

***Gault* Forty Years Later: Importance and Impact**

Forty years ago, the United States Supreme Court issued its historic decision in *In re Gault*, establishing a constitutional right to counsel for children in delinquency proceedings. This elaborate and wide-ranging opinion changed the course of juvenile justice and forced the states to put in place a process and a system for delivering legal services to children. The Supreme Court in its resolve to ensure that children have procedural safeguards in place underscored their intention when stating that “Juvenile Court history has again demonstrated that unbridled discretion, however benevolently motivated, is frequently a poor substitute for principle and procedure.”

Congress expressed similar concern over the need to safeguard the rights of children when it enacted the Juvenile Justice and Delinquency Prevention Act in 1974. The Congressional statement of findings specifically observed that “understaffed, overcrowded juvenile courts, probation services, and correctional facilities are not able to provide individualized justice or effective help.” Congress continued to receive information about the poor quality of juvenile indigent defense and when the Act was reauthorized in 1992, in 1996, and again in 2002, Congress re-emphasized the importance of lawyers in juvenile delinquency proceedings, specifically noting the inadequacies of both prosecutorial and public defense systems to provide individualized justice or effective assistance.

Despite the intentions of both the United States Supreme Court and the Congress, the right to counsel in delinquency proceedings has yet to be fully realized. Many experts and commentators across the country question whether the spirit and intent of that landmark decision has, in fact, materialized. Several studies conducted during the last four decades since *Gault* have shown that many children go through the justice system without the benefit of counsel – and that access to counsel and the quality of representation children receive are, at best, uneven.

The need for competent counsel for every child accused of a crime has never been greater. While effective counsel has always been necessary to ensure fundamental fairness and just proceedings, to access appropriate and necessary services, and to ensure safe and humane conditions of confinement for those children who need to be incarcerated, the stakes have significantly increased. In the wake of a harsh wave of punitive legislation and massive juvenile code revision, children are now subject to increased sanctions, longer sentences, harsher conditions, zero tolerance mandates, erosion of confidentiality protections, decreased procedural protections related to transfer to adult court, and even life sentences without the possibility of parole. These laws have had a particularly negative impact on children of color, drawing large numbers of poor and minority children deeper into the justice system.

The juvenile defense bar is at the heart of ensuring that the indigent defense system established for children operates as fairly, accurately and humanely as possible. Juvenile defense attorneys are a critical buffer against unfairness. While many improvements have occurred since the *Gault* case was decided in 1967, we still have a long way to go.