their liberty, that the consequences are not designed to do that. In our court for example, the lowest form of misdemeanor still gives the court the authority to deprive a child of his or her liberty by sending them to a detention center or to the Arizona State Department of Juvenile Corrections. All of those children have lawyers.

MARGOT ADLER: Give me an example of that kind of a misdemeanor, a very, very low level.

STEVEN RUBIN: Well, let's say simple possession of marijuana. Possession of a couple of joints, let's say, by a teen. If they were adjudicated delinquent of that offense, the court would have the authority to send them to the State Department of Corrections or as a condition of their probation, incarcerate them in a detention facility for a period of time. There are some jurisdictions where that is not the case, where for certain misdemeanors, children receive a fine or they do community service and that's the end of it and their liberty interests are not at stake.

MARGOT ADLER: Are there any instances where a juvenile waiving their right to an attorney makes sense?

STEVEN RUBIN: Yeah, I mean, I think so. It would make sense to me if it was a very simple matter. If it wasn't a trial. If the minor simply wanted to admit and go forward, and the minor was of an age, and of a capacity to fully understand what is meant by a waiver of right to counsel. I mean, I can see where there are times when that would work. I can recall a case that I had several years ago. A kid was 17, had never been in trouble before. He had been accepted to, uh, a prominent university and was going to graduate with honors shortly after the court date. He knew what he did. If I recall, I think it was simple possession of marijuana. He clearly knew what the potential consequences were. He did not qualify for court appointed counsel. He would have had to hire his own lawyer through, you know, because his parents made too much money to qualify for indigency. And he came in and he said, Judge, I want to waive my right to a lawyer. And I was very reluctant to do that. And we carried on a conversation, and talked about those rights. And I, you know, I was kind of convinced that he may have understood them better than I did. And that made sense to me for him to waive.

MARGOT ADLER: And what happened?

STEVEN RUBIN: He pled and he paid a fine, did some community service, and that was it. Most of our lower level misdemeanor, first and second offenses never come to court. They end up in a diversion program where the children are not represented by lawyers. They and their parents go in and talk to a probation officer and agree to a contract where the child admits the offense, and agrees to do a certain amount of community service or pay some restitution or write a letter of apology. And the case never comes to court.

MARGOT ADLER: Earlier in the show we talked about inadequate defense for juveniles being another concern. In your years sitting on the bench what have you seen?

STEVEN RUBIN: Well, it certainly is a concern when it happens but we're fortunate. We're not a very large jurisdiction. Our public defender's office is solely dedicated to juveniles. The lawyers who work here are dedicated to being here. They want to be here. They want to be working here. They want to be representing children. Where we actually sometimes run into trouble is when kids get in trouble and their parents go out and hire the family lawyer to come to juvenile court — lawyer who has had no experience either in criminal matters or in juvenile court at all. And there are times then when we run into some trouble.

MARGOT ADLER: Give me an example of that.

STEVEN RUBIN: Well, let's say, for example, that Johnnie gets in trouble for, uh, possession of marijuana and the parents are unhappy, for example, with the way that Johnnie was treated when he was arrested, for example — that the police officer didn't call the parent or whatever the circumstances may be. And they go and hire their family lawyer, who is a very good lawyer in the field of small business partnerships, which is the reason why he's their family lawyer. And that lawyer comes in to represent the child at juvenile court. And that lawyer, if we're fortunate — you know, not 100 percent sarcastically the lawyer knows where the courthouse is and comes to the right place, because the juvenile court is in a different place than the adult court. And many people don't know that. So we have had lawyers actually go to the wrong building and not really understand what the system is about. And, therefore, perhaps a kid who would be eligible

for diversion, easily eligible for diversion in a case like the one I'm just describing, possession of a small amount of marijuana, they end up, you know, coming in with guns drawn. And they want to litigate it and they don't really know how to do that. That would be an exaggerated example of the kinds of things that could happen.

MARGOT ADLER: So what do you do as a judge in that situation?

STEVEN RUBIN: Oh well, sometimes I would just, I would look at the prosecutor, and I would look at the file, and at the first hearing I would say have you interviewed this young man for diversion? And the lawyer, the family lawyer, will look at me like, and not say, you know, what the heck is diversion? And, the prosecutor would say to me, you know, you're right, Judge; maybe we ought to do that. Let me take a few minutes and talk with the defense lawyer and see, see what we can do. And more often than not they'd come back and say, we're going to give them a diversion interview.

MARGOT ADLER: So generally, what you're saying is you have to have a very understanding judge at that moment, and not every judge is that understanding.

STEVEN RUBIN: Yeah, I think so. I think that's true. We here in Pima County are very fortunate. We are the first model delinquency court in the country under the National Council of Juvenile and Family Court Judges delinquency guidelines, uh, document. We're kind of on the cutting edge, I think, nationally in the way we approach these matters.

MARGOT ADLER: That was Steven Rubin, a judge from the Pima County Juvenile Court in Tucson, Arizona. Forty years after the Gault decision, is juvenile justice heading in the right direction? Tell us what you think, at [JusticeTalking.org](http://JusticeTalking.org).

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MARGOT ADLER: And one more thing, all of us at Justice Talking wish you a very happy new year. We've loved working on the show this past year and the other day we were sitting around picking our favorite shows. Here's my list: Both of our Supreme Court round-up shows; also hosting a debate on whether there should be a federal shield law to protect journalists and their sources — a debate between U.S. Attorney Patrick Fitzgerald who prosecuted the Scooter Libby case and Jack Doppelt, a professor at Northwestern's Medill School of Journalism. Also the show on money, fairness, and college admissions, which revealed some things about who gets in to some elite colleges that weren't very pretty. And then there was our show on Katrina's continuing effect on Louisiana's legal system. And let's not forget the "Bong Hits 4 Jesus" case out of Alaska. It brought conservative religious leaders together with free speech liberals. Remember if you missed any of these shows, you can hear them on the web, at [JusticeTalking.org](http://JusticeTalking.org).

The whole crew here, Viet, Julie, Jeanne, Kitty, Ingrid, Laura, Gary, Kara, and I are already working on a whole bunch of new shows for 2008, including one on water scarcity and its affect on law and policy; and also a program on the FCC's relaxed rules on media ownership. We'll also take a look at the continuing tension between security and liberty in an age of an endless war

on terror, and we will take a closer look at the division in American society over immigration laws. Hoping for more justice as well as Justice Talking, I'm Margot Adler.

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