

In Re Gault:

Featuring a Re-enactment of the oral arguments leading to the Landmark
U.S. Supreme Court Opinion

Dramatis Personae:

The Court:

Chief Justice Warren.....Judge William Hibbler
Justice Fortas.....Scott Turow
Justice Brennan.....Luis Pinedo, Atty
Justice Harlan.....Uzomaka Nzelibe
Justice Douglas.....Judge Anne Burke
Justice BlackJudge Anne Burke
Justices Stewart and White.....Judge Ilana Rovner

Attorney for Gault

**Prof. Randolph Stone presents the Appellants' (Gault) argument by
Norman Dorsen, New York University School of Law**

Attorney for Arizona

**Prof. Stephen Presser, presents the Appellees' argument by Frank A.
Parks, Assistant Attorney General of Arizona.**

BERNARDINE DOHRN: Today we will hear excerpts of the oral arguments before the U.S. Supreme Court which led to the 1967 landmark decision, *In re Gault*, establishing constitutional due process rights of juveniles, including the right to counsel during juvenile court proceedings.

It was June 1964 when Gerald Francis Gault, age 15, was arrested and charged with making a single lewd telephone call to a neighbor woman. Within a week, he had been sentenced to a state school for six years. An adult would have gotten two months at most. This happened in Arizona but it could very well have happened in Minnesota. After all, one of the definitions of delinquency in our 1905 statute was using “indecent language.”

Gerald Gault's family was poor but, luckily for him, they found a feisty, justice-minded attorney named Amelia Lewis, who had recently moved from New York to Arizona. The unsung hero, here, is Amelia Lewis. She saw Gerald as "a good kid in the wrong place at the wrong time" and vowed to handle this case as though it was going all the way to the United States Supreme Court. It is reported that she said, "I have three sons, how could I not help Gerald?" She enlisted the help of Norman Dorsen who in turn was helped by the ACLU. Dorsen argued Gault's case before the United States Supreme Court.

Two and one-half years after Gerald was sent to the State Industrial School, the United States Supreme Court heard oral arguments on December 6, 1966. We begin with a question from the Court to Mr. Dorsen.*

JUDGE ILANA ROVNER as JUSTICE STEWART: You've emphasized the fact that no notice was given to Mrs. Gault. Why would she be the one to receive notice?

RANDY STONE AS DORSEN: : The suggestion has been made, Mr. Justice that notice was given to Mrs. Gault. It is plain from the record that no notice of any kind was given to anyone else in the family of Gault. Therefore I want to emphasize the extent to which the facts show that no notice of any kind was given to anyone at any time.

JUDGE ILANA ROVNER as JUSTICE STEWART: How about to the juvenile?

RANDY STONE AS DORSEN: The juvenile received no notice whatsoever as far as the record shows. There was discussion with the juvenile orally and he may have known the general tenor of the charges, but the only notice that was discussed in the record and discussed by the Supreme Court of Arizona, was the oral notice given to Mrs. Gault on the evening of June 8th.

On June 9th, the initial hearing took place in Judge McGhee's chambers. No one was sworn, no transcript was made, and neither Gerald nor Mrs. Gault was represented by counsel or advised of any right to counsel. Officer Flagg testified that at the juvenile hearing, Gerald admitted making the phone call and using some of the obscene language. Judge McGhee testified that Gerald admitted using some lewd words."

Judge McGhee continued the case because, in his words, "I didn't know myself what I was going to do because I was not satisfied from the testimony there at that time." Accordingly, Officer Flagg did some more investigating. He testified "I talked to Gerry more to see if he would tell me anymore, I talked to Ronny Lewis some more looking for a change of stories perhaps."

On June 15th the second hearing was held in the presence of Gerald and both his parents, Officer Flagg and Ronald Lewis, the other boy involved in the incident, and Ronald's father. Again neither Gerald nor his parents was represented by counsel. It should be noted that Mrs. Cook, the woman who had complained about the phone call, was not present or called as a witness at either hearing. When Mrs. Gault asked the judge during the hearing of June 15th why Mrs. Cook was not present, saying that "She wanted Mrs. Cook present so she could see which boy that done the talking,

the dirty talking over the phone,” Judge McGhee answered “she didn’t have to be present.”

On the same day of the second hearing, Judge McGhee handed down an order containing no findings of fact. The order simply states that after a full hearing and due deliberation the court finds that said minor is a delinquent child. The order than says that the child’s own good and the best interests of the state require that he be committed to the state industrial school for the period of his minority unless sooner discharged by due process of law.

UZOAMAKA NZELIBE as JUSTICE Harlan: How old was Gerald at the time of his commitment?

RANDY STONE AS DORSEN: 15 years old.

In his testimony at the habeas corpus hearing, Judge McGhee indicated that there were several bases for his decision. One was a violation of a statute that makes it a crime to use “vulgar, abusive, or obscene language in the presence of a woman or child.” A delinquent child is defined by the juvenile code as including a child who has violated a law of the state such as the section I have just quoted.

SCOTT TUROW AS JUSTICE Fortas: What’s the penalty for the commission of that crime by an adult?

RANDY STONE AS DORSEN: : Two months is the maximum penalty plus a fine.

SCOTT TUROW AS JUSTICE Fortas: And this boy got ...

RANDY STONE AS DORSEN: : Up to six years Mr. Justice Fortas.

UZOAMAKA NZELIBE as JUSTICE Harlan:: What is this industrial school, is it a prison?

RANDY STONE AS DORSEN: Well of course I've not been there. It is a school where delinquent children are sent.

SCOTT TUROW AS JUSTICE FORTAS: Are neglected children also sent there, neglected juveniles?

RANDY STONE AS DORSEN: No, just delinquent children.

SCOTT TUROW AS JUSTICE FORTAS: Is it a security institution?

RANDY STONE AS DORSEN: : I believe it is.

SCOTT TUROW AS JUSTICE Fortas: The boy can't go home.

RANDY STONE AS DORSEN: : Can't go home that's pretty clear, can't go home until his minority, unless the board of governors of the state industrial schools let him go home. The boy is in the exclusive control of this board.

SCOTT TUROW AS JUSTICE Fortas: And his parents are deprived of him.

RANDY STONE AS DORSEN: That's absolutely right Mr. Justice. Judge McGhee testified at the habeas corpus hearing that at no time did he ever advise Gerald's parents that he was charged with violating this statute.

JUDGE WILLIAM HIBBLER AS Chief Justice Warren: He wasn't charged with violating that statute was he?

RANDY STONE AS DORSEN: He was charged with being a delinquent because he violated that statute. That was the first ground that the judge stated. The second ground in which the judge considered the boy delinquent was that he was "habitually involved in immoral matters". - Judge McGhee also testified at the habeas corpus hearing that there was "probably another ground too."

In connection with the ground of habitually involved in immoral matters, the first mention of which was at the habeas corpus hearing, the judge said that he took account of an earlier allegation that Gerald had stolen a baseball glove from another boy and lied about it to the police. This allegation was contained in a probation office referral report but the incident was never made the subject of charges in juvenile court and no hearing was held, according to Judge McGhee, because of lack of material foundation.

JUDGE WILLIAM HIBBLER AS Chief Justice Warren: Is that what the judge referred to as being "habitually involved in an immoral matter?"

RANDY STONE AS DORSEN: : That’s right he mentioned this fact, Mr. Chief Justice.

JUDGE WILLIAM HIBBLER AS Chief Justice Warren: Nothing comparable to what happened in the instant case?

RANDY STONE AS DORSEN: That’s correct.

The Supreme Court of Arizona affirmed in an extensive opinion. It dealt with each of the constitutional claims that are the subject of this appeal. The court held as follows:

First, regarding notice of charges, the court ruled that young Gault received adequate notice because “Mrs. Gault knew the exact nature of the charge against Gerald Gault from the day he was taken to the detention home.”

Second, with respect to the right of counsel, the Arizona Supreme Court held that, although parents cannot be denied representation by retained counsel, due process does not require that an infant have a right to counsel. The court held further that Gerald was not denied due process because his parents “knew they could have retained counsel”. The court also said that the parents and the probation officer may be relied upon to protect the infant’s interest.

Third, with respect of confrontation and cross-examination, the court below held there was no denial of due process because the relevancy of confrontation only arises where the charges are denied.

With respect to the privilege against self-incrimination, the Court below noted the division of authority in state courts over whether an infant has a privilege against self-incrimination or a right to be advised of the

privilege. The court then held that the necessary flexibility for individualized treatment will be enhanced by a rule which does not require the judge to advise the infant of a privilege against self-incrimination.

Fifth and finally, with respect to the right of transcript and appellate review, the court held that there is no right of appeal from a juvenile court order and that there is no right to a transcript.

It is the position of appellants that Gerald Gault was deprived of his liberty without due process of law in the juvenile court of Gila County and that the Judgment of the court below should be reversed.

Before proceeding to these constitutional questions severally, it may be helpful if I very briefly outline some of the background of the juvenile court problem. Prior to the juvenile court movement, which started in Illinois in 1899, juveniles were treated like all other criminals.

JUDGE WILLIAM HIBBLER AS Chief Justice Warren: How long has this Arizona statute at issue here been on the books?

RANDY STONE AS DORSEN: : I'm not certain. I think it was amended in 1962, but I am not sure of the exact date it was enacted.

The juvenile court movement was a response to findings of social science, psychology, social welfare and to new theories of rehabilitation that flourished at the turn of the century. Accordingly, juvenile courts were established beginning in 1899 and now we find them in every state of the union. The proceedings in these juvenile courts are civil, not criminal. The court is theoretically engaged in determining the needs of the child in society rather than adjudicating guilt and meting out punishment. The court in this state are acting as *parens patriae* rather than prosecutors or judge, treating

the child as with a firm but benevolent parent. But *parens patriae* and individualized justice led to proceedings in juvenile court that dispensed with certain traditional rights.

Of late, there has been increasing criticism by scholars and reexamination by courts. Questions have arisen as to the fulfillment of the original goals of juvenile court movements and especially about the barter of alleged special treatment for constitutional protection. The climax came last year in *Kent v. United States*. Summing up the present situation, the court said as follows “There is evidence in fact that there may be grounds for concern that the child receives the worst of both worlds and that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children.”

JUDGE ANNE BURKE as JUSTICE Douglas: Kent is not a constitutional case.

RANDY STONE AS DORSEN: : That is correct. In *Kent* the court did not decide these questions but the court specifically reserved them and specifically reserved the question whether constitutional guarantees which would be applicable to adults must be applied to juvenile court proceedings. This case presents that issue in the five specific respects that I have outlined.

UZOAMAKA NZELIBE as JUSTICE Harlan: Do any states provide these constitutional safeguards for juveniles?

RANDY STONE AS DORSEN: : Many of them do. Some of them provide by statute and some provide by court rule. For example, I was about

to turn to the question of right to counsel and, according to the national legal aid and advisors brief, 78% of the jurisdictions in which legal aid operate provide a right to counsel.

SCOTT TUROW AS JUSTICE Fortas: Mr. Dorsen, have you seen a theoretical articulation of the basis for reading the Constitution of the United States so as to carve out juveniles, what is the theoretical basis?

RANDY STONE AS DORSEN: : I have seen some Mr. Justice Fortas, and we submit that these are insufficient. One is the justification of the therapeutic aid or the individualized justice that is to be accorded juveniles.

SCOTT TUROW AS JUSTICE Fortas: Suppose the state passed a statute applicable to adults which tracked all of this. And the State declared that now the state is *parens patriae* of adults and nobody's going to be sent to jail, they'll just going to be sent to industrial homes and there they will be well fed, well shod, well clothed, but they can't get out.

Now how would one dispose of that and distinguish that from the case of children? I suppose that we would all agree out of hand that is no excuse for depriving people of constitutional guarantees.

What is the basis of saying that an 18 year old boy can be deprived of a constitutional guarantee and *parens patriae* herein but the state couldn't go through the *parens patriae* formula and deprive adults of constitutional guarantees?

RANDY STONE AS DORSEN: I see no satisfactory explanation.

LUIS PINEDO as JUSTICE Brennan: What about this one, Mr. Dorsen. I notice one of the briefs here, that fundamentally, speaking now in legal concept, the basic right of a juvenile is not for liberty but custody. That's the notion that supports this different treatment, isn't that supposed to be it?

RANDY STONE AS DORSEN: : I must confess it may well be. I do not understand it.

LUIS PINEDO as JUSTICE Brennan: You don't have to understand it, but that is the argument.

RANDY STONE AS DORSEN: : That is the argument that the Ohio Juvenile Court judges make.

JUDGE ILANA ROVNER as JUSTICE White: Doesn't that spring from the idea that the state stands in the place of the natural parents?

RANDY STONE AS DORSEN: : That's correct.

JUDGE ILANA ROVNER as JUSTICE White: And the natural parents can't control the child, the state can. That's the idea?

RANDY STONE AS DORSEN: : I guess that is it.

SCOTT TUROW AS JUSTICE Fortas: I suppose at common law you could take an 8 year old boy, and put him to trial before a jury, and convict and sentence him to be hanged, and give him all the constitutional rights of

trial by jury and cross examination and the rest of it. They decided to remove that from the criminal courts and set up an alternative procedure.

RANDY STONE AS DORSEN: : In connection with the question of justification in the procedures of this case, whether considered from the point of view of custody, treatment, therapeutic aim, appellants would like to stress to the Court the very important, and in our view very sharp, distinction between the determination of delinquency and any custodial obligation that the state may take after the child has been determined to be delinquent. There is no inconsistency in our view between having the kind of protections that we are suggesting are required by due process, and the finest custodial and treatment processes in the country.

JUDGE ILANA ROVNER as JUSTICE White: What is left of the juvenile system as it was perceived if all federal constitutional rights must be possessed?

RANDY STONE AS DORSEN: We would suggest the best part, namely the opportunity for the state, in a case where a child is properly determined to be delinquent, to do what it can to treat him, to take care of him, to rehabilitate him.

JUDGE ILANA ROVNER as JUSTICE White: Can they do that differently than the way they do it for adults?

RANDY STONE AS DORSEN: I think that only in the sense that children are in a more formative stage and that the theory of child care has been that a child can be brought along in a different way than adults can be.

JUDGE ILANA ROVNER as JUSTICE White: And confinement. They might distinguish between confinements like in medical penitentiaries.

RANDY STONE AS DORSEN: : That is true, unfortunately as the system has developed in many states, up to three quarters of the states; it's still possible for juveniles to be referred to regular prisons in the company of adult criminals.

SCOTT TUROW AS JUSTICE Fortas: Mr. Dorsen, how much is left of this confidentiality of a juvenile court proceedings? Don't the draft authorities have access to juvenile records?

RANDY STONE AS DORSEN: That's correct.

SCOTT TUROW AS JUSTICE Fortas: Does the FBI have access to it as a matter of fact?

RANDY STONE AS DORSEN: : As a matter of fact, a recent Harvard study cited that FBI is given all reports of delinquency or at least a large number of them.

SCOTT TUROW AS JUSTICE Fortas: Do police authorities in the same jurisdiction have access to it?

RANDY STONE AS DORSEN: : As far as I know they do, even though the Arizona code purports to protect the juvenile by providing for destruction of all records after two years following his release from confinement.

SCOTT TUROW AS JUSTICE Fortas: I wondered whether all this business about the confidentiality of these records really isn't confidentiality for the purpose of protecting the parents from criticism. I wonder if there really is much left of it so far as the child is concerned.

LUIS PINEDO as JUSTICE Brennan: Mr. Dorsen, would you apply your same idea to all the stages of the hearing of the juvenile court. You say on the delinquency. Are you speaking technically on the hearing of delinquency or would you include the hearing on disposition.

RANDY STONE AS DORSEN: : I would not include the hearing on disposition. This case of course does not present that question.

LUIS PINEDO as JUSTICE Brennan: But he certainly would have the right to counsel.

RANDY STONE AS DORSEN: : Absolutely.

LUIS PINEDO as JUSTICE Brennan: But you wouldn't call for confrontation or things like that.

RANDY STONE AS DORSEN: I think the way I would put it myself would be that no fact that the judge is taking account of in determining whether to dispose the child one way or another should be left undisclosed to the child and his counsel.

LUIS PINEDO as JUSTICE Brennan: Wouldn't you have to think about these things in deciding this case?

RANDY STONE AS DORSEN: That's right I think you do because I think in this case, for example, even before the hearing there was a question of when the child was going to admit or deny the charges. And in particular with respect to his right to counsel, as the record here very dramatically demonstrates, when this child did not deny the charges against him at the first opportunity, according to the Supreme Court of Arizona, he lost the right at that point to an adjudicative hearing and naturally we would say that this was a critical stage of the proceeding and he would be entitled to counsel.

This record does show that this boy was prejudiced in countless ways, not only because of the absence of counsel, but because at no time was either he or his parents informed of the specific charge upon which the judge ultimately made the decision. If a lawyer were present, for example, the lawyer would have tried to establish exactly what the charge was.

SCOTT TUROW AS JUSTICE Fortas: As a matter of fact we still don't know. I'm still not clear, are you Mr. Dorsen?

RANDY STONE AS DORSEN: Well, the judge I don't think was entirely clear because he said, at one point, there was probably some other grounds.

SCOTT TUROW AS JUSTICE Fortas: Yes sir, and the determination of delinquency, as I understand it, would take into account not only the specific incident at issue, but also the boy's record.

LUIS PINEDO as JUSTICE Brennan: Doesn't that make it quite different from a conventional criminal trial. The determination of delinquency depends not on specific acts of misconduct but only upon those in reference to it, the totality of his previous record. Doesn't that make this whole administration an entirely different bird from a criminal trial, where it is generally considered prejudicial to bring in anything about his previous conduct except the specific misconduct of which he is charged?

RANDY STONE AS DORSEN: I think it makes it different but I don't think it makes it substantially different. And the reason I don't think so is that if certain facts which are alleged to be true by the state are going to be taken into account in determining whether a boy is going to be adjudged a delinquent and his freedom taken away, those facts should be stated in advance, specifically and in due time, so that preparation for the case can be made. In this case the notice was given at 7:30 or 8 on the evening of June 8th and the hearing was the next day.

SCOTT TUROW AS JUSTICE Fortas: As I understand it Mr. Dorsen, the theory is that there are specific incidents from which a finding of delinquency has been made, not some general amorphous reaction to the

boy. But in this particular case, as I understand it, there was one immediate incident namely the telephone call, there was this reference to the purse taking by the boy's companion at which Gault himself was present, and then there was this vague reference to an incident involving the baseball glove.

RANDY STONE AS DORSEN: That's correct.

SCOTT TUROW AS JUSTICE Fortas: And that's it, isn't it? And there is nothing in this record that illuminates what that baseball glove incident was and nothing beyond the bare words of the report with respect to the purse taking.

RANDY STONE AS DORSEN: That's correct.

UZOAMAKA NZELIBE as JUSTICE Harlan: Is there enough information in the materials to tell us how far this progression has gone within the states, whether by statute or court rule?

RANDY STONE AS DORSEN: Yes, the brief of the National Legal Aid has as good a compilation as I believe has been made in this field.

UZOAMAKA NZELIBE as JUSTICE Harlan: Can you tell us briefly how extensive?

RANDY STONE AS DORSEN: 78% of the jurisdictions give a right to counsel. 89% provide confrontation of witnesses and 70% the privilege against self-incrimination and almost 90%, I believe, a right to an appeal. In

other words, it has come to be recognized over the past few years, in view of the scholarly criticism and the work of the courts, that these rights are essential. They're in no way inconsistent with the therapeutic and dispositional aspects of the juvenile proceeding. That specific facts, as Mr. Justice Fortas stated, are those that have to be rebutted. That lawyers are essential or more essential in juvenile cases than it is with adults.

JUDGE WILLIAM HIBBLER AS Chief Justice Warren: Do you know how many states, if any, provide counsel if they are unable to obtain them themselves? Is that in your brief?

RANDY STONE AS DORSEN: It is in the brief.

JUDGE WILLIAM HIBBLER AS Chief Justice Warren: If it's in the brief, don't bother then, go right on with your argument.

RANDY STONE AS DORSEN: I'd like to answer it, if I can.

74% provide counsel, according to the legal aid, if the child cannot afford it.

JUDGE WILLIAM HIBBLER AS Chief Justice Warren: The courts require that, do they?

RANDY STONE AS DORSEN: That's right.

Of course, in this case, Chief Justice, it's very plain that even though the Supreme Court of Arizona said that Mrs. Gault knew of her right to retain counsel, that is far from providing the right to counsel that we believe

the Constitution requires. First of all, it's Gerald Gault's right. Secondly, the right, we believe is required by the constitution, is the right to assign counsel if the boy can't afford it. Instead the Supreme Court of Arizona said that the parent or the probation officer can act as counsel.

Now, of course, if the parent himself were before the court as a defendant, he would be entitled to a lawyer on the theory that he couldn't defend his own case. But when a child is in the position of a 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. There is in fact a 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. Flagg did not do a thing for Gerald Gault. It is well established that he didn't inform Gerald Gault of any of his rights throughout the proceeding. Instead, what he did try to do was to get a change of story. He was certainly acting as an adversary.

In short, our position with respect to a lawyer and the other constitutional protections that we believe to be fundamental, that the absence of the lawyer does not mean that we will have a harmonious informal non-adversary proceeding, instead it means that we will have a one-sided adversarial proceeding in which the cards are stacked against the child from beginning to end.

UZOAMAKA NZELIBE as JUSTICE Harlan: I take issue with that statement, that the cards are stacked against the child. In my experience the juvenile court is an advocate for the child.

RANDY STONE AS DORSEN: I did not mean, and I'd like to answer that very specifically Mister Justice, I am not suggesting and I hope my words are not taken to suggest that there is any intention to do the child in. I said at the beginning and I'd like to reaffirm, that the purposes of these acts were the highest. The purposes were to help the child. The problem is the way the system has developed.

JUDGE ILANA ROVNER as JUSTICE White: Could I ask you one more question? Could you tell me to what extent around the country that the judge sees the social studies before determining delinquency?

RANDY STONE AS DORSEN: You mean looking at welfare reports of the probation office. They are available to him in almost every jurisdiction.

JUDGE ILANA ROVNER as JUSTICE White: Therefore the decision may not be limited to one incident. You would say if it isn't limited to that, than every fact upon which the determination of delinquency depends must be tried out, even though the judge will say, look I never hold a boy to be delinquent on the basis of one act; it depends on his whole background.

RANDY STONE AS DORSEN: I would still maintain Mr. Justice that, when you are determining delinquency with the loss of freedom, that the facts have to be stated. I don't see how we could urge the contrary.

SCOTT TUROW AS JUSTICE Fortas: How about notice? Just before you sit down, what should the notice, according to you, contain? Just, in this case, the notice about the charge, about the phone call, or what else, if anything.

RANDY STONE AS DORSEN: I would say the notice of the charge about the telephone call, the notice of the possibility that he was going to be subjected to a determination under a criminal statute which was never brought before him at any time. And I also believe that the notice should be in writing. And I believe the notice should be given to the child.

SCOTT TUROW AS JUSTICE Fortas: Only to the child?

RANDY STONE AS DORSEN: To the child and to the parents.

SCOTT TUROW AS JUSTICE Fortas: Why to the parents? If someone makes a charge against me, they don't notify my mother do they?

RANDY STONE AS DORSEN: That is true, but in this case, when the child is in his minority, there is a familial relationship.

SCOTT TUROW AS JUSTICE Fortas: So it makes it quite different from an ordinary case, if you have to notify the parents.

RANDY STONE AS DORSEN: In a sense there may be more rights.

SCOTT TUROW AS JUSTICE Fortas: Is there a property right of the child and the parent?

RANDY STONE AS DORSEN: I would not call it a property right.

SCOTT TUROW AS JUSTICE Fortas: Then why should the parents have to be notified?

RANDY STONE AS DORSEN: I don't believe it's a property right.

SCOTT TUROW AS JUSTICE Fortas: We are talking here about constitutional rights.

RANDY STONE AS DORSEN: I believe that the parents are in a position to help the child. I believe the parents have a child in a family relationship. And I believe therefore, as in apparently 100% of the jurisdictions that the legal aid office canvassed, 100% provide notice to the parents.

Thank you.

JUDGE WILLIAM HIBBLER AS Chief Justice Warren: Mr. Parks.

STEPHEN PRESSER AS PARKS: Chief Justice, may the court please, the attack that is being made today against the Arizona Juvenile Code goes, in our estimation, to the heart of the American juvenile court system. We, the appellees in this case, consider this the crossroad of juvenile jurisprudence, where approximately two-thirds of the century, in the vast

majority of cases, juvenile codes very, very similar, if not exactly the same, as the Arizona Code have weathered constitutional attacks.

And I think at the outset, with considerable justification, even opposing counsel, as a critic to the Arizona code, will admit that it is incumbent upon a jurisdiction to treat their children differently than they would an adult, an adult offender, if that would be the proper phraseology. The conflict of course arises entirely with, on the one hand, what is required by due process, fair treatment, and on the other hand the sociologist's concept of what is proper treatment, in terms of the fact that we dealing with a child, an individual of tender years.

Well, at the outset, in proffering the cause for the state of Arizona, as I think our court has explicitly stated, they are interested entirely in the individualized justice approach to children's problems. This is their main aim in regard to handling the problems of youth.

JUDGE ILANA ROVNER as JUSTICE White: You think this is such a big crossroads in this case for New York?

STEPHEN PRESSER AS PARKS: Well, in regard to my estimation in regard to the New York provisions, I believe that New York has gone beyond their crossroad.

JUDGE ILANA ROVNER as JUSTICE White: So this case is no crossroad for New York. What about California?

STEPHEN PRESSER AS PARKS: California, they have made an inroad on their crossroad, I believe, while they haven't gone as far as the potential constitutional ramifications could conceivably take them.

JUDGE ILANA ROVNER as JUSTICE White: What about Illinois?

STEPHEN PRESSER AS PARKS: You're catching me short Mr. Justice.

JUDGE ILANA ROVNER as JUSTICE White: You say this is a crossroads for the juvenile court system. Well that may be true in your state; this may be only true in certain states.

STEPHEN PRESSER AS PARKS: In certain states. And, of course, I look through the monocle as seen through the state of Arizona, as to what our conception is of a proper and a proper functioning juvenile system.

SCOTT TUROW AS JUSTICE Fortas: Let's see if that can be broken down a little bit. Will it interfere with individualized treatment, in the Arizona conception, for the child and the parent to be given written notice?

STEPHEN PRESSER AS PARKS: Certainly not, certainly not.

SCOTT TUROW AS JUSTICE Fortas: Will it interfere with individualized treatment for counsel to be provided to them?

STEPHEN PRESSER AS PARKS: If you would wish, I will go into it now. I had hoped I might just provide the basic foundation for our reasoning.

SCOTT TUROW AS JUSTICE Fortas: I just would just like to get the list from you here. So you think it might interfere with individualized treatment if counsel were appointed for the child?

STEPHEN PRESSER AS PARKS: Definitely your honor, definitely.

SCOTT TUROW AS JUSTICE Fortas: Suppose a child would be given the warnings that he didn't have to say anything and if he did say anything, it could be used against him. Do you think that would interfere? In other words, if he was given the opportunity to avoid self-incrimination, would that interfere with individualized treatment?

STEPHEN PRESSER AS PARKS: That is correct your honor.

SCOTT TUROW AS JUSTICE Fortas: You think it would?

STEPHEN PRESSER AS PARKS: That is correct. To be warned of a right against self-incrimination.

SCOTT TUROW AS JUSTICE Fortas: That is bad?

STEPHEN PRESSER AS PARKS: That is correct your honor.

SCOTT TUROW AS JUSTICE Fortas: How about appellate review, would that interfere with individualized treatment?

STEPHEN PRESSER AS PARKS: If the legislature so deemed that as the law of our jurisdiction, then so be it. I take the position that the failure of our legislature to define an absolute channel of review did not deny due process.

SCOTT TUROW AS JUSTICE Fortas: I'm not asking that. I'm saying, would it interfere with what you say is Arizona's objective, which is individualized treatment, suppose if you provided a right of appeal, a right of review, would that interfere?

STEPHEN PRESSER AS PARKS: In good conscious, I would say no.

SCOTT TUROW AS JUSTICE Fortas: How about confrontation, the requirement that the accusing witness testify in front of the child or the child's counsel or the child's parent or all of them, would that interfere with individualized treatment?

STEPHEN PRESSER AS PARKS: In cases where the charges are denied by the child, I think it is a requirement to due process.

SCOTT TUROW AS JUSTICE Fortas: You think that is a requirement?

STEPHEN PRESSER AS PARKS: That is correct.

SCOTT TUROW AS JUSTICE Fortas: How do you construe this record?

STEPHEN PRESSER AS PARKS: The Supreme Court of Arizona, I wouldn't say side-stepped the issue, they took it front on by deciding that in this specific instance it was not a relevant argument.

SCOTT TUROW AS JUSTICE Fortas: Yes, but usually in a criminal case, unless there is a clear admission, the case proceeds as if there has been a not guilty plea, isn't that right?

STEPHEN PRESSER AS PARKS: That is correct your honor. However, as I will tend to interpret the facts, I think they are a bit distorted by appellants.

SCOTT TUROW AS JUSTICE Fortas: I'm not asking that. I'm asking for your view. Do you agree that confrontation in the case of a juvenile is a constitutional necessity where there is a denial?

STEPHEN PRESSER AS PARKS: I wouldn't go so far as to say it is a constitutional requirement, but I would be the first one to accept the concept that fair treatment would warrant a rule that would decide that the child has denied the charges, that there be a fact-finding procedure to determine whether, in fact, the facts which have been alleged are correct or incorrect.

SCOTT TUROW AS JUSTICE Fortas: Well unless you are going to confess error here, you have to take the position that Gerald Gault did not deny the act of which the complaint was made here, but on the other hand he didn't admit it, did he?

STEPHEN PRESSER AS PARKS: The judge states in the record, "I talked to the boy and asked him if in fact the phone call was made. The boy gave the exact set of facts as is related in the record, that he had dialed the number and he had stated some of the words although not the most serious of those words." This was also substantiated by deputy probation officer Flagg.

SCOTT TUROW AS JUSTICE Fortas: To get back to the other point, if you think that confrontation, where the boy denies guilt, would not negate individualized treatment, why is it that you are so worried about self-incrimination, by telling the boy that he's got privilege against self-incrimination.

STEPHEN PRESSER AS PARKS: Well I think the one potential disadvantage to confrontation is to bring the child into the center of an adversary proceeding with all the taint perhaps of a criminal proceeding that we try to remove from the child.

SCOTT TUROW AS JUSTICE Fortas: I thought you said that that was all right where the child denies guilt. I thought you said that that was an essential element of fairness.

STEPHEN PRESSER AS PARKS: Because it is my position that I think fundamental fairness requires a fair fact-finding determination of an adjudication of delinquency. And if a child denies it, I think that it would be incumbent on the discretionary powers of the judge to ensure that the subject is aired to that degree which, to his satisfaction and by clear and convincing evidence, will indicate that there has been a violation or that the facts alleged indeed did take place.

SCOTT TUROW AS JUSTICE Fortas: Do you know any way to establish anything by clear and convincing evidence, short of providing fundamental due process.

STEPHEN PRESSER AS PARKS: I think the two would run hand in hand your honor.

Of course, if I just may answer the one remaining question left unanswered, what is the difference between that and the privilege against self-incrimination to warn the child of that. Well this gets right to the basic core of the juvenile system that everything that is conceivably done is for the purpose of enhancing the welfare of the child. It is the state's last opportunity to take the child of tender years and in a very, very supreme effort try to take that child, who perhaps is incorrigible, and make him a good citizen.

Now to tell him at the outset we're here for your benefit, but anything you say may be used against you, you don't have to say anything, I think that even the experts in the field will indicate that this is a very, very bad first step.

I would just like to have the court to respectfully bear in mind, that when the state acts as the *parens patriae* in place of the parent, it does in fact do that. We're dealing here with the child. Now this is a completely different, if I may start with my argument on this basis, a completely different individual than an adult. All through a child's adolescent years he goes through a period of limited freedom. He doesn't know absolute liberty and freedom as such is known to an adult. I mean he has no right to go out and drive a car, he has a limited right to contract, he doesn't have personal liberty to avoid compulsory education. His entire adolescent years, in many cases a direct indication of just how he is going to be brought up, is directly dependent on what proper parental restraints are placed upon him. If the child needs necessary restraints, the parent gives it to him and I think this was the basic feature behind the first juvenile court. The state steps in when the parent is not doing the job, to do that job in the parents place.

Now the facts of this case will lend a great degree of credence to the statements that I am making here today. We don't think it was a case where the child denied. He told the judge all and I think his statements indicated that he had stated some of the lewd remarks that were made on the phone. The facts as stated by Mr. Dorsen were basically correct. The boy was picked up correctly on the 8th. He was placed in a detention home in this very, very small community in Globe, Arizona. Flagg, who was one of two probation officers on the staff of the juvenile court in that county, spoke to Mrs. Gault and his statement, as I have related in my brief as to the effect that he talked to Mrs. Gault, he explained everything to her.

SCOTT TUROW AS JUSTICE Fortas: Why did the state, in its capacity of *parens patriae* of this 15 year old boy, pick him up and put him in

the receiving home? Was there any indication that he was about to flee the jurisdiction, or would not be available for trial? Was a warrant obtained?

STEPHEN PRESSER AS PARKS: No, your honor, there was no warrant obtained, but the record, while it does not specifically pass on this issue, will show that, on this specific date, the father was away on his job, some 150 miles away up in the Grand Canyon area. His mother was working. The boy was home alone.

SCOTT TUROW AS JUSTICE Fortas: And so this, supposedly benevolent *parens patriae*, the state, picks the boy up and puts him in what, in most jurisdictions, one would have to say is whimsically called a receiving home.

STEPHEN PRESSER AS PARKS: We like to think of our detention centers as getting the center of our attention, Mr. Justice Fortas.

SCOTT TUROW AS JUSTICE Fortas: I congratulate you, you're relatively unique.

STEPHEN PRESSER AS PARKS: But the juvenile officer decided that the proper procedure in this case was to have the boy taken to the detention center.

SCOTT TUROW AS JUSTICE Fortas: That's routine, isn't it?

STEPHEN PRESSER AS PARKS: Not in all cases.

JUDGE WILLIAM HIBBLER AS Chief Justice Warren: I want to get this clear. This Boy being home alone, his father 120 miles away and his mother at work, was any written notice left for the parents when the boy was taken, or any word given to anyone in the household as to where the boy had gone?

STEPHEN PRESSER AS PARKS: Chief Justice, this did not take place, there was no written notice left at the home. We, as appellees, in this case would try to justify it, to the respect that Flagg, who was out during the day, as soon as he came to the detention center happened to meet Mrs. Gault and we presume, that if he had been there earlier, there would have been an actual notice. He testified that he talked to her specifically, informed her of what the complaint contained, and he also specifically told her where and when the hearing was to take place.

JUDGE WILLIAM HIBBLER AS Chief Justice Warren: But she had to get that information from neighbors or someone else around the place, the officers left no notice to the parents at all, did they?

STEPHEN PRESSER AS PARKS: No they did not, they did not. The very, very important factor, I think, that goes to the entire panoramic view of this case, was that the boy was not new, nor was his parents completely new, to this type of state action. The boy had his first scrape with the law back in 1962, when, as counsel has stated, there was a theft of the baseball glove.

SCOTT TUROW AS JUSTICE Fortas: Was this ever proved? Was there anything in the record? Was anything before the judge that shows that that was proved, that the boy stole a baseball glove? Does anything show what the circumstances were? Did he pick it up the glove on the field? Did he break into a store?

STEPHEN PRESSER AS PARKS: There was no written record. In this case, as a factual matter, the judge was there in '62, his probation officers were there in '62, and they handled it.

SCOTT TUROW AS JUSTICE Fortas: Even the Judge doesn't say exactly what happened, does he?

STEPHEN PRESSER AS PARKS: While he was not asked to delve into that issue, his statements on the facts indicate that he was well aware of what the facts of the case were.

SCOTT TUROW AS JUSTICE Fortas: I have no way of knowing if that's so or not so. The fact of the matter is, on the basis of what you say and what happened here, that was an important part, an unwritten, unknown, perhaps so far as we know unadmitted, unproven incident, was part of the reason for putting the boy in detention for a maximum of six years for an offense, which if committed by an adult would have resulted in a maximum of two months in prison is that right?

STEPHEN PRESSER AS PARKS: That's correct. The boy was still on probation from the February 2, 1964 adjudication of delinquency, when he

was involved in that grand theft, and being on probation, I think the court went through their adjudicatory proceeding, determined whether or not the facts as alleged on this occasion took place, and they took in effect the fact that the boy was already on probation. He was not responding to the therapeutic approach that the court was trying to afford him.

SCOTT TUROW AS JUSTICE Fortas: Forgive me and I'll leave you alone after this, but so far as this record shows on that grand theft, the only thing we have is that scrap of paper reproduced in this record that shows that he was in the theater along with another boy and that the other boy took the pocket book. That's all we know and that appears on this sheet of paper. We don't know whether the boy himself was culpable, what the degree of culpability was, whether he participated in taking it, or whether he was just with the other boy.

Now the representation is, I don't mean it's yours, but basic to this whole field, it is said the state is acting as *parens patriae*. It's acting as sort of a foster father of this boy and one of the things that it takes into account is a written statement that the boy was along with another boy in a movie theatre and the other boy took a pocket book, am I correct?

STEPHEN PRESSER AS PARKS: That is the basic substance of the prior probation and I know that the court is limited to, in this case, the order signed by the court on that occasion and they determined the boy to be delinquent and just what the provisions of his probationary period were.

JUDGE ANNE BURKE as JUSTICE Black: Were they following the ordinary procedures followed by juvenile courts in the country as it has developed?

STEPHEN PRESSER AS PARKS: The basic framework, your Honor, I'd say was complied with. We think it was as far as notice is concerned, as far as going through an adjudicatory proceeding as we think it should be held, the fact that the parents were given notice of the hearing. Our court said that if the boy had, in their estimation, denied the charges, they would have definitely had a reasonable period of time in which to prepare a defense.

JUDGE ANNE BURKE as JUSTICE Black: They're simply following the procedure as it has been developed and second thoughts have caused us to question. I don't see that you have done anything extraordinarily bad, what you've done; rather, you have been following the courts that have followed in the past.

STEPHEN PRESSER AS PARKS: That is correct Mr. Justice Black, the Arizona court based its decision on the fact that they were going along with the vast majority of cases that have held similarly on similar points. They have said that we recognize that the child is entitled to due process. Our question is what does due process require in this special tribunal and they have balanced on the one hand, as I have mentioned, the needs of the individual and, on the other hand, just what the goals of equality are in recognizing the type of individual being dealt with.

JUDGE ANNE BURKE as JUSTICE Black: That places you in a situation as you say, does it not, that they are not entitled to a reasonable notice? You're going to do it by not recognizing certain federal rights that this fellow would have, except that he is a minor. Isn't that it?

STEPHEN PRESSER AS PARKS: Well, if one was to accept the principle that a child has the same absolute rights as a parent, then one would only have one hurdle remaining.

JUDGE ANNE BURKE as JUSTICE Black: But he would have to stay in prison, do whatever has to be done. The parents couldn't do it for him.

STEPHEN PRESSER AS PARKS: Of course we tend to think it is not confinement merely because his liberty is limited to the parental restraint level.

JUDGE ANNE BURKE as JUSTICE Black: You think it is not confinement?

STEPHEN PRESSER AS PARKS: Ahhh

JUDGE ANNE BURKE as JUSTICE Black: Maybe you went a little too far.

STEPHEN PRESSER AS PARKS: Ah, we look at it from this point. It is very difficult and I think it would be naïve to argue that when a child goes to an industrial school he has the right to walk out of the gate anytime he wants

to, this is not true. The child is sent there for training. It's just like saying, if you are going to be sent to school, you are going to school from 8 until 4 or whatever the hours are, and you may leave at 4 o'clock and come home.

JUDGE ANNE BURKE as JUSTICE Black: Could he?

STEPHEN PRESSER AS PARKS: Well, he is there on a 24 hour basis, depending on what the provisions are for perhaps his temporary release.

JUDGE ANNE BURKE as JUSTICE Black: Matter of fact, if you called the place a jail instead of what you call it, he is in jail.

STEPHEN PRESSER AS PARKS: If one would consider it a penal institution.

UZOAMAKA NZELIBE as JUSTICE Harlan: He didn't have a place to go home, no parents there?

STEPHEN PRESSER AS PARKS: The record shows that the father is constantly away. There were statements made by Judge McGhee to the effect that, after making an investigation, they didn't think that the parents were performing the function they should. And if you've got a good child who is not being helped by his parents as they should, the state has an interest in the child, your Honor, to attempt to keep him on the straight road of life until age of 21 when he is on his own.

This leads me to a point that has not been brought out and I think will detract a bit from the harshness of the disposition that was made by the

juvenile judge. Gerald Gault is no longer in the Fort Grant State Industrial School. Although he is still under their exclusive control and jurisdiction until he reaches his majority or he is absolutely released.

Now, in this case, one of the ramifications of the individualized treatment shows that on December 9th of 1964, in other words about five months after he was committed, the boy was replaced in his home. They applied what they thought was needed on the boy and now he hasn't been in trouble since December 9th of 1964.

JUDGE WILLIAM HIBBLER AS Chief Justice Warren: I was wondering about the request that the parents made for the recipient of this telephone call, the woman who received the telephone call, to be brought to the hearing for examination. As to whether it was this boy's voice or the voice of the other one and the judge said, as I read someplace, she doesn't have to come here. What about that so far as a fair hearing is concerned?

STEPHEN PRESSER AS PARKS: Well It is our position, Chief Justice, that whether or not a complaining party should be there is directly dependent and commingled with the question if, whether or not in a fatherly manner the juvenile judge says, "Gerald, what went on, what did you do?" and the boy says, "Well Judge, I called the number and I said some of the words on the phone."

SCOTT TUROW AS JUSTICE Fortas: Suppose the judge doesn't say that in a fatherly manner?

STEPHEN PRESSER AS PARKS: Then I'll say he wasn't an Arizona juvenile judge, Mr. Justice Fortas.

JUDGE WILLIAM HIBBLER AS Chief Justice Warren: I understood, Mr. Parks, that at that time, when they asked for the woman to be present, that there was a difference of opinion between the boy and the authorities as to whether he had spoken the lewd words and they wanted her there for the purpose of establishing that it was the other boy's voice and not his voice on the telephone. That it would seem to me would be enough of a denial, so if there was a right of confrontation of witnesses, he would have the right to have the woman present to be examined as to whose voice it was.

STEPHEN PRESSER AS PARKS: Our Supreme Court, in reviewing the entire record, thought that the statements were made. There was one person who held the view that Gerald did not make the admission that was Mrs. Gault, his mother.

I would like to just move on to what is probably one of the most important areas and that is the right to counsel. The positions being taken by appellants in regard to the right to counsel are based entirely upon what they consider and believe to be the requirements of due process. In doing so, they are definitely and entirely equating juvenile proceeding to a criminal trial. We contend that this is not so.

Our statutes specifically hold it is not to be considered a criminal trial, a child is not convicted if he is found delinquent, his statements can in no way be considered the conviction of a crime. Our state has gone perhaps one step farther, by trying to protect the child as much as possible, by requiring that two years after an adjudication of delinquency, the records

will be destroyed. Our legislature saw this as a means of avoiding the problems of when the boy gets to be 20 and 21, where he has the record available perhaps for civil service or the FBI, to see that is destroyed. We have specific provisions for destruction of those records. We like to think that this is a means of taking this proceeding and if it has performed its function, of taking it and dispensing with it and therefore dispensing with any potential problems that could arise out of that hearing beyond what was contemplated by our statute.

SCOTT TUROW AS JUSTICE Fortas: But what records are destroyed? Here is a case where a boy might have been kept in custody for six years and you certainly don't destroy all records after two years. What is destroyed and what remains? There must be some record that Gerald Gault was subject to this court order that would survive for the six year period.

STEPHEN PRESSER AS PARKS: Your Honor, our Juvenile Code provides for destruction of records after two years after the discharge of the child from the institutions to which he may have been committed.

SCOTT TUROW AS JUSTICE Fortas: That would mean that this would be destroyed after he gets to be 21, in Gerald Gault's case, unless he gets an absolute discharge prior to that time, which is cold comfort in terms of what we have been talking about. Presumably there would still be a record that the boy was sent to the institution for such and such a period on such and such a basis.

STEPHEN PRESSER AS PARKS: There's a possibility of that, yes sir.

As to the right to counsel, I necessarily find myself arguing a philosophical point of view which is the basic foundation of our juvenile system. We don't think the word liberty is used in the same sense that that word is used in our constitutional provisions. Of course, there is a clear cleavage between our position and the appellants. We think the probation officer can serve a function for the child. We try to remove as much of a traumatic experience for the child as possible. The probation officer acts for the child. Of course, appellants take the position that this is not possible. There is a reason why an absolute right to counsel at this proceeding shouldn't be a rule absolute. Our court definitely left the discretion of the appointment of counsel up to the juvenile judge. This is a case where the judge did not use that specific discretion. We think a rule absolute would destroy the flexibility of the juvenile court.

JUDGE WILLIAM HIBBLER AS Chief Justice Warren: Does your juvenile court judge have the right to say that no lawyer can represent a child in this particular case?

STEPHEN PRESSER AS PARKS: No, Chief Justice, our Supreme Court decided back in, I believe the early 1950's, that if the parents wish to retain counsel, they have that right to retain counsel of their own choosing and counsel cannot be prohibited from performing whatever function they see fit at that hearing.

JUDGE WILLIAM HIBBLER AS Chief Justice Warren: I wonder how you would distinguish though, the situation where if a child of a wealthy family wants to bring a lawyer there to represent the child, they can do so

and he can have representation all the way through the proceedings on the theory that it would be helpful to him, but on the other hand a poor family that can't afford an attorney must remain bereft of one and must rely on the probation officer.

STEPHEN PRESSER AS PARKS: There is a distinction, Chief Justice, between what the court perhaps would think is the best procedure for the child. They might think it would be better if we just came in here and encouraged the boy to talk as the first means of rehabilitation, it would work better without counsel who'd perhaps stymie that process.

But we can't go so far as to say because we think that specific procedure is correct, we're going to say that you cannot have the right to counsel appointed on your behalf, in other words, if the parents so wish it, our Supreme Court did not think that we had the power to say "No, you are going to be prevented from doing that." This was the concept of fair play.

JUDGE WILLIAM HIBBLER AS Chief Justice Warren: You think it represents fair play for the judge himself to determine whether a child shall have counsel?

STEPHEN PRESSER AS PARKS: Shall have counsel in the circumstances needed and that the circumstances of the case might perhaps warrant. That's correct your honor. We are of the opinion that the spirit of the law rather than the absolute letter of the law would require this court to accept the juvenile proceeding in the way it has been functioning and the way it will function in the future.

On the right against self-incrimination, there's a reason why the child should not be informed of that right. Our court specifically did not say the child doesn't have the right, only that the court did not have to advise of him of that right. First of all we contend that there is no criminal conviction involved, number one. Number two, a refusal of the child to testify or to talk to the judge cannot be punished. In many cases it just indicates the fact that the child is antagonistic to society, unwilling to cooperate, showing a further need for perhaps additional guidance. There is no prosecutor present; there is no individual to twist what the child says. We would prefer to think of our juvenile judges as talking with the child in the most reasonable respect, encouraging him to tell the truth.

SCOTT TUROW AS JUSTICE Fortas: One of the questions here is very simply put. If this boy was sent away for the three incidents that have been here mentioned, the baseball glove incident, whatever that was, the pocket book incident, whatever that was, and the present incident, what is there in juvenile court theory or philosophy, what is there in the theory of the juvenile court which makes it undesirable or impossible for this boy to have had the basic elements of a trial, with respect to those incidents, so that at least he would have known and we would know, the reviewing court would know, exactly what these incidents were? What happened, why was this boy sent away for six years? Is it your position that doing that would destroy the juvenile court theory?

STEPHEN PRESSER AS PARKS: Well, constitutional protection applies when a person is charged with a crime. Then we are going to have to

say that delinquency is just another name for crime and therefore all the constitutional guarantees that have been outlined today should apply.

SCOTT TUROW AS JUSTICE Fortas: I don't get anywhere by trying to solve this problem in terms of the use of a word like crime or not a crime. The question is that we are dealing here with proceedings in which a person may be deprived of liberty and put in a place for 24 hours a day, they're in custody. You can call it a crime or you can call it a horse, they are still deprived of liberty.

STEPHEN PRESSER AS PARKS: But children are not adults and I think we recognize in this society that there are certain restraints that must be put on children and some children, by reasons of certain circumstances, require restraints, guidance, training, over and beyond what they get within the natural custody of their family. Thank you your honors.

SCOTT TUROW AS JUSTICE Fortas: The U.S. Supreme Court opinion of *IN RE GAULT* was released May 15, 1967. MR. JUSTICE FORTAS delivered the opinion of the Court:

We do not in this opinion consider the impact of constitutional provisions upon the totality of the relationship of the juvenile and the state. We consider only the problems presented to us by this case. These relate to the proceedings by which a determination is made as to whether a juvenile is a "delinquent" as a result of alleged misconduct on his part, with the consequence that he may be committed to a state institution.

From the inception of the juvenile court system, wide differences have been tolerated, indeed insisted upon, between the procedural rights accorded to adults and those of juveniles. In practically all jurisdictions, there are rights granted to adults that are withheld from juveniles. 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. The apparent rigidities, technicalities, and harshness which they observed in both substantive and procedural criminal law were therefore discarded.

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 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." Accordingly, the highest motives and most enlightened impulses led to a peculiar system for juveniles, unknown to our law in any comparable context.

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 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.

Under our Constitution, the condition of being a boy does not justify a kangaroo court. The essential difference between Gerald's case and a normal criminal case is that safeguards available to adults were discarded in Gerald's case.

JUDGE ANNE BURKE as JUSTICE Black: Mr. Justice Black agrees.

In a juvenile system designed to lighten or avoid punishment for criminality, Gerald Gault was ordered by the State to six years' confinement in what is, in all but name, a penitentiary or jail. Where a person, infant or adult, can be seized by the State, charged, and convicted for violating a state criminal law, and then ordered by the State to be confined for six years. I think the Constitution requires that he be tried in accordance with the guarantees of all the provisions of the Bill of Rights made applicable to the States by the Fourteenth Amendment.

JUDGE ILANA ROVNER AS JUSTICE Stewart: Mr. Justice Stewart disagrees.

The Court today uses an obscure Arizona case as a vehicle to impose upon thousands of juvenile courts throughout the nation, restrictions that the Constitution made applicable to adversary criminal trials. I believe the Court's decision is wholly unsound as a matter of constitutional law, and sadly unwise as a matter of judicial policy.

[Court adjoins]