


THE ROLE OF YOUTH DEFENDERS

Mississippi Spring Youth Defender Certification Training
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 Gary L. "Gar" Blume
 Blume & Blume
 Attorneys at Law, PC
 2804 20th Avenue
 Northport, AL 35476
 (205) 556-6712
 gar@blumelawnet



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It All Starts with *IN RE GAULT*

- ◆ ***In Re Gault***, 387 U.S. 1 (1967)
- ◆ **Jerry Gault – 15 years old on June 8, 1964**
- ◆ **Trailer Park – Rural Arizona**
- ◆ **On Probation – Accomplice to Wallet Theft**

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What Was a Crank Phone Call?

- ◆ **Do You Have Prince Edward in a Can?**
- ◆ **Why Don't You Let Him Out?**
- ◆ **Is Your Refrigerator Running?**
- ◆ **Catch it Before it Gets Away!**

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The Jerry Gault Saga

◆ **WHAT DID A PHONE LOOK LIKE IN 1964???**

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The Jerry Gault Saga



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The Jerry Gault Saga

- ◆ Mrs. Cook – Trailer Park Neighbor
- ◆ Jerry & his buddy – Called her number & crudely made a comment to the effect that **they thought that she was well endowed.**
- ◆ Mrs. Cook – Called the Sherriff’s Office.

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The Jerry Gault Saga

- ◆ Jerry was arrested about 10 am
- ◆ Parents came home from work after 5 pm and couldn't find Jerry
- ◆ Other boy's mother called
- ◆ Went to Juvenile Detention
- ◆ Learned – Hearing Tomorrow Morning

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The Jerry Gault Saga

- ◆ The Charge: **MAKING A LEWD PHONE CALL**
- ◆ Adult Penalty: **Up to 60 Days**
Up to \$50 Fine

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Gault – PRELIMINARY HEARING
June 9, 1964

Present in Court:

- ◆ Judge McGhee
- ◆ Arresting Officer
- ◆ Jerry & His Parents

WHO'S MISSING???????

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Gault Preliminary

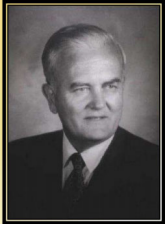
- ◆ Judge McGhee:
 - ◆ No Sworn Testimony
 - ◆ Asked Questions of the Cop
 - ◆ Asked Questions of Jerry

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Gault Preliminary

Judge McGhee:
 Kept Jerry Locked Up

No Record Other Than
 Judge's Docket Entry



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Gault TRIAL – June 15, 1964

Present in Court:

Judge McGhee
 Prosecutor
 Probation Officer **WHO'S MISSING???**
 Arresting Officer
 Jerry & His Parents

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Gault TRIAL – June 15, 1964

DEFENSE LAWYER???
Gideon - Decided by SCOTUS
 March 18, 1963

MRS. COOK???
NEVER APPEARED !!!

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Gault Trial – June 15, 1964

- ◆ **Jerry's mother asked:**
 - ◆ **Shouldn't Mrs. Cook be here to tell which boy's voice she recognized on the phone?**
- ◆ **Judge McGhee:**
 - ◆ **It's Not Necessary to Bother Her**

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Gault Trial – June 15, 1964

Other Problems???

- ◆ **No Petition or Charging Document**
- ◆ **No Transcript or Record of the Trial**
- ◆ **No Sworn Testimony**
- ◆ **Judge McGhee Questioned Jerry Himself**

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Gault Trial – June 15, 1964

- ◆ Judge McGhee found Jerry to be Delinquent
- ◆ Sentenced him to **Fort Grant Industrial School** until he turned 21
 - ◆ **5+ Year Sentence!!!**



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What's A Mother To Do?

- ◆ **Jerry's Mother asked Judge McGhee if she could give Jerry a hug before he was taken back to lockup.**
- ◆ **The Judge refused.**
- ◆ **She was so incensed that she started looking for a lawyer that afternoon.**

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Who Did Jerry's Mother Find?

AMELIA LEWIS



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Who Was Amelia Lewis?

From the Bronx

Practiced law for 33 years in New York (1924-1957)

19th Amendment – Effective 1920

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Who Was Amelia Lewis?

Moved to Phoenix, AZ & took the Arizona bar exam.

Only one other woman took the bar exam at that time:

Sandra Day O'Connor

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What did Amelia Lewis Do?

- ◆ **Arizona Law Did Not Provide for Appeal from a Juvenile Delinquency Adjudication!**
- ◆ **Amelia filed a Habeas Corpus Petition to the Arizona Supreme Court.**
- ◆ **AZ Supremes Ordered Judge McGhee to Conduct a Hearing**
- ◆ **Judge McGhee Denied Relief – August 17, 1964**

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What did Amelia Lewis Do?

- ◆ **Appealed** to the AZ Supreme Court Arguing:
- ◆ **Denial of Due Process** because:
 - ◆ **No Notice of Specific Charges**
 - ◆ **Inadequate Notice of Hearings**
 - ◆ **No Advisement of – Right to Counsel**
Right to Confront Accuser
Right to Remain Silent

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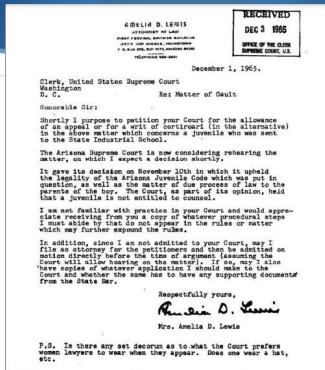
DUE PROCESS

- ◆ **Admission of Unsworn Testimony**
- ◆ **No Transcript**
- ◆ **No Right to Appeal**

**Arizona Supreme Court
 Affirmed – Dec. 14, 1965**
Jerry's been locked up for 18 months+!

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CERT PETITION



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SCOTUS – May 15, 1967

- ◆ **8-1 in Jerry’s Favor**
- ◆ **Justice Fortas** wrote the Opinion:
- ◆ **Neither the 14th Amendment nor the Bill of Rights is for ADULTS ONLY!**

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SCOTUS – May 15, 1967

- ◆ **Under our Constitution, THE CONDITION OF BEING A BOY DOES NOT JUSTIFY A KANGAROO COURT.**
- ◆ **DUE PROCESS is the PRIMARY & INDISPENSABLE FOUNDATION of INDIVIDUAL FREEDOM.**

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The Rest of The Story?

WHAT EVER HAPPENED TO JERRY & AMELIA?

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Jerry & Amelia in 1987



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MISSISSIPPI Attorney – Client Relationship

- ◆ § 43-21-201(1)
- ◆ In delinquency matters the court **SHALL APPOINT LEGAL DEFENSE COUNSEL** who is not also a guardian ad litem for the same child.

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§ 43-21-201(1)

- ◆ ... the child **SHALL** be represented by counsel **AT ALL CRITICAL STAGES:** detention, adjudicatory and dispositional hearings; parole or probation revocation proceedings; & post-disposition matters.
- ◆ If indigent, the child shall have the right to have counsel appointed for him by the youth court.

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Juvenile Defender's Statutory Responsibilities

- ◆ § 43-21-201(4)
- ◆ The Juvenile Defender **OWES THE CHILD THE SAME DUTIES AS ARE DUE AN ADULT CLIENT:**
- ◆ **UNDIVIDED LOYALTY**
- ◆ **CONFIDENTIALITY**
- ◆ **COMPETENT REPRESENTATION**

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Who's In Charge?

- ◆ We are to conduct the child's defense in accordance with the child's **EXPRESSED INTERESTS** – We are **CLIENT DIRECTED**.
- ◆ **THUS, YOUR KID-CLIENT IS "THE BOSS OF YOU."**
- ◆ How do we reconcile this with neuro-scientific research during the past 15-20 years?

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Just Like With Adult Clients

McCoy v. Louisiana, 138 S.Ct. 1500 (May 14, 2018)

The 6th Amendment guarantees the assistance of counsel.

The **defense lawyer's province is trial management.**

A **defendant has an absolute right to CHOOSE THE OBJECTIVE OF THE DEFENSE.**

THE DEFENSE LAWYER MUST ABIDE BY THE CLIENT'S DECISION.

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CHILD'S PARENTS???

- ◆ **Where do the Parents fit in with all of this???**
- ◆ **Appointed/Contract?**
- ◆ **Retained/Paid by Parents?**

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J.D.B. v. North Carolina

- ◆ *J.D.B. v North Carolina*, 131 S.Ct 2394 (2011)
- ◆ 2nd Most Important SCOTUS Juvenile Case
- ◆ **Juvenile *Miranda* / Custodial Rights – The Reasonable Child Standard**

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The J.D.B. Saga

- ◆ **Suspect in a string of burglaries**
- ◆ **13-year-old special education 7th grader**

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The *J.D.B.* Saga

- ◆ Removed from Class by **Uniformed Officer** & Taken to a Small Conference Room
- ◆ **Uniformed Officer**; **School Resource Officer**; **Male Assistant Principal**; & **Adult Administrative Intern**

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The *J.D.B.* Saga

- ◆ **Questioned for 45 minutes**
- ◆ **Not told he was free to leave**
- ◆ **Not advised of his juvenile *Miranda* rights**

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The *J.D.B.* Saga

- ◆ **Assistant Principal Told JDB:**
- ◆ **Do The Right Thing**
- ◆ **The Truth Always Comes Out In The End**

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The *J.D.B.* Saga

- ◆ You'll Be Locked Up, Unless You Come Clean!
- ◆ So JDB Confessed

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The *J.D.B.* Saga

CAIT FENHAGEN

Hillsborough, NC
Public Defender's
Office – JU Ct



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The *J.D.B.* Saga

- ◆ Motion to Suppress Alleging:
 - ◆ Custodial Setting
 - ◆ No Miranda

(5th Amendment)

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The *J.D.B.* Saga

- ◆ **LOST** in Trial Court, but **PRESERVED THE ISSUES**
- ◆ **LOST** in NC Appellate Court
- ◆ **LOST** in NC Supreme Court

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The *J.D.B.* Saga

HANNAH DEMERITT



SCOTUS Petition

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J.D.B. - SCOTUS

◆ **Rejected ONE SIZE FITS ALL Analysis**

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J.D.B. - SCOTUS

◆ If a **child's age** is "**objectively apparent** to a reasonable officer," **age must be considered** in the *Miranda* analysis.

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J.D.B. - SCOTUS

◆ **Youth** is a fact that **generates common-sense conclusions** about **behavior and perception**.

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J.D.B. - SCOTUS

◆ This analysis **DOES NOT REQUIRE SPECIALIZED TRAINING** – IT IS OBVIOUS TO ANYONE WHO WAS ONCE A CHILD, **INCLUDING POLICE OFFICERS AND JUDGES**.

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J.D.B. - SCOTUS

- ◆ **Our history is replete with laws and judicial recognition that children cannot be viewed simply as miniature adults.**

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J.D.B. - SCOTUS

- ◆ **The law has historically reflected the same assumption that children characteristically lack the capacity to exercise mature judgment & possess only an incomplete ability to understand the world around them.**

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J.D.B. - SCOTUS

- ◆ **THE LEGAL DISQUALIFICATIONS PLACED ON CHILDREN AS A CLASS ... EXHIBIT THE SETTLED UNDERSTANDING THAT THE DIFFERENTIATING CHARACTERISTICS OF YOUTH ARE UNIVERSAL.**
- ◆ Justice Sotomayor

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J.D.B. - SCOTUS

◆ **Where have we heard this kind of language from SCOTUS before?**

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J.D.B. - SCOTUS

◆ **8th Amendment Cases:**

- ◆ *Roper v Simmons*
- ◆ *Graham v Florida*
- ◆ *Miller v Alabama*
- ◆ *Montgomery v Louisiana*

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Arguments From J.D.B.

◆ Age should also serve to **excuse or mitigate delinquent (or criminal) culpability:**

- ◆ Self-defense
- ◆ Duress
- ◆ Provocation
- ◆ Negligence
- ◆ Recklessness
- ◆ Accomplice Culpability

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The Rest of the Story

**WHAT EVER
HAPPENED TO
J.D.B.???**

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???

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§ 43-21-555 – Say What???

- ◆ **PLEA BARGAINING PROHIBITED**
- ◆ Under **NO CIRCUMSTANCES** shall the party or the prosecutor engage in discussion **FOR THE PURPOSE OF AGREEING** to exchange concessions by the prosecutor for the party’s admission to the petition.
- ◆ **HOW CAN THIS BE RECONCILED WITH YOUR DUTY TO ZEALOUSLY ADVOCATE FOR YOUR CLIENT?**

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**Lawyer is a
Mandatory Reporter**

- ◆ § 43-21-353 – Mandatory Reporter Statute
Specifically Includes Attorneys
- ◆ HOW DO YOU RECONCILE THIS STATUTORY DUTY WITH POTENTIAL CRIMINAL/DELINQUENCY CONSEQUENCES WITH YOUR DUTY OF UNDIVIDED LOYALTY, CONFIDENTIALITY, AND COMPETENT REPRESENTATION?

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**Lawyer is a
Mandatory Reporter**

- ◆ Is this provision constitutional?
- ◆ DOESN'T THIS IMPINGE UPON THE CHILD'S RIGHT TO COUNSEL, A FAIR TRIAL AND GENERAL DUE PROCESS RIGHTS?

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**Collateral Consequences of a
Juvenile Delinquency Record**

- ◆ THERE IS NO STATUTORY PROVISION THAT IMPOSES A DUTY ON A JUVENILE DEFENDER TO NOTIFY A CLIENT AND/OR HIS/HER PARENTS OF COLLATERAL CONSEQUENCES OF A JUVENILE DELINQUENCY RECORD.
- ◆ IS THERE OTHERWISE A DUTY, ETHICAL OR OTHERWISE?
- ◆ See, *Padilla v. Kentucky*, 559 U.S. 356 (2010).
6TH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL.

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Youth Court Ain't Las Vegas!

- ◆ **WHAT HAPPENS IN YOUTH COURT DOESN'T NECESSARILY STAY THERE!!!**
- ◆ **ARREST RECORDS PUBLIC IF** child has been adjudicated delinquent:
 - 2 or more** involving **felony charges** or **guns**
 - Violent offenses:** Murder, manslaughter, burglary, arson, armed robbery, aggravated assault
 - Any Sex Offense**

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Youth Court Ain't Las Vegas!

- ◆ **Arrest Records (continued):**
 - Drug sale, manufacture or distribution**
 - Possession of drugs with intent to sell, manufacture or distribute**
 - Driving Under the Influence**

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Youth Court Ain't Las Vegas!

- ◆ **Employment Opportunities** may be limited if records are public
- ◆ **Schools Can Easily Gain Access** - with just a written request to the law enforcement agency. § 43-21-255(3)
- ◆ **Schools Can Use Juvenile Adjudication as a basis to SUSPEND or EXPELL a student "for good cause."**
- ◆ **Public Benefits** – Temporary Assistance for Needy Families

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Youth Court Ain't Las Vegas!

◆ WORKING WITH CHILDREN PROHIBITED

most juvenile sex offenders are prohibited from “working with children” or owning/operating a child care service.
§ 43-15-305

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Youth Court Ain't Las Vegas!

◆ PUBLIC HOUSING

Registered sex offenders not allowed, including juveniles

Anyone in the household’s criminal activity can be the basis of an **eviction** to protect the other residents’ and staff’s **health, safety**, or right to **peaceful enjoyment** of the premises

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Youth Court Ain't Las Vegas!

◆ Driver’s License Suspensions

Drug Cases – 6 months

DUI – 6 months

◆ Sex Offender Registries - SORNA

13 years old & over must register

§ 45-33-49 (6) & (7)

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Our Biggest Challenges ...

- ◆ **Assessing the child's communication deficits.**

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Our Biggest Challenges ...

- ◆ **Age, experience, education level, learning disabilities, and varying degrees of child development.**

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Our Biggest Challenges ...

- ◆ **Studies show that 65 -70% of children involved in the criminal justice system have at least one diagnosable mental-health disorder.**

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Our Biggest Challenges ...

- ◆ The **spoken language competency** of **children involved in the criminal justice system** falls in the **bottom 1%** of the population at large.

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Our Biggest Challenges ...

- ◆ **Children** in the charged setting of the court system **often misunderstand** what **most judges & lawyers would consider simple** and commonly used words.

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Our Biggest Challenges ...

- ◆ *TEAMCHILD STUDY* of 15 – 18 year olds
- ◆ **THOUGHT “NEXT APPEARANCE IN COURT” HAD TO DO WITH HOW THEY WERE TO DRESS WHEN THEY CAME BACK TO COURT** (hair combed & conservatively dressed)

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Our Biggest Challenges ...

- Why don't you just say:
- “YOU HAVE TO COME BACK TO COURT WHEN YOU'RE TOLD TO?”**

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Our Greatest Challenge!

- The JUDGE Who Wants the Docket to Move Along!**



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QUESTIONS
???

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