

1971

Dependent-Neglect Proceedings: A Case for Procedural Due Process

Dianne M. Faber

Follow this and additional works at: <https://dsc.duq.edu/dlr>



Part of the [Juvenile Law Commons](#)

Recommended Citation

Dianne M. Faber, *Dependent-Neglect Proceedings: A Case for Procedural Due Process*, 9 Duq. L. Rev. 651 (1971).

Available at: <https://dsc.duq.edu/dlr/vol9/iss4/8>

This Comment is brought to you for free and open access by Duquesne Scholarship Collection. It has been accepted for inclusion in Duquesne Law Review by an authorized editor of Duquesne Scholarship Collection.

Comment

Dependent-Neglect Proceedings: A Case for Procedural Due Process*

It is a serious matter for the long arm of the State to reach into a home and snatch a child from its mother. It is a power which a government dedicated to freedom for the individual should exercise with extreme care, and only where the evidence clearly establishes necessity.¹

INTRODUCTION

Fourteenth Amendment² rights of due process and equal protection have continually demanded the attention of the United States Supreme Court in recent years, notably in the area of criminal procedure.³ Since the *Gault*⁴ decision of 1967, children have been recognized holders of the right to procedural due process in juvenile court delinquency proceedings. *Gault* provided for right to counsel, right to notice of specific charges or factual allegations, confrontation and cross-examination of witnesses, and the privilege against self-incrimination.⁵ *In re Winship*⁶ further extended the child's right to procedural due process by requiring proof *beyond a reasonable doubt* as the standard to be met for a finding of delinquency. Mr. Justice Fortas, writing for the Court in *Gault*, stated that "[u]nder our Constitution, the condition of being a

* This discussion of dependent-neglect proceedings is based on the author's personal experience and observations of the Allegheny County Juvenile Court and Child Welfare Services Bureau while employed by the Neighborhood Legal Services Association. Practical experience was gained by working with attorneys and clients involved in dependent-neglect cases. In addition, the author interviewed personnel of Juvenile Court, Child Welfare Services, and other social agencies in Allegheny County during the period from April to December of 1970. Special thanks is due to both the Allegheny County Child Welfare Services Bureau and Juvenile Court for their interest and co-operation.

1. 180 Pa. Super. 143, 148, 117 A.2d 780, 783 (1956).

2. U.S. CONST. amend. XIV, § 1.

3. *Miranda v. Arizona*, 384 U.S. 436 (1966); *Duncan v. Louisiana*, 391 U.S. 145 (1968); *Chambers v. Maroney*, 399 U.S. 42 (1970).

4. *In re Gault*, 387 U.S. 1 (1967).

5. *Id.*

6. *In re Winship*, 397 U.S. 358 (1970). *Winship* questioned the constitutionality of the standard of proof in the New York Family Court Act providing for a preponderance of the evidence as sufficient for a finding of delinquency.

boy does not justify a kangaroo court.”⁷ The Court reasoned that in a delinquency proceeding a child is liable to incarceration in an industrial or reform school—a confinement amounting to a deprivation of liberty requiring the protection of Fourteenth Amendment due process.⁸ Both the *Gault* and *Winship* decisions were strictly limited to the *adjudicatory stage of delinquency proceedings*.⁹

Serious questions concerning the individual's constitutional rights, *viz.*, procedural due process, are equally involved in dependent-neglect cases, yet these questions have been wholly ignored in the attention given delinquency hearings.

Dependent-neglect cases arise when instances of emotionally or physically deprived children come to the attention of a juvenile court. The purpose of a dependent-neglect hearing is to determine whether the state should assume guardianship of the child, with the possibility of removal from the parent's custody.¹⁰ Such adjudications involve rights of the child and parent, and question the very existence of the family as an institution. The functioning of the family, the basic unit of our society, is under direct scrutiny when a court seeks to determine if a child is being neglected. For this reason, when the State uses its judicial machinery to disrupt the family relationship by separating a child from his parents, all the safeguards of procedural due process should be observed.

The purpose of this comment is to set forth arguments for applying standards of due process to dependent-neglect proceedings. The noticeable dearth of case law and scholarly opinion in this area¹¹ presents virgin soil in which the advocate may attempt to produce an awareness of the system's defects, as it now operates, and develop methods for curing those ills.

THE CHILD WELFARE SERVICES

The concern our society feels for the physical, emotional and psychological well-being of children is evidenced by the growth of private and governmental agencies, and state and federal legislation dedicated

7. *In re Gault*, *supra* note 4, at 28.

8. *Id.* at 27.

9. *Id.* at 13; *Winship*, 397 U.S. at 359.

10. PA. STAT. ANN. tit. 11, § 244 (1933).

11. The author was unable to discover any case law, articles in law reviews or other professional periodicals dealing specifically with the application of procedural due process to dependent-neglect hearings.

Comment

to helping and protecting children. Social services geared to the needs of children are provided by child welfare agencies, public and private, throughout the United States. The children who most often come to the attention of child welfare agencies are:

Those who have troubles or conflicts in their families or who are in need of guardians or permanent homes through adoption.

Those who are living in one-parent families as the result of death, desertion, divorce, or birth out of wedlock.

Those who are neglected, abused, or exploited by their parents.

Those who are ill, physically or mentally handicapped, or suffering from emotional difficulties.

Those who have behavior problems or who are delinquent.

Those who have problems arising out of special home conditions, such as employment of the mother or her absence from the home due to illness or for other reasons.

Those who are handicapped by conditions in the community or by the circumstances under which they live, such as poverty or unemployment, housing too inadequate for decency, or those of migrants and other minority groups.¹²

The problems of these children are closely allied to their family situation. Helping the family as well as the child is, therefore, the purpose of child welfare services.¹³

The Allegheny County Commissioners established the County Child Welfare Services Bureau in the summer of 1963; operations began in the early part of 1964.¹⁴ Foster Home-Finding, Adoption, Shelter Care, and Protective Services are the departments of the agency administering to the needs of dependent and neglected children of Allegheny County. Two-thirds of the children involved with the agency remain in their own homes. The other one-third must receive outside care either because they have no families, their parents are unable to care for them and voluntarily relinquish custody, or their parents do not properly provide for them and they are removed from the home by court order.

12. CHILDREN'S BUREAU, WELFARE ADMINISTRATION, U.S. DEPARTMENT OF HEALTH, EDUCATION AND WELFARE, Publication No. 406, CHILD WELFARE SERVICES, at 5, 1963 (reprint 1966); interview with Thomas Carros, Director of Allegheny County Child Welfare Services, in Pittsburgh, July, 1970.

13. CHILDREN'S BUREAU, *supra* note 12, at 8.

14. The following discussion of the Allegheny Child Welfare Services Bureau is derived from interviews with members of the executive and supervisory staff of the agency: Thomas Carros, Director; supervisors Ned Hollis, Dorothy Reinhard, Rosemary Phaneuf, Paul Aigner, and Barbara Pacifico. Additional sources of information were: Act of June 13, 1967, P.L. —, §§ 701-731, PURDON'S PA. STAT. ANN. tit. 62, §§ 701-731 (1968); PENNSYLVANIA DEPARTMENT OF PUBLIC WELFARE, OFFICE OF FAMILY SERVICES, REGULATION MANUAL: CHILDREN AND YOUTH MANUAL.

When the caseworker providing protective services¹⁵ to the child and family believes that the parents either cannot or will not remedy the circumstances leading to neglect, he will petition juvenile court to give Child Welfare Services custody of the child. Unless it is a case of severe abuse or abandonment, juvenile court does not become involved until Child Welfare has worked with the family many months or even years.¹⁶

PENNSYLVANIA JUVENILE COURTS

The Pennsylvania Juvenile Court Law governs both delinquency and dependent-neglect proceedings.¹⁷ The courts' jurisdiction in matters regarding delinquent, dependent and neglected children is exclusive.¹⁸ Prior to 1963 the juvenile courts were responsible for the pre-hearing stages of dependent-neglect cases now handled by Child Welfare Services under the State Department of Welfare.¹⁹ Since Child Welfare Services has been in operation, juvenile courts become involved only when a court order is needed to provide for the care and placement of a dependent and/or neglected child.

The juvenile courts were created for the specific purpose of dealing with delinquent, dependent and neglected children apart from the adult judicial system. The court seeks to rehabilitate the child and save him from the adverse sociological and psychological circumstances which led to his dependent, neglected, or delinquent condition.²⁰ They are purely statutory courts without foundation in common law, and are, therefore, strictly limited within the confines of the creating stat-

15. Protective Services involves the assigning of a caseworker, a trained social worker employed by the agency, to the child. The caseworker makes visits to the home and discusses the child and family situation with the parents to determine if help is needed. If professional help is required, then the caseworker works with the child and his family to solve their problems.

16. Some examples of the types of problems involved are: a mentally or physically handicapped child not receiving necessary medical care or educational training; the emotionally disturbed child in need of professional treatment; the child without proper nourishment or clothing; the child repeatedly left in the home without adult supervision; the physically or mentally abused child; and an emotionally disturbed or physically handicapped parent who cannot provide for the child's needs.

17. See note 10, § 244.

18. *Id.*

19. See note 14.

20. *In re Gault*, 387 U.S. 1 (1967); *In re Samuel W. v. Family Court of New York*, 24 N.Y.2d 196, 299 N.Y.S.2d 417, 247 N.E.2d 171 (1969); *People v. Lewis*, 260 N.Y. 171 (1932); *Holme's Appeal*, 379 Pa. 599, 109 A.2d 523 (1954); *Commonwealth v. Fisher*, 213 Pa. 48, 62 A.2d 198 (1905). The courts' opinions in these cases present a thorough discussion of the purposes of the juvenile court system. They concentrate on the sociological and psychological theories responsible for the development of juvenile courts.

Comment

ute.²¹ Rules of procedure and rules and regulations for the conduct of officers and employees are to be formulated by the individual juvenile courts,²² instead of applying the rules of procedure and evidence applicable to other county courts. To date, the juvenile courts have not produced written rules of procedure.²³

An informal atmosphere is maintained for juvenile court proceedings to further their purpose as rehabilitative rather than punitive.²⁴ The procedure is more akin to that of an administrative agency or arbitration board than to an adversary proceeding. The desire is to promote communication between the child, family and court.

Hearings are initiated upon petition of "any citizen, resident of the county," setting forth that a child is neglected, dependent or delinquent²⁵—the only definitions of which are provided in the statute.²⁶ There is no system of pleading beyond the filing of the petition—a printed form with space available for a general statement of the reasons for requesting a hearing. In a majority of cases dependent-neglect petitions are filed by a Child Welfare Services caseworker to request removal of the child from his parents' custody.

Courtroom procedure is controlled by the presiding judge. Aside from general provisions in the statute for the filing of petitions,²⁷ sepa-

21. Juvenile jurisdiction in Allegheny County is now posited in the Court of Common Pleas. Act of Dec. 2, 1968, P.L. —, § 2, PURDON'S PA. STAT. ANN. tit. 17, § 235.2 (Supp. 1970).

22. See note 10, § 265.

23. In an article in the Pittsburgh Press, Dec. 20, 1970, § 1, at 16, col. 1, the judges of the Allegheny County Juvenile Court indicated that the State's nine-judge Juvenile Court Commission has been assigned the drafting of proposed rules of court.

24. See note 20.

25. See note 10, § 246.

26. *Id.* § 243:

(5) The words "neglected child" shall mean a child

(a) who is abandoned by his parent, . . . , or

(b) who lacks proper parental care by reason of the fault or habits of his parent, . . . , or

(c) whose parent, . . . neglects or refuses to provide proper or necessary substance, education, medical or surgical care or other care necessary to the child's health, morals or well-being, or

(d) whose parent . . . neglects or refuses to provide special care made necessary by the child's mental condition, or

(e) who is found in a disreputable place or associates with vagrant, vicious or immoral persons, or

(f) who engages in an occupation, or in a situation dangerous to life or limb, or injurious to the health, morals or general welfare of himself or others.

(6) The words "dependent child" shall mean a child

(a) who is homeless or destitute or dependent on the public for support, or

(b) who is without a parent or guardian able to provide for his support, training and education, or

(c) who is otherwise in need of personal guardianship.

27. *Id.* § 246.

ration of juvenile from adult proceedings,²⁸ available alternatives for disposition,²⁹ and a prohibition against jury trials,³⁰ the statute gives no direction to the court's procedure. While the right to notice of charges and counsel are afforded the parents, the right to confrontation and cross-examination of witnesses, the right to counsel for the child, and the privilege against self-incrimination required by *Gault* in delinquency proceedings have not, as yet, been extended to dependent-neglect hearings.

At the beginning of a dependent-neglect case, the caseworker-petitioner relates to the judge, in narrative form, her reasons for requesting custody of the child.³¹ The judge questions the petitioner, and then permits the parents' attorney to ask questions. Petitioner's testimony consists of the caseworker's professional opinions of the child's and family's situation, based on her case work with them and on school, medical, and psychological reports. The petitioner-caseworker also discusses her attempts to solve the problems causing the dependency and/or neglect. If there are witnesses for petitioner's case, they testify at this time and are questioned by the judge and the parents' attorney. The parents are often excluded during this portion of the hearing. Judges and caseworkers argue for the exclusion of parents during petitioner's case as necessary to maintain the caseworker-parent relationship and to prevent damaging the child-parent relationship. The reasoning is that these relationships are of such a delicate nature that exposing them to a clinical discussion of the psychological and social problems involved, and an analysis of the intimate details of the functioning of parents and child as a family, will impair the trust and confidence necessary to the maintenance of these relationships. After presentation of petitioner's case, the parents are brought in and questioned by their attorney and the judge. The parents may also produce their own witnesses, who will be similarly questioned.

DEFECTS OF THE SYSTEM

The object of this comment is not to demand an adversary proceeding with all the trappings of a trial in the "adult" courts. The inform-

28. *Id.* § 249.

29. *Id.* §§ 249, 250, 253.

30. *Id.* § 247.

31. The following discussion of procedure as it operates in a dependent-neglect hearing is based on interviews of caseworkers and attorneys and observation of Allegheny County Juvenile Court proceedings.

Comment

ality of the juvenile courts serves an important function in furthering the work of such agencies as the County Child Welfare Services Bureau. Yet, it is submitted that the very delicacy of the family relationship which necessitates protection from the harshness of the traditional courtroom procedure, also necessitates the observance of basic procedural due process before the state may infringe upon essential familial rights.

The absence of recognized rules of evidence and written rules of procedure greatly hamper the effectiveness of an attorney representing parents in a dependent-neglect case. An attorney appearing before juvenile court for the first time finds it difficult to function in the informal atmosphere. Hearsay, *ex parte* reports and narrative testimony based on opinion are generally admissible. When the attorney objects, he discovers that the judge will admit the testimony and sift out that which is irrelevant and hearsay for himself. Even the attorney experienced in juvenile court work is often relegated to the role of a passive participant without the tools of procedure and evidence to protect his client's case. The use of precise pleadings, depositions and interrogatories available to the attorney in other courts are not found in juvenile court. Unlike a complaint or bill of indictment setting forth charges against a defendant in a civil or criminal trial, the petition in a dependent-neglect case³² gives only a general statement of the charges against his client. What issues will be determinative at the hearing are, therefore, not clarified until the petitioner's case is presented to the court.³³

Closely allied with the lack of evidentiary rules and procedure are the vague standards to be met in proving neglect. The definitions set forth in the statute³⁴ constitute the sole source providing elements of neglect. The petitioner-caseworker, presenting his case in narrative form,³⁵ does not attempt to prove specific elements of neglect, but draws a general picture of the family situation in which the child is neglected. Although the caseworker will give specific instances of neglect, his testimony is not organized to prove specific elements, as in a case for battery where the plaintiff *must* prove the specific elements of the tort. To demand standards of proof in a dependent-neglect case as those in tort law, would be unrealistic. But without something more definite than now exists, the parents and their attorney are seriously

32. See p. 655 *supra*.

33. See p. 656 *supra*.

34. See note 26.

35. See p. 656 *supra*.

hindered in preparing for and meeting the case presented against them.

The practice of excluding parents during crucial testimony is a serious infringement of their right to confrontation and cross-examination of witnesses.³⁶ A caseworker does not request custody of a child unless he is unable to solve the problems of the family by working with the parents to improve the circumstances which necessitated the involvement of Child Welfare. Therefore, if the situation has reached such an impasse as to require a petition for removal, it is doubtful that the caseworker-parent or child-parent relationships can be on very solid ground to begin with. It is submitted that if these delicate relationships are unstable enough to require a court hearing, their protection does not justify the denial of Fourteenth Amendment rights to confrontation and cross-examination of witnesses. If the parents are not present to hear the caseworker-petitioner's case against them, it increases the burden of the attorney trying to represent the parents. An effective defense is dependent upon knowing the charges that defendant faces. As previously indicated, the issues to be proven are not clearly defined before the petitioner's case is presented in court. Without having heard the case against them neither attorney nor client can prepare an adequate argument.

The parents in a dependent-neglect hearing are given the right to counsel, yet neither the child nor the caseworker-petitioner have legal representation. Although in theory the informal proceeding is to prevent a controversy with advocate posed against advocate, in reality the parties are representing opposing sides. The petitioner argues that the child is neglected and must be removed from the home; the parents argue that the child should remain in their custody. The child is placed in the middle. It is the judge, not the caseworker-petitioner or the parents, who calls the child as a witness. It is the judge who questions the child first, permitting the other parties to ask questions if they choose. The child is not a witness for either side, and should, therefore, have independent counsel. The caseworker-petitioner should also have legal representation. A social worker with no legal training cannot be expected to present legally cogent arguments. The caseworker-petitioner is not always able to separate legally relevant from irrelevant testimony, and often becomes emotional when the parents' attorney attempts cross-examination of him. In these circumstances it can be difficult for the petitioner to present his case effectively. Because

36. See p. 656 *supra*.

Comment

petitioner's case may be improperly organized and the testimony not entered by the best evidentiary methods, the case may appear much weaker than it is. Counsel for petitioner, child, and parent are necessary to assure fair and competent representation for all parties to the hearing.

The inconsistency found between Pennsylvania statutory and case law regarding burden of proof presents another serious defect in dependent-neglect procedure. The problem is whether some objective finding of neglect is required or whether "the best interests of the child" is to govern the outcome of the hearing. Section 243 of the statute sets forth general criteria to determine if a child is neglected or dependent.³⁷ The only available Pennsylvania case law as to how these definitions are to relate to standards of proof is represented by *In re Rinker* and *In re Rose*.³⁸

In *Rinker*, the Superior Court stated, "[a] child cannot be declared 'neglected' merely because his condition might be improved by changing his parents."³⁹ The court further indicated that its purpose was not to determine what is for *the best interest of the child*, but to adjudicate whether or not a child is neglected.

In the *Rose* case the Superior Court stated:

The power of the Juvenile Court is not to adjudicate what is for the best interest of a child, but to adjudicate whether or not a child is neglected and dependent, and if so, to make orders in relief of the child.⁴⁰

These opinions apparently indicate that there is a standard to be met—some criteria for determining what is neglect. As previously mentioned, the only available source for such a standard is section 243 of the statute. The inconsistency comes from section 250 of the same statute by which the judge, after an inquiry of the facts, is to "determine whether the *best interests of a child and the State* require the care, guidance and control of such child." [Emphasis added.]

Whether proof of the specifics set forth in the statute's definitions is required, or whether it is entirely within the discretion of the judge to determine what is for the child's "best interest" is a problem which reduces the competency of both the petitioner's and the attorney's presentation at the hearing. Without a clear understanding of the

37. See note 26.

38. *In re Rinker*, 180 Pa. Super. 143, 117 A.2d 780 (1955); *In re Rose*, 161 Pa. Super. 204, 54 A.2d 297 (1947).

39. *Rinker*, at 148, 117 A.2d at 784.

40. *Rose*, at 208, 54 A.2d at 298.

standard of proof required, neither can know what is necessary as to relevant testimony and cross-examination.

NATURE OF THE PROCEEDINGS

One of the greatest obstacles to recognizing the constitutional defects in delinquency proceedings was defining their nature. From the passage of the first juvenile court statutes to the opinion in *Gault*, juvenile court proceedings were classified as "civil" and justified by the theory that the state stepped in as *parens patriae*, thereby taking over the rights and duties of the parent to control the child.⁴¹ *Gault* determined that any threat to a child's liberty required the safeguards of procedural due process.⁴² The proceedings were thereafter classified as quasi-criminal because, as in a criminal trial, it is an individual's liberty which is at stake.

To determine what procedural safeguards are necessary and applicable, dependent-neglect proceedings must also be classified. As with delinquency hearings prior to *Gault*, the sociological theories responsible for our system of juvenile courts have maintained that dependent-neglect proceedings cannot be classified within traditional judicial formulas. The arguments put forth for keeping the hearings informal are also applied to keeping the hearings unclassified.⁴³ As Justice Musmanno indicated in his dissenting opinion in *Holme's Appeal*, reality has never measured up to theory.⁴⁴

It may be argued that dependent-neglect proceedings are civil in the nature of custody cases. In both custody and dependent-neglect cases it is the custody of the child which is ultimately at stake. The protections of procedural due process are present in a custody case, which is argued by legal counsel in an adversary proceeding with all the trappings of a formal trial.⁴⁵ There is even greater necessity to observe standards of due process in dependent-neglect cases in view of the significant difference between dependent-neglect and custody cases. The controversy in a custody case is between parties with an established right to guardianship of the child—parents, relatives, or an agency which has previously

41. See note 20.

42. 387 U.S. at 27.

43. See p. 655 *supra*.

44. *Holme's Appeal*, 370 Pa. 599, 615, 109 A.2d 523, 529 (1954); cited by Justice Fortas in his opinion for the Court in *Gault* at 27.

45. Act of Aug. 10, 1951, P.L. 1163, § 301; Aug. 4, 1955, P.L. 302, § 1; Feb. 10, 1956, P.L. 1022, § 3; July 11, 1957, P.L. 791, § 1; Oct. 13, 1959, P.L. 1311, § 1; Nov. 10, 1959, P.L. 1467, § 1; Dec. 22, 1965, P.L. 1192, § 1; Dec. 22, 1965, P.L. 1193, § 1; PURDON'S PA. STAT. ANN. tit. 20, § 2080.301 (Supp. 1970); Rinker, at 149, 117 A.2d at 784.

obtained legal custody. The court's purpose is to determine only what is for the "best interests" of the child as between parties with a predetermined right to care for that child.⁴⁶ In a dependent-neglect case it is the State, in the form of Child Welfare Services or other agency, that is the petitioning party. It is not only the interests of the child which the juvenile court investigates, but also the neglect of the parents. The power of the State to infringe on vital individual rights must always be carefully limited. Even if the proceedings are to be classified with custody cases, the protections afforded by the formalities of a civil trial are lacking.

It is submitted that the better approach would be to classify dependent-neglect proceedings as quasi-criminal, which would bring them within the *Gault* and *Winship* decisions. There are three major arguments for such classification.

First, the hearing is for the purpose of determining whether the child will be removed from the *parents'* custody. Despite the fact that it is the child's welfare that is of paramount concern, the conduct being scrutinized is that of the parents in relation to their children—have the parents "neglected" their children? The court looks to whether the parents have or have not properly cared for their offspring. Their removal from the home is a condemnation and punishment for the parents.

Second, section 4727 of the Penal Code of Pennsylvania⁴⁷ makes it a misdemeanor to "abandon a child in destitute circumstances or to wilfully omit to furnish necessary and proper food, clothing or shelter for such child." Although juvenile courts cannot prosecute or punish under the Penal Code,⁴⁸ they investigate the same behavior covered by section 4727, and mete out their own sentence—separation of parent from child for an indeterminate period without the safeguards of procedural due process.

Third, although the determination of the court is for the "welfare and best interest of the child,"⁴⁹ the result is a loss of the child's liberty without procedural due process. The child is removed from his home and family and is placed in a shelter, an institution, or a foster home

46. *Com. ex rel. Gifford v. Miller*, 213 Pa. Super. 269, 248 A.2d 63 (1968); *Com. ex rel. McNamee v. Jackson*, 183 Pa. Super. 522, 132 A.2d 396 (1957); *In re Rinker*, *supra* note 38.

47. Act of June 24, 1939, P.L. 872, § 727, PURDON'S PA. STAT. ANN. tit. 18, § 4727 (Supp. 1970).

48. Under PA. CONST. art. V, §§ 1 and 5, added in 1968, criminal jurisdiction is currently placed in the newly created Common Pleas courts. The criminal jurisdiction of the new courts of Common Pleas replaces that of the old courts of Oyer and Terminer and Quarter Sessions.

49. See note 10, § 250.

involuntarily. It is a loss of the child's liberty in the sense that he loses his natural right to be with his parents and family and is often shifted from place to place without his consent. Although delinquency commitments were always justified by the State as in the "best interest" of the child, the Supreme Court found in *Gault* that a commitment amounts to a loss of liberty and, therefore, requires procedural due process.⁵⁰ The same reasoning should apply where a child faces the possibility of removal from his home.

THE RIGHTS INVOLVED

The Fourteenth Amendment forbids the State to deprive any person of life or liberty without due process of law.⁵¹ Although no specifically enumerated provision of the Constitution makes reference to the rights of parent and child, the United States Supreme Court has recognized the sanctity of marriage and the family as falling within the ambit of the Fourteenth Amendment.

In *Meyer v. Nebraska*, the Court discussing the definition of liberty as used in the Fourteenth Amendment, stated that it "denotes, not merely freedom from bodily restraint but also the right . . . to marry, establish a home and bring up children . . ."⁵²

In its opinion in *Loving v. Virginia*,⁵³ the Court declared that the freedom to marry is one of the essential rights of man and cannot be infringed without due process of law. The rights to procreate and care for the children of a marriage were recognized as vital and intimate parts of the right to marry.

At great length and with several concurring opinions, the Court in *Griswold v. Connecticut*,⁵⁴ reiterated the belief that the marriage relationship and the concomitant right to bear and raise children, is a constitutional right. All the safeguards of due process must apply when the State attempts any infringement of this right.⁵⁵

From these three Supreme Court decisions, it may be argued that any

50. *Gault*, at 27.

51. U.S. CONST. amend. XIV, § 1.

52. *Meyer v. Nebraska*, 262 U.S. 399 (1923). In *Meyer* the Court held invalid a statute restraining the teaching of foreign languages to children upon the ground, among others, that it interfered with the right of parents to control the education of their children.

53. *Loving v. Virginia*, 388 U.S. 1 (1967), where the Court held invalid the Virginia antimiscegenation law.

54. *Griswold v. Connecticut*, 381 U.S. 479 (1964), where the Connecticut statute prohibiting the procurement and use of contraceptives by married couples was held unconstitutional.

55. *Id.* at 485.

action by the State interfering with the family relationship is an interference with Fourteenth Amendment rights and requires the protections of procedural due process.

The Pennsylvania Courts have also recognized the natural and fundamental right of parents to the custody of their children. One of the two major dependent-neglect decisions in Pennsylvania,⁵⁶ *In re Rinker*, declared that to remove children from their parents is a serious matter, a power "to be exercised only with extreme care and where the evidence clearly establishes necessity."⁵⁷ The belief that the right of a parent to a child and a child to a parent is repeated in most of the significant Pennsylvania custody cases.⁵⁸

The right of parents to the custody of their children and of children to the care and guidance of their natural parents is one of long standing. To invade these rights is a serious undertaking and one which deserves the full panoply of constitutional protections.

CONCLUSION

The ruling in *Gault* should be applied to dependent-neglect as well as delinquency proceedings. It is not only the freedom of the child that is at stake, but the entire family relationship. The family is the basis of our society; an institution so fundamental that until recent years it needed no defense or justification. To deny full constitutional protections when an infringement of this institution is contemplated, while extending such protection to those accused of crime, is ludicrous. In any dependent-neglect proceeding, the right to confrontation and cross-examination of witnesses, and the right to counsel for the child, petitioner, and parent are essential. The application of rules of evidence and written rules of procedure are necessary to guarantee a fair and competent hearing, which is implicit in the concept of due process. Neither trial by jury, nor an adversary proceeding is being advocated. To prevent abuse of discretion, to give all parties a fair hearing, and

56. See note 38.

57. *Rinker*, at 147, 117 A.2d at 783.

58. *Com. ex rel. Gifford v. Miller*, 213 Pa. Super. 269, 248 A.2d 63 (1968); *In re Neff* (Cochran Appeal), 187 Pa. Super. 79, 142 A.2d 499, case appealed, 394 Pa. 162, 145 A.2d 857 (1958); *In re Duckworth*, 188 Pa. Super. 232, 146 A.2d 365 (1958); *Com. ex rel. McNamee v. Jackson*, 183 Pa. Super. 522, 132 A.2d 396 (1957); *Com. ex rel. Harry v. Eastridge*, 374 Pa. 172, 92 A.2d 350 (1953); *Com. ex rel. Keenan v. Thomas*, 151 Pa. Super. 131, 30 A.2d 246 (1943); *Com. ex rel. Cummings v. Nearhof*, 141 Pa. Super. 581, 15 A.2d 529 (1940).

to protect the constitutional rights involved, however, a confrontation between advocates trained in the law and aware of the legal rights at stake must be afforded. The spirit of the Constitution so demands.

DIANNE M. FABER