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Making Sense of the Lionel Tate Case

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INTRODUCTION

Lionel Tate was released from the Broward County Jail in Fort Lauderdale, Florida on January 27, 2004 after serving three years in the State's adult prison system. Two days later, on January 29, the youngster, just two days short of his seventeenth birthday, pled guilty in a Broward courtroom to second-degree murder in the death of a six-year old playmate, Tiffany Eunick. In exchange for that plea and the three years he already served in Florida's adult correctional system, Tate was placed on house arrest for one year, and then obligated to complete ten years of probation.[1] The plea agreement was identical to the one initially offered to Tate some three years earlier when he was twelve years of age. His initial failure to take that plea resulted in his removal from juvenile court jurisdiction, indictment by a grand jury, a criminal trial and a conviction as an adult for first degree murder, resulting in life imprisonment without parole. The media reported his conviction as the youngest child ever sentenced to life in prison in the United States.[2]

Tate's release came as a result of an appellate ruling by Florida's Fourth District Court of Appeal on December 10, 2003, in which the court held that a competency hearing should have been ordered by the trial court when Tate initially rejected the plea offer, as well as, at a post-trial hearing.[3]

The youngster's pro-wrestling defense, his incarceration for life without parole, and the subsequent appellate reversal, all generated national and even international attention.[4] More significantly, and together with other notori-

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1. Paula McMahon & Jon Burnstein, *State Offers Tate Same Deal He Rejected Before*, SUN-SENTINEL (Ft. Lauderdale), Dec. 26, 2003, http://www.sunherald.com/mld/sunherald/news/nation/7577352.htm.

2. *Id.*; Manuel Roig-Franzia, *Deal Would Free Youth Who Killed 6-Year-Old*, WASHINGTON POST, Dec. 30, 2003 at A03, *available at* http://www.washingtonpost.com/ac2/wp-dyn?pagename=article&contentId=A397672003Dec29&notFound=true; Jill Barton, *Teen in 'Wrestling Death' Ordered Free*, ASSOCIATED PRESS, Jan. 26, 2004, http://www.guardian.co.uk/uslatest/story/0,1282,-3671841,00.html.

3. Tate v. State, 864 So. 2d 44, 50 (Fla. 4th Dist. Ct. App. 2003).

4. *See Teen offered plea bargain; Florida boy tried as an adult for murder at age 12 could be out of prison next month*, TORONTO STAR, Dec. 27, 2003, at A17; Nicholas Wapshott, *Youngest 'Lifer' Wins Freedom*," LONDON TIMES, Jan. 2, 2004, http://www.heraldsun.news.com.au/common/story_page/0,5478,8308508^401,00.html (last visited Mar. 27, 2004); Duncan Campbell, *Parole for Youth Given Life Jail Sentence at 13*, GUARDIAN, Jan. 27, 2004, at 19, *available at* http://www.guardian.co.uk/usa/story/0,12271,1132050,00.html; *Juvenile*

ous cases involving young teenagers charged with serious offenses,[5] the Tate case has generated discussion about a series of issues arising from the practice in the United States of charging young juveniles in adult criminal courts.[6]

The issues the case raises are varied and complex. For example, at what age should teenagers be charged as adults? Does conviction of young teenagers in adult criminal court serve any deterrent purpose? Do juveniles incarcerated in the adult criminal justice system recidivate at a higher rate than similar youth in the juvenile justice system? What are conditions and services like in the adult prison system? Why are minority children disproportionately represented in the adult criminal justice system? Are juveniles competent to stand trial in the adult court and/or aid in their defense? Is the juvenile court effective in rehabilitating juveniles? Should rehabilitation be an issue when a juvenile is charged with a very serious offense? What role should retribution play in a case where a juvenile is adjudicated to have committed a very serious criminal offense? Should prosecutors have unfettered discretion in charging young defendants as adults? Should the felony murder doctrine apply to juvenile defendants? At whose direction does a defense lawyer representing a very young defendant, act—the child client or the parents?

This edition of the *Nova Law Review* contains articles focusing on several of the major issues raised by the Tate case. In the first article, *Abolish-*

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killer freed, AUSTRALIAN, Jan. 28, 2004, at 8; *Teen who killed friend is released from prison*, INT'L HERALD-TRIBUNE, Jan. 28, 2004, at 5; *Killer teen set free*, OTTAWA SUN, Jan. 30, 2004 at 22.

5. *See* Steven A. Drizin & Allison McGowen Keegan, *Abolishing the Use of the Felony-Murder Rule When the Defendant is a Teenager*, 28 NOVA L. REV. 507 (2004) (discussing the Florida cases of *Tate* and *Brazill*; and also discussing the case of fifteen-year-old Jonathan Miller from Georgia convicted of felony murder and sentenced to life in prison with the possibility of parole in Fourteen years); *see also* Jason Cato, *What Does Teenager's Release Mean for Chester Case?*, ROCKY HILL HERALD, Jan. 28, 2004, http://www.heraldonline.com/local/story/3281217p-2931601c.html (last visited Mar. 27, 2004) (comparing *Tate* to the case of Fourteen-year-old South Carolina boy charged with killing his grandparents).

6. *See* Deborah Sharp, *Neither Family Happy with Teen's Plea Deal*, USA TODAY, Jan. 6, 2004, http://www.keepmedia.com/ShowItemDetails.do?item_id=371500&extID=10026 (last visited Mar. 27, 2004); Noah Bierman, *Freedom No Free ass for Tate*, MIAMI HERALD, Jan. 25, 2004, http://www.miami.com/mld/miamiherald/news/7783801.
htm (last visited Mar. 27, 2004). The public outrage with youth crime is not new. In 1978 fifteen-year-old Willie Basket was convicted for three subway murders and sentenced to the State Division for Youth until his twenty-first birthday. New York Governor Hugh Carey exploded and sought new legislation to allow children as young as thirteen to be tried as adults. FOX BUTTERFIELD, ALL GOD'S CHILDREN: THE BOSKET FAMILY AND THE AMERICAN TRADITION OF VIOLENCE 226–27 (Alfred A. Knopf 1st ed., 1995); PAUL A. STRASBURG, VIOLENT DELINQUENTS 1–2 (1978).

ing the Use of the Felony-Murder Rule When the Defendant is a Teenager, Northwestern University Clinical Professor Steven A. Drizin and Northwestern University School of Law graduate Alison McGowen Keegan argue forcefully that, in light of the child's lack of ability or incapacity to form the requisite criminal intent to commit the underlying crime in the child abuse felony murder case—the murder—the prosecutor ought not be allowed to avoid proving the underlying intent in order to get a conviction. In the second article, *A Child and A Choice*, Lionel Tate's trial counsel, James Lewis, discusses the ethical question he faced—how a lawyer may go about representing a young client whose competence may be questioned; how that lawyer deals with the child's parent; and, as a result, from whom does the lawyer takes his guidance in making the decision to accept or reject a plea offer.[7]

The third article, *Child's Play No Longer: Children Charged and Tried as Adults in Florida—Ending up in Prison for Life Without Parole,* authored by Lionel Tate's appellate counsel, Richard Rosenbaum, is enlightening in two respects. First, he adds more information about what actually occurred in the Tate case. Second, together with commentary on competence and separation of powers, he expands upon the various constitutional arguments, including due process, equal protection and privacy, which were unsuccessful before the District Court of Appeal. In the fourth article, *Tate v. State: Highlighting the Need for a Mandatory Competency Hearing*, Nova law student Steven Bell argues that mandatory competency hearings are needed for children under the age of sixteen who are charged with felonies in either juvenile or adult court.

In order to put all of these articles in perspective, it is first important to understand just what happened in the Tate case and what the Florida Intermediate Appellate Court decided. This introduction will summarize the holding in the case and describe the various issues raised by the case and those left unresolved by the opinion, including the subjects dealt with in the Drizin/ Keegan, Lewis, Rosenbaum, and Bell articles.

THE TATE CASE

Twelve-year old Lionel Tate was indicted by a grand jury and convicted of the first degree murder of six-year old Tiffany Eunick, in a six day trial between January 16 and 19, 1999.[8] The verdict included charges of both

7. *See* Jim Lewis, *A Child and a Choice*, 28 NOVA L. R. 479 (2004).

8. Tate v. State, 864 So. 2d 44, 44 (Fla. 4th Dist. Ct. App. 2003). Added to the oddities of the case is the fact that Kenneth Padowitz, the prosecutor who made the plea offer to Tate in his initial murder trial, represented the victim's mother, Deweese Eunick-Paul, after going into private practice. After the first appeal, Tate's mother, Kathleen Grossett-Tate, was repre-

felony murder predicated upon the commission of aggravated child abuse and premeditated murder.[9] The appellate court found that the evidence clearly showed that the child had been brutally slain and that she had "as many as thirty-five injuries, including a fractured skull, brain contusions, twenty plus bruises, a rib fracture, injuries to her kidneys and pancreas, and a portion of her liver detached."[10] The appellate court also explained that none of the experts believed that the injuries resulted from "play fighting," a probable reference to the wrestling defense presented by the defendant.[11] Although Tate raised many issues before the appellate court in his appellate brief,[12] the court ruled solely in Tate's favor on the issue of competence—that the denial of the defense lawyer's post-trial request to have the boy evaluated, as well as the court's failure to *sua sponte* order a pre-trial competency evaluation when Tate rejected the original juvenile court plea, constituted a violation of Tate's due process rights.[13]

At the post-trial stage, Tate was represented by separate counsel, Richard Rosenbaum, the lawyer who also ultimately represented Tate on his successful appeal.[14] In the post-trial hearing, in addition to moving for a new trial, Rosenbaum sought an evidentiary hearing to challenge whether the pre-trial plea negotiations were adequately explained to the child. Rosenbaum sought a competency evaluation and hearing on the grounds that the child neither knew nor understood the consequences preceding the trial and that he was unable to assist his counsel before and during trial.[15] In addition, Rosenbaum argued to the court that the child was, at the time of the post-trial hearing, not competent to understand the implications of why he needed to waive the attorney-client privilege.[16] In fact, James Lewis wished to testify in support of the request for a post-trial competency hearing but was faced with the inability to do so without waiver of the attorney-client privilege by Tate.[17] According to the appellate court, after Tate conferred with his

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sented by her own counsel, Henry Hunter from Tallahassee. John Thor-Dahlburg, *Boy who received life without Parole to be freed soon*, L.A. TIMES, Jan. 26, 2004, at 8, *available at* http://www.contracostatimes.com/mld/cctimes/news/7798061.htm.

9. *Tate*, 864 So. 2d at 47.

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.* at 50.

14. *Tate*, 864 So. 2d at 46; *see* Richard L. Rosenbaum, *Child's Play No Longer: Children Charged and Tried as Adults in Florida—Ending up in Prison for Life Without Parole*, 28 NOVA L. REV. 485 (2004).

15. *Tate*, 864 So. 2d at 47.

16. *Id.* at 48.

17. Tate v. State, 864 So. 2d 44, 48 (Fla. 4th Dist. Ct. App. 2003).

mother, he did not agree to the proposed waiver of the attorney-client privilege.[18] The court noted that the child apparently simply followed his mother's instructions not to waive the privilege despite both lawyers' view that it was in the child's best interest.[19] Lewis wanted to tell the court "what led him to believe that Tate was not competent during trial."[20] Subsequently, the trial court denied the post-trial motion for a post-trial evaluation and hearing.[21] Ironically, prior to ruling against the child, the trial court commented that "I am also convinced that if I deny your hearing at this particular point, that I would get ordered by the Fourth District Court of Appeals [sic] to have such a hearing."[22]

The appellate court posed the question before it this way:

> whether, due to his extremely young age and lack of previous exposure to the judicial system, a competency evaluation was constitutionally mandated to determine whether Tate had sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he had a rational, as well as factual, understanding of the proceedings against him.[23]

The appellate court found that "[t]he record reflects that questions regarding Tate's competency were not lurking subtly in the background, but were readily apparent. . . ."[24] The court noted that the child had an IQ of 90 or 91, placing him in the lower twenty-five percent of children of his age, and that he had significant mental delays. Thus, the appeals court concluded that the trial court committed error by failing to *sua sponte* order a competency hearing pre-trial and, nonetheless, to deny the post-trial request for the competency hearing.[25] In coming to its conclusion, the Fourth District Court of Appeal relied upon the United States Supreme Court opinion in *Dusky v. United States*, which established the test for the determination of competency: "whether he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding--and whether he has a rational as well as factual understanding of the proceedings against him."[26] Finding that a competency hearing should have been ordered, the court then

18. *Id.*
19. *Id.* at 48–49.
20. *Id.* at 49.
21. *Id.* at 48, 49.
22. *Tate*, 864 So. 2d. at 47.
23. *Id.* at 48.
24. *Id.* at 50.
25. *Id.*
26. 362 U.S. 402, 402 (1960); *see also* Pate v. Robinson, 383 U.S. 375, 384 (1966).

remanded, indicating the child was entitled to a new trial because conducting a hearing at the appellate stage, to determine the present competency of the maturing adolescent, failed to adequately retroactively protect Tate's rights.[27]

The court rejected all other appellate arguments made by Tate's lawyer. In response to the argument that the Legislature did not mean to prosecute children as caretakers for the crime of aggravated child abuse, the appellate court found that the statute was not void for vagueness, and that a clear reading of the statute allowed it to be applied to the conduct of a non-caretaker child against another child.[28] The court noted that it is up to the Legislature to reexamine the language of the statute and determine whether it intended such a result. The court went on to find that there was no equal protection or due process violation because the child was being treated more harshly than older adolescents, premised upon the notion that there is no absolute right for juveniles to be treated in a separate system for juvenile offenders, a concept recognized by a number of jurisdictions.[29] The court also rejected the equal protection argument that some juveniles are charged and convicted as adults while others are dealt with in the juvenile system on the basis of prosecutorial discretion.[30] In making its ruling, the court relied upon its earlier rejection of the same argument in the notorious Florida criminal matter, the Nathaniel Brazill case.[31] Brazill, thirteen, had been convicted of shooting and killing his middle school teacher, Barry Grunow, on May 26, 2000.[32]

In addition, the court in the Tate case rejected a separation of powers argument made by Tate, who claimed that the State had unlawfully delegated its powers by allowing the prosecutor to define the crimes and the fix penalties by seeking indictment for children under fourteen.[33] The court rejected an argument that Tate had a right to a transfer hearing under *Kent v. United States*,[34] which had also rejected by the court in *Brazill*.[35] The court rejected the argument in the *amicus* brief, whose authors were from the Juvenile Law Center, that a child of his age did not have the adult capacity to form criminal intent, concluding that the Legislature had rejected the common law de-

27. Tate v. State, 864 So. 2d 44, 51 (Fla. 4th Dist. Ct. App. 2003).
28. *Id.* at 50–51.
29. *Id.* at 52–53.
30. *Id.* at 52.
31. *Id.* at 52–53 (citing Brazill v. State, 845 So. 2d 282, 289 (Fla. 4th Dist. Ct. App. 2003)).
32. *Brazill*, 845 So. 2d at 285.
33. *Tate*, 864 So. 2d at 53.
34. 383 U.S. 541 (1966).
35. *Tate*, 864 So. 2d at 53 (citing *Brazill*, 845 So. 2d at 288–89).

fense of infancy with a statutory scheme.[36] The court rejected Tate's argument about the right to privacy and confidentiality, which he would have had in the juvenile court. The court recognized that in the Brazill case there had been a similar argument regarding the right to the rehabilitative aspect of the juvenile court.[37] The court in *Tate* rejected this argument on the same ground that there is no statutory or constitutional right to access to the juvenile court system.[38] Finally, the court rejected "the argument that a life sentence without the possibility of parole is cruel and unusual punishment on a twelve-year-old child" under the *Florida Constitution* and the *Federal Constitution*.[39]

PUTTING THE CASE INTO CONTEXT

It is hardly surprising that a case like that of Tate would eventually take place in the State of Florida, involving a very young child convicted of a very serious offense, resulting in incarceration for life. In 2000, Florida led the nation in transfers of juveniles to criminal court.[40] In the fiscal year, 1994-1995, almost 5,000 juveniles involved in more than 7,000 cases were transferred to the criminal court in Florida.[41] This number constitutes more than ten percent of all juvenile offenders handled through the court system in Florida.[42] In fact, the figure came close to the total number of residential placement dispositions for juvenile offenders in the Florida programs run by the Department of Juvenile Justice.[43] There is evidence that children transferred to the adult criminal court system in Florida were more likely to re-offend than those kept in the juvenile court system for similar offenses and

36. *Id.* Organizations and law school professors working in the juvenile justice field filed two *amicus curiae* briefs. The attorneys from the Juvenile Law Center of Philadelphia who prepared the competence-related brief were Robert G. Schwartz, Marsha L. Levick and Lourdes M. Rosado.

37. *Brazill*, 825 So. 2d at 288.

38. Tate v. State, 864 So. 2d 44, 53–54 (Fla. 4th Dist. Ct. App. 2003).

39. *Id.* at 54.

40. FLA. DEP'T OF JUVENILE JUSTICE, BUREAU OF DATA AND RESEARCH, A DJJ SUCCESS STORY: TRENDS IN TRANSFER OF JUVENILES TO ADULT CRIMINAL COURT 5 (Jan. 8, 2002) [hereinafter A DJJ Success Story] (describing Florida as "widely recognized as the leader of the transfer experiment").

41. DONNA BISHOP, ET AL., OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, A STUDY OF JUVENILE TRANSFERS TO CRIMINAL COURT IN FLORIDA, (Aug. 1999), http://www.ncjrs.org/txtfiles1/fs99113.txt.

42. *Id.*

43. *Id.*

based upon material race, sex and gender.[44] Ironically, Florida's Department of Justice has recently said that there is mounting evidence of greater effectiveness of treatment programs for serious offenders in the juvenile justice system.[45]

Florida also possesses a variety of statutory routes for adjudication of juveniles in the adult court, including discretionary judicial waiver, discretionary prosecutorial waiver, known as direct file in Florida, and grand jury indictment for juveniles who have been charged with capital or life felonies.[46] Whether prosecutorial discretion to try children in adult court in Florida is applied fairly has been the subject of studies, which suggest a lack of regularity in the process.[47]

The expansion of the use of adult court in Florida, including 1994 changes allowing additional discretionary direct file criteria for fourteen and fifteen year olds,[48] is not all that dissimilar to the practices of other states. In the 1990s, many states changed their juvenile justice statutes to expand the circumstances under which juveniles could be transferred to or filed directly against in adult court.[49] The causes for the change in legislation are multiple, including perceived increase in juvenile access to drugs, the gun culture, gangs, media perceptions, political advantageousness, and an increase in the

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44. DONNA BISHOP & CHARLES FRAZIER, THE CONSEQUENCES OF WAIVER, IN THE CHANGING BORDERS OF JUVENILE JUSTICE: TRANSFER OF ADOLESCENTS TO THE CRIMINAL COURT (Jeffrey Fagan& Franklin Zimring eds., 2000); DONNA M. BISHOP ET AL., OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, JUVENILE TRANSFERS TO CRIMINAL COURT STUDY: PHASE I FINAL REPORT, (1998); Donna Bishop, *The Transfer of Juveniles to Criminal Court: Reexamining Recidivism Over the Long Term*, 43 CRIME & DELINQUENCY, 548, 558 (1997); Donna Bishop, *The Transfer of Juveniles to Criminal Court: Does it make a difference?*, 42 CRIME & DELINQUENCY 171 (1996).

45. A DJJ Success Story, *supra* note 40, at 6.

46. *Id.*

47. Vincent Schianaldi & Jason Ziedenberg, Center on Juvenile and Criminal Justice, *The Florida Experiment: An analysis of the Impact of Granting Prosecutors Discretion to Tax Juveniles as Adults* 3–4 (2000) (finding that 28% of youth transferred to adult criminal court were charged with violent crimes, and more than half were charged with non-violent property crimes).

48. *Id.*

49. PATRICK GRIFFIN ET AL., NATIONAL CENTER FOR JUVENILE JUSTICE, TRYING JUVENILES AS ADULTS IN CRIMINAL COURT: AN ANALYSIS OF STATE TRANSFER PROVISIONS (1998); Marisa Slaten, *Juvenile Transfers to Criminal Court: Whose Right Is It Anyway?*, 55 RUTGERS L. REV. 821, 822 (2003); *see also* CHARLES M. PUZZANCHEAR, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, DELINQUENCY CASES WAIVED TO CRIMINAL COURT, 1990-1999, (Sept. 2002) (finding that since 1994, cases waived to adult court declined 38%, and represented less than 1% of formally processed delinquency cases); Guillory v. Superior Court, 72 P.3d 815, 817 (Cal. 2003) (upholding Proposition 21 providing discretion to prosecutors similar to that available to the prosecutors in the Tate case).

youth population. Perhaps the most significant cause of change in legislation is fear of youth crime, combined with a belief that juvenile courts do not work.[50] As may be imagined, the perceptions about the effectiveness of the adult criminal justice system in responding to the perceptions about youth crime vary dramatically.[51] According to William J. Bennett and his co-authors in their book *Body Count* in 1996, in which they coined the phrase "super predators" to refer to certain juveniles, the authors said that "despite many legislative efforts aimed at trying more juvenile criminals as adults, not much has happened."[52] The authors explained that Americans have been calling for change in the juvenile justice system that would allow law enforcement officials to get a firm grasp on youth criminals. On the other hand, the Sentencing Project, in an article in 2002, made the following statement about the deterrent effect of incarceration of juveniles in adult correctional institutions:

> The imposition of adult punishments, far from deterring crime, actually seems to produce an increase in criminal activity in comparison to the result obtained for children retained in the juvenile system. Reliance upon criminal courts and punishment ignores evidence that more effective responses to the problems of crime and violence exist outside the criminal justice system in therapeutic programs. Because there is considerable racial disparity in the assignment of children to adult prosecution, the harshness, ineffectiveness and punishing aspects of transfer from juvenile to adult court is doubly visited on children of color.[53]

The Sentencing Project article suggests there is evidence of dramatic racial disparity in the transfer and placement of children in the adult criminal justice system. In Florida, African-American youngsters in 2000 constituted about forty percent of the youth population. Yet state-wide they constituted

50. A DJJ Success Story, *supra* note 40, at 5.

51. *See* JUVENILE JUSTICE: A CENTURY OF CHANGE, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION (Dec. 1999) (supporting the juvenile justice system as a comprehensive and balanced approach to justice).

52. WILLIAM J. BENNETT, ET AL., THE BODY COUNT 118 (Simon & Schuster ed., 1996).

53. PATRICIA ALLARD & MALCOM YOUNG, THE SENTENCING PROJECT COMMENTARY: PROSECUTING JUVENILES IN ADULT COURT: PROSPECTIVE FOR POLICY MAKERS AND PRACTITIONERS (2002); *see also* Simon I. Singer & David McDonald, *Criminalizing Delinquency: The Deterrent Effects of the New York Juvenile Offender Law*, 22 L. & SOC'Y REV. 521 (1988); Eric Jensen & Linda Metzger, *A Test of the Deterrent Effect of Legislative Waiver on Violent Juvenile Crime*, 40 CRIME & DELINQUENCY 96 (1994).

fifty-six of the referrals transferred to adult court.[54] In fact, in Miami-Dade County during the same time period, eighty-five percent of the cases filed in adult courts related to minority youth.[55] Both the Tate and Brazill case involved children of color. Nothing in either appellate opinion touches on the issue of over-representation of minority children in the adult criminal justice cases.

The issue of competency of juveniles to assist in the defense, of course, was the subject of the ruling by the appellate court in the *Tate* case and raises another significant issue in terms of transferring and trying children in the adult criminal justice system. It is significant that the issue of competence was the subject of one of the two *amicus curiae* briefs filed in the case, in part a Brandeis-like memorandum containing substantial supporting literature.[56] Competence of young children in the adult criminal court is the subject of important recent articles. The work of Thomas Grisso, Jeffrey Fagan, Elizabeth Scott and Lawrence Steinberg, among others, has raised the consciousness of both the prosecution and defense regarding the capacity of juvenile defendants to aid in their defense.[57]

However, the appellate opinion in *Tate* did not settle the question of whether young children are competent to aid in their defense in adult crimi-

54. Building Blocks for Youth for a Fair and Effective Youth Justice System, State by State Information: Florida, *at* http://www.buildingblocksforyouth.org/statebystate/florida.html (last visited Apr. 3, 2004) (showing Florida's disproportionate minority confinement). *See generally* DONNA HAMPARIAN & MICHAEL J. LEIBER, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, DISPROPORTIONATE CONFINEMENT OF MINORITY STUDENTS IN SECURE FACILITIES (1997).

55. *Id.*

56. Brief for Amici Curiae Center on Children & the Law et al., Tate v. State, 864 So. 2d 44 (Fla. 4th Dist. Ct. App. 2003) (No. 4D01-1306).

57. *See* Thomas Grisso & Laurence Steinberg, *Juvenile Competence: Can Immaturity Alone Make an Adolescent Incompetent to Stand Trial?* 9 JUV. JUST. UPDATE 2 (2003); Jeffrey Fagan, *Atkins, Adolescence, and the Maturity Heuristic: Rationales for a Categorical Exemption for Juveniles From Capital Punishment*, 33 NEW MEXICO L. REV. 207 (2003) (analyzing immaturity and culpability of juveniles); Jeffrey Fagan, *Atkins, Adolescence, and the Maturity Heuristic: Rationales for a Categorical Exemption for Juveniles From Capital Punishment*, 33 N.M. L. REV. 207 (2003); Elizabeth S. Scott and Lawrence Steinberg, *Blaming Youth*, 81 TEX. L. REV. 799 (2002); RICHARD J. BONNIE & THOMAS GRISSO, ADJUDICATIVE COMPETENCE AND YOUTHFUL OFFENDERS, IN YOUTH ON TRIAL: A DEVELOPMENTAL PERSPECTIVE ON JUVENILE JUSTICE 73, 75 (Thomas Grisso & Robert G. Schwartz eds., 2000); THOMAS GRISSO, FORENSIC EVALUATION OF JUVENILES 101–05 (1998); Thomas Grisso, The Competence of Adolescents as Trial Defendants, 3 PSYCHOL. PUB. POL'Y & L. 3, 23 (1997); Thomas Grisso, *The Evolution of Adolescence: A Developmental Perspective on Juvenile Justice Reform*, 88 J. CRIM. L. & CRIMONOLOGY 137, 141–42 (1997); Lawrence Steinberg & Elizabeth Cauffman, *Maturity of Judgment in Adolescent Decision Making*, 20 LAW AND HUM. BEHAVIOR 249 (1996).

nal cases. The appellate opinion simply advised trial judges hearing adult criminal cases involving very young defendants that they should be alert to issues of competence, and that they may request *sua sponte* expert advice on the question of the child's competence. What should alert the judge is not described in any doctrine in the opinion. The judge, arguably, is the least likely of the players in a criminal case to have knowledge of the child's competence. Obviously defense counsel should know a great deal about the client's competence. But, so too, should the prosecutor.

THE DRIZIN/KEEGAN, ROSENBAUM, LEWIS, AND BELL ARTICLES

The *amicus curiae* brief filed in the *Tate* appeal on behalf of the appellant, authored by Professor Stephen Drizin and others dealt with the question of felony murder and its application to children and is the subject of the Drizin/Keegan article in this law journal. The article, which urges rejection of felony murder charges as appropriate for young child defendants raises the important question of why the State should be able to convict children of serious criminal charges involving deaths without proving the child intended to kill the victim. Jim Lewis's article focuses on a very serious issue—the relationship among a lawyer, the child client, and the client's parents. While at first glance it would seem obvious that the lawyer's obligation to the client is simple and straightforward, the Rules of Professional Conduct recognize that the duty is to the client regardless of who is paying the bills. The Rules also suggest that when a client is disabled, including children, the lawyer should do what he or she can to represent the client as any other fully capable client. The reality of representation, as Lewis's article demonstrates, is not always so clear. When one is faced with a twelve-year-old client whose competence may be suspect may the lawyer rely upon the judgment of the parent?

Rosenbaum's article both provides the reader with great insight into how the Tate case was handled post trial, particularly with regard to the issue of competency, and fleshes out the various constitutional arguments that failed in the appellate court. In order to understand what the future holds for children charged in adult court for serious crimes, it is vital to understand what legal challenges have failed. Bell argues that competency hearings should be mandatory for felonies committed by youths less than sixteen-years-old, in both juvenile and adult court. Mandatory competency hearings should be conducted despite the fact that failure to raise the issue of competence can constitute ineffective assistance of counsel and despite the court's power to order a competency hearing. Rather, because of the evidence that

children less than sixteen lack the "essential characteristics"[58] to be competent to stand trial, a competency hearing should be required.

CONCLUSION

These four articles start a discussion both in terms of Florida's application of adult criminal charges and the adult criminal justice process to children who commit very serious offenses and the role of judges, prosecutors and defense counsel in these cases. There has been extensive public outcry concerning the Florida law that allows a twelve-year-old to be sentenced to prison for life without the possibility of parole. Whether or not there will be any response by the Florida Legislature, or other state legislatures, to the increased use of the adult criminal justice system to hold young children accountable, or to the severity of sentences for juveniles, remains to be seen.[59] Likewise, because the appellate opinion in the *Tate* case obligates judges to inquire as to a juvenile defendant's competence, but sets no precise age standards, it is unclear how judges, prosecutors and defense lawyers will handle these problems. Although the *Tate* opinion resolves one child's case, the larger questions of whether children like Tate should be held accountable in adult court and, if so, how we determine whether they are competent to aid in their own defense, remain unanswered.

58. Steven Bell, *Tate v. State: Highlighting the Need for a Mandatory Competency Hearing*, 28 NOVA L. R. 575 (2004).

59. In the Winter of 2004 after Tate's release, Florida State Senator Steve Geller introduced Senate Bill 530 ("SB 530") amending the Florida juvenile delinquency statute, Chapter 985 to provide that children fifteen years of age or younger, who have not committed other listed offenses, be eligible for parole in capital offense cases. S. 530, 2004 Reg. Sess. (Fla. 2004), http://www.flsenate.gov/session/index.cfm?BI_Mode=ViewBillInfo&Mode=Bills&SubMenu=1&Year=2004&billnum=530. However, SB 530 was not enacted. *See* Beth Reinhard, *Parole denied for kids who get life*, MIAMI HERALD, Apr. 1, 2004, *at* http://www.miami.com/mld/miamiherald/news/state/8326125.htm%20on%20April%201,%202004 (last visited Apr. 8, 2004). Senator Walter Campbell filed Senate Bill 1346, a more extensive plan, which would limit the age at which a minor could be sentenced to death, mandates Department of Juvenile Justice commitment of juveniles, who are convicted of offenses punished by death in the adult system. S. 1346, 2004 Reg. Sess. (Fla. 2004), http://www.flsenate.gov/session/index.cfm?BI_Mode=ViewBillInfo&Mode=Bills&SubMenu=1&Year=2004&billnum=1346.