

IN THE SUPREME COURT OF OHIO

In Re: **COREY SPEARS,  
A MINOR CHILD**

CASE NO: 06-1074

On Appeal from the Licking  
County Court of Appeals  
Fifth Appellate District  
C.A. Case No. 2005-CA-93

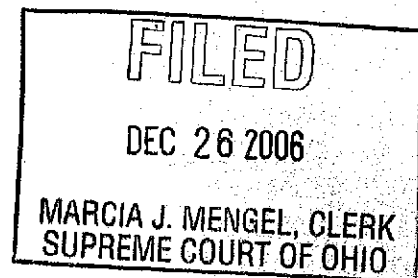
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**BRIEF OF AMICI CURIAE JUVENILE LAW CENTER, ET AL.  
IN SUPPORT OF APPELLANT COREY SPEARS**

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## **IDENTITY OF *AMICI CURIAE***

*Amici Curiae* are Juvenile Law Center, National Association of Criminal Defense Lawyers, and the National Juvenile Defender Center.<sup>1</sup>

## **STATEMENT OF FACTS**

*Amici Curiae* hereby adopt the Statement of Facts set forth in Appellant's Brief.

## **INTEREST OF *AMICI CURIAE***

While the presence of counsel is now commonplace in juvenile delinquency proceedings, the precise role that counsel plays is less well understood. *Amici* Juvenile Law Center, National Juvenile Defender Center, and National Association of Criminal Defense Lawyers endeavor through this brief to describe that role in detail, from a youth's first contact with the juvenile justice system through direct appeal. Throughout, we include as well the voices of lawyers across the country who have represented children at all stages of delinquency proceedings and who share, firsthand, how their representation made a real and significant difference in the lives of their clients. As this Court confronts the validity of the waiver of the right to counsel by appellant Corey Spears and his mother, *Amici* believe that a full understanding of the many tasks assigned to and undertaken by counsel in these proceedings, as well as the risks, at every stage, that children face without counsel, is essential to a determination of this issue.

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<sup>1</sup> A brief description of each organization can be found in Appendix A.

## ARGUMENT

### I. *First Proposition of Law of Amici Curiae*

#### **Waiver of the Right to Counsel at any Stage of a Delinquency Proceeding Jeopardizes Fundamental Rights and Exposes Youth to Grave and Sometimes Unforeseen Lifelong Consequences**

*The child "requires the guiding hand of counsel at every step in the proceedings against him." In re Gault, 387 U.S.1, 36 (1967) (quoting Powell v. Alabama, 287 U.S. 45, 69 (1932)).*

It is firmly established that a child has the right to counsel at any and all stages of a delinquency proceeding where the child's liberty may be curtailed. *In re Gault*, 387 U.S. 1 (1967); *Gideon v. Wainwright*, 372 U.S. 335 (1963). As we approach the 40<sup>th</sup> anniversary of *Gault* in 2007, *Amici* urge this Court to give full meaning to *Gault*, by reversing the adjudication below which was imposed following both an un-counseled waiver of the youth's right to an attorney and an un-counseled admission of guilt by a youth barely fourteen years old.

Forty years ago, the United States Supreme Court wrote:

The juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it.

*Gault*, 387 U.S. at 36. Today, the need for the assistance of counsel in juvenile court is even more paramount, as greater numbers of youth are at risk of adult prosecution, dispositions have become longer and more punitive, and delinquency adjudications now carry collateral consequences that follow the youth into adulthood and, in some cases, for the rest of their lives. Of equal if not greater importance, as the stakes in juvenile court have risen, social science research has confirmed that most youth lack the capacity, on

their own, to understand the nature of those stakes and to make intelligent decisions about how to navigate the increasingly complex dimensions of the modern juvenile court.

Because of these complexities, children charged as delinquents should be provided with continuous legal representation throughout the delinquency process including, but not limited to, detention, pre-trial motions or hearings, adjudication, disposition, post-disposition, probation, appeal, expungement and sealing of records. In the decades since *Gault*, the scope and importance of the representation of counsel has been repeatedly recognized and codified in national standards for juvenile court practice.<sup>2</sup>

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<sup>2</sup> See American Council of Chief Defenders & National Juvenile Defender Center, *Ten Core Principles for Providing Quality Delinquency Representation through Indigent Defense Delivery Systems* (January 2005), available at [http://www.njdc.info/pdf/10\\_Principles.pdf](http://www.njdc.info/pdf/10_Principles.pdf) [hereinafter *Ten Core Principles*]; Am. Bar Ass'n, et al., *Justice Cut Short: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings in Ohio*, Chapter 6: Recommendations (March 2003) available at [http://www.njdc.info/pdf/Ohio\\_Assessment.pdf](http://www.njdc.info/pdf/Ohio_Assessment.pdf) [hereinafter *Justice Cut Short*] (recommending that the Governor and Legislature should enact and implement an unwaivable right to counsel for all children and youth for every stage of delinquency and unruly proceedings, including probation revocation hearings where loss of liberty is a possible outcome); Inst. of Judicial Admin. & Am. Bar Ass'n, *Juvenile Justice Standards: Standards Relating to Pretrial Court Proceedings* (1980) [hereinafter *Standards Relating to Pretrial Court Proceedings*] (calling for the effective assistance of counsel at all stages of the proceeding and advising that the right to counsel should attach as soon as possible, and advocating that the juvenile should have the mandatory and unwaivable right to effective assistance of counsel at all stages of the proceedings)]; Patricia Puritz, et al, Am. Bar Ass'n Juvenile Justice Center, *A Call for Justice: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* (1995) [hereinafter *A Call for Justice*] (standards of representation should guarantee that every juvenile has counsel, that the right to counsel is not waived, and that the juvenile is represented from the earliest stages of the proceeding through post-disposition stages); National Ass'n of Counsel for Children, *NACC Policy Agenda: Juvenile Justice Policy*, adopted May 17, 1997, available at [www.naccchildlaw.org/policy/policy\\_agenda.html](http://www.naccchildlaw.org/policy/policy_agenda.html) (juveniles accused of offenses should be represented by competent counsel in all court proceedings, including post-disposition proceedings); National Advisory Commission on Criminal Justice Standards, *Juvenile Justice Standards Relating to Interim Status* (1980), Standard 7.6C (right to counsel at each stage of formal juvenile justice process); National Council of Juvenile and Family Court Judges, *Juvenile Delinquency Guidelines: Improving Court Practice in Juvenile*

Consistent with *Gault*, Ohio statutory and case law specifically establish that the right to counsel extends to juveniles through all stages of the juvenile delinquency process. Ohio Rev. Code § 2151.352 (a child, his parents, custodian, or other person in *loco parentis* of such child is entitled to representation by legal counsel at *all stages of the proceedings* and if, as an indigent person, he is unable to employ counsel, to have counsel provided for him) (emphasis added); Ohio Juv. R. 4(A) (“Every party shall have the right to be represented by counsel and every child, parent, custodian, or other person in *loco parentis* the right to appointed counsel if indigent”); *See In re Kriak*, 30 Ohio App. 3d 83, 84, 506 N.E.2d 556, 557 (1986); *In re Kimble*, 114 Ohio App.3d 136, 139, 682 N.E.2d 1066 (1996).

In the case at bar, 13 year-old Corey Spears waived his right to counsel and plead to the charges against him early in the delinquency proceeding. He was thus unrepresented throughout all stages of that proceeding. Yet each stage is critical and presents particular options, risks and challenges for youth like Corey Spears. What those stages of the delinquency proceeding entail, and how counsel can make a difference at each of those stages, is set forth below.

**A. Legal Counsel Serves a Crucial Role During the Pre-Adjudication Stage of a Delinquency Case**

*Think of all the suppression issues that we raise that a child without counsel would not know how to handle.*

*Juvenile Public Defender, Virginia*

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*Delinquency Cases at 25* (2005) available at [www.ncfcj.org/content/view/411/411/](http://www.ncfcj.org/content/view/411/411/) [hereinafter *Juvenile Delinquency Guidelines*] (holding delinquency judges responsible for providing children with access to counsel at every stage of the proceedings, from before the initial hearing through post-disposition and re-entry).

Counsel's involvement during the pretrial phase of a juvenile case is critical to obtaining a favorable outcome for her client. *A Call for Justice* at 32. To ensure that a child is fully aware of the importance of counsel, and therefore does not unknowingly waive his right, the National Council of Juvenile and Family Court Judges recommends that when a child is served with a summons, information should also be provided to the child and his or her family as to why counsel for the youth is important, and what the child's options are for obtaining legal representation prior to the adjudication hearing. *Juvenile Delinquency Guidelines* at 74.

Prior to adjudication, attorneys should investigate facts, obtain discovery from prosecutors, acquire information about their client's personal history, file appropriate pretrial motions on behalf of their clients, and advocate for their clients at probable cause and detention hearings. *A Call for Justice* at 32. In fact, early intervention by lawyers can have a significant impact on the entire course of delinquency proceedings. *Id.* at 31. Experts agree that defense counsel should be assigned to youth at the earliest stage of the delinquency process. *Ten Core Principles* at Principle 1 (stating that the indigent defense delivery system should ensure that defense counsel is assigned at the earliest possible stage of the delinquency proceeding); *See also* American Bar Association, *Ten Principles of a Public Defense Delivery System: Principle 3* (2002) (counsel should be furnished upon arrest, detention, or request); *Juvenile Delinquency Guidelines* at 90 (describing a delinquency court of excellence as one in which counsel is appointed before any initial or detention hearing). Prompt appointment allows counsel to represent the child throughout all pretrial events, including arrest, intake, lineup and identification, interrogation,

preliminary hearings, discovery and investigation, pretrial motions, transfer hearings, and plea bargaining.

### **Arrest**

In Ohio, the child's right to counsel attaches when he or she is taken into custody. Ohio Juv. Rule 6. By taking a child into custody upon suspicion that the child has committed a delinquent act, the police have begun the child's journey through the juvenile justice system. If, at this point, the police officer determines that the case should proceed, and does not release the child with a warning, the child is taken to the police station for questioning. Although attorneys are rarely involved at this very early stage of a delinquency proceeding, they may offer guidance to youth when faced with the intimidating consequences of an arrest. Some youth who know they are facing arrest – for a probation violation or for running away from placement – may contact an attorney with whom they have had a previous relationship, but all youth would benefit from the assistance of an attorney at this important stage of the proceedings. Representation by an attorney at the time of arrest can ensure the child will have a thorough understanding of his rights against self-incrimination and of the process that he is about to enter. If the child is being held at the police station or will be detained prior to questioning or the filing of a petition, the attorney can begin advocating for the client's release or for an expedited process of questioning and intake. The role of the attorney at this early stage will ensure that the youth is aware of the charges against him and that the youth is aware of his rights against self-incrimination and to counsel.

## **Intake**

After a child is arrested, he is interviewed by a probation officer at the preliminary intake. At this stage, the probation officer will review the child's record, obtain his social history, and consider the seriousness of the charge alleged. Based upon this review, the probation officer makes a recommendation to the police whether to file a delinquency petition, divert the case out of the delinquency system, informally process the case through an informal adjustment, or dismiss the case entirely. Gary S. Katzmann ed., *Securing Our Children's Future: New Approaches to Juvenile Justice and Youth Violence*, Introduction at 10 (Brookings Institution Press 2002). Upon intake in the Ohio juvenile delinquency system, a child typically will be screened to determine whether the case should proceed to formal processing. Ohio Juv. Rule 9. The Ohio Rules of Juvenile Procedure specifically state that "[i]n all appropriate cases formal court action should be avoided and other community resources utilized to ameliorate situations brought to the attention of the court." *Id.* In order to assure that formal action is avoided, a child requires the assistance and expertise of counsel. If the case proceeds forward, the probation officer may have the authority to recommend whether the child should be released pending adjudication or whether the child requires secure detention. *See* Barry C. Feld, *The Right to Counsel in Juvenile Court: An Empirical Study of When Lawyers Appear and the Difference They Make*, 79 J. Crim. L. & Criminology 1185 (Winter 1989).

Because part of the probation officer's responsibility is to recommend to the prosecutor whether the case should be dismissed, diverted, or filed, the attorney's role in advocating for the best outcome for her client is paramount. First, the attorney can

provide the probation officer with helpful information about the child's social and community ties, including any positive activities in which the youth is involved.

Elizabeth Calvin, Sarah Marcus, George Oleyer, & Mary Ann Scali, *Juvenile Defender Delinquency Notebook: Advocacy and Training Guide* [hereinafter *Delinquency Notebook*] at 83 (2d ed. 2006). Furthermore, the attorney can ensure that the probation officer receives all the important information about the alleged incident – including the client's whereabouts and alibi if the client was not involved.

If the probation officer will not recommend dismissal, the attorney can raise the option of diversion and advocate that the child be diverted out of the delinquency system. An attorney for youth can present diversion programs within the child's community and arm the probation officer with alternatives to formal court processing. *Id.* at 84. If the probation officer recommends that the case proceed to formal court processing, the attorney can advocate for his client's interest by providing information to the probation officer so he may support a reduction in the severity of charges.

Lastly, at intake with a probation officer, youth are often subjected to various mental health screenings and assessments to determine the presence of mental health disorders or the necessity for mental health treatment. Although these tools can be an important mechanism for diverting children with severe mental health needs out of the delinquency system, they often provide opportunities for youth to make incriminating statements that may invite further charges. *Juvenile Delinquency Guidelines* at 45. For that reason, it is especially important that attorneys represent the interest of youth at this early stage. Attorneys for youth will be able to prepare them for what to expect from the



intake screenings, and explain to youth that their privilege against self-incrimination has attached and they can choose not to respond to the intake officer's questions.

### **Lineup and Identification**

When seeking witness identification of a suspect, police use a variety of techniques – including lineups, photo identifications, and driving around near the crime scene. By initiating representation at this early stage of the proceeding, an attorney for the youth can take protective measures and intervene if there appears to be an overly suggestive method of identification. If intervention is ineffective, the attorney can later call into question the validity of identification procedure at a suppression hearing.

### **Interrogation**

When a child is taken into custody and questioned, procedural safeguards must be in place to protect the minor's privilege against self-incrimination. In *Miranda v. Arizona*, 384 U.S. 436 (1966), the U.S. Supreme Court held that before being subjected to a custodial interrogation, the individual must be warned of his rights against self-incrimination and his right to counsel. Any statement obtained during a custodial interrogation absent these warnings or the individual's valid waiver of these rights would be inadmissible as admission would violate the individual's right against self-incrimination. *Id.* When counsel represents a child during an interrogation, she acts as a reminder to the child that he need not make incriminating statements or answer a police officer's questions. Furthermore, the attorney can ensure that police officers are not using overly coercive techniques. Even if counsel is not present during interrogation, she will be able to gather information about the interrogation in order to determine whether information was obtained coercively. If the child was coerced or not informed of his

rights prior to interrogation, the attorney can file a motion to suppress any incriminating statements the child made so that they are not introduced into evidence at adjudication.

### **Preliminary Hearings**

The first court appearance for a juvenile can take several forms – a preliminary hearing when the child is first appointed counsel, a probable cause hearing to determine whether there is probable cause to believe the child has committed a delinquent act and the case should proceed, a detention hearing to determine whether the child should be detained while awaiting adjudication, arraignment to formally charge the child, or to schedule an adjudication hearing. *Delinquency Notebook* at 132. At all pre-adjudicatory hearings, it is imperative that the child be represented by counsel to assure that his rights are protected. At a pretrial detention hearing, for example, where the court will determine whether the child should be detained or released between the time of arrest and adjudication, an attorney's assistance is particularly important. *See Schall v. Martin*, 467 U.S. 253, 275-77 (1984); Barry C. Feld, *Criminalizing Juvenile Justice: Rules of Procedure for the Juvenile Court*, 69 Minn L. Rev. 141, 191-209 (1984) [hereinafter Feld, *Criminalizing Juvenile Justice*]. Youth placed in secure detention facilities while awaiting adjudication are more likely than their non-detained counterparts to be formally processed and to receive more punitive sanctions at disposition. Barry Holman & Jason Zeidenberg, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*, A Justice Policy Institute Report, available at [http://www.justicepolicy.org/reports\\_jl/11-28-06\\_dangers/dangers\\_of\\_detention\\_report.pdf](http://www.justicepolicy.org/reports_jl/11-28-06_dangers/dangers_of_detention_report.pdf) (detained youth are more likely to be referred to court, see their cases

progress through the system to adjudication and disposition, have a formal disposition filed against them, and receive a more serious disposition).<sup>3</sup>

In Ohio, a child is entitled to a detention hearing within 72 hours of being placed in detention. Ohio Juv. Rule 7(F). A key function of counsel at this hearing is suggesting appropriate alternatives to detention for each child.<sup>4</sup> *Encouraging Judges to Support Zealous Defense Advocacy* at 3-4. Unfortunately, the detention hearing is often the first time the child meets with his attorney. Nevertheless, counsel can endeavor to provide the court with relevant information about the youth's offense history, family and community relationships, educational performance and mental health history to advocate against detention unless it is necessary to assure the child's safety. *A Call for Justice* at 31-32. Attorneys may also provide the court with suggestions of alternatives to secure detention, such as group homes, residential treatment facilities, house-arrest, or other non-secure community-based programs. *Id.*

### **Discovery and Investigation**

As an advocate for the interests of the child, counsel for youth charged with alleged offenses should begin investigating the charges as soon as possible. At this point, the client will have the freshest memory of the events and will be best able to assist

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<sup>3</sup> See also National Juvenile Defender Center, *Encouraging Judges to Support Zealous Defense Advocacy from Detention to Post-Disposition: An Overview of the Juvenile Delinquency Guidelines of the National Council of Juvenile and Family Court Judges* at 4 (Summer 2006) available at [http://www.njdc.info/pdf/ncjfcj\\_fact\\_sheet.pdf](http://www.njdc.info/pdf/ncjfcj_fact_sheet.pdf). [hereinafter *Encouraging Judges to Support Zealous Defense Advocacy*], quoting C.E. Frazier & J.C. Cochran, *Detention of Juveniles: Its Effects on Subsequent Juvenile Court Processing Decisions*, 17 *Youth & Soc'y* 286-305 (1986); C.E. Frazier & D.M. Bishop, *The Pretrial Detention of Juveniles and its Impact on Case Disposition*, 76 *J. of Crim. L. & Criminology* 1132-1152 (1985); See also *A Call for Justice* at 32.

<sup>4</sup> If the child has been unlawfully detained, the attorney may also file a *habeas* petition to challenge the detention.

counsel in crafting a defense strategy. *Id.* at 32-33. Lawyers for children play a crucial role in obtaining discovery that is most helpful to the court in its adjudication and disposition processes. For instance, the attorney would be able to compile information related to the police investigation, juvenile justice records, medical records, school records, and radio transmission records. Finally, an attorney would have the legal expertise to file a subpoena if there are other witnesses that she would like to have testify at adjudication. Lawyers would also conduct a prompt investigation of the facts and circumstances of the case to obtain information in the possession of prosecutors, police, school authorities, probation officers, and child welfare personnel. Inst. for Judicial Admin. & Am. Bar Ass'n, *Juvenile Justice Standards, Standards Relating to Counsel for Private Parties* at Standard 4.3 (1980) [hereinafter *Standards Relating to Counsel for Private Parties*]. At this early stage, attorneys for children are also able to explore dispositional alternatives, resources and services available in the community to assist in disposition planning later in the proceeding. *A Call for Justice* at 33. Attorneys are advised that "[m]any important rights of clients involved in juvenile court proceedings can be protected only by prompt advice and action. The lawyers should immediately inform clients of their rights and pursue any investigatory or procedural steps necessary to protect their clients' interests." *Standards Relating to Counsel for Private Parties* at Standard 4.1.

### **Pretrial motions**

Attorneys have the unique ability to file pretrial motions with the court to preserve their client's interests during trial and in case of appeal. Such motions may include efforts to obtain discovery materials, to suppress physical evidence and oral or

written confessions, or to challenge the circumstances of a pretrial identification. *Juvenile Delinquency Guidelines* at 30-31. Pre-trial motions typically filed in juvenile court include discovery and investigatory motions, motions *in limine*, and suppression motions. Attorneys can file motions to demand information regarding the alleged event or occurrence and police investigation. Based upon the investigation of the alleged delinquent act, attorneys may file motions to suppress evidence obtained unlawfully – whether through an unlawful search or seizure, or an illegally obtained confession. To prevent or protect the admission of evidence attorneys can also file motions *in limine*. In juvenile court, the informal procedure often leads to a relaxed atmosphere where any evidence is admitted. It is the attorney's role to ensure that any incriminating or prejudicial evidence about his or her client is excluded.

### **Transfer**

Although youth have an absolute and unwaivable right to counsel at a transfer hearing in Ohio, representation by an attorney prior to the transfer hearing can ensure that all preventive measures are taken prior to a discretionary transfer to adult court.

### **Plea bargaining**

Immediately prior to adjudication, there is one last mechanism to avoid the formal hearing – the plea bargain. Studies have shown that overwhelming numbers of juvenile cases result in plea bargains. Judith B. Jones, *OJJDP Juvenile Justice Bulletin: Access to Counsel* at 5 (June 2004), available at [www.ojp.usdoj.gov](http://www.ojp.usdoj.gov) (stating that as many as 90 percent of juvenile cases result in plea bargains). Because of the growing collateral consequences of a juvenile record, attorney representation at a plea bargain is vital. Unfortunately, too often plea agreements are used for expediency without providing

youth with a thorough understanding of the consequences of a plea. Counsel can provide the child with an overview of the nature of the charges against him, the possible plea agreements the prosecutor may pursue, and the consequences of a guilty plea – including detention, probation, restitution, and any collateral consequences of adjudication. Experts caution against the widespread use of pleas in juvenile court.<sup>5</sup> In the absence of attorney representation, it is unlikely that a juvenile would be able to make an informed choice and therefore could possibly enter into a plea agreement without fully understanding the implications. In addition to better informing the child about his options in entering into a plea agreement, an attorney will also negotiate the plea agreement with the prosecutor. Without representation, a child or his parent would be ill-equipped to negotiate with a skilled prosecutor.

*In two instances I questioned competency in cases where the child had made a previous plea in juvenile court. In both cases, upon expert examination, the child was found incompetent, despite earlier findings of delinquency. The parent would be unlikely to be aware of the requirement for competency in due process and the court has such limited contact it would be unable to even recognize incompetence in many cases. Because the children were represented due process was not denied. Both children had charges resulting from acts during placements and their behavior was directly related to their youth and emotional difficulties. But the court system was well on its way to finding each child delinquent, one for arson and one for assault. Delinquency findings, especially the arson, would have made it even more difficult for us to find adequate treatment for these children. Removing the delinquency label forced the court, their families, and child protective services to address the problem instead of tracking them into the juvenile prison system. I don't believe this would have happened without representation.*

*Juvenile Public Defender, Ohio*

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<sup>5</sup> The Institute for Judicial Administration and American Bar Association, in its Juvenile Justice Standards, state that “a juvenile should not accept a plea bargain unless it is clear that the juvenile fully understands the alternative choices and the implications of a plea bargain in the event of re-arrest or failure to adhere to sentencing and probation provisions.” Inst. for Judicial Admin. & Am. Bar Ass’n, *Juvenile Justice Standards* (1980).

## **B. Legal Counsel Serves a Crucial Role During the Adjudication Stage of a Juvenile Delinquency Proceeding**

*I had a young woman who was accused of battering another girl. She was actually breaking up the fight between them. She wanted to stand up for what she did and did not want to be punished for doing the right thing and breaking up the fight. The alleged victim in the case didn't see my client because she was actually behind her, pulling her away from the girl who was actually fighting her. Without my representation at trial, my client would not have been able to cross examine the three state witnesses and to show that they were all lying to try and "get back" at my client. We won the trial, and my client went on to college without a criminal record.*

*Juvenile Public Defender, Florida*

An adjudication hearing is analogous to trial in adult criminal court. While some states provide juveniles with the right to a jury trial, in the vast majority of adjudicatory hearings, judges determine guilt or innocence. *Katzmann*, at 10.<sup>6</sup> Prosecutors must establish guilt "beyond a reasonable doubt" while defense counsel argue for acquittal. *In re Winship*, 397 U.S. 358 (1970).

Defense counsel plays a crucial role throughout the adjudicatory hearing. During the prosecution's direct examination, competent defense counsel would immediately object to each inappropriate remark or question posed by the prosecutor. *Delinquency Notebook* at 193. Following direct, defense counsel would cross-examine witnesses in a manner that either undermines the prosecution's position or reinforces the defense's position. Cross-examining a police officer, mental health expert, expert witness, identification witness, co-defendant or the complainant each require a distinct set of considerations and strategies. *Id.* at 195-198. Defense counsel can also undermine the prosecution's arguments through adept impeachment of witnesses. This requires familiarity with the intricate, jurisdiction-specific rules governing impeachment.

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<sup>6</sup> Juveniles are not constitutionally entitled to trial by jury. *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971).

Challenging the admissibility of evidence is another vital role of defense counsel. Again, this requires a fluency in the elaborate set of rules governing admissibility of evidence in court. After the prosecution rests its case, defense might enter a motion for a directed verdict. *Id.* at 203.

Defense counsel then begins its presentation which involves direct examination, entering evidence, cross examination, redirect, and closing argument. Naturally, legal knowledge and training are critical to defense counsel's presentation. Defense counsel must always evaluate the risks/rewards of putting any particular witness on the stand, including assessing whether the youth should testify. *Id.* at 206. Counsel also evaluates the need for expert testimony, identifies an appropriate expert and qualifies the expert before questioning him or her. As in criminal court, evidence is governed by a complex set of rules with which counsel must be familiar. Even when the prosecutor is cross examining, defense counsel has a significant role, objecting when appropriate and considering what points need to be clarified upon redirect. *Id.* at 209. The redirect examination offers defense an opportunity to clarify issues, rehabilitate an impeached witness, and reframe testimony if necessary. Finally, during closing argument defense counsel demonstrates that the prosecution has failed to meet its burden of proof.

Defense counsel is also responsible for protecting client's appellate rights. Preserving issues for appeal requires an understanding of the legal process that cannot be expected from those without legal training. Specifically, defense counsel creates a complete record during the proceedings which involves verifying that all relevant facts and decisions are on the record and all appropriate legal issues have been raised. *Id.* at



250. A complete record includes all statements made in court, the judge's rulings on all motions and objections, and written offers of proof for excluded evidence. *Id.*

*I represented a juvenile client who was prosecuted both as a youth and as an adult. The U.S. Attorney collaborated with the Corporation counsel of the District and tried him first as an adult. He had initially been charged as a co-defendant with two other young men, one of them his cousin, for armed robbery and kidnapping. The allegation was that they had taken the car from someone and locked him in the trunk and gone joyriding. The two other boys were persuaded to plead to the charges by my client's aunt. They got Federal Youth Act sentences and testified against my client. My client was the only one who asserted his right to counsel which made the U.S. Attorney think that he was sophisticated and the ring leader. In any event, a jury acquitted my client who was then tried as a juvenile in a burglary where the only evidence was his fingerprints in a busy video store. He was again acquitted by the juvenile court judge. The client and his sister told me that my representation changed their lives. The client is now 36 years old, gainfully employed and living a crime and drug free life.*

*Law Professor, Washington D.C.*

**C. Attorney Representation is Especially Important During the Adjudicatory Stage Because of the Potentially Far-Reaching Consequences of Adjudication**

*I represented a 17 year old charged with possession of cocaine. He was found guilty in juvenile court; the judge refused to take the matter under advisement or allow the child to be on probation and pursue drug education with the goal of having the charge dismissed. My client was attending a local community college and was going to lose his federal financial aid if the conviction stood. We appealed the case (de novo) to circuit court where the trial judge did take it under advisement, required my client to do well in school and not get in any further trouble. After a year, the case was dismissed. He did not lose his federal financial aid and eventually went on to graduate.*

*The client and his parents were shocked to find out that he would lose his financial aid with a delinquency conviction in juvenile court for drugs. Without a lawyer explaining the collateral consequences this young man would have lost his opportunity to go to college.*

*Juvenile Public Defender, Virginia*

While the direct consequences of adjudication may be fairly obvious, the numerous collateral consequences are obscure and unlikely to be evident to an uncounseled youth or his parent. In the absence of legal representation it is probable that a juvenile would be left unaware of such consequences until their onset. Juveniles must be warned of these indirect sanctions as they may have drastic consequences for their future

career and educational opportunities. The collateral consequences of delinquency adjudications render the need for legal representation even more acute.

Collateral consequences hinder a juvenile's ability to productively reintegrate into society. A juvenile's housing, education, employment, and subsequent judicial matters may be impacted by adjudication. For example, adjudications could disqualify juveniles from public housing. See Kristin Henning, *Eroding Confidentiality in Delinquency Proceedings: Should Schools and Public Housing Authorities be Notified?*, 79 N.Y.U. L. Rev. 520 (2004) [hereinafter Henning, *Eroding Confidentiality*]. Housing authorities routinely conduct background checks for adult applicants and may "investigate whether any member of the family unit, including a juvenile member, has been convicted of specific disqualifying offenses." Michael Pinard, *The Logistical and Ethical Difficulties of Informing Juveniles about the Collateral Consequences of Adjudications*, 6 Nev.L.J. 1111, 1114 (2006) [hereinafter Pinard, *Logistical and Ethical Difficulties*]. While juvenile records are often inaccessible, "there is evidence that some housing authorities attempt to screen for juvenile records despite state laws that limit or deny access." Henning, *Eroding Confidentiality* at 570. Juveniles adjudicated delinquent for sexual offenses who are required to register as sex offenders may have their housing options limited by community notification provisions.<sup>7</sup>

A juvenile's educational opportunities also may be compromised as a result of adjudication. Public schools "acting pursuant to zero tolerance policies often expel students who have been adjudicated in juvenile court." Henning, *Eroding Confidentiality*

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<sup>7</sup> Sex offenders subject to community notification requirements often find themselves with limited, undesirable housing options when community members mobilize around campaigns to prevent registered sex offenders from moving into their neighborhoods.

at 577-79. Unfortunately, expelled juveniles often face difficulty finding an alternative education placement. Because juveniles who lack access to education are at great risk of returning to the juvenile justice system, and ultimately the criminal justice system, the potential collateral consequence of expulsion is particularly severe. *See generally*, Advancement Project, *Education on Lockdown: The Schoolhouse to Jailhouse Track* (March 2005), available at <http://www.advancementproject.org/publications.html>. Adjudication may hinder a juvenile's chance of admission to an institution of higher learning as well. *See* Robert Shepard, *Collateral Consequences of Juvenile Proceedings: Part II*, 15 *Crim. Just.* 41 (Fall 2000), available at <http://www.abanet.org/crimjust/juvjus/cjmcollconseq2.html>. Moreover, an increasing number of college applications inquire into juvenile adjudications. *Id.*

A juvenile's employment opportunities may also be limited by adjudication. While historically juvenile adjudications have not been characterized as criminal convictions for purposes of employment applications, increasingly applications "include specific references to juvenile adjudications." *Id.* While the juvenile justice system originally intended to insulate juveniles from the collateral consequences of criminal convictions, these protections have been eroding in highly consequential ways.

Military service is a specific arena in which adjudication may preclude eligibility. Based on the U.S. Army's classification system, juvenile delinquency adjudications qualify as criminal offenses. *Id.* While each division of the military has distinct regulations governing the use of juvenile delinquency and criminal records, no division explicitly prohibits the use of such records. A juvenile may request a moral waiver to

enlist in the army; however, certain enumerated offenses render an applicant ineligible for waiver. A.R. 601-210(4-24).

The loss of driving privileges which frequently flow from adjudication may indirectly impact employment opportunities as well. Certain types of juvenile adjudications may result in revocation or suspension of a driver's license, or inability to obtain a license in the first place. For juveniles who reside in rural communities where there is limited, if any, public transportation, the inability to drive may translate into an inability to work.

Finally, adjudication may have significant ramifications in subsequent judicial matters. A past juvenile adjudication "may affect sentencing in future criminal proceedings." Pinard, *Logistical and Ethical Difficulties* at 1115. "Many federal and state statutes provide for sentence enhancements for repeat offenders, including those convicted in juvenile adjudications." Douglas M. Schneider, *But I Was Just a Kid: Does Using Juvenile Adjudications to Enhance Adult Sentences Run Afoul of Apprendi v. New Jersey*, 26 Cardozo L. Rev. 837, 838 (2005). The Armed Career Criminal Act (ACCA) is just one example; ACCA imposes a fifteen-year minimum sentence for those in violation of the "felon in possession statute." 18 U.S.C. § 922 (criminalizing possession of a firearm by a felon, a fugitive from justice, an unlawful drug user, or one who falls into several other categories). ACCA explicitly states that a "conviction" includes juvenile delinquency adjudications involving a violent felony. *Id.* at § 924(e)(2)(C).<sup>8</sup>

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<sup>8</sup> The collateral consequences for adults are even more expansive and more severe. Thus, there is a heightened need for legal representation for juveniles designated as "Serious Youthful Offenders" eligible for blended sentencing. Ohio Rev. Code Ann. §§ 2152.13(D)(1)(a), 2152.13(D)(2)(a)(i). Because such juveniles may face adult criminal convictions, they also must be apprised of the collateral consequences of adult sentences.

#### **D. Legal Counsel Serves a Crucial Role at Disposition**

*My client had a short-barreled shotgun at school the day after the Red Lake, MN shootings. The court allowed the petition with his name on it to be released to the press even though he was in juvenile court. The state's initial request was to waive the boy to adult court and send him to prison. The client had two prior nonviolent delinquency adjudications. My first step was to advise my client to sit in detention and allow the furor to die down. He was generally a quiet, pleasant boy who had been attending a private school on a partial athletic scholarship. His parents were unable to afford their portion of the tuition and he entered a large public school where the offense occurred. He had fallen behind on his credits and was starting to truant school on a regular basis.*

*While I didn't condone his bringing a weapon to school, it turned out that the client had a justified fear of being jumped because he had been threatened by alleged gang members regarding that specific day and a friend, who also had been threatened, had actually been assaulted at school that week. I obtained a psychologist who was able to testify that the client should not be waived to adult court based on his history and assessments. There were character witnesses including his former principal, a prominent local pastor, and family members. After losing the waiver, the D.A. advocated for corrections until my client turned 18. After consideration of all of the facts, the court ordered the client to enter a well-respected group home in Wisconsin. The D.A. then came into court after the client had spent only ten weeks in the group home, asking for services to be terminated as no longer necessary. The court did not allow that. The client successfully completed the programming at the home in less than eight months and he left the home with everything required to take the GED examination. Instead of a prison record and no future, the client ended up with a juvenile adjudication which is not a conviction in my state, a GED credential, and a clean adult record.*

*Juvenile Public Defender, Wisconsin*

A juvenile's right to counsel continues during the disposition stage of a delinquency case. Because Ohio law entitles a juvenile to representation by counsel at *all stages* of a delinquency proceeding, waiver of the right to counsel at one stage does not preclude a juvenile from asserting his right to counsel at a subsequent stage. *See In re S.J.*, 2006 WL 2484276, at \*2-3, 2006 Ohio 4467 (Ohio App. 9 Dist. 2006) (Slip Copy)

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(For a discussion of adult collateral consequences see Deborah N. Archer & Kele S. Williams, *Making America "The Land of Second Chances": Restoring Socioeconomic Rights for Ex-Offenders*, 30 N.Y.U. Rev. L. & Soc. Change 527 (2006); Ben Geiger, *The Case for Treating Ex-Offenders As A Suspect Class*, 94 C.L.R. 1191 (2006); Margaret E. Finzen, Note, *Systems of Oppression: The Collateral Consequences of Conviction and Their Effects on Black Communities*, 12 Geo. J. on Poverty L. & Pol'y 299 (2005)).

(a juvenile who validly waives counsel during at adjudication does not lose the right to request counsel at disposition, and at disposition the trial court must reiterate the right to counsel and afford the juvenile a new opportunity to invoke or waive the right); *In re Ratliff*, 2002 WL 745370, at \*3, 2002 Ohio 2070 (Ohio App. 12 Dist. 2002) (not reported in N.E.2d) (trial court violated juvenile's right to counsel by proceeding at the disposition hearing without obtaining a waiver of the right to counsel where the juvenile was represented by appointed counsel at the adjudicatory hearing and counsel did not appear at the disposition hearing).

During disposition, the court decides what sanctions to impose upon the juvenile. In Ohio, the overriding purposes of disposition are "to provide for the care, protection, and mental and physical development of [delinquent] children...protect the public interest and safety, hold the offender accountable for the offender's actions, restore the victim, and rehabilitate the offender." Ohio Rev. Code § 2152.01(A); *see generally A Call for Justice* at 36 (the purpose of disposition is to develop a plan to meet the youth's educational, emotional and physical needs while simultaneously protecting the public from future offenses). Legal representation is invaluable at this critical stage of a juvenile's journey through the delinquency process. An extensive exploration of resources is required during this phase to ensure that appropriate rehabilitative services are provided to the youth. *See A Call for Justice* at 38 ("More than at any other stage of the juvenile justice system, counsel should explore every possible resource during the dispositional process...The lasting impact that dispositions have on children's lives should not be underestimated.") This is particularly true in Ohio where the Ohio Code

requires that the purposes of disposition “be achieved by a system of graduated sanctions and services.” Ohio Rev. Code § 2152.01(A).

One of the primary functions of legal counsel during disposition is to ensure that a juvenile receives the least restrictive disposition that satisfies the needs of both the youth and society, and that the disposition imposed takes into account the individual desires of the youth. *A Call for Justice* at 37 (citing Inst. for Jud. Admin. & Am. Bar Ass’n, *Juvenile Justice Standards, Standards Relating to Disposition*, Standards 2.1 & 2.2 (1980)). An attorney is well-equipped to actively find and advocate for appropriate alternatives to incarceration, such as supervised or unsupervised probation; community service; house arrest; limitations on travel or car use; structuring of a youth’s time; restrictions on privacy; voluntary submission to searches or breathalyzer tests at the behest of law enforcement; part-time detention during non-school hours and/or on weekends; enrollment in a day reporting center or program; monitoring by a community member (i.e., clergy member, employer, counselor, teacher); electronic monitoring; victim restitution; fines; an agreement to stay away from a victim or a specific neighborhood; placement in a group home in the community; and placement in a highly structured community residential program. *See generally Ten Core Principles* at Principle 8 (asserting that juvenile defense counsel are obligated “independent from court or probation staff, to actively seek out and advocate for treatment and placement alternatives that best serve the unique needs and dispositional requests of each child”).

While there is a wide array of possible dispositions, a detained juvenile eager to resolve his case may be willing to agree to incarceration or a restrictive placement that may not be appropriate or in his best interests. In this situation, legal counsel would

serve an important role in advising the juvenile not to accept the placement, and in identifying and advocating for an alternative disposition.

Juvenile defense attorneys, on their own or with the assistance of social workers, investigators, paralegals, and interpreters, can review the recommendation and report submitted by a probation officer, independently identify the most appropriate disposition for the youth, and determine whether to agree with the recommendation or to advocate for a different disposition. *See generally Juvenile Delinquency Guidelines* at 142 (urging juvenile defense counsel to determine prior to a disposition hearing whether to agree with the recommended disposition or present an alternative); *Ten Core Principles* at Principle 4 (urging defenders to utilize litigation support services to provide quality juvenile defense services). For example, an attorney representing a youth with special education needs could advocate for a placement in close proximity to a school that is able to provide needed services to the youth. A parent or a juvenile appearing *pro se* is unlikely to identify this issue – let alone know of the appropriate placement and school setting – in advocating for the youth’s placement.

At the disposition stage, legal counsel also serves the crucial function of presenting mitigating evidence to both the juvenile’s probation officer and the judge. An attorney would gather and present important documents to shed light on the youth’s background to explain his past behavior, as well as to inform the probation officer and the court of his rehabilitative needs. Such documents could include report cards; letters from service providers regarding the juvenile’s satisfactory performance in particular programs; letters of support from community members; a letter from the juvenile himself expressing remorse, a commitment to change, and/or hope for a positive outcome at



disposition; documentation of participation in positive activities, such as school attendance records, awards, trophies, enrollment in after-school programs, artwork, registration in treatment programs; and letters of support from staff members at the detention facility where the youth is currently detained.

An attorney would also ask the court to order that psychological, psychiatric, educational, or neurological evaluations are conducted and present copies of such assessments to the court to ensure that a youth's emotional, mental health, medical, substance abuse, and behavioral needs are known to the court and accounted for in selecting the appropriate disposition for a youth. *See generally Ten Core Principles at Preamble C* ("Defenders must recognize mental illness and developmental impairments, legally address these needs and secure appropriate assistance for these clients as an essential component of quality legal representation. Drug- and alcohol-dependent juveniles and those dually diagnosed with addiction and mental health disorders are more likely to become involved with the juvenile justice system. Defenders must recognize, understand and advocate for appropriate treatment services for these clients."); *id.* at Principle 4 (urging defenders to utilize "essential expert services throughout the delinquency process," including "evaluation by and testimony from mental health professionals, education specialists, [and] forensic evidence examiners"). The court will sometimes order such evaluations on its own. Nonetheless, these evaluations will prove more useful if an attorney representing the youth contacts the evaluator in advance to request that she identify the youth's specific needs to individualize the dispositional planning. *See A Call for Justice at 36.*

Many youth have additional special needs, including special education needs, financial assistance, transportation needs, immigration issues, and language barriers. Attorneys are well-equipped to explore these needs in advocating for the best disposition option for a youth. For example, because a youth's educational needs can have a great impact on his behavior, an attorney representing a juvenile would present any evidence of special education needs to the probation officer and the court, including an individualized education program developed pursuant to the federal Individuals with Disabilities Education Improvement Act, 20 U.S.C. §§ 1400 *et seq.*, to assist the court in determining the most appropriate treatment and rehabilitation plan for the youth. *See generally Ten Core Principles* at Principle 9 (urging juvenile defense counsel to “advocate[], either through direct representation or through collaborations with community-based partners, for the appropriate provision of the individualized education needs of clients”).

A parent who is not knowledgeable about the array of services available to youth with special needs, or worse, is resistant to the idea of engaging her child in treatment for special needs, will be incapable or unwilling to advocate for effective treatment and rehabilitation at disposition. When youth do not have the assistance of a trained attorney to advocate on their behalf with regard to their needs, they risk being placed in inappropriate facilities that cannot provide them with services crucial to their rehabilitation. *See Delinquency Notebook* at 227 (“Research indicates that the juvenile incarceration system is seriously flawed and that children in correctional facilities are subjected to overcrowding, poor services and inadequate care.”) (citing Cynthia Conward, *Where Have All the Children Gone? A Look at Incarcerated Youth in America*, 27 Wm. Mitchell L. Rev. 2435, 2445-50 (2001)). Moreover, a youth who lacks legal

representation may end up inappropriately incarcerated in a futile attempt to obtain services for the child or in a facility far from his family, straining familial relationships and making reintegration into the community following disposition extremely challenging. *See id.* (“Children with emotional or mental disturbances are also frequently, and futilely, directed towards incarceration facilities as a way to obtain services. Additionally, training schools and similar facilities are often far from population centers, making it difficult for youth to maintain contact with their families and exacerbating the challenges inherent in transitioning back into the community following their dispositions.” *citing* Coalition for Juvenile Justice, *Handle with Care: Serving the Mental Health Needs of Young Offenders* at 40 (1998), available at [http://eric.ed.gov/ERICDocs/data/ericdocs2/content\\_storage\\_01/0000000b/80/25/e3/3a.pdf](http://eric.ed.gov/ERICDocs/data/ericdocs2/content_storage_01/0000000b/80/25/e3/3a.pdf); Dale Parent, *et al.*, *Conditions of Confinement: Juvenile Detention and Corrections Facilities* 26-27 (1994), available at [www.ojjdp.ncjrs.org/publications/dc\\_facilities.html](http://www.ojjdp.ncjrs.org/publications/dc_facilities.html)).

Legal representation of the juvenile’s interests is crucial at the disposition hearing itself. *Juvenile Delinquency Guidelines* at 137 (“[c]ounsel for the youth plays an important role in the disposition hearing with the responsibility to ensure that all significant needs relating to the delinquent behavior of the adjudicated delinquent youth have been brought to the attention of the juvenile delinquency court”). At the hearing, a lawyer will utilize her professional expertise to present the various forms of evidence discussed above. Legal counsel will perform essential tasks at the hearing, including strategizing which expert and lay witnesses to call, presenting other evidence on behalf of the juvenile such as letters of support, and perhaps preparing the juvenile to testify in a

manner that safeguards his right against self-incrimination.<sup>9</sup> *See, e.g., Juvenile Delinquency Guidelines* at 142 (urging counsel to determine whether to call witnesses to testify at the disposition hearing); *A Call for Justice* at 37 (urging counsel to call witnesses and present other evidence at disposition hearings). For example, an attorney who intends to oppose placement in a particular facility on the basis of unsafe conditions may identify and subpoena someone currently investigating the facility to testify at the disposition hearing regarding his or her investigation. The attorney would also know to issue a subpoena *duces tecum* requiring the medical director of the facility to produce all records of injuries sustained by youth at the facility. It is unrealistic to expect a parent to be aware that a particular placement was unsafe, or to know how to use the adversarial process to challenge the placement at the disposition hearing. Finally, an attorney would appreciate the need to preserve the record for a possible appeal.

#### **E. Legal Counsel Serves a Crucial Role Even After Disposition, During the Post-Disposition Phase of a Delinquency Case**

*I represented a young man who was found guilty of a petty misdemeanor and was placed on probation. He violated his probation by not abiding by curfew and not following the rules at home. His probation officer and the mother wanted to commit him to a juvenile detention facility for a year. Through negotiations with the Department of Juvenile Justice and by speaking to the client with the mother, I was able to get an alternative disposition for the client. Instead of being locked away for a year, the client and his mother had in-home counseling and therapy sessions so as to bring the two closer together and solve the underlying communication and trust issues. He went on to complete probation.*

*Juvenile Public Defender, Florida*

The lawyer's role in a delinquency case does not end after disposition. A juvenile's attorney continues to provide meaningful assistance to her client even after the

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<sup>9</sup> In preparing a report that is provided to the court and recommends disposition, a probation officer usually meets with the juvenile. Legal counsel would also prepare the juvenile for this meeting, including advising him or her not to divulge any information regarding dismissed charges to safeguard his or her right against self-incrimination.

disposition hearing. *See generally Ten Core Principles* at Principle 8 (urging juvenile defense attorneys to “provide independent post-conviction monitoring of each child’s treatment, placement or program to ensure that rehabilitative needs are met” and if their needs are not, to “interven[e] and advoca[te] before the appropriate authority”); *Standards Relating to Counsel for Private Parties*, Standard 10.3(b) (“Legal representation should also be provided the juvenile in all proceedings arising from or related to a delinquency” action), *quoted in A Call for Justice* at 38. For example, after disposition an attorney would continue to provide legal assistance by explaining the court’s disposition order to the youth (including the requirements of probation if it was imposed), filing motions for reconsideration of adjudication or disposition, and finalizing the record in preparation for appeal, including having the transcript certified for appeal and moving to expand the record. These are essential functions that someone without legal training would not be able to perform effectively.

An attorney would also represent the youth at dispositional review hearings post-disposition. In this capacity, the attorney essentially acts as the eyes and ears of the court, reporting to the judge whether the youth is receiving appropriate rehabilitative services following an extensive review and investigation into the juvenile’s situation independent of any investigation conducted by the probation officer. The *Juvenile Delinquency Guidelines* urge counsel to “independently speak with the youth, the youth’s parent or legal custodian, and the service provider” rather than rely only on the information provided by the probation officer. *Juvenile Delinquency Guidelines* at 179. *See also Juvenile Delinquency Guidelines* at 181. An attorney tracking his client’s case post-disposition would bring to the court’s attention any unreasonable delay in

placement; unsafe, unsanitary or overcrowded conditions of confinement; grounds for release from confinement; the failure or delay in the provision of needed services; and developments in the juvenile's situation, such as a relative's new willingness to take custody of the youth or a parent's completion of a substance abuse program. *See generally A Call for Justice* at 39-40 (urging juvenile defense counsel to use dispositional review hearings as opportunities to bring matters to the attention of the juvenile court); *see also Standards Relating to Counsel for Private Parties*, commentary to Standard 2.3, *cited in A Call for Justice* at 40. The importance of the attorney at the disposition and post-disposition phases is also confirmed by the *Juvenile Delinquency Guidelines*, which recommend that at the review hearing the "counsel for youth [have] the opportunity to question the probation officer or caseworker" and "present[s] any additional information or testimony, if needed." *Juvenile Delinquency Guidelines* at 171. *See also Juvenile Delinquency Guidelines* at 185. Without this information, the court would not be able to determine whether the youth is truly being rehabilitated or whether his needs are being met. In extreme cases, the court would lack critical information to remove youth from emotionally or physically harmful placements.

*We have a teleconference program where every month a team comprised of a social worker and an attorney regularly visits a child who is in placement. In the past several years there have been numerous times where disturbing facts were revealed. For example, in 2003, at a secure state placement, we learned that staff had often used restraints as punishment and kept children in restraints for hours. Once this information was revealed, we brought it to the attention of the Juvenile Court Supervising Judge. The Judge then conducted his own hearing, taking testimony from each child at the placement. Confirming the facts, and convinced that this placement was harming children, the Judge immediately ordered all of our clients removed from the facility.*

*No other children were sent to that facility from our court until the court was convinced that appropriate changes in staff and training had occurred. This model has been used a number of times. The Juvenile Court has come to rely on the information*

*brought back from the teleconference trips as a part of system accountability. The information helps programs improve and keeps children safer.*  
*Juvenile Public Defender, Pennsylvania*

#### **F. Legal Representation is Crucial in the Appeals Process**

Finally, legal representation is invaluable on appeal. *See, e.g., Douglas v. California*, 372 U.S. 353 (1963) (establishing right to counsel for adult criminal defendants on appeals of right). In advising the juvenile whether to appeal an adjudication or disposition, legal counsel would review the adjudication and disposition orders critically, explain the right to appeal to the youth, explain the pros and cons of filing an appeal to the youth, and provide counsel's opinion as to the likelihood of success on appeal. *See, e.g., Juvenile Delinquency Guidelines* at 161. On appeal, a lawyer would provide legal services essential to successfully challenging an adjudication or disposition, including ordering transcripts, reviewing the accuracy of the record and the exhibits admitted into evidence, ensuring that documents ordered sealed remain sealed, supplementing the record, navigating the rules of appellate procedure to ensure the timely and appropriate filing of the notice of appeal and briefs, asserting arguments within the context of the proper standard of review, seeking a stay of the adjudication or disposition pending appeal, soliciting *amicus curiae* to submit briefs to bolster the arguments asserted on appeal, and asserting sophisticated legal arguments at oral argument.<sup>10</sup>

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<sup>10</sup> There are, of course, other proceedings and actions that may arise in which a juvenile is not legally entitled to appointment of counsel, and therefore the waiver of right to counsel is not an issue, but where legal representation would nonetheless prove valuable to the juvenile. For example, juveniles would clearly benefit from the assistance of counsel in filing writs of *habeas corpus*, *mandamus* and prohibition to challenge unlawful commitment to facilities; at probation revocation hearings; in having their delinquency records expunged and/or sealed; in bringing actions for violations of their civil rights

In sum, there is no substitute for legal representation at any of stage of a delinquency proceeding. Neither youth alone, nor with their parents, are capable of representing the myriad interests and rights of youth at stake in delinquency proceedings.

## II. *Second Proposition of Law of Amici Curiae*

### **Parents Cannot Fulfill the Critical Role of Counsel for Children Subject to Delinquency Proceedings Due to the Potential Conflict of Interest Between Parent and Child and the Inherent Tension Between the Duties of a Parent and a Legal Counselor**

*My fourteen year old client allegedly stabbed his brother in the back. The family's first contact with the legal system was with the county juvenile probation office. The probation officer advised the family that it would be in the youth's best interest to plead guilty to felony aggravated assault. Mother took this to heart because she liked the probation officer and she was too consumed with her own problems to think about her son's.*

*After several individual consultations with my client, I was able to convince him he should not plead guilty to aggravated assault because the facts of the case, as acknowledged by the victim, did not amount to aggravated assault. The client admitted to disorderly conduct. Of course, had he admitted to the felony, the felony record would have greatly impacted his prior record score should he receive charges as an adult. Mother had not been advised of this either. With the help of legal representation, the allegations were put into perspective for the court and as a consequence the juvenile's sanctions were greatly reduced.*

*Juvenile Public Defender, Pennsylvania*

#### **A. Consultation With and Assistance of Counsel is Essential to the Exercise of Due Process Rights**

While the family obviously feels some of the consequences of a youth's involvement with the juvenile justice system, "the delinquency action is against the child

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while detained or incarcerated; at special education proceedings, such as meetings where a youth's individualized education program is reviewed; and at school disciplinary proceedings that will likely have an impact on adjudication and/or disposition. Even if the attorney who represented the youth at adjudication or disposition is not available to represent the juvenile in these matters, he or she could nonetheless provide referrals to private or *pro bono* attorneys who could take on such matters. See, e.g., *A Call for Justice at 40* (noting that juvenile defense attorneys can develop links with attorneys interested in representing youth in actions challenging the conditions of confinement).



and the right against self-incrimination belongs to the child.” Hillary B. Farber, *The Role of the Parent/Guardian in Juvenile Custodial Interrogations: Friend or Foe*, 41 Am. Crim. L. Rev. 1277, 1303 (2004).

Following *Gault*, the United States Supreme Court further clarified the central role of *counsel* in ensuring due process to juveniles in *Fare v. Michael C.*, 442 U.S. 701 (1979). The *Fare* Court noted that the various procedural safeguards – most notably, consultation with an attorney – are designed to ensure the juvenile’s *legal rights*. In *Fare*, the Court held that a youth’s request to speak with his probation officer did not invoke his Fifth Amendment rights under *Miranda*. *Id.* The Court held that a probation officer cannot provide a youth the legal counsel that is necessary for the youth to fully comprehend the nature of his rights and the consequences of waiving them. *Id.* at 719. As the court stated, “[i]t is this pivotal role of legal counsel that justifies the *per se* rule established in *Miranda*, and that distinguished the request for counsel from the request for a probation officer, a clergyman, or a close friend.” *Fare*, 442 U.S. at 722. *Gault* and *Fare* both underscore the requirement that adequate counsel can only be provided by an attorney, not by a friend, advisor, or trusted adult. Even a “relationship of trust and cooperation” does not equate to a relationship in which protection of legal interest is the guiding purpose. *Fare*, 442 U.S. at 722. Like the probation officer in *Fare*, a parent is

not trained in the law, and so is not in a position to advise the accused as to his legal rights. Neither is he a trained advocate, skilled in the representation of the interests of his client before both police and courts. He does not assume the power to act on behalf of his client by virtue of his status as advisor, nor are the communications of the accused to the probation officer shielded by the lawyer-client privilege.<sup>11</sup>

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<sup>11</sup> Only a handful of states—Connecticut, Idaho, Minnesota, and New York—recognize a child-parent privilege. See Farber, 1306 at n. 161.

*Id.* at 719. Indeed, “[t]he lawyer occupies a critical position in our legal system.

Whether it is a minor or an adult who stands accused, the lawyer is the one person to whom society looks as the protector of the legal rights of that person in his dealings with the police and the courts.” *Id.* It is the “independent advice that an accused would expect from a lawyer retained or assigned to assist him during questioning” that is required for an effective waiver to be made. *Id.* at 721.

The Court’s finding in *Fare* – that even trusted individuals cannot fulfill the role of an attorney for the purposes of ensuring a youth’s due process rights – has been extended to explicitly preclude parents from filling the role of legal counsel. Courts in several jurisdictions have used the *Fare* analysis to hold that a youth’s request to speak to a parent is not an invocation of the youth’s Fifth Amendments rights. For example, in *U.S. ex rel. Riley v. Franzen*, 653 F.2d 1153, 1159-60 (7th Cir. 1981), the court held that the youth’s request to speak with his father was equivalent to the request made in *Fare* because

the result in *Fare* is based primarily upon the Court’s analysis of counsel’s unique role in protecting a defendant’s Fifth Amendment privilege and the inability of a probation officer to satisfy that role. On this basis, we see no grounds upon which to distinguish the request in this case from the one at issue in *Fare*.

*Id.* at 1159. The court reasoned that the youth’s father would be as inadequate as the probation officer in protecting the youth’s due process rights as the “father is not trained in the law. Consequently, he was not in a position to advise the accused as to his legal rights. Neither is he a trained advocate, skilled in the representation of the interests of his client before both police and courts.” *Id.* at 1159. Moreover, as with a discussion with a probation officer, the conversation with the father would not be privileged. *Id.* at 1160. Similarly, in *Ashurst v. Morris*, the Sixth Circuit, in an unpublished opinion, adopted the

analysis of the Seventh Circuit in *Riley* in holding that a youth's request to call his mother did not invoke his Fifth Amendment rights. 914 F. 2d 255, at \*\*3 (6th Cir. 1990) (Unpublished Opinion).

**B. Empirical Evidence has Shown that Parents are not Effective Legal Advisors or Advocates for their Children's Legal Rights**

Empirical evidence has shown the degree to which parents are not effective legal advisors or advocates for their children's legal rights. Parents do not help, and indeed may hurt the child's chance of understanding and asserting his rights. Thomas Grisso, *Juveniles' Waiver of Rights: Legal and Psychological Competence* 106 (1981) (comparing juveniles' and adults' levels of *Miranda* comprehension). In one study, Grisso surveyed approximately 750 parents of high school students in two schools in St. Louis, Missouri. Parents were asked to respond to two types of questions. One set of questions asked parents to respond to a hypothetical arrest and request to interrogate a youth. The second set of questions elicited parents' attitude regarding an individual's exercises of his/her legal rights through the Children's Rights Attitude Scale. Only 20% of parents believed that juveniles should be able to withhold information from police. More than one-half of the parents disagreed with the idea that juveniles should be allowed to avoid incriminating themselves by withholding information. *Id.* 175-180. In the Grisso study, the most common reason that parents gave for advising youth to cooperate with the police was "moralistic," because they felt that "honesty is the best policy." *Id.* at 180-81. Grisso found that the majority of the time parents offer no advice during an interrogation or instruct children to speak to police and not obtain an attorney. *Id.* at 168-90.

The results imply that, in interrogation situations, parents frequently fail to provide the advice and assistance envisioned by the states when they implemented the interested adult rule. Parents do not offer the advice and counsel the Supreme Court thought would protect children from their own immaturity. In fact, Grisso's research revealed that parental presence does not serve as a substitute for representation.

Kimberly Larson, *Improving the 'Kangaroo Courts': A Proposal for Reform in Evaluating Juveniles' Waiver of Miranda*, 48 Vill. L. Rev. 629, 653 (2003). See also Feld, *Rules of Procedure for the Juvenile Court* at 182 ("Rather than mitigating the pressures of interrogation, parents appear predisposed to coercing their children to waive the right to silence."); Barbara Kaban & Ann E. Tobey, *When Police Question Children, Are Protections Adequate?* 1 J. Center Child. & Cts., 151, 154 (1999) ("[I]t has been anecdotally observed that parents often push their children to 'talk' to authorities and to 'tell the truth.'").

More recent research into the role of parents in law enforcement interrogations confirms Grisso's earlier findings. To investigate what parents know and believe about interrogation and how, if at all, parents influence their children during this process, researchers conducted a parent-youth interview study with 172 youth ages 11-17 years and their parents (or their legal guardians or adult caretakers), who ranged in age from 27 to 71 years, in 2004-2005 in the Washington, D.C. metropolitan area and northern Virginia. Jennifer Woolard, Ph.D., Georgetown University, *Parents as Developmental Protection for Adolescents in Police Interrogation: Perspectives from Parents, Youth and Law Enforcement* (Presentation at the annual conference of the American Psychology-Law Society in March 2006, on file with Dr. Woolard at [jennifer.woolard@gmail.com](mailto:jennifer.woolard@gmail.com)) [hereinafter Woolard, *Parents in Police Interrogation*]. Investigators measured youths' and parents' knowledge and beliefs about the *Miranda* protections and police practices,

as well as how the youth and parents assess their respective decision-making authority with regard to whether a youth should confess to police. *Id.* Specifically, investigators used a scale on the Comprehension of Miranda Rights (CMR) instrument to gauge parents' and youths' ability to understand and paraphrase the *Miranda* warnings. *Id.* Preliminary data results show that 26% of the families in the study had parents who demonstrated an inadequate understanding of *Miranda*. *Id.* Investigators also questioned youth and parents about a number of police practices involved in interrogation. Parents demonstrated varying degrees of knowledge about these police practices. *Id.* For example, while almost 80% of parents knew that you do not have to answer police questions, less than 15% knew that the police do not have to tell parents prior to questioning if their children are being viewed as witnesses or suspects. *Id.*

Finally, the researchers asked parents and youth to comment on an interrogation vignette to assess the parental role in whether or not a child will confess. They found that most (85%) of the parents believed that they and not their children should decide whether or not their child should talk to police, and one-third of parents recommended that the child in the vignette confess. *Id.* Moreover, in about 17% of the cases, the youth believed that the child in the vignette should remain silent while their parents believed the child should confess. *Id.*

**C. Meaningful Exercise of a Youth's Due Process Rights Requires That the Youth Receive the Advice of an Attorney and That Youth, Not Their Parents, Decide Whether to Waive Rights**

Notably, “[n]o case...has held that a parent could waive the constitutional right of a minor in a Juvenile Court or criminal case.” *In re Collins*, 20 Ohio App. 2d 319, 322, 253 N.E.2d 824, 827 (1969). Effective exercise of the right to counsel includes placing

the authority to exercise this right in the hands of the youth who is subject to the delinquency proceeding.

The principle that the juvenile alone retains the authority to waive his right to counsel is consistent with decisions in other legal contexts in which courts have found that youth must be accorded increased autonomy and special protections in the exercise of their constitutional rights where the consequences are particularly serious or grave. For example, in *Bellotti v. Baird*, 443 U.S. 622 (1979), the Court, in considering the right of minors to consent to an abortion without parental consent, focused on the importance of the decision. Like the decisions that a youth must make during the course of a delinquency proceeding, the decision to terminate a pregnancy carries with it significant consequences to the minor and her future. “[T]here are few situations in which denying a minor the right to make an important decision will have consequences so grave and indelible,” as the decision to terminate a pregnancy has lifetime consequences for the youth. *Id.* at 642. “[C]onsidering her probable education, employment skills, financial resources, and emotional maturity, unwanted motherhood may be exceptionally burdensome for a minor.” *Id.* Thus, while the Court in *Bellotti* appreciated the value of a requirement that minors seek parental consent for an abortion, the Court held that youth cannot be solely dependent on their parents’ permission, given the ramifications they face in making the decision as to whether to give birth. *Id.* at 641-42, 643-44. Consequently, the Court held that to pass constitutional muster states requiring parental consent for an abortion must also have a mechanism by which the minor can directly access legal counsel and the courts, because the absence of such an alternative would unconstitutionally burden the youth’s right to an abortion. *Id.* at 651. As one

commentator has noted, there is a “tacit assumption in the abortion context that counsel will assist minors in making informed choices” and youth access to an attorney is a prerequisite to the full understanding and exercise of their rights. Farber at 1301.

Similarly, several courts have found that parents are not able to adequately represent the legal interests of their children in civil actions. The federal courts in at least three circuits have held that a parent cannot represent his/her child in civil actions because they are unable to represent their child’s legal interests and where there is a right to counsel that right belongs to the individual whose interests are at stake. *See Meeker v. Kercher*, 782 F.2d 153 (10th Cir.1986); *Osei-Afriyie v. Medical College of Pa.*, 937 F.2d 876 (3d Cir.1991); *Cheung v. Youth Orchestra Found. of Buffalo*, 906 F.2d 59 (2d Cir.1990). *See also Brown v. Ortho Diagnostic Systems, Inc.*, 868 F. Supp. 168, 171 (E.D. Va. 1994) (“the infant is always the ward of every court wherein his rights or property are brought into jeopardy, and is entitled to the most jealous care that no injustice be done to him. . . .The right to counsel belongs to the children, and. . .the parent cannot waive this right.”) (citations and internal quotations omitted).

As the United States Court of Appeals for the Second Circuit stated in *Cheung*,

[I]t is not in the interests of minors or incompetents that they be represented by non-attorneys. Where they have claims that require adjudication, they are entitled to trained legal assistance so their rights may be fully protected. There is nothing in the guardian-minor relationship that suggests that the minor’s interests would be furthered by representation by the non-attorney guardian.

906 F.2d at 61. *See also Brown*, 868 F. Supp. at 172 (“litigation is akin to navigating hazardous waters; federal courts are willing to allow individuals to steer their own boats, and perhaps founder or run aground; but federal courts are not willing to permit individuals to risk the safety of others’ boats. ) This legal principle – that youth require

the assistance of counsel to adequately protect their rights, and that this job cannot be delegated to a parent or other non-lawyer adult – has even greater force in the delinquency and criminal context where youths' liberty interests are at stake.

**D. Potential Conflicts of Interest Between Parents and Children Prohibit Parents from Effectively Representing their Children's Rights When Deciding Whether to Waive Counsel**

A long-held principle in legal ethics is that an individual cannot adequately represent another if he or she has a conflict of interest with a party involved in the case or situation. An attorney must advocate zealously on her client's behalf. If an attorney has conflicted interests or divergent allegiances not only is the attorney-client relationship compromised but ethical violations are implicated.

A number of states require that a parent or interested adult play some role in the interrogation of youth for the waiver of *Miranda* rights to be valid. *See* Barry C. Feld, *Juveniles' Competence to Exercise Miranda Rights: An Empirical Study of Policy and Practice*, 91 Minn.L.Rev. 26, 36 (2006) (summarizing state trends). Such rules are premised on the assumption that a parent or interested adult will enhance the youth's understanding of her rights and options and reduce the possibility that a confession will be coerced because the interests of the children and parents are thought to always coincide. *Id.* at 39. "Courts often adhere to a model of family relations that presumes the interests of parents and children coincide." Catherine J. Ross, *From Vulnerability to Voice: Appointing Counsel for Children in Civil Litigation*, 64 Fordham L. Rev. 1571, 1580 (1996). This assumption is often inaccurate and can lead to inadequate due process protections for youth.



Two types of conflict of interest render a parent unable to assume the role of counsel for his/her child and assist the youth in exercising the youth's due process rights: (1) the inherent tension between parental responsibilities as compared to the role of a legal advisor; and (2) the direct conflict of interest between a parent and child that often arises in delinquency cases.

**1. Parents Cannot Act as Legal Counsel Due to the Inherent Tension Between Parenting Duties and the Duties of an Attorney**

Parents are charged with the care and custody of their children as well as their moral upbringing. Parents have the duty to prepare their children for adulthood and this "must be read to include the inculcation of moral standards, religious beliefs, and elements of good citizenship. *Wisconsin v. Yoder*, 406 U.S. 205, 233 (1972). This affirmative process of teaching, guiding, and inspiring by precept and example is essential to the growth of young people into mature, socially responsible citizens." *Bellotti* 443 U.S. at 638. When a parent learns that their child is in trouble they are understandably upset, confused, angry, and embarrassed. They are surely concerned with their child's safety. But as the person responsible for the youth's moral and religious upbringing, parents may feel it is important for the child to cooperate with police and provide all information requested without considering the legal consequences. Farber at 1294, 1295. Parents are not solely concerned with their child's legal rights; indeed, in many instances they are not at all concerned with such legal rights. As one Ohio public defender was quoted as saying in an assessment of access and quality of counsel in delinquency proceedings, "[t]he kids come in with their parents, who want to get this dealt with as quickly as possible, and they say, 'you did it, admit it.'" *Justice Cut Short* at 28.

As the Court reasoned in *Fare*, legal counsel is the vanguard of youth's due process rights in police investigations and delinquency proceedings because attorneys have an expertise that most parents do not. *Fare*, 442 U.S. at 722. The requirement that youth consult with an attorney in these situations allows parents to act as parents, "unburdened by the potential legal consequences of their advice." Farber at 1279. "Parents may struggle between teaching the child a moral lesson, advocating for the rehabilitative needs of the child, advancing the legal interests of the child, or maybe even protecting the legal and safety interests of neighbors, friends, co-workers who might be affected by the child's delinquent conduct." Kristin Henning, *It Takes a Lawyer to Raise a Child?: Allocating Responsibilities Among Parents, Children, and Lawyers in Delinquency Cases*, 6 Nev. L. J. 836, 850 (2006) [hereinafter Henning, *It Takes a Lawyer*] (citing Model Rules of Prof'l Conduct R. 1.8(f)(3)). The lawyer, on the other hand, has a clearly defined and exclusive role to advise a youth on their legal interests. Farber at 1305-06.

*I recently represented a young girl whose mom wanted her daughter to plead guilty to retail theft because a trial would take up too much of mom's time, even though her daughter denied ever stealing anything.*

*Juvenile Public Defender, Pennsylvania*

## **2. Potential Conflicts of Interest Between Parent and Child in Delinquency Cases Prevent the Parent From Providing Effective Legal Counsel to the Youth**

Frequently a parent's interests may be directly at odds with the youth's in a delinquency proceeding. As the punitive nature of the delinquency system increases, the degree to which parents also find themselves liable for the misconduct of their children has increased. This trend enhances the likelihood that the parent might have interests at odds with their child; the parent's advice to the child, in turn, may reflect the parent's

concern about their own liability rather than the legal consequences to the child. For example, parents may be held accountable for the behavior of their children in juvenile, civil, and criminal courts. Henning, *It Takes a Lawyer* at 839. Parents may be ordered to pay restitution, as well as participate in and pay for treatment. *Id.* at 858. Parents may even seek court involvement to access services for their child or gain control over a child who is not obeying them. *Id.* at 851. These divergent goals and interests between parent and child can make the interrogation, adjudication, and disposition phase rife with conflict.

In *Fare*, the Court recognized conflicts of interests between children and other adults as detrimental to an individual's ability to provide effective counsel, and cited this as another basis for its holding. "Indeed, the probation officer's duty to his employer on many, if not most, cases would conflict sharply with the interests of the juvenile. For where an attorney might well advise his client to remain silent in the face of interrogation by the police, and in doing so would be 'exercising [his] good professional judgment...to protect to the extent of his ability the rights of his client,' a probation officer would be bound to advise his charge to cooperate with the police." *Fare*, 422 U.S. at 721 (internal citation omitted).

A parent's interests are most evidently at odds with the youth's in situations where the parent is the complaining witness or has a relationship with the alleged victim. Illustrative is the situation in *In re William B.*, where the youth was charged with stealing his mother's van and raping a youth in his mother's custody. 163 Ohio App. 3d 201, 837 N.E. 2d 414 (2005). The youth's mother was present at two hearings where the youth made admissions without the assistance or consultation of counsel. *Id.* at 205, 417. The

court found that “as one of [the youth]’s victims and the custodian of another of [the youth’s] victims, [the youth’s] mother may have had interests adverse to her son’s best interests and therefore was unable to fully represent his interests.” *Id.* at 205, 417.

Consequently, the court was concerned that the youth was “not adequately informed of the consequences of his admission.” *Id.* at 206, 418. Involvement of legal counsel would have ensured that the youth had the appropriate information needed to make an informed decision about exercising or waiving his rights. Similarly, in the *Matter of Steven William T.*, the youth made an admission with a family friend and his mother present. 201 W.Va. 654, 499 S.E. 2d 876 (1997). The youth claimed that the family friend put pressure on him to confess because she had a close relationship with the co-defendant. *Id.* at 662-63, 884-85. The court held that a confession “may be rendered meaningless where the parent or guardian has a conflict of interest with the child or has no real parental relationship with the child, as was the case here where the biological mother had not seen the child in four years.” Finally, in *In re Poland*, the court found a father’s interests in conflict with the legal interests of his son, due to the father’s statements that he no longer knew how to handle his son’s behavior and could not provide him help. 2004 WL 2391813 \*2 (Ohio App. 5 Dist) (Not Reported). Father’s interests were adverse to the youth’s in that he “at best...took a neutral position and at worst, he begged for juvenile court involvement.” *Poland*, 2004 WL 2391813 at \* 2. The father was therefore unable to provide the youth sufficient counsel to protect his legal rights. *Id.* The court found that the youth was confused about the potential consequences of his adjudication and “this confusion was impacted by the lack of counsel, and this lack of

knowledge impacted appellant's waiver of counsel and admission." *Poland*, 2004 WL 2391813 at \* 3. His father's presence did not and could not remedy these defects.

**E. Youth's Tendency to Conform to the Wishes of Authority Figures Reduces Parents' Effectiveness as a Protective Factor in their Interaction with the Delinquency System**

As discussed in greater detail in the brief of *Amici Curaie* Children's Law Center and the American Civil Liberties Union of Ohio, the immaturity and vulnerability of youth make them less able to withstand the pressure of the interrogation setting and more likely to conform to the wishes of authority figures, including their parents. "The adolescent regularly needs guidance, acceptance, and approval from parents, teachers, coaches, religious leaders, and other significant adults." Henning, *It Takes a Lawyer* at 841 (citing Ralph Gemelli, *Normal Child and Adolescent Development* 447, 467 (American Psychiatric Press 1996)). That youth are vulnerable to the influence of their peers and parental pressure makes ensuring consultation with an independent and neutral counsel even more important. "The bundle of vulnerabilities [usually attributed to youth] bears directly and affirmatively on the children's need for appointed counsel." Ross at 1595. "[T]hose vulnerabilities should not be understood only as disabilities that justify outsider status and voicelessness...the vulnerabilities of children support the appointment of counsel for children who are incapable of making considered decisions." *Id.* at 1618.

The Ohio courts have acknowledged that these characteristics of youth require that the court be diligent in ensuring that valid waivers have occurred and that youth have the benefit of legal counsel to ensure a meaningful exercise of their rights. As the court in *In re Johnston* stated:

Because courts indulge every reasonable presumption against a waiver of fundamental constitutional rights, that waiver must affirmatively appear

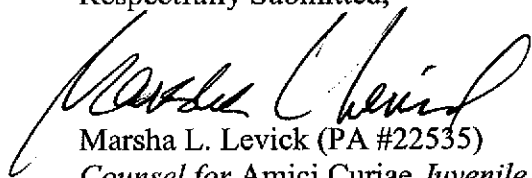
on the record. Because of the immaturity of the individuals appearing before a juvenile court, the court has a higher duty to be thorough in this regard. In the present case, it is clear there was no such waiver...it is evident from the record that two of the state's witnesses...provided hearsay testimony and evidence...Presumably, the appointment of counsel to represent Johnston will prevent a recurrence.

142 Ohio App.3d 314, 319, 755 N.E.2d 457, 461, Ohio App. 11 Dist. (2001) (citations omitted).

### CONCLUSION

For the foregoing reasons, *Amici Curiae* Juvenile Law Center, *et al.*, respectfully request that this court grant the relief requested by Appellant.

Respectfully Submitted,



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## APPENDIX A

**Juvenile Law Center (JLC)** is the oldest multi-issue public interest law firm for children in the United States, founded in 1975 to advance the rights and well being of children in jeopardy. JLC pays particular attention to the needs of children who come within the purview of public agencies – for example, abused or neglected children placed in foster homes, delinquent youth sent to residential treatment facilities or adult prisons, or children in placement with specialized services needs. JLC works to ensure that children are treated fairly by systems that are supposed to help them, and that children receive the treatment and services that these systems are supposed to provide. JLC also works to ensure that children's rights to due process are protected at all stages of juvenile court proceedings, from arrest through disposition, from post-disposition through appeal, and that the juvenile and adult criminal justice systems consider the unique developmental differences between youth and adults in enforcing these rights.

The **National Association of Criminal Defense Lawyers (NACDL)** is a nonprofit corporation and the only national bar association working in the interest of public and private criminal defense attorneys and their clients. Founded in 1958, NACDL's mission is to ensure justice and due process for the accused; to foster the integrity, independence, and expertise of the criminal defense profession; and to promote the proper and fair administration of justice.

NACDL has more than 12,000 members nationwide -- joined by 90 state, local, and international affiliate organizations with another 30,000 members -- including private criminal defense lawyers, public defenders, and law professors committed to preserving fairness within America's criminal justice system.

The **National Juvenile Defender Center** was created to ensure excellence in juvenile defense and promote justice for all children. The National Juvenile Defender Center responds to the critical need to build the capacity of the juvenile defense bar in order to improve access to counsel and quality of representation for children in the justice system. The National Juvenile Defender Center gives juvenile defense attorneys a more permanent capacity to address important practice and policy issues, improve advocacy skills, build partnerships, exchange information, and participate in the national debate over juvenile justice. The National Center provides support to public defenders, appointed counsel, child advocates, law school clinical programs and non-profit law centers to ensure quality representation and justice for youth in urban, suburban, rural and tribal areas. It also offers a wide range of integrated services to juvenile defenders and advocates, including training, technical assistance, advocacy, networking, collaboration, capacity building and coordination.

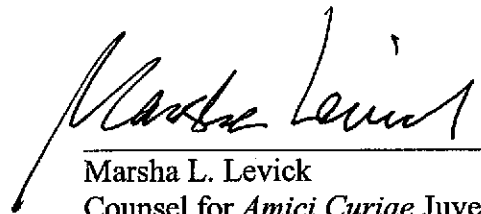


**CERTIFICATE OF SERVICE**

I, Marsha L. Levick, do hereby certify that, pursuant to Ohio Supreme Court Rule XIV.2.(C), one copy of this Brief of *Amici Curiae* Juvenile Law Center, *et al.* in Support of Appellant Corey Spears was served, via overnight mail, on the 26<sup>th</sup> day of December on all counsel of record for the parties in this appeal as follows:

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