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Constitutional Law - Right to Trial by Jury in Juvenile Delinquency Proceedings

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CONSTITUTIONAL LAW—RIGHT TO TRIAL BY JURY IN JUVENILE DELINQUENCY PROCEEDINGS—The Supreme Court of Pennsylvania has held that the right to trial by jury in a juvenile proceeding is not so “fundamental” as to be constitutionally required.

Terry Appeal, 438 Pa. 339, 265 A.2d 350 (1970).

Terry, a minor, was found delinquent in a non-jury hearing held in the Juvenile Court of Philadelphia. On appeal, Terry argued that the constitution as interpreted by *In Re Gault*¹ and *Duncan v. Louisiana*² accorded him the right to a jury trial. The Pennsylvania Supreme Court in affirming the order of the lower court and ruling against Terry arrived at its decision by a contrary interpretation of *Gault* and *Duncan*. The court stated that although the *Gault* Court used broad and sweeping language, the holding was narrow. The court reasoned that in light of this narrow holding it was difficult to conclude that juvenile courts must comply with all the requirements of due process. It was the court's task to decide whether or not the right to trial by jury was one of the due process rights required in a juvenile proceeding.³

The Pennsylvania Supreme Court rejected Terry's contention that *Duncan v. Louisiana* was useful in determining what due process rights were applicable in juvenile courts. In *Duncan* the Supreme Court held that “(t)he fourteenth amendment guarantees a right of jury trial in all criminal cases which—were they to be tried in a federal court—would come within the sixth amendment's guarantee. . . .”⁴ Although the Court in *Duncan* again spoke in sweeping terms, Pennsylvania maintains there is also language contained in the *Duncan* opinion that restricts the absolutism of its holding and indicates the ruling may not necessarily be controlling in juvenile proceedings. To resolve the question the court pointed out that they must determine “(w)hether there are elements in the juvenile process which render the right to a trial by jury less essential to the protection of an accused's rights in the ju-

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1. 387 U.S. 1 (1967).
 2. 391 U.S. 145 (1968).
 3. *Terry Appeal*, 438 Pa. 339, 265 A.2d 350 (1970).
 4. 391 U.S. 145, 149 (1968).

venile system than in the normal criminal process, and therefore not so 'fundamental' as to be constitutionally required."⁵

The court enumerated four factors which they felt, when coupled with the constitutional protections of *Gault*, were elements in the juvenile process which render the right to a jury trial non-essential in a juvenile proceeding. They concluded because of the safeguards built into the juvenile system *Duncan* does not apply to juveniles and Pennsylvania is not constitutionally compelled to grant the right to trial by jury.⁶

In *Terry* the court first emphasizes that the sweeping rationale of *Gault* was greatly tempered by its narrow holding. "If we had only the broader language it would be difficult to resist the conclusion that the Supreme Court had concluded that juvenile courts must comply with all the requirements of due process. The holdings do not, however, seem to contemplate so large a result. . . ."⁷ It is submitted the narrow holding in *Gault* should not be used to conclude the Court intended to restrict its sweeping rationale. The Supreme Court in *Gault* clearly states:

In their jurisdictional statement and brief in this court, appellants do not urge upon us all of the points passed upon by the Supreme Court of Arizona. They urge that we hold the juvenile code of Arizona invalid on its face or as applied in this case because, contrary to the Due Process Clause of the Fourteenth Amendment, the juvenile is taken from the custody of his parents and committed to a state institution . . . , and in which the following basic rights are denied:

1. Notice of the charges;
2. Right to counsel;
3. Right to confrontation and cross-examination;
4. Privilege against self-incrimination;
5. Right to a transcript of the proceedings; and
6. Right to appellate review.

We shall not consider other issues which were passed upon by the Supreme Court of Arizona. We emphasize that we indicate no opinion as to whether the decision of that court with respect to such other issues does or does not conflict with requirements of the Federal Constitution.⁸

5. *Terry Appeal*, 438 Pa. 339, 348, 265 A.2d 350, 354 (1970).

6. *Id.*

7. *Id.* at 345, 265 A.2d at 353.

8. *In Re Gault*, 387 U.S. 1, 10-11 (1967).

One of the issues passed upon by the Supreme Court of Arizona was "(t)hat the correct burden of proof is that 'the juvenile judge must be persuaded by clear and convincing evidence that the infant has committed the alleged delinquent act'."⁹ The United States Supreme Court failed to mention the burden of proof standard in the *Gault* decision; yet three years later when confronted with the same question in *In Re Winship*¹⁰ the Supreme Court decided if a juvenile's due process rights were not to be denied, the correct standard of proof required in a juvenile proceeding is proof beyond a reasonable doubt.¹¹ *Winship* is a strong affirmation of the Supreme Court's statement in *Gault* that they would only rule on the points brought before them by the appellants, and the lack of review of other issues ruled upon by the Arizona Supreme Court was not to be construed as an indication of the Court's opinion concerning the constitutionality of these issues.¹² Therefore to interpret, as the Pennsylvania Supreme Court did in *Terry*, the narrow holding in *Gault* as being carefully tailored and designed by the Supreme Court to temper its sweeping rationale places on that decision an unwarranted restriction and one not borne out in light of the Court's recent ruling in *Winship*.

Pennsylvania next contends that the *Duncan* decision also contains restrictive language which indicates the right to trial by jury is not an absolute constitutional requirement nor necessarily fundamental in every type of proceeding.¹³ The majority seemingly justifies this contention by quoting from footnote 14 of the *Duncan* case: "(i)t might be said that the limitation in question is not necessarily fundamental to fairness in every criminal system that might be imagined but is fundamental in the context of the criminal processes maintained by the American states."¹⁴ "A criminal process which was fair and equitable but used no juries is easy to imagine. It would make use of alternative guarantees and protections which would serve the purposes that the jury serves in the English and American system."¹⁵ Pennsylvania alleges this language contained in footnote 14 of the *Duncan* decision indicates there is a definite restriction on the absolutism of the holding. How-

9. *Id.* at 11 n. 7.

10. 397 U.S. 358 (1970).

11. *Id.*

12. 387 U.S. 1 (1967).

13. 438 Pa. 339, 265 A.2d 350 (1970).

14. 391 U.S. 145, 150 n. 14 (1968).

15. *Id.*

ever, the Pennsylvania Supreme Court quoted only a portion of that footnote. The United States Supreme Court went on to state:

. . . (Y)et no American state has undertaken to construct such a system. Instead, every American state, including Louisiana, uses the jury extensively, and imposes very serious punishments only after a trial at which the defendant has a right to a jury's verdict. In every state, including Louisiana, the structure and style of the criminal process—the supporting framework and the subsidiary procedures—are of the sort that naturally complement jury trial, and have developed in connection with and in reliance upon jury trial.¹⁶

Justice Cohen in his dissenting opinion in *Terry* asserts that footnote 14 in *Duncan* does not place a restriction on that decision and, if anything, amplifies the need for a jury by emphasizing its role in American jurisprudence.¹⁷ The most cogent argument against accepting footnote 14 as a restriction can be derived from the absolutism of the language contained in Justice White's majority opinion in *Duncan* and Justice Fortas' concurring opinion in *Bloom v. Illinois*.¹⁸ Justice White states: "Because we believe that trial by jury in criminal cases is fundamental to the American scheme of justice, we hold that the Fourteenth Amendment guarantees a right of jury trial in all criminal cases which—were they to be tried in a federal court—would come within the Sixth Amendment's guarantee."¹⁹ (Note: A three-judge district court, several months before *Duncan* was decided, in *Nieves v. United States*, declared 18 U.S.C.A. § 5033 unconstitutional. § 5033 holds that a juvenile to be tried under the Federal Juvenile Delinquency Act must first waive his right to a jury trial. In ruling § 5033 unconstitutional the three-judge panel also held that in light of *Gault*, juveniles were entitled to trial by jury in all federal juvenile proceedings.)²⁰ In his concurring opinion in *Bloom*, Justice Fortas writes: "I believe as my Brother White's opinion for the Court in *Duncan v. Louisiana* persuasively argues, that the right to jury trial in major prosecutions, states as well as federal, is so fundamental to the protection of justice and liberty that 'due process of law' cannot be accorded without it."²¹ Justice Douglas' dissenting opinion in *DeBacker v. Brainard*²² also failed to note

16. *Id.*

17. 438 Pa. 339, 265 A.2d 350 (1970).

18. 391 U.S. 194 (1968).

19. 391 U.S. 145, 149 (1968).

20. 280 F. Supp. 994 (1968).

21. 391 U.S. 194, 212 (1968).

22. 396 U.S. 28 (1970).

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any restrictions on the absolutism of *Duncan*. In the *DeBacker* decision the majority of the Court decided not to rule on the right to trial by jury for juveniles as *Duncan v. Louisiana* applied only prospectively and *DeBacker's* hearing was conducted before the *Duncan* decision. Justice Douglas in delivering the dissenting opinion stipulates: "I would reach the merits and hold that the Sixth and Fourteenth Amendments require a jury trial as a matter of right. . . ." ²³ "(G)iven the fundamental nature of the right to jury trial as expressed in *Duncan* and *Bloom*, there is, as I see it, no constitutionally sufficient reason to deprive the juvenile of this right."²⁴ It is concluded that the Pennsylvania Supreme Court, by its reading of and reliance on footnote 14, in the *Duncan* case interpreted in that decision a restriction that was not intended.

Pennsylvania finally enumerates the following four elements which are factors built into the juvenile system:

- (1) The judges in juvenile courts take a different view of their role than that taken by judges in criminal courts;
- (2) The juvenile system utilizes various diagnostic and rehabilitative services and is thus better capable of providing understanding and sympathetic treatment;
- (3) An adjudication of delinquency is much less onerous than a finding of guilty in a criminal trial; and
- (4) The right to trial by jury, if incorporated as one of the due process rights a juvenile is entitled to, would disrupt the unique nature of the juvenile process.

These factors, Pennsylvania asserts, together with the constitutional due process safeguards of *Gault* provide the juvenile system with the "alternative guarantees and protections" required to render a jury trial non-essential as a "fundamental" constitutional right within the meaning of *Duncan*.²⁵

The *Gault* Court in commenting on the juvenile judge's role indicates this role is probably not as helpful to the juvenile system as an orderly appearance of due process.

The early conception of the Juvenile Court proceeding was one in which a fatherly judge touched the heart and conscience of the erring youth Then, as now, good will and compassion were admirably prevalent. But recent studies have, with surprising

23. *DeBacker v. Brainard*, 396 U.S. 28, 35 (1970).

24. *Id.* at 38.

25. 438 Pa. 339, 265 A.2d 350 (1970).

unanimity, entered sharp dissent as to the validity of this gentle conception. They suggest that the appearance as well as the actuality of fairness, impartiality and orderliness—in short, the essentials of due process—may be a more impressive and more therapeutic attitude so far as the juvenile is concerned.²⁶

Gault then clearly specifies that while the juvenile judge's differing role can be retained it is not a substitute for the orderliness of due process.

Pennsylvania next proposes that because the juvenile system uses various diagnostic and rehabilitative services they are better equipped to provide understanding and sympathetic treatment. The juvenile courts are provided "(w)ith services specially designed to aid minors. . . ." ²⁷ The Supreme Court in *Gault* also recognizes the value of these services in a juvenile system, and feels they should be preserved as part of the juvenile process. However, they carefully point out that these services have no effect on the adjudicatory phase of the juvenile proceedings where the juvenile is provided with the protections of the Due Process Clause. "The problems of pre-adjudication treatment of juveniles, and of post-adjudication disposition, are unique to the juvenile process; hence what we hold in this opinion with regard to the procedural requirements at the adjudicatory stage has no necessary applicability to other steps of the juvenile process."²⁸ The Court reiterates this view in *Winship* when they reject the New York Court of Appeals' argument that since juvenile proceedings are designed to aid the child and not punish him they should not be subject to the due process right of proof beyond a reasonable doubt. In repudiating this argument the Court states: "Again, however, *Gault* expressly rejected this justification. We made clear in that decision that civil labels and good intentions do not themselves obviate the need for criminal due process safeguards in juvenile courts. . . ." ²⁹ Therefore, while the Supreme Court willingly admits the juvenile system can provide the child with unique services, they specifically reject Pennsylvania's argument that this is a factor for denying the child's due process rights during the adjudication phase of the juvenile process.

The third element Pennsylvania contends is a factor which renders

26. 387 U.S. 1, 25-6 (1967).

27. 438 Pa. 339, 348, 265 A.2d 350, 355 (1970).

28. 387 U.S. 1, 31 n. 48 (1967).

29. 397 U.S. 358, 365 (1970).

trial by jury less essential to juveniles is that an adjudication of delinquency is less onerous than a finding of guilty in a criminal trial. "None of the disabilities which follow a criminal conviction attach to an adjudicated delinquent, and most importantly, the institutions to which juveniles are committed are something less than jails, for there is a greater emphasis on rehabilitation."³⁰ The first time the United States Supreme Court questioned this "civil" in nature distinction as a reason for the deprivation of a juvenile's constitutional rights was in *Kent*. There the Court observed, "[w]hile there can be no doubt of the original laudable purpose of juvenile courts, studies and critiques in recent years raise serious questions as to whether actual performance measures well enough against theoretical purpose to make tolerable the immunity of the process from the reach of constitutional guarantees applicable to adults."³¹ In *Gault* the Court again considered the importance of the classification of "delinquent" as opposed to "criminal." They note, "[t]here is, of course, no reason why this should not continue. It is disconcerting, however, that this term has come to involve only slightly less stigma than the term 'criminal' applied to adults."³² In further discussion concerning the juvenile's loss of constitutional rights based on the premise a finding of delinquency does not lead to criminal involvement the *Gault* Court observes, "[i]n the first place, juvenile proceeding to determine 'delinquency', which may lead to commitment to a state institution, must be regarded as 'criminal' To hold otherwise would be to disregard substance because of the feeble enticement of the 'civil' label-of-convenience which has been attached to juvenile proceedings."³³ Disregarding this language the New York Court of Appeals in *Winship*, made substantially the same "less onerous" argument that Pennsylvania makes in *Terry*. They contend that the due process requirement of proof beyond a reasonable doubt need not be incorporated in a juvenile proceeding because a delinquency status is not a crime; and the proceedings are not criminal. In reaffirming their stand in *Gault* the Supreme Court again rejects this argument: "In effect the Court of Appeals distinguished the proceedings in question here from a criminal prosecution by use of what *Gault* called the 'civil' label of convenience But *Gault* expressly rejected that designation as a reason for holding the Due Process Clause inapplicable to a

30. 438 Pa. 339, 349, 265 A.2d 350, 355 (1970).

31. *Kent v. U.S.*, 383 U.S. 541, 555 (1966).

32. 387 U.S. 1, 23-4 (1967).

33. *Id.* at 49-50.

juvenile proceeding.”³⁴ The Supreme Court of Pennsylvania emphasizes, a factor to be considered when determining a juvenile’s constitutional rights is that commitment following a juvenile hearing will place the child in an institution where the focus is on rehabilitation. Again *Gault* excludes this as a factor in determining constitutional rights. “It is of no constitutional consequence—and of limited practical meaning—that the institution to which he is committed is called an Industrial School. The fact of the matter is that, however euphemistic the title, a ‘receiving home’ or an ‘industrial school’ for juveniles is an institution of confinement in which the child is incarcerated for a greater or lesser time.”³⁵

Therefore, it is submitted that the first three of the four elements Pennsylvania classifies as important considerations in resolving whether a juvenile’s right to trial by jury is constitutionally required have been specifically rejected by the Supreme Court in *Kent*, *Gault* and *Winship* as factors to be considered when determining a child’s constitutional rights in a juvenile proceeding.

When enumerating the four elements, the Pennsylvania Supreme Court postulated that these elements coupled with the due process safeguards of *Gault* are factors in the juvenile system which rendered the right to trial by jury constitutionally non-essential. However, the fourth factor is not an inherent element of the juvenile process. It merely states that jury trials for juveniles, of all the due process rights, would be most disruptive to the juvenile system.³⁶ This certainly cannot be considered as an element that provides the juvenile with additional safeguards which, when coupled with the due process guarantees of *Gault*, would render the right to trial by jury constitutionally non-essential. True, the present juvenile system might be disrupted to some extent by jury hearings, but should administrative difficulties be a consideration when determining constitutional rights? If *Duncan* does apply equally to juveniles as it does to adults, is the juvenile’s constitutional right to be revoked because he is a child? The Court in *Gault* states: “Under our constitution, the condition of being a boy does not justify a kangaroo court.”³⁷ It must be remembered that *Duncan* did not require a jury trial in all criminal proceedings, but only in serious crimes.³⁸ (Note: *Duncan* did not draw an exact line between

34. 397 U.S. 358, 365 (1970).

35. 387 U.S. 1, 27 (1967).

36. 438 Pa. 339, 265 A.2d 350 (1970).

37. 387 U.S. 1, 28 (1967).

38. 391 U.S. 145 (1968).

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serious crimes and petty offenses but they did stipulate incarceration for two or more years constituted a serious crime. Statistics from the Warrendale Youth Development Center and the New Castle Youth Development Center, Pennsylvania, reveal the average length of commitment to be eight months at New Castle YDC and 13 months at Warrendale YDC.) Presently, then, a juvenile's right to a jury trial would only extend to serious crimes as defined in *Duncan v. Louisiana*, and therefore the juvenile process would be disrupted only to the same extent.

The majority in *Terry* construes *Gault* and *Duncan* in a narrow and restricted manner. Yet close scrutiny does not verify such a narrow interpretation. The majority of the Pennsylvania Supreme Court further rationalizes its unwillingness to apply *Duncan's* holding to juveniles by enumerating four elements which, they state, when coupled with the due process guarantees of *Gault* render the right to trial by jury constitutionally non-essential in a juvenile hearing. However, as indicated, these four elements were specifically rejected by the United States Supreme Court as factors to be considered when determining a juvenile's constitutional rights. Therefore, in conclusion, it is submitted the Pennsylvania Supreme Court in holding that juveniles are not constitutionally entitled to a jury trial do so without adequately justifying that decision.

Dennis L. Veraldi

CONSTITUTIONAL LAW—BURDEN OF PROOF IN A JUVENILE DELINQUENCY PROCEEDING—The Supreme Court of the United States has held that where a juvenile is charged with the commission of a delinquent offense for which institutional confinement may be imposed, due process requires that the charges against him be proved beyond a reasonable doubt.

In re Winship, 397 U.S. 358 (1970).

During a 1967 adjudicatory hearing, the appellant, a 12-year-old boy, was adjudicated a "delinquent." The act upon which the adjudication was based would have constituted larceny had the appellant been an adult. The presiding judge, relying on a statute,¹ found that by the

1. N.Y. FAMILY COURT ACT § 744(b) (McKinney Supp. 1970) provides in part: "Any determination at the conclusion of a fact-finding hearing that a respondent did an act or acts must be based on a preponderance of the evidence."