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## Constitutional Law - Burden of Proof in a Juvenile Delinquency Proceeding

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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,<sup>1</sup> found that by the

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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."

"preponderance of the evidence" the appellant was guilty. The judge expressly held that the proof against appellant did not establish his guilt beyond a reasonable doubt. The case ultimately reached the United States Supreme Court which noted probable jurisdiction. The Court reached the conclusion that where a juvenile is charged with the commission of a crime which renders him liable to confinement for as long as six years "as a matter of due process the case against him must be proved beyond a reasonable doubt."<sup>2</sup>

In reaching this conclusion the Court relied mainly upon *In re Gault*.<sup>3</sup> *Gault* held that where, as a result of a juvenile delinquency proceeding, a juvenile may be committed to an institution due process requires the following: 1) the child and his parents or guardian must be given notice sufficient to permit preparation of a defense to the charges; 2) they must be notified of the child's right to be represented by counsel; and 3) the child must be afforded the privilege against self-incrimination and the rights of confrontation and cross-examination of witnesses against him. These rights were held to be applicable only to the adjudicatory phase of the proceeding.<sup>4</sup>

The *Winship* Court expressly affirmed *Gault* rejecting the contention that the Due Process Clause was inapplicable to juvenile delinquency proceedings since the proceedings are not "criminal" in nature. Similarly the Court denied the notions that juvenile proceedings are designed "not to punish, but to save the child," and that a "delinquent" adjudication is not a "criminal conviction."<sup>5</sup>

Civil labels and good intentions do not themselves obviate the need for criminal due process safeguards in juvenile courts, for a proceeding where the issue is whether the child will be found to be 'delinquent' and subjected to the loss of his liberty for years is comparable in seriousness to a felony prosecution.<sup>6</sup>

In *Gault*, Justice Fortas, speaking for the majority, noted that by affording juveniles constitutional rights to which adults are entitled, the beneficial aspects of the juvenile process (treating juveniles separately from adults, avoiding classification of the juvenile as a "criminal," and providing for the confidentiality of police contacts

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2. *In re Winship*, 397 U.S. 358, 361 (1970).

3. 387 U.S. 1 (1967).

4. The adjudicatory stage is that stage of the delinquency proceeding where there is a judicial determination of the truth of the allegation of delinquency. 7 HOUSTON L. REV. 400 (1969-70).

5. 387 U.S. at 12-31.

6. *Id.* at 36.

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and court action relating to juveniles) will not be impaired. This view was espoused by Justice Brennan in *Winship* where he remarked for the majority:

Use of the reasonable doubt standard during the adjudicatory hearing will not affect New York's policies that a finding that a child has violated a criminal law does not deprive the child of his civil rights, and that juvenile proceedings are confidential; nor will there be any effect on the informality, flexibility, or speed of the hearing at which the factfinding takes place. The opportunity during the post-adjudicatory or dispositional hearing for a wide ranging review of the child's social history and for his individualized treatment will remain unimpaired. Similarly, there will be no effect on the procedures distinctive to juvenile proceedings which are employed prior to the adjudicatory hearing.<sup>7</sup>

The fact that the *Gault* Court spoke in terms of according juveniles "adult rights"<sup>8</sup> implicitly posed a problem for the Court in *Winship*; the reasonable doubt standard of proof had never been expressly held as a constitutionally required right of adults.<sup>9</sup> The Court recognized the problem and stated:

We explicitly hold that the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.<sup>10</sup>

The Court primarily based its decision upon the fact that there is virtually unanimous adherence to the reasonable doubt standard in common law jurisdictions and that expressions in many opinions indicate that it has long been assumed that proof of a criminal charge beyond a reasonable doubt is constitutionally required.<sup>11</sup> It is one of those "fundamental principles that are deemed essential for the protection of life and liberty."<sup>12</sup>

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7. 397 U.S. at 366.

8. Right to notice of impending criminal charges had been decided in *Cole v. Arkansas*, 333 U.S. 196 (1948) and *In re Oliver*, 333 U.S. 257 (1948); the rights of confrontation and cross-examination were held as constitutionally required by due process in *Pointer v. Texas*, 380 U.S. 400 (1965) and *Douglas v. Alabama*, 380 U.S. 415 (1965); requirements of a right to counsel and freedom from self-incrimination were decided in *Gideon v. Wainwright* 372 U.S. 335 (1963) and *Miranda v. Arizona*, 384 U.S. 436 (1966), respectively.

9. Michael & Cunningham, *From Gault to Urbasek: For the Youth the Best of Both Worlds*, 49 CHI. B. RECORD 162 (1968).

10. *In re Winship*, 397 U.S. at 364.

11. *Speiser v. Randall*, 357 U.S. 513 (1958); *Holland v. United States*, 348 U.S. 121 (1954).

12. *Davis v. United States*, 160 U.S. 469, 488 (1895).

By deeming the reasonable doubt standard applicable to adults prior to deciding its applicability to juveniles, the Court avoided a difficult question. That question is whether there are some rights due process requires to be afforded to juveniles that are not rights of adults. The Court also avoided this question in *Gault* which is evidenced by their refusal to decide whether or not a state is required by the Constitution even to provide appellate review for juveniles without applying the same to adults.<sup>13</sup> The reason for the avoidance of this question in *Gault* and in *Winship* is because of the Court's realization that this would be a radical step to take at this time in light of the fact that the holdings in these cases marked a significant change in the law.<sup>14</sup> The Court wishes to gradually erode the view that the "parens patriae" philosophy precludes any need for a child to be accorded constitutional rights.<sup>15</sup> It follows therefore, that the Court would choose to apply only those rights to juveniles which have been accorded to adults rather than taking the more severe and expansive approach of according rights to juveniles which have not even been accorded to adults.

Attention has now been given by the Court to the sanctions imposed by the state rather than to the state's good motives. The nature of these sanctions is explained by the Court's decision in *Gault* that "whether it be called punishment or rehabilitation the juvenile delinquent's confinement is no less a loss of liberty than the adult criminal's."<sup>16</sup> It would seem that the Court perceives the loss of liberty and the stigma which would result from this youth being adjudicated

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13. *Griffin v. Illinois*, 351 U.S. 12, 18 (1956).

14. The first Juvenile Court Act in the United States was enacted in Illinois in 1899. This system of dealing with juvenile offenders was eventually adopted by every state. The conscience of society demanded that the child be afforded the opportunity for full social development. The methods employed in the social reformation of a misdirected child were a combination of science and law directed toward the adequate treatment of delinquency and crime. Pursuant to the objective of rehabilitation, each state enacted statutes which did not provide the child with constitutional protections. There was a dual purpose in their reasoning: 1) it was felt that the child should not be subjected to the rigorous technicalities of the criminal proceeding and the stigma attached; and 2) the flexibility in disposition allowed by the proceeding was considered desirable. Hence, the idea of punishing a child for his criminal acts was abandoned on the theory that children should not be handled under the same procedures and processes as adult offenders. A child would not be adjudicated criminal under this theory, but in the interest of society he would be rehabilitated.

15. The absence of constitutional restrictions was explained by the "civil" nature of the proceedings, since the parens patriae doctrine held that the basic right of a juvenile is not to liberty but to custody. A delinquency adjudication providing for incarceration of the youth in a training school was merely a transfer of custody, in which the state assumed the role of guardian. Thus, a juvenile could suffer no loss of liberty, since he had none, and there was neither right to nor necessity for the procedural safeguards prescribed by constitution and statute in criminal cases.

2 *SETON HALL L. REV.* 221 (1970).

16. 387 U.S. 1, 22 (1967).

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"delinquent" as outweighing those "treatment aspects" of state institutions to which this youth could possibly have been committed. By the *Winship* Court repeating what had been explicitly stated in *Gault*, "that civil labels and good intentions do not themselves obviate the need for criminal due process safeguards in juvenile courts,"<sup>17</sup> it seems to be implying that these labels in fact were criminal. Although the juvenile court's intention is to "help" the youngster rather than punish him, as a matter of fact, commitment to an institution ultimately results in "custodial punishment" rather than "treatment."<sup>18</sup>

Hence, it appears that societal perception of delinquent youngsters,<sup>19</sup> the lack of treatment services and personnel, and the psychologically destructive milieu of our present delinquent institutional facilities continues to strongly influence the Court in decisions regarding the rights of juvenile offenders.<sup>20</sup> Whenever involuntary removal from society and institutionalization is utilized as a means for "rehabilitating" a youthful offender the amount of proof must reach a standard of beyond a reasonable doubt. This standard is used in determining whether a child is in need of such "treatment" because a serious question remains whether or not such treatment will really be offered to him.<sup>21</sup> Therefore, it is indefensible that a juvenile may be so deprived of his liberty under a lesser standard of proof than that applicable to an individual who is older and who is tried for the same offense. The right to liberty is too valuable to be treated as a factor of age. In accord are those decisions which have indicated that appropriate treat-

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17. 397 U.S. at 358.

18. As the Supreme Court observed in *Kent v. United States*, 383 U.S. 541, 555 (1966): "while 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."

19. *Jones v. Commonwealth*, 185 Va. 335, 38 S.E.2d 444 (1946).

20. "[F]acilities are often overcrowded." Children's Bureau, Statistical Series 78, *Statistics On Public Institutions for Delinquent Children*: 1963 at 8-10 (1965); "[O]ften training schools degenerate into miniature prisons with many of the same vicious aspects." Douglas, *Juvenile Courts and Due Process of Law*, 19 JUV. CR. JUDGES J. 9, 11 (1968); "Juveniles undergo the experience of forced association with more sophisticated, delinquent recidivists, or worse yet, with hardened criminals." Sheridan, *Juveniles Who Commit Non-Criminal Acts: Why Treatment in a Correctional System*, 31 FED. PROB. 26, 28 (1967); "[B]eing institutionalized may have lasting effects upon his personality and ability to cope in a socially acceptable way." Lipsitt, *Due Process as a Gateway to Rehabilitation in the Juvenile Justice System*, 49 B.U.L. REV. 62, 75 (1969). See also Holme's Appeal, 379 Pa. 599, 616 (1954) (Musmanno, J. Dissenting); *Trimble v. Stone*, 187 F. Supp. 483, 485 (1960); ALLEN, *THE BORDERLAND OF CRIMINAL JUSTICE*, 18, 52-56 (1st ed. 1964).

21. The Court in *Kent v. United States*, 383 U.S. 541, 556 (1966). Noted: "There may be grounds for concern that the child receives the worst of both worlds: that he neither receives the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children."

ment is essential to the validity of juvenile custody and therefore that a juvenile may challenge the validity of his custody on the ground that he is not in fact receiving any special treatment.<sup>22</sup>

It is submitted that the Court's decision in the instant case is consistent with their decision in *Gault*.<sup>23</sup> Both holdings are quite narrow; the Court does not state whether the result would have been the same in a "non-delinquency" proceeding governing children "in need of supervision"<sup>24</sup> or whether there are other "elements of due process and fair treatment" required during a delinquency proceeding. It appears from *Kent*,<sup>25</sup> *Gault*,<sup>26</sup> and *Winship*,<sup>27</sup> that only those rights which come into play during the "adjudicatory-phase" of the hearing and whose enforcement would not destroy those aspects of the juvenile process which the Court views as unique and beneficial will be accorded to juveniles as constitutionally required. It seems apparent that setting the standard of proof for guilt in a delinquency proceeding has far less potential for contributing to the disruption of the uniquely beneficial pre-hearing and post-adjudicatory phase of the juvenile process than does advising a child of his constitutional rights to counsel, silence, affording him the rights of confrontation and cross-examination, and insuring that explicit notice of the charges be given to the child's parents. These rights involve the machinery and procedures of the court system while the imposition of a reasonable doubt standard merely requires a juvenile judge to be more confident in reaching his decision. In fact, it has been suggested that its utilization would assure protection of the right against self-incrimination which has already been accorded to juveniles,<sup>28</sup> and would improve the quality of services offered at delinquent institutions.<sup>29</sup>

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22. *Creek v. Stone*, 379 F.2d 106 (1967); *Kauter v. Reid*, 183 F. Supp. 352 (D.D.C. 1960); *White v. Reid*, 125 F. Supp. 647 (D.D.C. 1954); *Clayton v. Stone*, 358 F.2d 548 (1966); *In re Rich*, 125 Vt. 373, 216 A.2d 266 (1966).

23. 387 U.S. 1 (1967).

24. N.Y. FAMILY COURT ACT, § 731 (McKinney Supp. 1970).

25. 383 U.S. 541 (1966).

26. 387 U.S. 1 (1967).

27. 379 U.S. 358 (1970).

28. If a juvenile may be found "delinquent" upon proof by a preponderance of the evidence, then he is pressured to testify, a result contra to his right against self-incrimination, as accorded by *Gault*. If the state need only convince the court that it "seems likely" or "is more probable than not" that the child was guilty of the commission of the offense, then he may be forced to sacrifice his right against self-incrimination in order to rebut a very weak case presented by the state. 68 MICH. L. REV. 567 (1969-70).

29. "One of the reasons for the ineffectiveness of the treatment given delinquents is that correctional centers are overburdened. By adopting the higher standard of proof, it is likely that fewer youths would be sent away for treatment and that the institutions would be able to perform better their function of rehabilitating, since there would be a

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Therefore, it is submitted that the Court will be quite hesitant in affording juveniles such rights as the right to trial by jury<sup>30</sup> since this right would probably "affect the informality, confidentiality, flexibility, and speed of the hearing at which the factfinding takes place."<sup>31</sup> On the other hand, the Court should not be precluded from applying such protections as the Fourth Amendment exclusionary rule<sup>32</sup> to juvenile proceedings or according juveniles the privilege against self-incrimination during interrogation while in the custody of the police or juvenile authorities.<sup>33</sup> Although the admissions or evidence would be "obtained" or "seized" prior to the adjudicatory stage of the proceeding, these rights only become "relevant" or "operative" during the adjudicatory stage. It cannot be said that allowing a juvenile these procedural safeguards will have an "effect on the procedures which are unique, beneficial and distinctive to juvenile proceedings that are employed prior to the adjudicatory hearing."<sup>34</sup> There is nothing "unique, beneficial and distinctive" about a policeman searching a youth without "probable cause," or coercing a child to give inculpatory statements during questioning. Therefore, unless we are willing to consider the practices condemned in *Miranda*<sup>35</sup> and *Mapp*<sup>36</sup> as becoming acceptable as the age of the accused decreases there appears to be no valid reason why the Court should not accord these rights to juveniles in the future.

Likewise, it would appear that the Court's decision in *Winship*<sup>37</sup> or *Gault*<sup>38</sup> does not preclude the Court from deciding that a juvenile is constitutionally entitled to more stringent application of those due

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fairly high degree of certainty that only those who are in need of help would be sent to the institutions." *Id.*

30. In *Duncan v. Louisiana*, 391 U.S. 145 (1968) the Supreme Court held that the right to a trial by jury for all crimes punishable by as much as two years imprisonment is a fundamental right which must be accorded to defendants in state courts under the Due Process Clause of the Fourteenth Amendment. Since most of the juvenile acts in this country authorize commitment during the child's minority, it would follow that this right is "potentially applicable" to juveniles.

31. In *re Winship*, 397 U.S. at 366.

32. In *Mapp v. Ohio*, 367 U.S. 643 (1961), the Supreme Court held that all evidence obtained by searches and seizures in violation of the Fourth Amendment of the Constitution is, through the Fourteenth Amendment Due Process Clause, inadmissible in a state court.

33. In *Miranda v. Arizona*, 384 U.S. 436 (1966), the Supreme Court held that when an individual is taken into custody or otherwise deprived of his freedom by the authorities in any significant way and is subjected to questioning, he must be warned, prior to any questioning, that he has the right to remain silent that anything he says may be used against him, that he has the right to the presence of counsel and that if he cannot afford an attorney one will be appointed for him prior to any questioning.

34. In *re Winship*, 397 U.S. at 366.

35. 384 U.S. 436 (1966).

36. 367 U.S. 643 (1961).

37. 397 U.S. 358 (1970).

38. 387 U.S. 1 (1967).

process safeguards which have already been accorded to adults. In fact, the majority opinion in *Gault* intimates that special problems may arise with respect to such things as a child's ability to waive his right against self-incrimination. Justice Fortas stated:

We appreciate 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.<sup>39</sup>

Of course, even though the Court seems to have adopted a strongly protective policy toward juveniles and realizes their increased susceptibility to the ill effects of a lack of constitutional safeguards, it may not insist on according more rights to juveniles. It is one thing to say that a delinquency adjudication and possible commitment to a training school makes a juvenile delinquency proceeding "criminal enough" to demand certain constitutional rights which have been accorded to adult offenders; it is another thing to say that the consequences of such proceedings demand that a juvenile be accorded even stricter application of those safeguards.

In conclusion, it seems clear that the Court, motivated by a shift of attention from "motives of treatment" to the consequence of "restraint of liberty," has manifested an intention to apply only those rights which are operative during the adjudicatory-phase of the proceedings to juveniles which have already been accorded to adults by the Due Process Clause of the Fourteenth Amendment. They will determine the issues narrowly, and take special precautions to protect those aspects of the juvenile delinquency proceeding which they perceive as unique and beneficial. Of course, only the future can determine the growth and development of the law.

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39. *Id.* at 55.