Duquesne Law Review

Volume 9 | Number 4 Article 3

1971

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The Juvenile Court system was conceived and established at the turn of the century, although belated to be sure. In 1899, the first juvenile court in the United States was established in Cook County, Illinois, and within a few years juvenile court laws had been passed in each of the states. The whole philosophy was, and is, based on the concept that youthful offenders should be treated differently than adults. Of course, there are variations in the different statutes; in many states the juvenile age is under 16; in a few it is 21; and in others such as Pennsylvania, it is 18.[1] Regardless of this detail however, the philosophy is the same, and due to the flexibility and judicial discretion intentionally built into the system, the potential for abuse is also the same. This problem will be more fully developed in other articles in this symposium.

While the juvenile courts have existed for this long period, and on the whole, functioned along traditional lines of judicial practice, one aspect of the system has patently laggered. Perhaps because the young offender is a "juvenile" for such a relatively short period of time; perhaps because of the privacy of the proceedings; perhaps for other unknown reasons, few appeals to state appellate courts were ever taken in juvenile court cases, and indeed the United States Supreme Court never considered a case involving juvenile court practice until 1966 when it decided *Kent v. U.S.*,[2] considering a procedural point raised under the District of Columbia Juvenile Court Act.

KENT

As is true under most juvenile court statutes, the District of Columbia Juvenile Court had the discretion to waive its jurisdiction in a case and certify the juvenile over to criminal court for trial as an adult. The juvenile court did this to young Kent without a hearing, as was

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1. PA. STAT. ANN. tit. 11, § 243(2) (1939). Allegheny County has a separate Juvenile Court Act found at PA. STAT. ANN., tit. 11, § 269-1 et seq. All references made hereinafter are made to the Pennsylvania Juvenile Court Act.

2. 383 U.S. 541 (1966).

its practice. In reversing and remanding, the United States Supreme Court, through Mr. Justice Fortas, held:

> [There] is no place in our system of law for reaching a result of such tremendous consequences without ceremony—without hearing, without effective assistance of counsel, without a statement of reasons. It is inconceivable that a court of justice dealing with adults, with respect to a similar issue, would proceed in this manner. It would be extraordinary if society's special concern for children, as reflected in the District of Columbia's Juvenile Court Act, permitted this procedure. . . . [and] it does not. . . . It is clear beyond dispute that the waiver of jurisdiction is a "critically important" action determining vitally important statutory rights of the juvenile. . . . [A]s a condition to a valid waiver order, the juvenile was entitled to a hearing, including access by his counsel to the social records and probation or similar reports which presumably were considered by the court, and to a statement of reasons for the Juvenile Court decision. This "result" is required by the statute read in the context of constitutional principles relating to due process and the assistance of counsel.[3]

The case, of course, involved an interpretation of the Washington, D.C. statute, and technically could be limited to that, but to the best of this writer's knowledge all of the judges in Pennsylvania sitting in juvenile court will not certify a case over to the adult side without a "full" hearing. This has been construed by most as requiring the judge to sit first as a committing magistrate; the Commonwealth must present a *prima facie* case. Following this presentation, there is usually a motion from the representative of the district attorney (if one is present) for certification. The court then considers: the past delinquent history of the juvenile; his maturity; the previous disposition by the court of cases involving the juvenile; whether he is amenable to rehabilitation under facilitites available to the juvenile court; whether he allegedly was involved with adult co-defendants; and whether the interests of justice would better be served by a jury trial—jury trials presently being prohibited by the Pennsylvania Juvenile Court Act.[4]

The question which has not been raised in any court *as yet*, as far as I know, is this: After the *prima facie* case is presented, the motion for certification made, and the testimony taken both in favor of and *contra* to the motion, if the motion is refused, could counsel for the juvenile claim that the judge who has heard all of the background and psycho-

3. *Id.* at 554, 556.
4. PA. STAT. ANN., title 11, § 247 (1933).

social history of the juvenile is no longer in a position to give a fair and impartial hearing to the defense side of the case? After all, in the usual case, the background information which is considered in a motion for certification is not known by the judge until an adjudication of delinquency has been made.

GAULT

While the *Kent* case was a decision based on interpretation of the District of Columbia Juvenile Court statute and could therefore be construed as applying only to the District of Columbia, in 1967 the United States Supreme Court made a far-reaching decision on the constitutional rights of a juvenile in any juvenile court. This was the landmark decision of *In Re Gault*.[5] The majority, speaking through Mr. Justice Fortas, generally held "the basic requirements of due process and fairness"[6] entitle the juvenile to: 1.) adequate and timely notice of the proceedings and charges against him; 2.) legal counsel (including free legal counsel if the family cannot afford counsel); 3.) the privilege against self-incrimination; 4.) the right to confront and cross-examine adverse witnesses.

While most Pennsylvania Juvenile Court judges have applied the principles laid down in *Gault* to *all* juvenile cases, and likewise will exclude or suppress statements obtained by police when the *Miranda*[7] warnings were not given, the opinion in *Gault* does not really go this far. The court limited the application of these principles to the hearing itself, not what went on before the hearing, and likewise limited its opinion to those cases where an adjudication of delinquency may result in *commitment* of the juvenile to an institution. The court emphasized that it was not

> . . . concerned with the procedures or constitutional rights applicable to the prejudicial stages of the juvenile process, nor do we direct our attention to the post-adjudicative or dispositional process. . . . We consider only the problems presented to us by this case. These relate to the proceedings by which a determination is made as to whether a juvenile is a "delinquent' as a result of alleged misconduct on his part, with the consequence that he may be committed to a state institution. As to these proceedings, there

5. 387 U.S. 1 (1967).
6. *Id.* at 12.
7. Miranda v. Arizona, 384 U.S. 436 (1966).

> appears to be little current dissent from the proposition that the Due Process Clause has a role to play.[8]

The Supreme Court did not explain or anticipate how a judge is supposed to know ahead of time whether or not he is going to commit a juvenile before he has heard the psycho-social history of the juvenile following the adjudication of delinquency. As a consequence, the prudent judge will apply those principles whether he feels the hearing will result in a commitment or simply probation.

Neither did the court state whether the juvenile himself is competent to waive the privilege against self-incrimination and the right to counsel or whether he must be joined in such a waiver by his parent or parents. The court did acknowledge, however, that:

> . . . special problems may arise with respect to waiver of the privilege by or on behalf of children, and that there may well be some differences in technique—but not in principle—depending upon the age of the child and the presence and competence of parents.[9]

Though the *Gault* opinion limited itself to the adjudicatory phase of the hearing and did not consider the prejudicial or post-adjudicative process, it would be hard to imagine that the United States Supreme Court will not extend the constitutional rights of a juvenile to events occurring prior to the juvenile court hearing, and it has been so held in Pennsylvania in a case involving a homicide.[10] It should be noted, however, that the fact that the defendant was a juvenile was apparently not considered by the court, perhaps because the adult criminal court in Pennsylvania has original jurisdiction in cases involving murder.[11]

Some courts have held that the parents must join in any waiver by a juvenile of his constitutional rights,[12] while others have held that if the juvenile is sufficiently mature and intelligent, he is capable of making the waiver without the joinder of his parents.[13] It has been the practice in Allegheny County to determine the question of a valid waiver on a case-to-case basis, considering the factors of maturity, intelligence, and sophistication of the juvenile.

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8. 387 U.S. at 13.
9. *Id.* at 55.
10. Commonwealth v. Simala, 434 Pa. 219, 252 A.2d 575 (1969).
11. PA. STAT. ANN., title 11, § 246 (1939).
12. *See* 287 N.Y.S.2d 218 (1968); McClintock v. Indiana, 253 N.E.2d 233 (1969).
13. West v. U.S., 399 F.2d 467 (5th Cir. 1968), *cert. denied*, 393 U.S. 1102 (1969); California v. Lara, 62 Cal. Rptr. 586, 432 P.2d 202 (1967), *cert. denied*, 392 U.S. 945 (1968); Thornton v. Dennis M., 75 Cal. Rptr 1, 450 P.2d 296 (1969).

Standard of Proof

In its most recent decision on the juvenile issue, the United States Supreme Court, considering the standard of proof required for adjudication of a delinquent, held that the delinquent act must be proved beyond a reasonable doubt.[14] This case was appealed from the New York Court of Appeals which had sustained the constitutionality of a section of the New York Family Court Act which provided that a finding of delinquency could be based on a preponderance of the evidence. In reversing, the United States Supreme Court held that the due process clause of the Fourteenth Amendment to the Constitution of the United States, protecting an accused against conviction except upon proof beyond a reasonable doubt, likewise applied to juveniles. Three justices, including Chief Justice Warren Burger, dissented. Again, as in *Gault*, the Supreme Court seemed to make a point of recognizing a distinction between a juvenile proceeding and an adult criminal proceeding.

> We conclude, as we concluded regarding the essential due process safeguards applied in *Gault*, that the observance of the standard of proof beyond a reasonable doubt "will not compel the States to abandon or displace any of the substantive benefits of the juvenile process." . . .[15]

Jury Trials

The Pennsylvania Juvenile Court Act specifically states that juveniles are not entitled to jury trials.[16] The constitutionality of that provision was recently upheld by the Pennsylvania Supreme Court in *In Re Terry*,[17] and the North Carolina Supreme Court reached the same result in *In Re Burrus*.[18] These two cases have been combined for consideration by the United States Supreme Court this term. The National Council of Juvenile Court Judges has filed a brief as *amicus curiae* urging affirmation of the Pennsylvania and North Carolina Supreme Court decisions.

Writing for the majority in *Terry*, Mr. Justice Roberts made a toughtful analysis of the opinions in *Gault* and *Kent* and concluded:

14. *In Re* Winship, 397 U.S. 358 (1970).
15. 397 U.S. at 367.
16. Pa. Stat. Ann., tit. 11, § 247 (1933).
17. 438 Pa. 339, 265 A.2d 350 (1969).
18. 275 N.C. 517, 169 So.2d 879 (1969).

> . . . Until such time as we are disabused of our belief that the potential for growth inherent in the juvenile system will not be ignored, we hold that the juvenile courts in this Commonwealth, if conducted in accordance with the procedural safeguards set forth in this opinion, are not constitutionally compelled to grant their constituency the right to a trial by jury.[19]

Conclusion

There are some who feel the *Gault* decision to be giant step backward in the juvenile court philosophy.[20] This writer does not share that opinion. One need only review the facts as related by Mr. Justice Fortas in *Gault* to see the potential for abuse in a system originally designed to help young people in trouble with the law. The United States Supreme Court cases which have been discussed above go far toward clarifying procedure to be followed and providing guidelines for the judiciary in handling Juvenile Court cases. One must wonder whether the U.S. Supreme Court will stop short of holding that juveniles are entitled to jury trials as a matter of right. This writer agrees with the majority in *Terry*.

Other questions which will undoubtedly be coming up for decision in this field are whether a juvenile has a right to bail and the rights of parents and children in dependency and neglect hearings. It is the opinion of this writer that the entire Juvenile Court system has been made stronger as the result of the recent United States Supreme Court decisions.

19. 438 Pa. at 351, 265 A.2d at 356.
20. Garcia, *The Fallacy of the Gault Case*, 54 J. Am. Jud. Soc'y 249 (1970).