

In re Gault Juvenile Indigent Defense Archives^{*}

Cases and Materials Cited in Supreme Court Petition and Filings

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The aim of this document is to provide a historical perspective of the *In re Gault* decision. This is accomplished through cataloging the cases, statutes, and secondary sources cited to in the briefs and materials of the case. Hopefully by examining the antecedent laws and opinion of the time, we can gain a fuller understanding of the case and the issues it addressed. These materials are listed as historical references only, and their status as valid law is not claimed. The materials contained herein are cited to in the following sources from *In re Gault*, 387 U.S. 1 (1967):

- Decision of the Supreme Court of the United States
- Jurisdictional Statement
- Brief for Appellant
- Brief for Appellee
- Brief of the National Legal Aid and Defender Association as Amicus Curiae
- Brief for Legal Aid Society and Citizens’ Committee for Children of New York, Inc., Amici Curiae
- Brief of the Ohio Association of Juvenile Court Judges as Amicus Curiae
- Brief of the American Parents Committee as Amicus Curiae

^{*} The archives is a work in progress that will be updated regularly as new materials are acquired. We welcome and encourage any and all additions and contributions. Please contact Rashida Edmondson-Penny at 202-452-0010 or inquiries@gaultat40.info.

Section One: Cases

A. Right to Counsel

- *Application of Gault*, 407 P.2d 760 (Ariz. 1965)
This is the Arizona Supreme Court decision which the United States Supreme Court reviewed in *In re Gault*. The court held that fairness is necessary in juvenile court proceedings, but not due process, as these are not criminal proceedings and they are concerned with the care, not the punishment, of the child. The court finds that Arizona statutes sufficiently protect youth accused of delinquency and there are no due process violations in this case. Specifically, the court finds while parents have the right to counsel, children do not; there is no requirement that children be advised of the privilege against self-incrimination; hearsay evidence is admissible; allegation of delinquency is sufficient notice of the charges; an ordering of transcripts will be left to the judges discretion, as there is no right to an appeal; and a judge must find delinquency by clear and convincing evidence.

Cited in: Decision, Appellant's Brief, Ohio Judges Amicus

- *Akers v. State*, 51 N.E.2d 91 (Ind. App. 1943)
Because delinquency proceedings are not criminal in nature, youth brought before juvenile courts are not entitled to the same procedural protections as defendants in criminal courts, including the requirement that they be warned of the consequences of a guilty plea and advised of their right to counsel and a trial by jury.

Cited in: Appellant's Brief, Appellee's Brief

- *Arizona State Department of Public Welfare v. Barlow*, 296 P.2d 298 (Ariz. 1956)
It was error for the Juvenile Court to order that the children be placed in custody of the Department of Public Welfare predicated on a hearing at which the parents were denied the opportunity to be heard by counsel.

Cited in: Decision, Appellee's Brief, Legal Aid Society Amicus

- *Ballard v. State*, 192 S.W.2d 329 (Tex. Civ. App. 1946)
Two elements must be present in order to find a child a juvenile delinquent: his age must be within the statutory limits and the child must have committed one of the enumerated acts of the statute. Where the record contains no reference to the child's age or birth date and the act of delinquency is not one of the enumerated acts, the child cannot be found delinquent. Additionally, children brought to juvenile court cannot be compelled to testify against themselves, they have the right to hear the evidence against them and cross-examine the witnesses, and the court should not hear and consider evidence about extraneous matters with which the child was not charged.

Cited in: Jurisdictional Statement, Appellant's Brief

- *Betts v. Brady*, 316 U.S. 455 (1942)
In this case, which would ultimately be overruled by *Gideon v. Wainwright*, 372 U.S. 335 (1963), the Supreme Court declined to incorporate the Sixth Amendment right to counsel to the states through the Fourteenth Amendment. This case is cited for the proposition that judges can no better protect the rights of children without counsel than they could protect the rights of adult defendants in post *Betts* courts.

Cited in: Jurisdictional Statement, American Parents' Committee Amicus

- *Black v. United States*, 355 F.2d 104 (D.C. Cir. 1965)
Case remanded to juvenile court for determination of waiver, with the assistance of counsel. Assistance of counsel in "critically important" determination of waiver is essential to proper administration of justice.

Cited in: Decision, Jurisdictional Statement, Appellant's Brief

- *Carnley v. Cochran*, 369 U.S. 506 (1963)
Habeas granted for adult defendant convicted without any attorney and with no evidence on the record of an affirmative waiver of counsel

Cited in: Decision, Jurisdictional Statement, Appellant's Brief, Legal Aid Society Amicus

- *Gideon v. Wainwright*, 372 U.S. 335 (1963)
This case reversed *Betts v. Brady*, 316 U.S. 455 (1942), and held that the states must provide counsel for indigent defendants in all felony cases.

Cited in: Decision, Appellant's Brief, Appellee's Brief, NLADA Amicus, Legal Aid Society Amicus, American Parents Committee Amicus

- *Hamilton v. Alabama*, 368 U.S. 52 (1961)
Because arraignment is a critical stage in criminal proceedings in Alabama, the Defendant had the right to be represented by counsel.

Cited in: Jurisdictional Statement, Appellant's Brief

- *In re Contreras*, 241 P.2d 631 (Cal. Dist. Ct. App. 1952)
Order declaring minor a ward of the state is set aside when minor had no access to counsel, the evidence was inadmissible, and the quantum of evidence fell below even probable cause standards.

Cited in: Decision, Jurisdictional Statement, Appellant's Brief, Legal Aid Society Amicus, American Parents Committee Amicus

- *In re Oliver*, 333 U.S. 257 (1948)
Where a judge serving as a one-man grand jury immediately convicted witness of contempt of court based upon grand jury testimony, there was a denial of due process. The secrecy of the grand jury is not the appropriate venue for a criminal conviction which demands public oversight. Defendant was not given notice of the charges against him and the opportunity to present a defense. He was not afforded his right to be represented by counsel, bring witnesses on his behalf or to confront the witnesses against him.

Cited in: Decision, Appellant's Brief

- *In re Poff*, 135 F.Supp. 224 (D.D.C. 1955)
The Court holds that where the child commits an act, which act if committed by an adult would constitute a crime, then due process in the Juvenile Court requires that the child be advised that he is entitled to the effective assistance of counsel, and this is so even though the Juvenile Court in making dispositions of delinquent children is not a criminal court.

Cited in: Decision, Jurisdictional Statement, Appellant's Brief, Appellee's Brief

- *Interest of Long*, 184 So.2d 861 (Miss. 1966)
Petitions which simply state a child has been charged as a delinquent are not sufficient to bring the child under the jurisdiction of the Youth Court Act. Additionally, summons must be served at least three days prior to the date set for a hearing and children and their parents must be advised of their right to be represented by counsel.

Cited in: Decision, Appellant's Brief

- *Johnson v. Zerbst*, 304 U.S. 458 (1938)
Compliance with the Sixth Amendment right to counsel is an essential jurisdictional prerequisite to a federal court's authority to convict a defendant of a crime. If one accused of crime is not represented by counsel and has not competently and intelligently waived the right, the Sixth Amendment prohibits conviction and sentence.

Cited in: Decision, Appellant's Brief

- *Kent v. United States*, 383 U.S. 541 (1966)
Prior to the entry of a waiver order, a child must be given a hearing. The child is entitled to counsel at the hearing and counsel is entitled to view the child's social file.

Cited in: Jurisdictional Statement, Appellant's Brief, Appellee's Brief, NLADA Amicus, Legal Aid Society Amicus, American Parents Committee Amicus, Ohio Judges Amicus

- *Miranda v. Arizona*, 384 U.S. 436 (1966)
Landmark Fifth Amendment case requiring that those taken into custody be informed of their right to an attorney and their right against self-incrimination.

Cited in: Decision, Appellant's Brief, Appellee's Brief, Legal Aid Society Amicus, American Parents Committee Amicus

- *People v. Dotson*, 299 P.2d 875 (Cal. 1956)
Because the issue before the juvenile court was simply whether to exercise its jurisdiction over the youth, or to transfer the case to adult criminal court, and not a decision that would result in a loss of liberty, there was no due process violation in the failure to provide youth with access to counsel.

Dissent contains positive language about the serious nature of the alleged violation and the necessity of counsel, even in juvenile court.

Cited in: Decision, Appellant's Brief, Appellee's Brief

- *Powell v. Alabama*, 287 U.S. 45 (1932)
Failure to provide counsel in a capital case, or to appoint counsel in a timely manner to allow consultation and investigation, is a denial of due process.

Cited in: Appellant's Brief, Appellee's Brief, NLADA Amicus, American Parents Committee Amicus

- *Shioutakon v. District of Columbia*, 236 F.2d 666 (D.C. Cir. 1956)
Once a petition has been filed against him, a juvenile must be advised of his right to an attorney, or have one appointed for him. The Court must determine that any waiver is made intelligently.

Cited in: Jurisdictional Statement, Appellant's Brief, Appellee's Brief, NLADA Amicus, Legal Aid Society Amicus

- *Von Moltke v. Gillies*, 332 U.S. 708 (1948)
In this case, the defendant was charged with espionage during World War II and was taken to custody where she was kept in almost complete isolation from her friends and family. She was unable to afford a lawyer. After speaking with government agents, she decided to plead guilty and in so doing, she signed a boiler plate waiver of counsel form. The Court held that under these circumstances, her waiver was neither intelligent nor understandingly made.

Cited in: Jurisdictional Statement, Appellant's Brief

B. Notice of Charges

- *Application of Gault*, 407 P.2d 760 (Ariz. 1965)
This is the Arizona Supreme Court decision which the United States Supreme Court reviewed in *In re Gault*. The court held that fairness is necessary in juvenile court proceedings, but not due process, as these are not criminal proceedings and they are concerned with the care, not the punishment, of the child. The court finds that Arizona statutes sufficiently protect youth accused of delinquency and there are no due process violations in this case. Specifically, the court finds while parents have the right to counsel, children do not; there is no requirement that children be advised of the privilege against self-incrimination; hearsay evidence is admissible; allegation of delinquency is sufficient notice of the charges; an ordering of transcripts will be left to the judges' discretion, as there is no right to an appeal; and a judge must find delinquency by clear and convincing evidence.

Cited in: Decision, Appellant's Brief, Ohio Judges Amicus

- *Application of Johnson*, 178 F.Supp. 155 (D.N.J. 1957)
Defendant in this case was convicted and sentenced as an adult for the crime of murder at the age of 15. New Jersey law was subsequently clarified to grant exclusive jurisdiction over children younger than 16 to the juvenile court. Keeping Defendant imprisoned under a *parens patriae* justification violated due process, as Defendant was entitled to proper notice and trial on the charges of being a juvenile delinquent. The Federal District Court ordered Defendant, now aged 28, released from custody, as the justifications of the juvenile court law no longer applied to him.

Cited in: Decision, Appellant's Brief

- *Ballard v. State*, 192 S.W.2d 329 (Tex. Civ. App. 1946)
Two elements must be present in order to find a child a juvenile delinquent: his age must be within the statutory limits and the child must have committed one of the enumerated acts of the statute. Where the record contains no reference to the child's age or birth date and the act of delinquency is not one of the enumerated acts, the child cannot be found delinquent. Additionally, children brought to juvenile court cannot be compelled to testify against themselves, they have the right to hear the evidence against them and cross-examine the witnesses, and the court should not hear and consider evidence about extraneous matters with which the child was not charged.

Cited in: Jurisdictional Statement, Appellant's Brief

- *Cole v. Arkansas*, 333 U.S. 196 (1948)

Due Process requires notice of the specific charge and a chance to respond to it. State Supreme Court may not uphold conviction by finding sufficient evidence of violation of uncharged statute section.

Cited in: Jurisdictional Statement, Appellant's Brief, Legal Aid Society Amicus, American Parents Committee Amicus

- *Green v. State*, 108 N.E.2d 647 (Ind.App. 1952)
The Court overturned the judgment of the juvenile court that was based upon the report of a probation officer presented to the judge outside of the child's hearing and without informing the child the nature of the charges against him. Although the Juvenile Court Act permitted courts to conduct hearings in an informal manner, these proceedings violated the child's Constitutional rights to be given notice of the charges against him and to be presented with the evidence against him.

Cited in: Jurisdictional Statement, Appellant's Brief

- *In re Ferrier*, 103 Ill. 367 (Ill. 1882)
Serving written notice of a dependency trial along with a copy of the petition upon infant's mother was proper notice.

Cited in: Decision, Ohio Judges Amicus

- *In re Oliver*, 333 U.S. 257 (1948)
Where a judge serving as a one-man grand jury immediately convicted witness of contempt of court based upon grand jury testimony, there was a denial of due process. The secrecy of the grand jury is not the appropriate venue for a criminal conviction which demands public oversight. Defendant was not given notice of the charges against him and the opportunity to present a defense. He was not afforded his right to be represented by counsel, bring witnesses on his behalf or to confront the witnesses against him.

Cited in: Decision, Appellant's Brief

- *In re Santillanes*, 138 P.2d 503 (N.M. 1943)
The Supreme Court of New Mexico ruled that because juvenile proceedings are not criminal in nature, the Constitutional protections provided in criminal proceedings are not necessary to provide due process of law. Youth have no right to a jury trial, no strict notice requirement, no privilege against self-incrimination, no guarantee against double jeopardy, and no right to an appeal in delinquency proceedings.

Cited in: Appellant's Brief, Appellee's Brief

- *Interest of Long*, 184 So.2d 861 (Miss. 1966)

Petitions which simply state a child has been charged as a delinquent are not sufficient to bring the child under the jurisdiction of the Youth Court Act. Additionally, summons must be served at least three days prior to the date set for a hearing and children and their parents must be advised of their right to be represented by counsel.

Cited in: Decision, Appellant's Brief

- *Mill v. Brown*, 88 P. 609 (Utah, 1907)
Because juvenile court is not a criminal court and does not aim to punish the child, but rather to save the child and provide a positive environment for the child, there is no right to a jury trial, no right to arraignment and plea, no prohibition against self-incrimination, no requirement of notice to the parent, no need for an arrest warrant, and the other like requirements of due process in criminal courts. However, because the state is attempting to provide a delinquent child with the services and resources usually supplied by a parent, the state must prove both that the child has committed an act of delinquency and that the parent has failed in his duties to raise the child. Hearings under this act, though not conducted in the manner of trials, should still be conducted in accordance with rules and in the manner of a legal proceeding.

Cited in: Appellee's Brief, Ohio Judges Amicus

- *Willner v. Committee on Character and Fitness*, 373 U.S. 96 (1963)
Attorney was denied due process when he was denied admittance to the bar without a hearing on the charges filed against him.

Cited in: Jurisdictional Statement, Appellant's Brief, Legal Aid Society Amicus, American Parents Committee Amicus

C. Right to Confrontation and Cross Examination

- *Application of Gault*, 407 P.2d 760 (Ariz. 1965)
This is the Arizona Supreme Court decision which the United States Supreme Court reviewed in *In re Gault*. The court held that fairness is necessary in juvenile court proceedings, but not due process, as these are not criminal proceedings and they are concerned with the care, not the punishment, of the child. The court finds that Arizona statutes sufficiently protect youth accused of delinquency and there are no due process violations in this case. Specifically, the court finds while parents have the right to counsel, children do not; there is no requirement that children be advised of the privilege against self-incrimination; hearsay evidence is admissible; allegation of delinquency is sufficient notice of the charges; an ordering of transcripts will be left to the judges discretion, as there is no right to an appeal; and a judge must find delinquency by clear and convincing evidence.

Cited in: Decision, Appellant's Brief, Ohio Judges Amicus

- *Ballard v. State*, 192 S.W.2d 329 (Tex. Civ. App. 1946)
Two elements must be present in order to find a child a juvenile delinquent: his age must be within the statutory limits and the child must have committed one of the enumerated acts of the statute. Where the record contains no reference to the child's age or birth date and the act of delinquency is not one of the enumerated acts, the child cannot be found delinquent. Additionally, children brought to juvenile court cannot be compelled to testify against themselves, they have the right to hear the evidence against them and cross-examine the witnesses, and the court should not hear and consider evidence about extraneous matters with which the child was not charged.

Cited in: Jurisdictional Statement, Appellant's Brief

- *Caruso v. Superior Court*, 412 P.2d 463 (Ariz. 1966)
Juvenile Court cannot inquire into termination of parental rights until it has first proven through clear and convincing evidence that the child is dependent within the meaning of applicable Arizona statute. A social worker's reports that went unexamined by petitioner and counsel, and where petitioner and counsel had no opportunity to cross examine the social worker-preparer, did not meet the evidentiary burden.

Cited in: Appellant's Brief, Legal Aid Society Amicus

- *Green v. State*, 108 N.E.2d 647 (Ind.App. 1952)
The Court overturned the judgment of the juvenile court that was based upon the report of a probation officer presented to the judge outside of the child's hearing

and without informing the child the nature of the charges against him. Although the Juvenile Court Act permitted courts to conduct hearings in an informal manner, these proceedings violated the child's Constitutional rights to be given notice of the charges against him and to be presented with the evidence against him.

Cited in: Jurisdictional Statement, Appellant's Brief

- *Greene v. McElroy*, 360 U.S. 474 (1959)
The right to confrontation and cross-examination extended to hearings for security clearance revocation of a civilian contractor.

Cited in: Jurisdictional Statement, Appellant's Brief

- *In re Holmes*, 109 A.2d 523 (Pa. 1954) cert denied 348 U.S. 973 (1955)
Holding that because juvenile delinquency proceedings are civil matters, not criminal, juveniles are not entitled to constitutional protections adherent to criminal trials. Juveniles have no privilege against self-incrimination, no bar against hearsay evidence, and no right to inspect all the evidence against them.

Dissent contains compelling arguments and language for granting juveniles these rights.

Cited in: Decision, Appellant's Brief, Appellee's Brief

- *In re Murchison*, 349 U.S. 133 (1955)
It is violative of due process to allow a judge that functions as a one person grand jury then preside over a contempt trial resulting from proceedings of that grand jury, as this impacts a defendant's ability to cross-examine witnesses and introduces bias into the proceedings.

Cited in: Jurisdictional Statement, Appellant's Brief, American Parents' Committee Amicus

- *In re Oliver*, 333 U.S. 257 (1948)
Where a judge serving as a one-man grand jury immediately convicted witness of contempt of court based upon grand jury testimony, there was a denial of due process. The secrecy of the grand jury is not the appropriate venue for a criminal conviction which demands public oversight. Defendant was not given notice of the charges against him and the opportunity to present a defense. He was not afforded his right to be represented by counsel, bring witnesses on his behalf or to confront the witnesses against him.

Cited in: Decision, Appellant's Brief

- *Pointer v. Texas*, 380 U.S. 400 (1965)

April 3, 2007

Holding that the Sixth Amendment right to confront the witnesses against you is a fundamental right necessary to a fair trial and it made obligatory on the States by the Fourteenth Amendment

Cited in: Decision, Appellant's Brief, Appellee's Brief, American Parents' Committee Amicus

D. Privilege Against Self-Incrimination

- *Application of Gault*, 407 P.2d 760 (Ariz. 1965)
This is the Arizona Supreme Court decision which the United States Supreme Court reviewed in *In re Gault*. The court held that fairness is necessary in juvenile court proceedings, but not due process, as these are not criminal proceedings and they are concerned with the care, not the punishment, of the child. The court finds that Arizona statutes sufficiently protect youth accused of delinquency and there are no due process violations in this case. Specifically, the court finds while parents have the right to counsel, children do not; there is no requirement that children be advised of the privilege against self-incrimination; hearsay evidence is admissible; allegation of delinquency is sufficient notice of the charges; an ordering of transcripts will be left to the judges discretion, as there is no right to an appeal; and a judge must find delinquency by clear and convincing evidence.

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Cited in: Jurisdictional Statement, Appellant's Brief

- *Dendy v. Wilson*, 179 S.W.2d 269 (Tex. Sup. Ct. 1944)
It was error for the juvenile court to compel youth to testify against themselves. It was not error for the court to proceed without a jury when said jury was not demanded in accordance with civil procedure.

Cited in: Decision, Appellant's Brief, Appellee's Brief

- *Gallegos v. Colorado*, 370 U.S. 49 (1962)
The confession of a 14-year-old boy made while he was detained for 5 days without access to counsel or parents or an appearance in juvenile court was obtained in violation of due process of law and his conviction of murder could not rest on it.

Cited in: Decision, Jurisdictional Statement

- *Griffin v. California*, 380 U.S. 609 (1965)
This case extended to state courts the rule that commenting on a defendant's decision not to testify at his trial is a violation of the Fifth Amendment privilege against self-incrimination.

Cited in: Decision, Appellant's Brief

- *Harling v. United States*, 295 F.2d 161 (C.A.D.C. 1961)
Incriminating statements taken from juveniles before the court waives jurisdiction and transfers youth to adult criminal court cannot be used in the criminal prosecution against them. To do so would make the non-criminal and non-punitive juvenile court an adjunct to the adult system.

Cited in: Decision, Legal Aid Society Amicus

- *In re Holmes*, 109 A.2d 523 (Pa. 1954) cert denied 348 U.S. 973 (1955)
Holding that because juvenile delinquency proceedings are civil matters- not criminal- juveniles are not entitled to constitutional protections adherent to criminal trials. Juveniles have no privilege against self-incrimination, no bar against hearsay evidence, and no right to inspect all the evidence against them.

Dissent contains compelling arguments and language for granting juveniles these rights.

Cited in: Decision, Appellant's Brief, Appellee's Brief

- *In re Santillanes*, 138 P.2d 503 (N.M. 1943)
The Supreme Court of New Mexico ruled that because juvenile proceedings are not criminal in nature, the Constitutional protections provided in criminal proceedings are not necessary to provide due process of law. Youth have no right to a jury trial, no strict notice requirement, no privilege against self-incrimination, no guarantee against double jeopardy, and no right to an appeal in delinquency proceedings.

Cited in: Appellant's Brief, Appellee's Brief

- *Malloy v. Hogan*, 378 U.S. 1 (1964)
Extends the Fifth Amendment right against self-incrimination to state proceedings through the Fourteenth Amendment. The Court applies the Federal test that the proceeding itself need not be criminal, so long as the testimony may furnish a link in a chain of prosecution, to state cases as well.

Cited in: Decision, Jurisdictional Statement, Appellant's Brief, American Parents' Committee Amicus

- *McCarthy v. Arndstein*, 266 U.S. 34 (1924)
The privilege against self-incrimination applies in bankruptcy proceedings because the privilege applies to civil and criminal proceedings alike, wherever the answer might tend to subject the giver to criminal responsibility.

Cited in: Decision, Appellant's Brief

- *Mill v. Brown*, 88 P. 609 (Utah, 1907)
Because juvenile court is not a criminal court and does not aim to punish the child, but rather to save the child and provide a positive environment for the child, there is no right to a jury trial, no right to arraignment and plea, no prohibition against self-incrimination, no requirement of notice to the parent, no need for an arrest warrant, and the other like requirements of due process in criminal courts. However, because the state is attempting to provide a delinquent child with the services and resources usually supplied by a parent, the state must prove both that the child has committed an act of delinquency and that the parent has failed in his duties to raise the child. Hearings under this act, though not conducted in the manner of trials, should still be conducted in accordance with rules and in the manner of a legal proceeding.

Cited in: Appellee's Brief, Ohio Judges Amicus

- *Miranda v. Arizona*, 384 U.S. 436 (1966)
Landmark Fifth Amendment case requiring that those taken into custody be informed of their right to an attorney and their right against self-incrimination.

Cited in: Decision, Appellant's Brief, Appellee's Brief, Legal Aid Society Amicus, American Parents Committee Amicus

- *Murphy v. Waterfront Commission*, 378 U.S. 52 (1964)
The privilege against self-incrimination applies to both state and federal government, so that a state cannot compel testimony that would be incriminatory in a federal jurisdiction and vice versa.

Cited in: Decision, Appellant's Brief, American Parents' Committee Amicus

- *Pee v. United States*, 274 F.2d 556 (D.C.Cir. 1959)
Once a juvenile is certified to be tried as an adult in criminal court, that juvenile has all the protections of statutory and Constitutional law available to adult defendants. The courts must choose between trying juveniles as adults and maintaining juvenile court jurisdiction. They cannot seek to blend both sets of procedure

Cited in: Decision, Appellee's Brief, Ohio Judges Amicus

- *People v. Lewis*, 183 N.E. 353 (N.Y. 1932)
Because the charge was “juvenile delinquency” and not a crime, the youth was not entitled to Constitutional protections against self-incrimination.

The dissent argues that the nature of the act was criminal and an arbitrarily chosen age was the sole justification for changing the nomenclature from larceny to juvenile delinquency. In this circumstance, there should be full Constitutional protection to safeguard rights and liberties.

Cited in: Decision, Appellant’s Brief, Appellee’s Brief

- *United States v. Morales*, 233 F.Supp. 160 (D.Mont. 1964)
The statement of a 16 year old boy was not made voluntarily when he spent days in custody without seeing relatives, friends, or a lawyer; he was falsely informed that he had been implicated by statements of other youth; and he spent several days before going before a magistrate. The evidence against the child was insufficient to justify his adjudication of delinquency and his motion for acquittal was granted. This case includes a detailed discussion of other cases from this time period that uphold the due process rights of juveniles.

Cited in: Decision, Appellant’s Brief

E. Right to a Transcript and Right to Appellate Review

- *Application of Gault*, 407 P.2d 760 (Ariz. 1965)
This is the Arizona Supreme Court decision which the United States Supreme Court reviewed in *In re Gault*. The court held that fairness is necessary in juvenile court proceedings, but not due process, as these are not criminal proceedings and they are concerned with the care, not the punishment, of the child. The court finds that Arizona statutes sufficiently protect youth accused of delinquency and there are no due process violations in this case. Specifically, the court finds while parents have the right to counsel, children do not; there is no requirement that children be advised of the privilege against self-incrimination; hearsay evidence is admissible; allegation of delinquency is sufficient notice of the charges; an ordering of transcripts will be left to the judges' discretion, as there is no right to an appeal; and a judge must find delinquency by clear and convincing evidence.

Cited in: Decision, Appellant's Brief, Ohio Judges Amicus

- *Draper v. Washington*, 372 U.S. 487 (1963)
Washington state procedure which required trial judges to rule on the frivolity of indigent defendants' appeals claims before granting access to trial transcripts violated due process rights.

Cited in: Appellant's brief, Appellee's brief

- *Ginn v. Superior Court*, 404 P.2d 721 (Ariz.Ct.App. 1965)
Absent a provision in the juvenile laws, there is no right of appeal. Such orders are only reviewable by certiorari.

Cited in: Jurisdictional Statement, Appellee's Brief

- *Griffin v. Illinois*, 351 U.S. 12 (1956)
State's refusal to furnish indigent defendants with a transcript for appellate purposes is violation of Equal Protection and Due Process.

Cited in: Appellant's Brief, Appellee's Brief, NLADA Amicus

- *In re Lewis*, 94 A.2d 328 (N.J. 1957)
There was adequate evidence for the trial judge to find the juvenile committed the act beyond a reasonable doubt. Because the judge acted within his discretion in sentencing the youth to the reformatory, that decision was not properly subject to appellate review.

Cited in: Legal Aid Society Amicus, Ohio Judges Association Amicus

- *In re Santillanes*, 138 P.2d 503 (N.M. 1943)
The Supreme Court of New Mexico ruled that because juvenile proceedings are not criminal in nature, the Constitutional protections provided in criminal proceedings are not necessary to provide due process of law. Youth have no right to a jury trial, no strict notice requirement, no privilege against self-incrimination, no guarantee against double jeopardy, and no right to an appeal in delinquency proceedings.

Cited in: Appellant's Brief, Appellee's Brief

- *Reynolds v. Howe*, 51 Conn. 472 (Conn. 1884)
Statute allowing for the commitment of boys under the age of sixteen who are in danger of being brought up to lead an idle or vicious life to the state reform school is neither criminal nor civil in nature and thus the decision is not subject to appeals. Strong *parens patriae* language is included in this decision.

Cited in: Appellee's Brief, Ohio Judges Amicus

- *Wissenberg v. Bradley*, 229 N.W. 205 (Iowa 1930)
A juvenile committed to the state industrial school did not have a right to a jury trial on charges that he was delinquent and incorrigible youth, as this was not a punishment in a criminal proceeding, but rather an attempt to educate and rehabilitate the boy. The court passed on the question of whether the right to appeal existed, because both parties presumed it did not.

Cited in: Decision, Jurisdictional Statement, Appellee's Brief

F. Miscellaneous

- *Akers v. State*, 51 N.E.2d 91 (Ind. App. 1943)
Because delinquency proceedings are not criminal in nature, youth brought before juvenile courts are not entitled to the same procedural protections as defendants in criminal courts, including the requirement that they be warned of the consequences of a guilty plea and advised of their right to counsel and a trial by jury.

Cited in: Appellant's Brief, Appellee's Brief

- *Ex parte Crouse*, 4 Whart. 9 (Pa.Sup.Ct. 1839)
An early Pennsylvania Supreme Court case explaining *parens patriae* doctrine and holding there is no violation of Constitutional rights in committing a child to a reformatory without a trial by jury.

Cited in: Decision, Ohio Judges Amicus

- *Fay v. Noia*, 372 U.S. 391 (1963)
Adult defendant's failure to appeal his conviction based upon a coerced confession to the state appellate court could not be deemed an intelligent and understanding waiver of his right to appeal to justify the denial of federal habeas corpus relief.

Cited in: Jurisdictional Statement, Appellant's Brief

- *In re Santillanes*, 138 P.2d 503 (N.M. 1943)
The Supreme Court of New Mexico ruled that because juvenile proceedings are not criminal in nature, the Constitutional protections provided in criminal proceedings are not necessary to provide due process of law. Youth have no right to a jury trial, no strict notice requirement, no privilege against self-incrimination, no guarantee against double jeopardy, and no right to an appeal in delinquency proceedings.

Cited in: Appellant's Brief, Appellee's Brief

- *Mill v. Brown*, 88 P. 609 (Utah, 1907)
Because juvenile court is not a criminal court and does not aim to punish the child, but rather to save the child and provide a positive environment for the child, there is no right to a jury trial, no right to arraignment and plea, no prohibition against self-incrimination, no requirement of notice to the parent, no need for an arrest warrant, and the other like requirements of due process in criminal courts. However, because the state is attempting to provide a delinquent child with the services and resources usually supplied by a parent, the state must prove both that the child has committed an act of delinquency and that the parent has failed in his

duties to raise the child. Hearings under this act, though not conducted in the manner of trials, should still be conducted in accordance with rules and in the manner of a legal proceeding.

Cited in: Appellee's Brief, Ohio Judges Amicus

- *Milwaukee Industrial School v. The Supervisors of Milwaukee County*, 40 Wis. 328 (Wis. 1976)
This late 19th century case upholds the statutes that allow a child to be committed to state industrial schools, finding that neither the rights of the child nor the parent are violated. This case offers rationale and arguments behind *parns patriae* doctrine.

Cited in: Appellee's Brief, Ohio Judges Amicus

- *Trimble v. Stone*, 187 F.Supp. 483 (D.D.C. 1960)
Although Juvenile Court proceedings are considered civil in nature rather than criminal, juveniles brought before the court have a Constitutional right to bail.

Cited in: Decision, Appellant's Brief

- *White v. Reid*, 125 F.Supp. 647 (D.D.C. 1954)
It was a violation of due process to hold a juvenile at the District of Columbia Jail, and not a reformatory school as authorized by the Juvenile Court Statute.

Cited in: Decision, Appellee's Brief

- *Williams v. New York*, 337 U.S. 241 (1949)
It was not a violation of due process for a judge to consider information obtained through a probation pre-sentence report in rendering a death sentence, contrary to a jury's life sentence recommendation. This case is cited to for its language about the purposes of sentencing and the importance of due process.

Cited in: Appellant's Brief, Legal Aid Society Amicus

- *Wissenberg v. Bradley*, 229 N.W. 205 (Iowa 1930)
A juvenile committed to the state industrial school did not have a right to a jury trial on charges that he was delinquent and incorrigible youth, as this was not a punishment in a criminal proceeding, but rather an attempt to educate and rehabilitate the boy. The court passed on the question of whether the right to appeal existed, because both parties presumed it did not.

Cited in: Decision, Jurisdictional Statement, Appellee's Brief

Section Two: Other Materials

A. Constitutions, Statutes, and Codes

- U.S. CONST. amend. V

Cited in: Jurisdictional Statement, Appellant's Brief, Appellee's Brief, Legal Aid Society Amicus

- U.S. CONST. amend. XIV

Cited in: Jurisdictional Statement, Appellant's Brief, Appellee's Brief, Legal Aid Society Amicus

B. Law Review Articles

- Francis A. Allen, *Criminal Justice, Legal Values, and the Rehabilitative Ideal*, 50 J.Crim. L.C. and P.S. 226 (1959)
The author critically examines what he calls the “rehabilitative ideal”- the shift from punishment to treatment and rehabilitation as the primary goals of the criminal justice system. While supportive of the theory, the author finds three areas of criticism of this ideal: the narrowing of scientific interests, the debasement of the ideal, and the danger of forsaking individual liberty under the guise of the ideal.

Cited in: Appellant’s Brief

- Chester J. Antieau, *Constitutional Rights in Juvenile Court*, 46 Corn.L.Q. 381 (1961)
The author argues that children in juvenile court are entitled to all Constitutional due process safeguards as are applicable in criminal proceedings.

Cited in: Jurisdictional Statement, Appellant’s Brief, American Parents Committee Amicus

- Matthew J. Beemsterboer, *The Juvenile Court- Benevolence in the Star Chamber*, 50 J. Crim. L.C. and P.S. 464 (1960)
The author argues against operating juvenile courts as a *parens patriae* court. He reviews the history of juvenile court legislation and case law in order to explain the reasoning behind these courts. Finally, the author suggests that the bar is responsible for advocating for changes for juvenile court. These strategies include bringing cases to state and US Supreme Court and rewriting state legislation to expressly provide for the protections of criminal court.

Cited in: Jurisdictional Statement, Appellant’s Brief, American Parents Committee Amicus

- F. James Davis, *Iowa Judges and the Juvenile Court*, 34 Iowa L. Rev. 634 (1949)
The author details the results of a survey of the juvenile court judges in Iowa. The survey was designed to identify their attitudes about the process that should be used in juvenile court. The judges overwhelmingly felt a juvenile court as opposed to criminal court sensibility, though they were influenced at least minimally by criminal procedure.

Cited in: American Parents Committee Amicus

- Nanette Dembitz, *Ferment and Experiment in New York: Juvenile Cases in the New Family Court*, 48 Corn. L.Q. 499 (1963)
The author examines the changes made to the New York Family Court Act. At the time the new legislation was one of the first in the nation to separate

punishments for status offenders and children accused of delinquent acts, provide counsel for youth unable to retain counsel, and put in procedural safeguards for the types of evidence that could be used in court.

Cited in: Jurisdictional Statement, Appellant's Brief, Legal Aid Society Amicus

- Sheldon Glueck, *Some "Unfinished Business" in the Management of Juvenile Delinquency*, 48 *Corn. L.Q.* 499 (1963)
The author details issues that still need to be addressed in the administration of juvenile courts, research into the causes of delinquency, and formulating approaches to prevention. The seven areas he thinks need to be resolved in the administration of juvenile proceedings are: the specificity of laws defining delinquent behavior, the specificity of the juvenile petition, affording constitutional protections to children, the nature of the adjudicatory hearing, rules of evidence to be applied during hearings, dangers and merits of pre-adjudicatory supervision, and the juvenile's access to counsel.

Cited in: Appellant's Brief

- Joel F. Handler, *The Juvenile Court and the Adversary System: Problems of Function and Form*, 1965 *Wis. L. Rev.* 7 (1965)
The author discusses and outlines proposed procedural changes in the juvenile court, in order to bring the court in line with the purposes of juvenile court.

Cited in: Legal Aid Society Amicus

- John J. Horwitz, *The Problem of Quid Pro Quo*, 12 *Buffalo L. Rev.* 528 (1963)
The author argues that juvenile courts have been set up as an exchange of Constitutional rights for individualized justice and that this is an uneven exchange.

Cited in: Appellant's Brief

- Jacob L. Isaacs, *The Role of the Lawyer in Representing Minors in the New Family Court*, 12 *Buffalo L.R.* 501 (1963)
In response to the New York Family Court Act's provision of a law guardian to children in delinquency and dependency hearings, the author examines the proper role of counsel in each of the settings at the various stages of the hearings.

Cited in: Jurisdictional Statement, Legal Aid Society Amicus

- Orman W. Ketcham, *Legal Renaissance in the Juvenile Court*, 60 *Norhtwestern Univ. L.R.* 585 (1965)
The author- then-president of the National Council of Juvenile Court Judges- praises the reintroduction of lawyers into juvenile courts across the country and argues that they are necessary to meet ideals of individualized justice.

Cited in: Jurisdictional Statement, Appellant's Brief

- Louis Lauer, *New Directions for Court Treatment of Youth*, 12 Buffalo L. Rev. 452 (1963)
The author discusses the administration and organization of the New York Family Court. In the second half of the article, the author focuses on the stigma attached to an adjudication of delinquency, and how the Family Court can combat that.

Cited in: Legal Aid Society Amicus

- James C. Logan & Karlheinz Kleeman, *Berlin Report: Juvenile Delinquency Before the Wall and Afterward (A Study in Comparative Criminal Law)*, 1963 Wash. Univ. L. Q. 296
The authors compare and contrast the juvenile codes of West Berlin with the Standard Juvenile Court Act and the Missouri Juvenile Code. In contrast to American statistics, the years after the Wall was erected saw a dramatic decrease in the number of offenses committed by juveniles.

Cited in: American Parents Committee Amicus

- Julian W. Mack, *The Juvenile Court*, 23 Harv. L. Rev. 104 (1909)
The author explains and supports the ideal of the juvenile court as *parens patriae* institution that looks at the best interests of the child and society, without regard to criminal law procedures.

Cited in: Appellant's Brief

- Robert B. McKay, *The Right of Confrontation*, 1959 Wash. U.L.R. 122
The author explores the importance of the right of confrontation and argues that the right should be available even in civil and administrative proceedings.

Cited in: Appellant's Brief

- John J. Molloy, *Juvenile Court- A Labyrinth of Confusion for the Lawyer*, 4 Ariz. L. Rev. 1 (1962)
The author writes from the perspective of a sitting juvenile court to explain the procedures used in his court and defend the lack of procedural due process in juvenile court and express doubt about the usefulness of a classically trained lawyer in these courts.

Cited in: Appellant's Brief, Appellee's Brief

- Note, *Juvenile Courts: Applicability of Constitutional Safeguards and Rules of Evidence to Proceedings*, 41 Corn. L.Q. 147 (1955)

The author examines recent decisions of the Pennsylvania and New York courts that fail to recognize due process rights of youth in favor of informal *parens patriae* courts. The author calls for a balance between fairness principles and the rehabilitative non-criminal nature of the juvenile court.

Cited in: Appellant's Brief

- Note, *Juvenile Delinquents, The Police State, Courts, and Individualized Justice*, 79 Harv. L. Rev. 775 (1966)
Through interviews and site visits, the authors catalogue the discretionary decisions of the players in the juvenile courts and the safeguards in place for youth.

Cited in: Jurisdictional Statement, Appellant's Brief, Legal Aid Society Amicus

- Monrad G. Paulsen, *Fairness to the Juvenile Offender*, 41 Minn. L. Rev. 547 (1957)
The author supports the ideals of the juvenile court that the purpose is not to punish youth like in the criminal, rather to rehabilitate them. He argues, however, that in order to do this, youth must be given certain rights in order to make the proceedings fair. This fairness principle need not extend as far as the Constitutional protections given to defendants in criminal trials.

Cited in: Jurisdictional Statement, Appellant's Brief, Appellee's Brief, American Parents Committee Amicus

- Charles W. Quick, *Constitutional Rights in the Juvenile Court*, 12 Howard L.J. 76 (1966)
The author examines the difference between criminal and juvenile court, concluding that there are little, and in fact the juvenile may be subject to greater loss of liberty. The author then examines in depth several due process protections and argues for the extension of these protections to juveniles as well as adult criminal defendants.

Cited in: Jurisdictional Statement, Appellant's Brief, American Parents Committee Amicus

- Frank J. Remington, *Due Process in Juvenile Proceedings*, 11 Wayne L. Rev. 688 (1965)
The author argues that it is not sufficient to abide by the minimum standards of due process that are articulated in appellate court rulings. Rather, the administrators of juvenile court must set higher standards and constantly assess and reevaluate those standards. The standards should be articulated, adhered to, and changed when necessary.

Cited in: American Parents Committee Amicus

- Sol Rubin, *Protecting the Child in the Juvenile Court*, 43 J. Crim. L.C. and P.S. 425 (1952)

This article exams the jurisdiction of juvenile court, detention of children before the court, procedure of juvenile court, and the treatment process of the court in order to point out existing provisions and suggest new provisions which protect the legal rights of the child without undermining the treatment goals of the juvenile court. The author argues that in order to fulfill the humanitarian aims of the juvenile court, the court will have to protect the children that are brought under its jurisdiction from its power.

Cited in: Jurisdictional Statement, Appellant's Brief, American Parents Committee Amicus

- Walter V. Schaefer, *Federalism and State Criminal Procedure*, 70 Harv. L. Rev. 1
The author discusses the problems and issues that arise in applying the Constitution to state criminal procedure.

Cited in: NLADA Amicus

- James E. Starrs, *A Sense of Irony in Southern Juvenile Courts*, 1 Harv. CR-CL L. Rev. 129 (1966)
The author uses his experience representing children arrested during civil rights demonstrations in Mississippi to illustrate the danger of the informal proceedings of juvenile court.

Cited in: Appellant's Brief

- Thomas A. Welch, *Delinquency Proceedings- Fundamental Fairness for the Accused in a Quasi-Criminal Forum*, 50 Minn. L. Rev. 653 (1966)
The author argues for the inclusion of Constitutionally guaranteed procedural rights in juvenile courts. While recognizing the goals of rehabilitation and lessened stigma in a juvenile adjudication, he argues that this is not the reality. The author also discusses in depth the need for lawyers in the juvenile court and some of the special ethical considerations these lawyers will face.

Cited in: Appellant's Brief

- Mitchell Wendell, *The Interstate Compact on Juveniles: Development and Operation*, 8 J. of Pub. L. 524 (1959)
The author details the use of the Interstate Compact on Juveniles among the states during its first few years of operation.

Cited in: Appellant's Brief

- Charles E. Wyzanski, *A Trial Judge's Freedom and Responsibility*, 65 Harv. L. Rev. 1281 (1952)

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The author attempts to establish positive norms of behavior for trial judges in a variety of types of cases.

Cited in: Legal Aid Society Amicus

C. Standards and Reports

- Children's Bureau, U.S. Dept of Health, Education, and Welfare, *Standards for Juvenile and Family Courts* (1966)

Cited in: Jurisdictional Statement, Appellant's Brief, NLADA Amicus, American Parents Committee Amicus

- United States Commission on Civil Rights Report, *Law Enforcement* (1965)
This report on equal protection in the south was issued in response to a Congressional request.

Cited in: Appellant's Brief