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Constitutional Rights of Juveniles: Gault and Its Application

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CONSTITUTIONAL RIGHTS OF JUVENILES: GAULT AND ITS APPLICATION

INTRODUCTION

A bold, new experiment was begun sixty years ago. It was started by people who believed that juveniles who committed criminal acts needed treatment rather than punishment. They saw a need for a separate philosophy of law and an independent system of courts for juveniles. Here, free from the technical rules of a criminal court, the whole child could be examined and an individualized treatment plan could be developed for the wayward youth. The juvenile was not to be labeled a criminal. It soon became apparent, however, that serious inequities existed within the juvenile court system. Juveniles were being deprived of their liberty without basic procedural due process safeguards. In addition, there was evidence that they were not receiving promised benefits. The juvenile court system and its philosophy came under attack by educators and jurists as early as the 1920's. However, it was not until 1966 that the Supreme Court of the United States granted *certiorari* to consider the constitutional questions involved in a juvenile delinquency proceeding. In *Application of Gault*,[1] the Supreme Court proclaimed that juveniles have certain basic procedural due process rights in a juvenile delinquency proceeding. This decision has plunged the entire juvenile court system into a state of flux. But before the *Gault* decision can be analyzed and its implications understood, it is necessary first to briefly relate the history of the juvenile court movement.

THE JUVENILE COURT AND ITS PHILOSOPHY

Under the early common law, juvenile and adult offenders were treated alike. Except for the fact that children under fourteen were presumed incapable of possessing the necessary criminal intent, juvenile offenders were subject to the same laws, manner of arrest, trial, and punishment as adult offenders.[2] As concern for social reforms developed, it was inevitable that this aspect of the law would come under attack.

1. 87 S. Ct. 1428 (1967).

2. For those under seven the presumption was conclusive, but between seven and fourteen the presumption was rebuttable. MACK, THE CHILD, THE CLINIC, AND THE COURT 310 (1925).

As early as 1825, New York City's House of Refuge separated juvenile and adult offenders, and attempted to give the children corrective treatment. In 1847, Massachusetts began the first industrial and reform school for juveniles. Later, New York and Massachusetts provided for separate trials, dockets and court records in juvenile cases.[3] This was just a beginning for the early reformers. They wanted more than separation of juveniles and adults in corrective institutions; they wanted an independent judicial system that was not fettered by the restrictions and rigidities of the adult criminal court. The goal was to be rehabilitation of the child, not punishment.[4] The child was seen as basically good and if caught in time he could be saved from his downward career. The emphasis was to shift from "Has he committed this crime?" to "What is the best thing to do for this lad?" [5]

Under this new system, the juvenile no longer had the constitutional procedural safeguards which he had previously enjoyed. The locution used to justify this was, "The State is proceeding as 'parens patriae' " [6]— a concept presumably borrowed from the Chancery court, where it meant the power of the State to act "in loco parentis" in protecting the child, both in regard to his person and his property.[7] Another justification for the denial was the belief that a child was not entitled to constitutional rights in the first instance. He did not have an absolute right to freedom, but rather was subject to the restraint of a parent or guardian to whom he owed obedience.[8]

As a result of this reform movement, the first distinct statewide court system for juveniles was established by the Illinois' Juvenile Court Act in 1889. This court was to hear cases on dependency, neglect and delinquency. The hearings were to be informal and closed to the public. The "sick" child was to be cured. By 1925, all but two states had established juvenile courts with similar aims.[9]

The proceedings in these juvenile courts were to be civil not criminal

3. The President's Commission on Law Enforcement and Administration of Justice, TASK FORCE REPORT: JUVENILE DELINQUENCY AND YOUTH CRIME 3 (1967) [hereinafter cited as TASK FORCE REPORT].

4. Paulsen, *Fairness to the Juvenile Offender*, 41 MINN. L. REV. 547, 563 (1957).

5. Mack, *The Juvenile Court*, 23 HARV. L. REV. 104, 107 (1909).

6. *Id.* 109. *See* Cinque v. Boyd, 99 Conn. 70, 121 A. 678 (1923).

7. Paulsen, *Kent v. United States: The Constitutional Context of Juvenile Cases*, 1966 SUP. CT. REVIEW 167, 173 (1966).

8. *Ex parte* Sharpe, 15 Idaho 120, 96 P. 563 (1908).

9. TASK FORCE REPORT, *supra* note 3, at 3.

in nature.[10] The criminal procedural safeguards enumerated in the constitution and its amendments were not required.[11] The child could be compelled to be a witness against himself[12] and hearsay was admissible.[13] Rights specifically granted to adults by state constitutions and statutes, such as bail[14] and trial by jury,[15] were denied. In most courts there was no right to counsel because it was felt that adversary tactics and technical objections would hamper the court's task.[16] It was felt that the child's interests would be adequately protected by the judge and the probation officer or the social worker.

This did not mean that the child was subjected to a completely arbitrary system of justice. Most courts held that the hearing must meet a certain standard. It must be fair and impartial;[17] it must contain fundamental fairness;[18] or it must guarantee due process.[19] The problem

10. Shioutakon v. District of Columbia, 236 F.2d 666 (D.C. Cir. 1956); *Ex parte* Daedler, 194 Cal. 320, 228 P. 467 (1924); Cinque v. Boyd, 99 Conn. 70, 121 A. 678 (1923); Lindsay v. Lindsay, 257 Ill. 328, 100 N.E. 892 (1913); Harris v. Souder, 233 Ind. 287, 119 N.E.2d 8 (1954); Robison v. Wayne Circuit Judges, 151 Mich. 315, 115 N.W. 682 (1908); *Ex parte* Newkosky, 94 N.J.L. 314, 116 A. 716 (1920); *In re* Santillanes, 47 N.M. 140, 138 P.2d 503 (1943); People v. Lewis, 260 N.Y. 171, 183 N.E. 353 (1932) *cert. denied*, 289 U.S. 709 (1932); Malone v. State, 130 Ohio St. 443, 200 N.E. 473 (1936); Commonwealth v. Fisher, 213 Pa. 48, 62 A. 198 (1905); Jones v. Commonwealth, 185 Va. 335, 38 S.E.2d 444 (1946); State *ex. rel.* Hinkle v. Skeen, 138 W. Va. 116, 75 S.E.2d 223 (1953), *cert. denied*, 345 U.S. 967 (1953).

11. *See, e.g.*, People v. Dotson, 46 Cal.2d 891, 299 P.2d 875 (1956).

12. *See In re* Dargo, 81 Cal. App.2d 205, 183 P.2d 282 (1947); *In re* Broughton, 192 Mich. 418, 158 N.W. 884 (1916); *In re* Santilanes, 47 N.M. 140, 138 P.2d 503 (1943); People v. Lewis, 260 N.Y. 171, 183 N.E. 353 (1932), *cert. denied*, 289 U.S. 709 (1932); *In re* Holmes, 379 Pa. 599, 109 A.2d 523 (1954), *cert. denied*, 348 U.S. 973 (1954). *But see Ex parte* Tahbel, 46 Cal. App. 755, 189 P. 804 (1920); People v. Fitzgerald, 244 N.Y. 307, 155 N.E. 584 (1927).

13. *See* Cambell v. Siegler, 10 N.J. Misc. 987, 162 A. 154 (1932); *In re* Holmes, 379 Pa. 599, 109 A.2d 523 (1954), *cert. denied*, 348 U.S. 973 (1954); State *ex rel.* Christensen v. Christensen, 119 Utah 361, 227 P.2d 760 (1951).

14. *In re* Magnuson, 110 Cal. App.2d 73, 242 P.2d 362 (1952); Cinque v. Boyd, 99 Conn. 70, 121 A. 678 (1923); Espinosa v. Price, 144 Tex. 121, 188 S.W.2d 576 (1945).

15. United States *ex rel.* Yonick v. Briggs, 266 F. 434 (D.C. Pa. 1920); *In re* Brodie, 33 Cal. App. 751, 166 P. 605 (1917); *In re* Sharp, 15 Idaho 120, 96 P. 563 (1908); Dinson v. Drostra, 39 Ind. App. 432, 80 N.E. 32 (1907); Commonwealth v. Bigwood, 334 Mass. 46, 133 N.E.2d 585 (1956); *In re* Perham, 104 N.H. 276, 184 A.2d 449 (1962); *In re* Lewis, 51 Wash.2d 193, 316 P.2d 907 (1957) (recognizing the rule).

16. People *ex rel.* Weber v. Fifield, 136 Cal. App.2d 741, 289 P.2d 303 (Dist. Ct. App. 1955); Rooks v. Tindall, 138 Ga. 863, 76 S.E. 378 (1912); Akers v. State, 114 Ind. App. 195, 51 N.E.2d 91 (1943); Dudley v. State, 219 S.W.2d 574 (Tex. Civ. App. 1949); *In re* Rich, 125 Vt. 373, 216 A.2d 266 (1966).

17. *In re* Roth, 158 Neb. 789, 64 N.W.2d 799 (1954).

18. United States v. Dickerson, 271 F.2d 487 (D.C. Cir. 1959).

19. Pee v. United States, 274 F.2d 556 (D.C. Cir. 1959); Application of Johnson, 178

lay in deciding exactly what these standards required.[20] This difficulty was aggravated by the fact that in most states juvenile proceedings were not appealable,[21] and inconsistencies could therefore result within the same jurisdiction. One notable result of the juvenile court system was that juveniles were often incarcerated for longer periods than adults would have been for the same offense.[22]

The early juvenile court system was consequently not without its critics.[23] A survey conducted by the United States Children's Bureau in 1920 revealed that only sixteen percent of the juvenile courts actually had separate hearings for juveniles, an authorized probation service, and the necessary social background on the youths.[24] An early case held that fines imposed by the juvenile court amounted to punishment, and, therefore, the juvenile was entitled to constitutional protections.[25] Similarly, where confinement has amounted to punishment rather than rehabilitation, education, and care, courts have held that the juvenile

F. Supp. 155 (D. N.J. 1957); People v. Dotson, 46 Cal.2d 891, 299 P.2d 875 (1956); Wissenburg v. Bradley, 209 Iowa 813, 229 N.W. 205 (1930); Bryant v. Brown, 151 Miss. 398, 118 So. 184 (1928); *In re* Carlo and Stasilowiez, 48 N.J. 224, 225 A.2d 110 (1966); *In re* W., 19 N.Y.2d 55, 224 N.E.2d 102, 277 N.Y.S.2d 675 (1966); Dendy v. Wilson, 142 Tex. 460, 179 S.W.2d 269 (1944).

20. Right against self-incrimination *see Ex parte* Tahbel, 46 Cal. App. 755, 189 P. 804 (1920); Dendy v. Wilson, 142 Tex. 460, 179 S.W.2d 269 (1944). *Contra,* cases cited *supra* note 12.

Exclusion of hearsay, *see In re* Contreras, 109 Cal. App.2d 787, 241 P.2d 631 (1952); *In re* Sippy, 197 A.2d 455 (D.C. Mun. Ct. App. 1953); *In re* Green, 123 Ind. App. 81, 108 N.E.2d 647 (1952); *In re* Mantell, 157 Neb. 900, 62 N.W.2d 308 (1954); People v. Lewis, 260 N.Y. 171, 183 N.E. 353 (1932), *cert. denied,* 289 U.S. 709 (1932) (recognizing the rule); Ballard v. State, 192 S.W.2d 329 (Tex. Civ. App. 1946). *Contra,* cases cited *supra* note 13.

21. Wissenberg v. Bradly, 209 Iowa 813, 229 N.W. 205 (1930). *See also* State v. McDonald, 206 La. 732, 20 So.2d 6 (1944); Note, *The Juvenile Court–Benevolence in the Star Chamber,* 50 J. CRIM. L.C. & P.S. 464, 472 (1960).

22. Commonwealth v. Fisher, 213 Pa. 48, 62 A. 198 (1905) (juvenile received three years for larceny when maximum sentence for an adult would have been six months); *In re* Holmes, 379 Pa. 599, 109 A.2d 523 (1954), *cert. denied,* 348 U.S. 973 (1954) (juvenile confined until his majority, 4 years, for driving without a license); State v. Cagle, 111 S.C. 548, 96 S.E. 291 (1918) (Two boys, eight and ten, were confined until their majority for petit larceny for which an adult would receive thirty days).

23. Waite, *How Far Can Court Procedures Be Socialized Without Impairing Individual Rights,* 13 J. AM. INST. OF CRIM. L. & CRIM. 339 (1922).

24. TAPPAN, JUVENILE DELINQUENCY 173 (1949). In 1966, the Children's Bureau conducted a similar survey which revealed that the gap still exists between the ideal and the practice in juvenile courts. TASK FORCE REPORT, *supra* note 3, at 3.

25. Robison v. Wayne Circuit Judges, 151 Mich. 315, 115 N.W. 682 (1908).

may challenge the validity of his custody.[26] The most famous diatribe on the juvenile court system was delivered by Justice Musmanno in his dissenting opinion in *In re Holmes* where he stated:

> [F]airness and justice certainly recognize that a child has the right not to be a ward of the State, not to be committed to a reformatory, not to be deprived of his liberty, if he is innocent. The procedure for ascertaining the guilt or innocence of a minor may be . . . [called] a civil inquiry . . . but in substance and in form it is a trial. . . . And no matter how trained and experienced a Juvenile Court judge may be, he cannot by any magical fishing rod draw forth the truth out of a confused sea of speculation, rumor, suspicion and hearsay. He must follow certain procedures which the wisdom of the centuries have established.[27]

The view of the juvenile proceeding as a civil rather than a criminal proceeding has been consistently criticized.[28] One expert stated that labelling juvenile proceedings "non-criminal" was "a convenient but highly misleading sophistry." [29] Where a California statute said that adjudication of a minor as a ward of the court "shall not be deemed conviction of a crime," the court held that "for all practical purposes, this is a legal fiction, presenting a challenge to credulity and doing violence to reason." [30] An adjudication of delinquency will affect a juvenile's later chances for employment, education and even a military career.[31] As Justice Musmanno said, "To say that a graduate of a reform school is not to be 'deemed a criminal' is very praiseworthy but this placid

26. "Unless the institution is one whose primary concern is the individual's moral and physical well-being, unless its facilities are intended for and adapted to guidance, care, education and training rather than punishment, . . . it seems clear a commitment to such an institution is by reason of conviction of a crime and cannot withstand an assault for violation of fundamental constitutional safeguards."

White v. Reid, 125 F. Supp. 647, 650 (D.D.C. 1954).

See Creek v. Stone, 379 F.2d 106 (D.C. Cir. 1967); Kautter v. Reid, 183 F. Supp. 352 (D.D.C. 1960). *See also* Elmore v. Stone, 355 F.2d 841 (D.C. Cir. 1966) (separate opinion of Bazelon, C. J.); *cf. In re* Rich, 125 Vt. 373, 216 A.2d 266 (1966).

27. 379 Pa. at 613, 109 A.2d at 529.

28. Cases cited *supra* note 14.

29. Tappan, *Unofficial Delinquency*, 29 NEB. L. REV. 547, 548 (1950).

30. *In re* Contreras, 109 Cal. App.2d 787, 789, 241 P.2d 631, 633 (1932).

31. Sheridan, *Double Jeopardy and Waiver in Juvenile Delinquency Proceedings*, 23 FED. PROBATION 43 (1959).

bromide commands no authority in the fiercely competitive fields of everyday modern life." [32]

APPLICATION OF GAULT

With all of this ferment, states began to re-examine their juvenile court statutes.[33] Cases involving involuntary confessions made by juveniles and admitted into evidence against them in juvenile court, were dismissed.[34] Courts began to point out that before juvenile court acts, a child was entitled to all the constitutional protections[35] and that the "legislative intent was to enlarge, not diminish, these protections." [36] It was in this atmosphere that the Supreme Court granted *certiorari* to consider *Kent v. United States*,[37] a District of Columbia delinquency proceeding involving a juvenile's rights in a waiver hearing to give jurisdiction to the criminal court. While the Court's decision to grant these rights turned on the interpretation of the District of Columbia's statute, it forecast the Court's growing dissatisfaction with the juvenile system when it said: "There is evidence . . . that there may be grounds for concern that the child receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children." [38] Approximately one year later, the same Court decided a case which changed the entire complexion of juvenile rights. In *Application of Gault*,[39] the Supreme Court squarely faced, for the first time, the issue of whether juveniles were entitled to basic procedural due process in a delinquency proceeding. Gerald Gault, fifteen years old, claimed that his due process rights had been violated at the proceeding at which he was declared a delinquent. This finding was based on an alleged telephone call which he

32. *In re* Holmes, 379 Pa. 599, 611, 109 A.2d 523, 528 (1954), *cert. denied*, 348 U.S. 973 (1954).

33. California and New York provided for the right to have counsel appointed and the right to be informed of this fact. *See* CAL. WELF. & INST. CODE §§ 633, 634, 659, 700 (West 1966); N.Y. FAMILY COURT ACT §§ 241, 249, 728, 741 (McKinney 1962).

34. *In re* Carlo and Stasilowiez, 48 N.J. 224, 225 A. 2d 110 (1966).

35. Commonwealth v. Horregan, 127 Mass. 450 (1879) (right to presentment by grand jury); State *ex rel.* Cunningham v. Ray, 63 N.H. 406 (1884) (due process; trial by jury); People *ex rel.* O'Connell v. Turner, 55 Ill. 280 (1870) (due process of law).

36. *In re* Poff, 135 F. Supp. 224, 225 (D.D.C. 1955).

37. 383 U.S. 541 (1966). The statute said the juvenile could be waived to criminal court after "full investigation." The Court held that the juvenile in such a case is entitled to a hearing, to access by his counsel to social records which were considered by the court and a statement of the reasons for the decision.

38. *Id.* at 556.

39. 87 S. Ct. 1428 (1967).

made using lewd or indecent remarks, and on his past behavior.[40] While his parents were at work and without any notice to them, Gerald was taken to the Detention Home. A preliminary hearing was held the next day, but Gerald was not released until three or four days after the hearing. At this time his parents were notified there would be further hearings on his "delinquency." Neither Gerald nor his parents were advised of their right to counsel. The complainant did not appear at either of the hearings. The evidence at the two hearings consisted of the probation officer's testimony as to what the complainant told him over the telephone, and Gerald's own statements which were elicited without warning him of his privilege against self-incrimination. Violation of due process was claimed because the Arizona Supreme Court held there was no right to appellate review of a juvenile court order and therefore no need of a transcript.

The Supreme Court of the United States reversed the Arizona Court, proclaiming that "neither the Fourteenth Amendment nor the Bill of Rights is for adults alone." [41] This does not connote that all criminal safeguards are going to automatically be transplanted to the juvenile court. As the Court said in *Kent*: "We do not mean . . . to indicate that the hearing to be held must conform with all of the requirements of a criminal trial or even of the usual administrative hearing, but we do hold that the hearing must measure up to the essentials of due process and fair treatment." [42] The Court held that in *Gault*, due process required notice of charges,[43] right to appointment of counsel, including the right to be notified of same, the right to confrontation and cross-examination of witnesses, and the privilege against self-incrimination. The Court did not rule on the questions of the right to appeal and to receive a copy of the transcript.[44]

40. Two years prior to the telephone call incident, Gerald had been referred to the court because his companion allegedly stole a baseball glove. No hearing was ever held. *Id.* at 1434.

41. *Id.* at 1436.

42. 383 U.S. at 562.

43. The notice must meet the standards of notice in a civil or criminal case. In a criminal context *see, e.g.*, Cole v. Arkansas, 333 U.S. 196 (1948). In a civil context *see, e.g.*, Armstrong v. Manzo, 380 U.S. 545 (1965).

44. While it pointed out that the federal constitution has not been construed as requiring states to provide such review [Griffin v. Illinois, 351 U.S. 1218 (1956)], it also discussed the unfortunate consequences of such failure in juvenile cases (87 S. Ct. at 1460). This would appear to imply when the issue is clearly presented to the Court, they will consider it a discriminatory denial of right of appeal and therefore a violation of the equal protection clause of the fourteenth amendment [*See generally* State v. Janiec, 6 N.J. 608, 80 A.2d 94 (1951), *cert. denied*, 341 U.S. 955 (1951)].

EFFECTS OF THE GAULT DECISION

The *Gault* decision does not abrogate the juvenile court system. The Court strictly confined the applicability of *Gault* "to proceedings by which a determination is made as to whether a juvenile is 'delinquent' as a result of alleged misconduct on his part, with the consequence that he may be committed to a state institution." [45] Even in these proceedings, the benefits of the system are to be retained.[46]

The difficulty remains of ascertaining what due process in a juvenile proceeding requires. The problem is complicated by the fact that there is no exact definition of due process. Its meaning varies with the circumstances, subject matter, and necessities of the situation.[47] The late Chief Justice Vanderbilt said, regarding due process for juveniles, that "[t]he indispensable elements of due process are: first, a tribunal with jurisdiction; second, notice of a hearing to the proper parties; and finally, a fair hearing." [48] There should be a difference between due process in the criminal court system and due process in a juvenile court. The exigency is not for all the technical rules of criminal courts, but it is for those which produce a correct and impartial determination of the facts. The rights granted in *Gault* all point in this direction. In addition, these rights will make the system seem less arbitrary to the child.[49]

45. 87 S. Ct. at 1436.

46. ". . . As we shall discuss, the observance of due process standards, intelligently and not ruthlessly administered, will not compel the States to abandon or displace any of the substantive benefits of the juvenile process." *Id.* 1440.

". . . But the features of the juvenile system which its proponents have asserted are of unique benefit will not be impaired by constitutional domestication." *Id* 1441.

". . . While due process requirements will, in some instances, introduce a degree of order and regularity to juvenile court proceedings to determine delinquency, and in contested cases will introduce some element of the adversary system, nothing will require that the conception of the kindly juvenile judge will be replaced by its opposite . . ." *Id.* 1443.

". . . In any event, there is no reason why, consistently with due process, a State cannot continue if it deems appropriate, to provide and to improve provisions for confidentiality of records of police contacts and court action relating to juveniles . . ." *Id.* 1442.

47. *E.g.*, Moyer v. Peabody, 212 U.S. 78 (1909).

48. Vanderbilt, *Foreword* to VIRTUE, BASIC STRUCTURE OF CHILDREN'S SERVICES IN MICHIGAN at x (1953).

49. ". . . [T]here is increasing evidence that the informal procedures, contrary to the original expectation, may themselves constitute a further obstacle to the effective treatment of the delinquent to the extent that they engender

Other constitutional rights, both state and federal, need to be scrutinized with the following questions in mind. What do they have to offer to the juvenile court system? Will they merely make it more formal or will they serve a real need? At least one author has urged that "children accused of acts that would be crimes if committed by adults are entitled as of constitutional right in the juvenile courts to all constitutional safeguards recognized in that jurisdiction to those charged with crimes in the usual criminal courts." [50] This is too far-reaching. What is needed is a selective due process adapted to the peculiar needs of a juvenile court. The reasoning in *Gault* can be analyzed and expanded in order to determine what additional rights, if any, will fall into this category.

Rights at Adjudication

Most juveniles are denied the right to trial by jury in juvenile court.[51] Trial by jury is not made mandatory on the states by the fourteenth amendment,[52] but all states have a provision providing for it in their constitutions in criminal cases. Conceivably, the Court could hold that the states have to administer this provision consistently with equal protection, and, therefore, apply it to juveniles as well as adults. There is, however, nothing in *Gault* which would indicate this change of position.[53] The addition of a jury would of necessity add many of the formalities of a criminal trial[54] without providing compensating advantages. With the implementation of the rights enunciated in *Gault*, the fact-finding role of the jury can be adequately performed by the judge.[55]

Like trial by jury, the requirement of a public trial is not necessary

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in the child a sense of injustice provoked by seemingly all-powerful and challengeless exercise of authority by judges and probation officers."

The President's Commission on Law Enforcement and Administration of Justice, THE CHALLENGE OF CRIME IN A FREE SOCIETY 85 (1967) (hereinafter cited as CRIME COMMISSION REPORT).

50. Antieau, *Constitutional Rights in Juvenile Courts*, 46 CORNELL L. Q. 387, 392 (1961).

51. CRIME COMMISSION REPORT, *supra* note 49, at 38.

52. Hughes v. Heinze, 268 F.2d 864 (9th Cir. 1959).

53. *See* Commonwealth v. Johnson, 36 U.S.L.W. 2187 (Pa. Super. Ct. Sept. 15, 1967). The court held that nothing in Gault entitles the juvenile to jury trial since jury trial is not an essential element of due process. Its absence does not hinder the search for the truth.

54. Paulsen, *Fairness to the Juvenile Offender*, 41 MINN. L. REV. 547, 559 (1957).

55. As to the importance of trial by jury *see* Palko v. Connecticut, 302 U.S. 319 (1937).

to assure the child of due process. Secret hearings are always suspect and it is thought that by opening the trial to the public, including the press, the accused will be better guaranteed a fair trial. Before *Gault* this might have been a powerful argument because usually the only persons present were the judge, the arresting officer, the probation officer, the juvenile and his parents. This, coupled with the fact there was no right to appellate review, gave the impression of a Star Chamber proceeding.[56] Now, the child's interests can be adequately protected by the presence of his attorney without exposing him to the glare of publicity. In addition, making the trial public would controvert one of the major aims of the juvenile system which is the protection of the youth from the stigma of being labelled a criminal by keeping the matter confidential. The addition of the public might also provide an audience for an unregenerate adolescent[57] or prevent the establishment of communications between the court and the child.[58]

Another right that was not before the Court in *Gault* is the right to have compulsory process to compel the attendance of witnesses. Although it is acknowledged in some juvenile courts,[59] it was suggested in at least two instances that the right did not exist.[60] For all practical purposes this right must be regarded as having been granted in *Gault*. This is an essential feature of the fact-finding process and its absence would severely impair counsel's ability to present an adequate defense.

The issues of the standard of proof required and the type of evidence admissible in a juvenile court are often raised. Some courts hold that the charge must be proved beyond a reasonable doubt[61] while others hold that a preponderance of the evidence is sufficient.[62] In some courts hearsay is admissible, while in others it is error.[63] Although these issues

56. "The powers of the Star Chamber were trifle in comparison with those of our juvenile courts. . . ." Pound, *Foreword* to YOUNG, SOCIAL TREATMENT IN PROBATION AND DELINQUENCY at xxvii (1937).

57. Symposium, *The Public's Right to Know*, 5 N.P.P.A.J. 431, 432 (1959).

58. Subcomm. on Youth and Family in the Courts to the N.Y. Temporary Comm. on the Courts, A PROPOSAL FOR DEALING WITH YOUTH IN THE COURTS 47-48 (1954).

59. W. Gelhorn, CHILDREN AND FAMILIES IN THE COURTS OF NEW YORK CITY 78 (1954).

60. Cinque v. Boyd, 99 Conn. 70, 121 A. 678 (1923) (dictum); White v. Reid, 125 F. Supp. 647 (D.D.C. 1954) (dictum).

61. *In re* Lewis, 11 N.J. 217, 94 A.2d 328 (1953); Jones v. Commonwealth, 185 Va. 335, 38 S.E.2d 444 (1946).

62. United States v. Borders, 154 F. Supp. 214 (N.D. Ala. 1957); People v. Lewis, 260 N.Y. 171, 183 N.E. 353 (1932), *cert. denied*, 289 U.S. 709 (1932); Robinson v. State, 204 S.W.2d 981 (Tex. Civ. App. 1947); State *ex rel.* Berry v. Superior Court, 139 Wash. 1, 245 P. 409 (1926).

63. *See* Campbell v. Siegler 10 N.J. Misc. 987, 162 A. 154 (1932); *In re* Holmes, 379

were not present in *Gault*, the Court indicated its feeling when it cited with approval from a pamphlet by the Children's Bureau which recommended that "testimony should be under oath and that only competent material and relevant evidence under rules applicable to civil cases should be admitted in evidence." [64]

As the law presently exists, juveniles are not protected by the exclusionary rule of *Weeks v. United States*[65] and *Mapp v. Ohio*[66] from the use of evidence seized in an illegal search.[67] This doctrine was repudiated in *In the Matter of Two Brothers and a Case of Liquor*.[68] Here two juveniles were accused of larceny of ninety cases of liquor. They moved to suppress the introduction of a case of liquor as evidence on the grounds that it was a product of an illegal search and seizure in violation of their fourth amendment rights.[69] The court held that while the police had probable cause to take the youths into custody, the search violated the fourth amendment. The crux of the problem was whether the juvenile court was a "court" within the meaning of *Weeks* and *Mapp*. The court answered this question by holding that:

> [w]hether the Juvenile Court is called a criminal court, a civil court, or a special tribunal, the policy behind the exclusionary rule applies. The only way to implement the mandate of the Fourth Amendment is to deny the fruits of illegal searches and seizures to the government by suppressing such evidence. The Juvenile Court had the same responsibility as any other court to refuse to become an accessory after the fact to illegal police activity which violates constitutional rights.[70]

The applicability of the rule does not rest on the label given to the court. In *Powell v. Zuckert*,[71] the exclusionary rule was invoked even

Pa. 599, 109 A.2d 523 (1954), *cert. denied*, 348 U.S. 973 (1954); State *ex. rel.* Christensen v. Christensen, 119 Utah 361, 227 P.2d 760 (1951).

64. STANDARDS FOR JUVENILE AND FAMILY COURTS, Children's Bureau Pub. No. 437 at 72-73 (1966) (hereinafter cited as STANDARDS).

65. 232 U.S. 383 (1914).

66. 367 U.S. 643 (1961).

67. *See* Gallegos v. Colorado, 145 Colo. 53, 358 P.2d 1028, *rev'd on other grounds*, 370 U.S. 49 (1962).

68. Nos. 66-2652-J, 66-2653-J (Juv. Ct. D.C. Dec. 28, 1966). Reprinted in 17 JUV. CT. JUDGES J. 153 (Winter 1967) (hereinafter cited as "Brothers").

69. One brother was arrested outside of their apartment. The police went upstairs to the apartment (5:30 A.M.) to arrest the other. They entered the apartment, arrested the boy, who was asleep in the bedroom, and seized a case of liquor which was either in the living room or kitchen doorway.

70. "Brothers", 17 JUV. CT. JUDGES J. 153 at 154-55.

71. 366 F.2d 634 (D.C. Cir. 1966).

though it was a civil proceeding. Again, the Court in *Gault* did not deal with this issue but by applying its reasoning, it seems certain that this right will be extended to juveniles.

In *Gault* the confessions and admissions used were elicited from Gerald during the hearings without warning him of the privilege against self-incrimination. The Court did not reach the issue of *Escobedo v. Illinois*[72] and *Miranda v. Arizona*[73] because neither the circumstances of the questioning by the probation officer after Gerald had been taken into custody nor the statements he made appeared in the record. A recent California case, however, held that the *Miranda* procedural guarantees do not apply in California juvenile courts. The reasons the court gave were that the proceeding was civil, and the court was merely giving him the help and guidance that his parents should have given him.[74]

The Supreme Court did make reference to *Miranda* when it said: "In light of *Miranda v. State of Arizona*, . . . we must also consider whether if the privilege against self-incrimination is available, it can be effectively waived unless counsel is present or the right to counsel is waived." [75] Considering this, plus the reservations the Court has expressed concerning the acquisition and use of a juvenile's confession,[76] it seems evident that when the issue is presented to the Court, it will apply *Miranda* in its entirety. Presumably it will be treated as self-incrimination was in *Gault*, with the Court recognizing special problems and conceding that there could be differences in technique but not in principle in applying the rule.[77]

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72. 378 U.S. 478 (1964).

73. 384 U.S. 436 (1966).

74. *In re* Castro, 52 Cal. Rptr. 469, 473 (Dist. Ct. App. 1966). *See also* Note, *Miranda Guarantees in California Juvenile Court*, 7 SANTA CLARA LAWYER 114 (1966).

75. Application of Gault, 87 S.Ct. 1428 (1967).

76. ". . . This Court has emphasized that admissions and confessions of juveniles require special caution." *Id.* at 1453.

". . . And where, as here, a mere child—an easy victim of the law—is before us, special care in scrutinizing the record must be used . . . We cannot believe that a lad of tender years is a match for police in such a contest. He needs counsel and support if he is not to become the victim first of fear, then of panic. . . . No lawyer stood guard to make sure that the police went so far and no farther, to see to it that they stopped short of the point where he became the victim of coercion. No counsel or friend was called during the critical hours of questioning." Haley v. Ohio, 332 U.S. 596, 599 600 (1948).

77. 87 S. Ct. at 1458.

Rights Applicable to the Pre-Judicial Stages

While the Court was not concerned with the pre-judicial stages of the juvenile process, its decision will have a decided impact on this area. This stage is vitally important in the juvenile court system. In 1957, fifty-one percent of all delinquency cases referred to juvenile courts were disposed of pre-judicially.[78] Some are adjusted at the police level, while others are settled at the juvenile court intake process. This system was borrowed directly from social agencies.[79] It is both a screening process, ascertaining the sufficiency of the petition, and a helping process. The petition may be dismissed or filed; the case may be referred to another agency; or informal supervision by the probation officer may be required or even actual detention imposed. Normally neither a defense counsel nor a prosecuting attorney appear.[80]

The very nature of the situation lends itself to abuse. The screening agency with the power to refer the juvenile to court has a powerful lever to force acceptance of its terms. This is not to imply that the power is completely misused. Screening serves valid needs. It eliminates those cases over which the juvenile court has no jurisdiction, thereby reducing a badly overcrowded court calendar. It can also handle cases which are relatively minor and spare the child the label of delinquent or possibly a quasi-criminal record.[81]

The instances where this system comes under the sharpest attack are those where it seeks to control the child through probation or detention. This amounts to punishment without an adjudication of guilt. This is a clear denial of due process, and would appear to be an area which the courts could correct. Other problems at the intake level, such as establishing a uniform criteria for referral, would be better handled on an administrative level.

A recent study showed that "in 1965, two-thirds of all juveniles apprehended were admitted to detention facilities and held there an average of twelve days. . . ." [82] A California report showed that during 1958, almost 8,400 juveniles were held for relatively minor offenses such as truancy, traffic violations, disturbing the peace, and minor liquor law

78. The President's Commission on Law Enforcement and Administration of Justice, TASK FORCE REPORT: JUVENILE DELINQUENCY AND YOUTH CRIME 14 (1967) (hereinafter cited as TASK FORCE REPORT).

79. *See generally* Sheridan, *Juvenile Court Intake*, 2 J. FAM. L. 139 (1962).

80. TASK FORCE REPORT, *supra* note 78, at 15.

81. *See, id.*, at 9-22.

82. CRIME COMMISSION REPORT, *supra* note 49, at 37.

violations.[83] In spite of this, most authorities agree that juveniles should not be admitted to bail as a matter of right.[84] Bail has been denied as a matter of right because the proceeding was civil in nature and the statute required bail only in criminal cases.[85] The label of the proceeding can no longer serve as justification for a denial of rights. While there is evidence to show that sometimes juveniles are detained merely for the shock effect on the juvenile,[86] in other cases, it is for the protection of the juvenile. Sometimes there may not be a responsible person to whom the juvenile can be released. For this reason, bail should be left to the discretion of the judge and not be a matter of right for the juvenile. Many of the problems raised by detention could be solved by providing for better physical facilities, and detention hearings as soon as possible after the youth's apprehension.

Rights Applicable at the Disposition Stage

Two important issues at the disposition stage are the use of social reports in sentencing and the right to counsel. A distinction must be made between the use of the report at the hearing to determine delinquency and its use at the disposition stage. It is clearly out of place at the hearing. It contains hearsay and other evidence which should not be admitted by the court, and it denies the juvenile the right to confrontation and cross-examination of witnesses. At the dispositional hearing, such social and psychiatric data becomes highly relevant in determining the sentence to be imposed.

The attorney can serve a valuable function at this hearing. The National Crime Commission strongly advocates appointment of counsel at the dispositional hearing when it states: "It is the disposition stage at which the opportunity arises to offer individualized treatment plans and in which the danger inheres that the court's coercive power will be applied without adequate knowledge of the circumstances." [87] An attorney could acquaint the court with special facts and offer his own disposition plan as an alternative to that of the social worker. This problem will probably be solved by the appointment of an attorney at the delinquency proceeding.

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83. *Id.* at 36.

84. Paulsen, *Fairness to the Juvenile Offender*, 41 MINN. L. REV. 547, 552 (1957).

85. Espinosa v. Price, 144 Tex. 121, 188 S.W.2d 576 (1965). *But see* Trimble v. Stone, 187 F. Supp. 483 (D.D.C. 1960); State v. Franklin, 202 La. 439, 12 So.2d 211 (1943).

86. TASK FORCE REPORT, *supra* note 78, at 13.

87. CRIME COMMISSION REPORT, *supra* note 51, at 87.

Other Problems

Another issue on which the courts will have to take a position involves the statutes which bring the juvenile within the jurisdiction of the court. Many of them are rather vague, subjecting the child to juvenile court jurisdiction if he is habitually involved in immoral affairs or in danger of leading an immoral life. This is particularly true of statutes which make conduct, which is legal for adults, illegal for children. This includes violating curfew laws, truancy, incorrigibility, drinking, and associating with felons or gamblers.[88] Some of these statutes may be so broad that they are unconstitutionally vague.[89] They may not tell the juvenile what type of behavior he must avoid. Officials may be given almost unlimited power to determine what kind of behavior will subject the youth to their jurisdiction. In spite of this danger, there is a real need for the juvenile court to have a broad and general jurisdiction.[90] The purpose of the juvenile court is still to recognize those children who have broken the law or are in danger of becoming criminals and to help them. *Gault* added that this must be done consistent with due process of law.[91]

Still another problem relates to the arrest of the juvenile. Some statutes allow a juvenile to be arrested without a warrant for a misdemeanor not committed in the officer's presence.[92] Under the common law, a peace officer could arrest without a warrant a person who committed a misdemeanor in his presence, if it amounted to a breach of the peace.[93] The reason for the arrest was preservation of the public peace, not apprehension of the offender.[94] Such arrests cannot be justified by asserting that law enforcement would be more difficult and uncertain without them.[95]

88. TASK FORCE REPORT, *supra* note 78, at 25.

89. *See generally* Musser v. Utah, 333 U.S. 95 (1945); Lanzetta v. New Jersey, 306 U.S. 451 (1939).

90. Standards, *supra* note 64, at 43-45. *See also* GOLDBERG & SHERIDAN, FAMILY COURTS: AN URGENT NEED (Children's Bureau, U.S. Dep't HEW 1960).

91. If the legislators had to draw statutes defining illegal juvenile behavior as narrowly as they do criminal statutes, there would be many situations in which the law would not have an effective way of dealing with this behavior. The decision in each case will depend on the wording of the particular statute. If it gives the juvenile court practically unlimited powers to determine what actions shall be illegal, it should be struck down. If it gives the court discretion within a limited framework, it should be approved.

92. *E.g.*, Ariz. Rev. Stat. § 8-221 (West 1956).

93. State v. Lutz, 85 W.Va 330, 101 S.E. 434 (1919).

94. Carroll v. United States, 267 U.S. 132 (1925).

95. United States v. Di Re, 332 U.S. 581 (1948).

The argument advanced for allowing juveniles to be arrested without warrants is based on the assumption that if there is a question or suspicion about the juvenile's behavior, it is better to bring him under the authority of the police or juvenile court and see that he receives proper guidance. This concern for the child's welfare should not overshadow the fact that the child has the right to remain free until he has violated the law or the officer has reasonable grounds to believe that he has. It is no more trouble for the officer to get a warrant in the case of a child than it is in the case of an adult. If the evidence will not support the issuance of a warrant, then the child must remain free. The philosophy of *Gault* makes it clear that the child has the right not to be the object of the state's care and solicitude. While requiring warrants in these instances may mean that some youths who need help will not receive it, it will introduce a system of orderliness in arrest practices so that the child will not feel that his arrest is the result of an arbitrary whim of the police officer.

Other Proceedings in Juvenile Court

A juvenile court is concerned with three types of proceedings—delinquency, neglect, and dependency. While the *Gault* decision applied only to delinquency proceedings, its reasoning applies equally to those other proceedings. Neglect and dependency encompass the situation where the child is destitute or lacks proper parental care. Some jurisdictions distinguish the two, making neglect applicable where the condition is due to the faults of the parents and dependency where the parents, if any, are without fault.[96] This is the most appropriate area for the state to exercise its concern with the welfare of juveniles.[97] Yet even here the due process elements as expressed in *Gault* must be required. The child's interests may require that he be removed from his parents, but this is a very serious decision contravening the basic custodial rights of parenthood and should be taken only in accordance with basic due process requirements.

96. *In re* Duncan, 62 Ohio L. Abs. 173, 107 N.E.2d 256 (Ct. App. 1951); *In re* Graham, 110 Utah 159, 170 P.2d 172 (1946). The Children's Bureau excludes dependent children from juvenile court jurisdiction because "[n]o child should be subject to the jurisdiction of the court for economic reasons alone. . . . Such assistance should be provided by a social agency." STANDARDS, *supra* note 64, at 34.

97. In 1965, there were 157,000 dependency and neglect cases in the United States. CHILDREN'S BUREAU, JUVENILE COURT STATISTICS 6 (U.S. Dep't HEW, Stat. Ser. No. 85, 1965).

Conclusion

The juvenile court system was established and begun in a time of awakening social conscience. The basic philosophy of the movement was that children who violated laws were not criminals and should not be treated as such. If the child could be recognized early in his wayward career, his later criminal development could be arrested. The juvenile court by taking into account his past behavior, environmental factors and various specialized reports, could arrive at an individualized treatment plan. The child was not to be punished for his illegal act as he would be in a criminal court. Instead, his action would serve as a basis, along with other factors, in determining if he was in need of help.

This noble plan developed two major faults. It could not develop sufficient personnel and facilities to enable it to meet its high ideals, and children were denied constitutional elements of due process merely because they were children and the proceedings were labelled "civil."

Gault stands for the proposition that juveniles in a delinquency proceeding have certain rights to procedural due process. Children, like adults, are entitled to certain procedural safeguards which the state must satisfy before it can interfere with his life. Merely because he is a child or it is for his own good, are no longer sufficient reasons to deny these rights. Courts should brush aside the labels and look at the reality of the situation. If the child is threatened with punishment or loss or impairment of liberty, these due process elements apply.

This decision does not obliterate the juvenile court system. It does not advocate wholesale transfer of all rights guaranteed in an adult criminal trial. It is grounded in the concept of selective due process, not application of specific constitutional amendments. Its call is for an integration of the best features of the juvenile court (separate treatment, confidentiality of records and the non-criminal label) with certain basic constitutional procedural protections. This will give the system an orderliness and consistency which previously it has lacked. Finally, *Gault* shows the juvenile that he has an interest in the law. It is there to protect him as well as to restrict him.

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