

1971

Criminal Law - Juvenile Court Proceedings - Evidence

Daniel Joseph

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



Part of the [Criminal Law Commons](#), and the [Juvenile Law Commons](#)

Recommended Citation

Daniel Joseph, *Criminal Law - Juvenile Court Proceedings - Evidence*, 9 Duq. L. Rev. 696 (1971).
Available at: <https://dsc.duq.edu/dlr/vol9/iss4/13>

This Recent Decision 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.

CRIMINAL LAW—JUVENILE COURT PROCEEDINGS—EVIDENCE—The Pennsylvania Superior Court has indicated that a distinction exists as to the admissibility of hearsay evidence in a juvenile proceeding. The distinction is based upon whether the hearsay evidence will help or hurt the child.

Farms Appeal, 216 Pa. Super. 445, 268 A.2d 170 (1970).

The particular facts of this case are not significant for the scope of this paper. It suffices to say that the case involves a juvenile proceeding in which the main issue is whether certain testimony sought to be admitted into evidence constitutes an exception to the hearsay rule. In holding that it does constitute such an exception, the majority opinion contains some dicta. It is this dicta which the writer believes is of significance in that it displays the present philosophy in Pennsylvania for handling juvenile proceedings. This philosophy, as will be shown, constitutes a logical step forward in fulfilling the aims and purposes of the juvenile system.

It is not the writer's purpose to discuss the substantive rules of evidence but instead to "get inside the judge's mind" in order to show (as indicated by the Pennsylvania Superior Court) what the judge's thought processes *should* be when dealing with hearsay evidence in a juvenile proceeding.

The logical starting point for tracing the Pennsylvania court's philosophy from the pre-*Gault*¹ to the post-*Gault* era is *In re Holmes*.² This case adequately sets forth the early views held in Pennsylvania; in addition, its colorful dissent by the late Justice Musmanno³ was later adopted by the majority of the United States Supreme Court in its *Gault* decision.

The view of the majority in *Holmes* is that the juvenile court proceeding is not in the nature of a criminal trial, but a civil inquiry or action and the goals of juvenile court proceedings are treatment, reformation, and rehabilitation of the minor child. The purpose of the proceeding is not penal but protective—"armed to check juvenile delinquency and to throw around a child, just starting, perhaps, on an evil course and deprived of proper parental care, the strong arm of the state acting as *parens patriae*."⁴

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

2. 379 Pa. 599, 109 A.2d 523 (1954).

3. Justice M. A. Musmanno late associate justice of the Pennsylvania Supreme Court.

4. 379 Pa. at 603, 109 A.2d at 525.

Recent Decisions

It is also the impression of the *Holme's* majority that "no suggestion or taint of criminality attaches to any finding of delinquency by a juvenile court."⁵ This philosophy led to an era in juvenile proceedings characterized by informality, especially in regard to the rules of evidence.⁶

Although the aims and purposes enunciated by the majority in *Holmes* are ideal, they were not realized. This was recognized by Musmanno in his dissenting opinion in *Holmes*.⁷

The argument was being made that in return for providing care instead of punishment for the child, the state can deny traditional due process to the juvenile. It was "a sort of quid pro quo. But it became obvious that the child's part of the bargain saw a definite failure of consideration."⁸ The situation was one of frustration for the juvenile—he received neither the protection given adults nor the fatherly hand and rehabilitating treatment theorized for children, but, in fact, received the "worst of both worlds."⁹

The turning point in the world of juvenile court proceedings came in May of 1967, when the United States Supreme Court decided the *Gault* case. Gerald Gault, who had been previously adjudicated a delinquent child¹⁰ and committed to the state training school, had his commitment reversed on the ground that he had been denied constitutional due process. This decision gave rise to a more formalized approach to juvenile proceedings.

Dean Monrad G. Paulsen¹¹ discussed the significance of *Gault*. "The *Gault* case is a case of enormous interest because it seems to *undercut* (emphasis added) one of the principal ideas that moved those who set

5. *Id.* at 604, 109 A.2d at 525.

6. *Id.* at 606, 109 A.2d at 526. "From the very nature of the hearings in the juvenile court it cannot be required that strict rules of evidence should be applied as they properly would be in the trial of cases in the criminal court."

7. 379 Pa. at 612, 109 A.2d at 529.

A most disturbing fallacy abides in the notion that a juvenile court record does its owner no harm. The grim truth is that a juvenile record is a lengthening chain that its riveted possessor will drag after him through childhood, youthhood and adulthood . . . Even when the ill-starred child becomes an old man the record will be there to haunt, plague and torment him. It will be an ominous shadow following his tottering steps, it will stand by his bed at night and it will hover over him when he dozes fitfully in the dusk of his remaining day.

8. Spencer, *Beyond Gault And Whittington—The Best of Both Worlds*, 22 U. MIAMI L. REV. 906 (1968).

9. *Kent v. United States*, 383 U.S. 541, 556 (1966).

10. The words 'delinquent child' include: "a child who has violated any law of the commonwealth or ordinance of any city, borough or township . . ." Act of June 2, 1933, P.L. 1433, § 1, PURDON'S PA. STAT. ANN. tit. 11, § 243 (1965).

11. Professor and Dean at the University of Virginia Law School.

up the juvenile court";¹² that principal idea being that children should have a court room experience characterized by informality. Paulsen states that the *Gault* case imposes in some juvenile court proceedings the degree of formalism which one finds in a criminal case.¹³ This results from the conclusion reached by eight of the nine judges that the "juvenile court dream has been an illusion."¹⁴ Thus *Gault* provided formality to the juvenile proceedings in order to give children some of the procedural safeguards which apply in criminal cases.¹⁵

Since this casenote is concerned with this formality as applied to the admissibility of hearsay evidence, it will be discussed only in this vein. It is, however, submitted that a caveat may be necessary here. Although a more formal proceeding is now called for, Pennsylvania has not lost sight of the aims and purposes of the juvenile courts. This fact can be readily seen from an analysis of the opinion in *Commonwealth v. Johnson*.¹⁶ Pennsylvania courts feel that the juvenile court system is to maintain its flexibility, within the limits prescribed by *Terry Appeal*,¹⁷ that being that the juvenile courts function with "the procedural regularity and the exercise of care implied in the phrase 'due process'."¹⁸

The Supreme Court was clear that due process did not require abandonment of this flexibility, advocated by the Pennsylvania courts, if the juvenile's interest in a fair adjudication is not overcome thereby.¹⁹ In light of this, a judge sitting alone in a juvenile proceeding and

12. Paulsen, *The Changing World of Juvenile Law, New Horizons For Juvenile Court Legislation*, 40 PENN. B.A.Q. 26, 27 (1968).

13. *Id.* at 27.

14. *Id.* at 28.

15. 387 U.S. 1 (1967).

16. 211 Pa. Super. 62, 74-75, 243 A.2d 9, 16 (1967).

The Supreme Court's opinion in *Gault* should not be viewed by the courts and judges of this commonwealth as a mandate to abandon the juvenile court adjudicative procedure. Rather it is an invitation to formulate a court procedure which will combine the best aspects of juvenile and criminal court procedure into an amalgam which will offer the juvenile the best of both worlds. The Supreme Court in our view recognized that there are essential differences between the trial of adults and juveniles. Similarly, juvenile court judges must recognize these differences and exercise their discretionary powers.

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

18. *Id.* at 344, 265 A.2d at 352.

Due process of law is the primary and indispensable foundation of individual freedom. It is the basic and essential term in the social compact which defines the rights of the individual and delimits the power which the state may exercise . . . (T)he procedural rules which have been fashioned from the generality of due process are our best instruments for the distillation and evaluation of essential facts from the conflicting welter of data that life and our adversary methods present. It is these instruments of due process which enhance the possibility that truth will emerge from the confrontation of opposing versions and conflicting data.

19. *In re Winship*, 397 U.S. at 366 (1970).

Recent Decisions

having the task of determining questions of fact and law²⁰ have the discretion to admit hearsay evidence for what it is worth since it is his duty to become as knowledgeable and inquisitive as reasonably possible.²¹ It is the use of this discretion and how such use may differ in adult and juvenile proceedings that the writer will presently discuss, in an effort to show that Pennsylvania has taken steps beyond *Gault* by its implementation of the juvenile procedure to further benefit the child.

Prior to showing a benefit to the child it is essential to first examine his plight, which resulted from the judges discretionary application of the hearsay rule, prior to the *Farms Appeal*.

In *Holmes*, the minor was charged with armed robbery of a church. At the hearing, the only evidence which supported this charge was the testimony of a detective that one of the two men convicted of the same crime in a criminal court had implicated the minor in his confession. This confession, which implicated the minor (*Holmes*), was later repudiated. Nevertheless, *Holmes* was committed to the Pennsylvania Industrial School. The Pennsylvania Supreme Court in its affirmance of the commitment said "the fact that the testimony of the detective was technically 'hearsay' was . . . wholly unimportant."²² Note that in *Holmes*, even though the judge, as previously discussed, has the discretion to admit or not to admit hearsay evidence, he chose to exercise his discretion and admit it even though it was harmful to the child.

*In re Mont*²³ is another Pennsylvania case, in which the minor *Mont* was adjudged delinquent and committed to reform school. The major portion of the evidence introduced in this case was hearsay.²⁴ Thus, another example of the judge allowing hearsay testimony which operated to the child's detriment.

Both of these Pennsylvania cases are prior to the *Gault* decision and although *Gault* did result in the formalization of juvenile proceedings, it did not distinguish between the admissibility of hearsay in a juvenile proceeding, in regard to its resulting benefit or detriment to the child.

20. Katz, *A Reappraisal of Juvenile Delinquency Proceedings in New York*, 34 ALBANY L. REV. 122 (1969).

21. Davis, *Hearsay in Nonjury Cases*, 83 HARV. L. REV. 1362, 1368 (1970). In practice, hearsay in nonjury cases has not been subject to the restrictive technical rulings that are more common in jury cases. Instead, the judge sitting alone as the trier of facts usually admits hearsay for what it is worth without ruling on its admissibility.

22. 379 Pa. at 606, 109 A.2d at 526.

23. 175 Pa. Super. 150, 103 A.2d 460 (1954).

24. Comment, *Criminal Offenders in the Juvenile Court: More Brickbats and Another Proposal*, 114 U. PA. L. REV. 1171, 1199 (1966).

When faced with the decision of whether or not to admit hearsay evidence for what it is worth, different policy reasoning is presented to the judge, depending upon whether the defendant is an adult or a juvenile.

A judge, when dealing with an adult, is concerned about releasing a bad man into society. Here, the judge is concerned with the safety of the public. When dealing with a mere child, on the other hand, society's safety is not the foremost consideration; instead it is the interest that society has in keeping this child's slate clean so that he can develop into a useful member of his community and not be restricted by a tainted past.²⁵ "The thrust of recent decisions is toward protection of the juvenile, in areas where penal sanctions may be imposed . . ."²⁶

With these ideas in mind and in light of the past Pennsylvania decisions,²⁷ it is submitted that the significance of the opinion in *Farms Appeal* is that today in Pennsylvania when a juvenile court judge is faced with the exercise of this discretion he *should* admit the hearsay evidence for what it is worth, if it will be to the child's benefit, and deny its admittance into evidence if it would be harmful to the child. This inference is drawn from the fact that in *Farms Appeal* the evidence if admissible will prove a prior inconsistent statement by the key witness for the prosecution, thereby greatly benefiting the juvenile defendant. The Pennsylvania Superior Court stated that such evidence should have been admitted; however, the court stated that "we would not allow an adjudication of delinquency based on hearsay."²⁸ It is submitted that this reasoning supports the inference that the judge *is not* going to use his discretion and allow the contested evidence to be admitted if it will be detrimental to the child.

It is the writer's opinion that had *Holmes* and *Mont* been decided with the same philosophy that prevailed in *Farms Appeal*, the hearsay testimony in the latter two cases, which led to an adjudication of delinquency, would not have been admitted into evidence.

By establishing this procedure for a judge to follow when faced with the problem of whether or not to admit hearsay, the Pennsylvania Superior Court has taken a logical step forward. Now the courts not only give the child the rights given an adult in a court proceeding (*Gault*), but also conduct the proceeding in such a manner as not to

25. 383 U.S. at 910.

26. Fox, *Responsibility in The Juvenile Court*, 11 WM. & MARY L. REV. 659 (1970).

27. 379 Pa. 599, 109 A.2d 523 (1954); Comment *supra* note 24.

28. 216 Pa. Super. 445, 454, 268 A.2d 170, 175 (1970).

Recent Decisions

lose sight of the fact that he is not a hardened criminal. Instead, he is a child with a long future ahead of him, a future that can be productive to society.

Daniel Joseph