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THE TREATMENT OF JUVENILE OFFENDERS IN MURDER CASES

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[The following article opens up an important question: Should juvenile murderers be subject to the jurisdiction of the Criminal Courts?

There is one school of thought that would give exclusive jurisdiction over all juvenile offenders, including juvenile murderers to the Juvenile Courts. Another group would have a concurrent jurisdiction to the extent that the Juvenile Court would have absolute discretion in either, retaining a juvenile offender for a hearing before it, or transfer the case to the Criminal Court for trial. If a juvenile is sixteen years of age and has been a repeater and violated his probation several times the Juvenile Court might deem it expedient to have such a juvenile tried for his latest violation in a Criminal Court. A third view, illustrated by Illinois, gives the State's Attorney authority to elect whether to try a juvenile offender in either the Criminal Court or the Juvenile Court. The latter is called the Family Court in Cook County, Illinois, since 1949. In that state some juvenile murderers have been tried in the Juvenile Court (Family Court) while others have been tried in the Criminal Court. Though the trial is in the Juvenile Court the juvenile offender can demand a jury trial composed of a six-member jury. In some cases a juvenile is found not guilty in the Criminal Court and then tried in Juvenile Court, found guilty and incarcerated.

The Illinois court has jurisdiction to try adults contributing to the delinquency of a juvenile and also the juvenile offender—a rather significant development.

The Illinois Court has jurisdiction to try adults contributing to the years of age are considered juveniles. Juveniles from the age of ten years are likewise recognized as being within the Criminal Code and thus criminally liable for its violation.—*John W. Curran, Ed.*]

Although children's courts had been established in Australia in the early nineties it was not until 1899, when the State of Illinois enacted enabling legislation, that such courts were incorporated into American jurisprudence. Prior to the establishment of such courts, it had been the practice in this country to hale juvenile lawbreakers before the criminal courts and to brand them with the stigma of a criminal charge. Those

who were found guilty were either punished or placed on probation. Although the theory of probation aimed at the rehabilitation of the youthful offenders and their return to society as useful, law abiding citizens, the efforts to that end were always stultified and in many instances completely frustrated by the psychological effect of their experience with the law on the impressionable minds of the young culprits.

The equitable nature of juvenile courts has been comprehensively set forth in the much quoted case of *Commonwealth of Pennsylvania v. Fisher.*[1]

The success which attended the establishment of juvenile courts has not failed to impress politically-minded legislatures. Their response to the popularity of these courts has found expression in their attempts to broaden the jurisdiction of the courts. On the other hand, the judiciary has zealously guarded the jurisdiction of the criminal courts from the inroads of such legislation whenever the unconstitutionality of such legislation was indicated. In the main, however, the criminal courts have been shorn of their jurisdiction over youthful offenders with respect to all offenses except murder and treason. This, the question of the treatment of cases involving juveniles charged with the crime of murder, is the subject of our inquiry.

Nowhere, perhaps, has the jurisdictional conflict between criminal and juvenile courts been more warmly contested or more clearly resolved than in the State of New Jersey.[2]

But the courts have gone beyond the mere refusal to accept a guilty plea, for the decisions hold that evidence of such a plea may not be introduced in the trial of an accused person.[3]

Finally they have gone so far as to hold that the improper introduction of evidence of this nature constituted sufficient grounds for the Appellate Court to declare a mistrial, notwithstanding the failure of defendant's counsel to enter an objection and exception on the record.[4]

Broad considerations of the basic nature of the crime of murder having been disposed of, it may now be appropriate to turn our attention to the statute creating and defining the jurisdiction of Juvenile Courts in New Jersey.[5]

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1. 213 Pa. 48, 62A. 198.
2. Genz v. State, N.J.L. 459, 31A. 1037.
3. State v. Smith, 109 N.J.L. 532, 162A. 752.
4. State v. Leaks, 124 N.J.L. 261, 10A. 2d 281 N.J.S.A., 9:18-12.
5. For the development of Juvenile Court Jurisdiction and its variations, see the following cases:
Ex parte Daniecki, 117 N.J.E. 527, 177A. 91.
In re Mei, 122 N.J.E. 125.
Richardson v. State Board of Control, etc., 99 N.J.L. 516.
State v. Goldberg, 124 N.J.L. 272, 11A. 2d 299.

The result in New Jersey is typical of the result in New York and Illinois and other jurisdictions when a juvenile murder case arises in spite of enlightened thinking that the juvenile delinquent should not be treated as a criminal in a criminal court.

The first thought which arises upon a reading of the opinion in the Goldberg case is, that here is grudging admission that our judiciary realized that the benefits and constitutional advantages of the juvenile court act outweighed the constitutionual disadvantages or defects, and felt constrained, therefore, to erect a barrier in cases involving the crime of murder. The opinion in this case, significantly, was written by Justice Case, who delivered the opinion also for the Court of Errors and Appeals in the Mei case, and who consequently participated in the deliberations of the court on that occasion. The second thought evoked by the opinion is that the courts, although admitting the protective advantages afforded to the child by the juvenile court, "make confusion more confounded" by saying in effect: "The child needs this court to correct his erring ways, but if he errs too greatly, this court cannot open its doors to him." Dr. Ralph S. Banay, Associate Director, Research on Social Deviations, New York, commenting on the inherent contradiction in such reasoning in an article in a recent issue of Federal Probation entitled "Homicide Among Children," makes this pertinent observation:

"The apparent philosophy behind statutes concerning juvenile offenders is that a child has not reached a degree of intellectual and emotional development that would qualify him as fully responsible for his acts. The laws, however, embody an obvious contradiction; for when the offense is too obnoxious or repugnant, complete responsibility is placed upon the child and he must face the full weight of the law."

That it was the intention of the New Jersey legislature not to except the crime of murder from the jurisdiction of the juvenile court is indicated by the course of subsequent legislation. In 1943 an amendment was enacted raising the age of children under such jurisdiction from sixteen to eighteen years and adding the following provisions:

"If it shall appear to the satisfaction of the court that the case of any person between the ages of sixteen and eighteen years should not be dealt with by the court, either because of the fact that the person is an habitual offender, or has been charged with an offense of a heinous nature, under circumstances which may require the imposition of a sentence rather than the disposition permitted by this chapter for the welfare of society, then the court may refer such case to the prosecutor of the pleas of the county where the court is situate.

"Such case will thereafter be dealt with in exactly the same manner as any other criminal case involving an adult offender.

"Any offender between the ages of sixteen and eighteen years may demand a presentment and trial by jury and, in such case shall be referred to the prosecutor

of the pleas and dealt with in exactly the same manner as any other criminal case involving an adult offender. Every case so referred shall be accompanied by all documents pertaining thereto."

Although the first of the three foregoing quoted paragraphs does not mention the crime of "murder" by name, it requires but a modicum of mental acumen to appreciate that the legislature meant "murder" and was inhibited from giving utterance to it by the umbrage resulting from the Daniecki and Mei opinions. It remains to be seen whether, in view of the clear legislative intent as expressed in the amendment, the New Jersey courts will hereafter modify their position with respect to the jurisdiction of juvenile courts in murder cases, or if they will continue to hold fast to a philosophy which attempts to justify an untenable position.

In what way, if any, the courts of New Jersey have been influenced by decisions in the sister state across the Hudson is difficult to say, because there is virtually no reference to the New York precedents in the cases we have thus far considered. This may stem from the fact that there is no uniformity in the enabling legislation on the subject, such as may be found in the statutes of the several states on other subjects. The Children's Court Act of the State of New York was enacted pursuant to the provision of the state constitution that "the Legislature may establish Children's Courts and may confer upon them such jurisdiction as may be necessary for the correction, protection, guardianship and disposition of delinquent, neglected or dependent minors."[6] The Children's Court Acts give the Children's Courts exclusive jurisdiction to hear and determine the cases of children under the age of sixteen years who are charged with juvenile delinquency. The extent of this jurisdiction has ben lucidly set forth in the case of *People v. Murch*,[7] as follows:

"The legislative history of those sections, as well as the unmistakable implications of the language used, show a clear intent to remove from the category of crime any and all lawbreaking acts committed by a child between the ages of seven and sixteen years, except those punishable by death or life imprisonment. The conclusive presumption of incapacity which has always existed in the case of a child under seven years of age is, as to those acts, now applied to a child between the stated ages . . . The result is that the only crimes which a child under sixteen years of age is capable of committing are treason, murder in the first degree and murder in the second degree; and that as to those crimes alone, in the case of such a child, have the criminal courts jurisdiction."

Since the decision just quoted rested largely on the previous decision of the New York Court of Appeals in the case of *People v. Roper*,[8] it

6. Laws of 1922, c. 547, amended by Laws of 1930, c. 393.
7. 263 N.Y. 285, 189 N.E. 220.
8. 259 N.Y. 170, 181 N.E. 88.

will be helpful to quote briefly from the opinion of Lehman, J., in the latter case:

"Upon the trial of a child under the age of sixteen, the participation of a child in a robbery or at least in a robbery in the second or third degrees, would not establish the guilt of a felony, but only of a minor offense characterized as juvenile delinquency. Hence, it is plain that the defendant's conviction rests upon no finding of guilt of a felony, and thus no finding of felonious intent, and the judgment must be reversed . . . A child under sixteen can be guilty of murder in the first or second degrees where he kills a man with felonious intent, but such felonious intent is not established without both proof and finding of intent to kill or of guilt of an independent felony during which the homicide occurred."

The temper of the decisions in New York since the Roper and Murch cases has been to extend the application of the "felonious intent" philosophy even further, by the use of such expressions as "design murder." An illustration of recent judicial reasoning on this subject is the case of *People v. Porter,*[9] which was decided in 1945 in the King's County Court of New York, from which the following significant comments are quoted:

"While all four defendants move to dismiss the indictment, the only serious question is raised by the three defendants who are under the age of 16—Porter, Washington and Skinner. It is contended on their behalf that at most this is a felony murder, and under our statutes and decisions persons under the age of 16 may not be convicted of a felony murder but only of what is often designated as a design murder i.e. with a design to effect death.[10]

"This contention is correct. It is settled law that a youth under sixteen may not be deemed guilty of any crime—but of juvenile delinquency—if he commits 'any act or omission which, if committed by an adult, would be a crime not punishable by death or life imprisonment.' Penal Law No. 2186. That being so, a murder prosecution is not warranted, nor a murder conviction justified by proof that the victim was killed while the youth was engaged in committing a felony. In other words, although an adult may be convicted of first degree murder on proof that a killing occurs in the course of a felony upon which he is engaged, a fifteen year old youth may not be so adjudged, unless there is proof that he intended to kill.[11]

"Unless there is sufficient evidence before the Grand Jury that Porter, Washington and Skinner intended to kill, the indictment against them should be dismissed.

In this brief survey, it has been the purpose of the writer to point up the sharp conflict between the conservative forces of established law as exemplified in the judicial decisions and the progressive dynamism inherent in the program of sociologists, as evidenced in the extension of legislation in behalf of juvenile offenders. The developments in New York as well as in New Jersey indicate how the conflict will be resolved.

It would serve no useful purpose in this article to review at length

9. 54 N.Y. 2d 3.
10. Penal Law No. 1044, sub. 1, and No. 1046.
11. People v. Murch, 263 N.Y. 285, 189 N.E. 220; People v. Roper, 1932, 259 N.Y. 170, 181 N.E. 88.

the judicial decisions of other states, for none of them presents a judicial philosophy worthy of comment. For the most part these states have taken a position which straddles the issue as to the treatment of juvenile offenders in murder cases. To the reader, who may be interested in pursuing the examination into the subject further, it is suggested that the very recent case of *Snyder v. State,* 56 A. 2d. 485, Court of Appeals of Maryland, will bring him up to November, 1947 with a review of the pertinent decisions.