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Indiana Law Journal

Volume 50 | Issue 4

Article 8

Summer 1973

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Gray, Michael P. (1973) "Toward a Code of Discovery for Juvenile Delinquency Proceedings," *Indiana Law Journal*: Vol. 50 : Iss. 4 , Article 8.
Available at: http://www.repository.law.indiana.edu/ilj/vol50/iss4/8

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Toward a Code of Discovery for Juvenile Delinquency Proceedings

Since 1967, when the Supreme Court in *In re Gault*[1] imposed "the essentials of due process and fair treatment"[2] upon a juvenile court system where "wide differences [had] been tolerated—indeed insisted upon—between the procedural rights accorded to adults and those of juveniles,"[3] juvenile courts have had to face the problem of the scope of discovery to be accorded the child and the prosecutor in the adjudicative phase[4] of a juvenile delinquency proceeding.[5] The

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[1] 387 U.S. 1 (1967).

[2] *Id.* at 30, *quoting* Kent v. United States, 383 U.S. 541, 562 (1966).

[3] 387 U.S. at 14.

[4] The adjudicative phase is concerned only with factfinding—determining whether the youth has committed the specific acts charged. Then, the dispositional phase decides what treatment (sentence) is appropriate for the child adjudicated delinquent. Glen, *Bifurcated Hearings in the Juvenile Court,* 16 CRIME & DELINQUENCY 255 (1970). The major function of bifurcated hearings is to control the evidence presented at each stage to ensure that impressionistic, diagnostic, hearsay-type evidence will not be received by the court at the time of adjudication, *i.e.,* what a juvenile "is" should not influence the determination of what he has done. Lemert, *The Juvenile Court—Quest and Realities,* in PRESIDENT'S COMM'N ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: JUVENILE DELINQUENCY AND YOUTH CRIME, Appendix D, at 91, 101 (1967) [hereinafter referred to as TASK FORCE REPORT].

Earlier juvenile codes employed a unitary hearing with almost total discretion in the judge. *See, e.g.,* IND. ANN. STAT. § 31-5-7-15 (Code ed. 1973). *But see* Atkins v. State, 259 Ind. 596, 602, 290 N.E.2d 441, 445 (1972) (abuse of discretion in failing to use *"least severe* disposition available to the juvenile court which will serve the needs of the case" (emphasis in original); REPORT OF THE INDIANA CIVIL CODE STUDY COMMISSION: PROPOSED JUVENILE PROCEDURE CODE §§ 23, 24 (1970) [hereinafter referred to as PROP. IND. JUV. PROC. CODE]. However, several model juvenile codes and many state juvenile court statutes separate the formal hearing into two distinct phases: adjudicative and dispositional. COUNCIL OF JUDGES, NATIONAL COUNCIL ON CRIME AND DELINQUENCY, MODEL RULES FOR JUVENILE COURTS rules 19, 29 (1969) [hereinafter referred to as MODEL RULES]; NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, UNIFORM JUVENILE COURT ACT § 29 [hereinafter referred to as UNIFORM ACT]; U.S. DEP'T OF HEALTH, EDUCATION, AND WELFARE, OFFICE OF HUMAN DEVELOPMENT, OFFICE OF YOUTH DEVELOPMENT, MODEL ACTS FOR FAMILY COURTS AND STATE—LOCAL CHILDREN'S PROGRAMS § 32 (prepared by W. Sheridan & H. Beaser 1975) [hereinafter referred to as HEW MODEL ACTS]; *see, e.g.,* N.Y. FAMILY CT. ACT § 746 (McKinney Supp. 1974).

[5] The phrase "juvenile delinquency" embraces not only conduct which is criminal by adult standards, but noncriminal antisocial behavior as well:

> Although there is variation among . . . courts hearing children's cases, jurisdiction generally includes delinquency, neglect, and dependency. Delinquency comprises cases of children alleged to have committed an offense that if committed by an adult would be a crime. It also comprises cases of children alleged to have violated specific ordinances or regulatory laws that apply only to children, such as curfew regulations, school attendance laws, restrictions on use of alcohol and tobacco; and children variously designated as beyond control, ungovernable, incorrigible, runaway, or in need of supervision . . . .

importance of this determination is underscored by the United States Supreme Court's developing insistence on more accurate factfinding procedures in juvenile delinquency proceedings as a means of ensuring "fundamental fairness."[6] Indeed, this insistence, coupled with the proven effectiveness of civil discovery procedures as factfinding tools and the almost universal classification of juvenile proceedings as civil,[7] has inevitably induced attempts to employ civil discovery techniques in delinquency proceedings.[8]

Courts facing the question of discovery in juvenile proceedings have presented this issue as a choice between civil discovery on the one hand and criminal discovery on the other.[9] Neither, however, is fully apposite. Civil discovery, as framed for the ordinary civil suit, is not appropriate in a delinquency proceeding where the juvenile faces possible incarceration.[10] Criminal discovery, on the other hand, even after a wave of reform in most states, still severely limits a defendant's pretrial access to witnesses and information.[11] This note suggests that

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TASK FORCE REPORT at 4; *see, e.g.,* IND. ANN. STAT. §§ 31-5-7-4 to -7-6 (Code ed. 1973).

To avoid the possibility of overreaching (the imposition of the judge's own code of behavior on the juvenile) made possible by these vague offenses which are illegal only for children, TASK FORCE REPORT at 25, and to avoid the stigma which has attached to the term "delinquent," several states have renamed this category and redefined the powers of the police and courts in such cases. *See id.* at 26. *E.g.,* ILL. REV. STAT. ch. 37, § 702-3 (Smith-Hurd 1972); N.Y. FAMILY CT. ACT § 712 (McKinney Supp. 1974); PROP. IND. JUV. PROC. CODE § 4 & Comments. For the purposes of this note, however, "delinquency" will be used in the broader sense.

[6] McKeiver v. Pennsylvania, 403 U.S. 528, 543 (1971); *In re* Winship, 397 U.S. 358, 365 (1970); *In re* Gault, 387 U.S. 1, 36 (1967). *See* TASK FORCE REPORT at 30:

> [E]fforts to help and heal and treat, if they are to have any chance of success, must be based on an accurate determination of the facts—the facts of the immediate conduct that led to the filing of the petition and also the facts of the child's past conduct and relationships.

See also F. ALLEN, THE BORDERLAND OF CRIMINAL JUSTICE 18-19 (1964).

[7] The court in Pee v. United States, 274 F.2d 556, 559 n.12 (D.C. Cir. 1959), found that this proposition is supported by decisions of the highest courts in 42 states, and by statutes in the other eight states.

[8] *See generally* M. MIDONICK, CHILDREN, PARENTS AND THE COURTS: JUVENILE DELINQUENCY, UNGOVERNABILITY AND NEGLECT § 4.6 (1972); Comment, *Discovery Rights in Juvenile Proceedings,* 7 U.S.F.L. REV. 333 (1973).

[9] Joe Z. v. Superior Ct., 3 Cal. 3d 797, 801, 478 P.2d 26, 28, 91 Cal. Rptr. 594, 596 (1970); *In re* Edwin R., 60 Misc. 2d 355, 357-58, 303 N.Y.S.2d 406, 409 (Fam. Ct. 1969).

[10] While the use of civil discovery techniques might be beneficial in neglect and dependency cases, Comment, *supra* note 8, at 340-41, such cases are tripartite in nature, involving the juvenile, his parents, and the state. *Cf.* Note, *Parents' Right to Counsel in Dependency and Neglect Proceedings,* 49 IND. L.J. 167, 173 (1973). Such cases are primarily concerned with providing for the physical and emotional welfare of the child and, thus, lack the possibility of incarceration which prompted the decision in *In re* Gault, 387 U.S. 1 (1967), a possibility which underscores the need for allowing the best factfinding tools available. Therefore, this note will adhere to the same focus as that in *Gault,* the adjudicative phase of the delinquency proceeding.

[11] *See* AMERICAN BAR ASSOCIATION PROJECT ON MINIMUM STANDARDS FOR CRIMINAL JUSTICE, STANDARDS RELATING TO DISCOVERY AND PROCEDURE BEFORE TRIAL § 2.1 (Stand-

the existing code of civil discovery,[12] modified to comport with the constitutional and structural requirements of juvenile courts systems, should be adopted as the system of discovery for use in the adjudicative phase of juvenile delinquency proceedings.

Parameters of Discovery in Delinquency Adjudications

A 1970 California case[13] identifies the problems of applying civil discovery rules to juvenile proceedings. The California Supreme Court held that the extensive discovery procedures available in civil proceedings were inapplicable to juvenile proceedings because of their "quasi-criminal" nature and because of the delay inherent in the use of the civil techniques. Although these objections identify problems inherent in the wholesale adoption of civil discovery techniques in delinquency proceedings, they do not preclude all alternatives other than criminal discovery, as the California court seems to imply.[14] Rather, the problems mentioned suggest the manner in which the civil discovery rules can be modified to produce a viable code of discovery for delinquency proceedings—a code consistent with the functional demands as well as the constitutional restraints on juvenile courts.

The court's use of the term "quasi-criminal" to describe juvenile proceedings hints at the first of these considerations. Indeed, this term is merely shorthand for denoting the recognition that

> [i]n theory the court's operations could justifiably be informal, its findings and decisions made without observing ordinary procedural safeguards, because it would act only in the best interest of the child. In fact it frequently does nothing more nor less than deprive a child of liberty without due process of law—knowing not what else to do and needing, whether admittedly or not, to act in the community's interest even more imperatively than the child's.[15]

This punitive aspect, together with the failure of the rehabilitative aspirations of the juvenile system,[16] led the United States Supreme

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ards with Commentary), at 52–78 (Approved Draft, 1970) [hereinafter cited as A.B.A. Project]. *But see* State *ex rel.* Keller v. Criminal Ct., 317 N.E.2d 433, 438 (Ind. 1974).

[12] Since state codes of civil procedure are varied, references in this note to "civil discovery" will refer to Fed. R. Civ. P. 26–37.

[13] Joe Z. v. Superior Ct., 3 Cal. 3d 797, 478 P.2d 26, 91 Cal. Rptr. 594 (1970).

[14] *Id.* at 801, 478 P.2d at 28, 91 Cal. Rptr. at 596.

[15] Task Force Report, *supra* note 4, at 9. *Cf. In re* Gault, 387 U.S. 1, 36 (1967).

[16] There is evidence . . . 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.

Kent v. United States, 383 U.S. 541, 556 (1966) (footnote omitted), *citing* Handler, *The*

Court in *In re Gault* to mandate various procedural safeguards at the adjudicative stage, including safeguarding the privilege against self-incrimination.[17] It is this privilege which constitutes the initial stumbling block for the implementation of civil discovery.[18]

The bilateral nature of civil discovery,[19] by affording the state equal use of the discovery techniques, would inevitably conflict with the juvenile's privilege against self-incrimination.[20] To preserve the vigor of this constitutional privilege, the reciprocity of civil discovery would have to be modified so that discovery would be virtually unilateral in favor of the juvenile in areas touching his fifth amendment privileges.

The California Supreme Court identified a further stumbling block, noting that the delay characteristic of civil discovery would run afoul of the traditional juvenile court philosophy requiring speedy adjudication.[21] This nearly universal requirement of speed would dictate modifications limiting the periods of time allowed for initiating and responding to requests for prehearing discovery.[22]

Special rules for juvenile discovery, whether formally adopted as a code or judicially tailored within the context of a court's inherent control of trial and pretrial procedures,[23] could provide for a full disclosure of relevant evidence, limited only by the juvenile court's institutional insistence on speedy disposition, and by the juvenile's con-

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Juvenile Court and the Adversary System: Problems of Function and Form, 1965 WIS. L. REV. 7.

[17] In *In re* Gault, 387 U.S. 1 (1967), the Court held that in the adjudicatory stage of the juvenile process, the juvenile possesses the following basic rights: notice of charges, right to counsel, right to confrontation and cross-examination, and the privilege against self-incrimination.

[18] *In re* Marie W., 62 Misc. 2d 585, 588, 309 N.Y.S.2d 280, 284 (Fam. Ct. 1970).

[19] FED. R. CIV. P. 26(b)(1).

[20] Boches, *Juvenile Justice in California: A Re-Evaluation,* 19 HAST. L.J. 47, 87 (1967). "Since the minor possesses a privilege against self-incrimination, discovery in delinquency cases necessarily would be a virtually one-way affair." *Id.* (footnote omitted). *But cf.* State *ex rel.* Keller v. Criminal Ct., 317 N.E.2d 433, 438 (Ind. 1974).

[21] *See* H. LOU, JUVENILE COURTS IN THE UNITED STATES 129 (1927).

[22] The civil rules of discovery offer a very flexible tool. Depositions upon oral examination require only that *reasonable* notice be given. FED. R. CIV. P. 30(b). The remaining procedures specify a 30–45 day period for completion of discovery, yet each expressly states that the court may allow a shorter time. *Id.* 31(a), 33(a), 34(b), 36(a). Thus, the limited periods of discovery required (see notes 50–55 *infra* & text accompanying) can be accommodated within the existing structure of the civil rules.

Also, the very nature of juvenile proceedings would facilitate these shorter time limits. As opposed to the highly complex issues, involving diverse parties and witnesses and evidence dispersed geographically, which are encountered in civil cases, juvenile cases generally present relatively simple factual and legal questions, involving a limited number of parties and witnesses living in close proximity. These factors would tend to limit potential complexity and accelerate notice of and compliance with requests for discovery, thus making the use of modified discovery feasible within the time periods contemplated.

[23] *Cf.* State *ex rel.* Keller v. Criminal Ct., 317 N.E.2d 433 (Ind. 1974).

stitutional privilege against self-incrimination.[24] Guidance in drafting these rules can be drawn from cases considering the applicability of the discovery rules under existing codes of civil procedure.

CIVIL DISCOVERY: A MIXED RESPONSE

In ruling upon requests on behalf of juvenile respondents for the use of civil pretrial discovery procedures, courts have refused to be bound by a "civil" label.[25] Rather, they have based their decisions on what they have perceived to be the practical and statutory limitations intrinsic to their juvenile court systems. Although uniformly denying the automatic application of the entire civil discovery system, courts nevertheless have recognized a need for discovery before a delinquency adjudication.[26] Judicial response, however, has not been uniform. Some courts have limited the use of discovery procedures to those allowed in a criminal proceeding.[27] The Illinois Supreme Court, on the other hand, has authorized the discretionary use of the entire system of civil discovery.[28]

In the 1969 case of *In re Edwin R.*,[29] a New York family court disallowed written interrogatories, depositions, and numerous other applications for discovery[30] made pursuant to the New York Civil Practice Law,[31] but did allow limited discovery which corresponded closely to that permitted by the then proposed New York Criminal Procedure

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[24] Some of the sanctions available for failure to make discovery would be inappropriate in the juvenile context. However, the invocation of these sanctions is within the discretion of the court which would thus be able to employ a sanction appropriate to the juvenile court. FED. R. CIV. P. 37. Prosecutorial discovery need not be precluded. *See* A.B.A. PROJECT, *supra* note 11, pt. III, *Disclosure to Prosecution*, at 16–17; State *ex rel.* Keller v. Criminal Ct., 317 N.E.2d 433 (Ind. 1974).

[25] Joe Z. v. Superior Ct., 3 Cal. 3d 797, 801, 478 P.2d 26, 28, 91 Cal. Rptr. 594, 596 (1970); People *ex rel.* Hanrahan v. Felt, 48 Ill. 2d 171, 174–75, 269 N.E.2d 1, 3 (1971); *In re* Edwin R., 60 Misc. 2d 355, 357, 303 N.Y.S.2d 406, 409 (Fam. Ct. 1969). As the Supreme Court emphasized in McKeiver v. Pennsylvania, 403 U.S. 528, 541 (1971): "Little, indeed, is to be gained by any attempt simplistically to call the juvenile court proceeding either civil or criminal. The Court carefully has avoided this wooden approach."

[26] Joe Z. v. Superior Ct., 3 Cal. 3d 797, 801, 478 P.2d 26, 28, 91 Cal. Rptr. 594, 596 (1970); People *ex rel.* Hanrahan v. Felt, 48 Ill. 2d, 171, 175–76, 269 N.E.2d 1, 4 (1971); *In re* Edwin R., 60 Misc. 2d 355, 357–58, 303 N.Y.S.2d 406, 409 (Fam. Ct. 1969).

[27] *E.g.*, Joe Z. v. Superior Ct., 3 Cal. 3d 797, 478 P.2d 26, 91 Cal. Rptr. 594 (1970). *See* Boches, *supra* note 20, at 86.

[28] People *ex rel.* Hanrahan v. Felt, 48 Ill. 2d 171, 269 N.E.2d 1 (1971).

[29] 60 Misc. 2d 355, 303 N.Y.S.2d 406 (Fam. Ct. 1969).

[30] *Id.* at 356, 303 N.Y.S.2d at 407–08. Counsel for the juvenile served written interrogatories containing 104 separate questions on the police commissioner, the corporation [county] counsel, and the petitioner, a detective in the police department. Petitioner was also served with a notice for oral examination before trial, for the production of documents, and for the admission of 46 separate items. *Id.*

[31] N.Y. CIV. PRAC. LAW §§ 3101–40 (McKinney 1970).

Law.[32] Counsel for the juvenile invoked a section of the Family Court Act which provided that the provisions of the Civil Practice Law apply to the family court "to the extent they are suitable to the proceeding involved."[33] The court found these "civil" discovery proceedings unsuitable for two reasons. First, they require bilateral discovery, which is feasible only when both sides are represented by counsel. Thus, they are incompatible with the practice in New York City, where most petitioners are private citizens (rather than police officers) who are not represented by counsel at any later proceedings.[34] Second, civil discovery is time-consuming and thus contravenes the intent of the Family Court Act to hold the factfinding hearing within three days if the juvenile must be kept in detention.[35]

Advancing similar arguments, another division of the New York family court also denied civil pretrial discovery. The court held that bilateral discovery would violate the juvenile's right to remain silent, while granting unilateral discovery would be prejudicial to the petitioner, the private citizen who initates the suit.[36]

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[32] Now N.Y. CRIM. PRO. LAW (McKinney 1971), *as amended* (McKinney Supp. 1974).

[33] N.Y. FAMILY CT. ACT § 165 (McKinney Supp. 1974). Several weeks later, in *In re* Joseph P., 60 Misc. 2d 697, 303 N.Y.S.2d 827 (Fam. Ct. 1969), the counsel who had represented the juvenile in *In re Edwin R.* renewed his attempt to invoke this statute by seeking interrogatories, pretrial depositions of witnesses, and other disclosures, arguing that these techniques were suitable to juvenile proceedings. The court, however, apparently following the reasoning of *In re Edwin R.*, denied these requests on the ground that the procedures requested were impossible to utilize within the juvenile court framework.

[34] *See In re* Edwin R., 60 Misc. 2d 355, 357, 303 N.Y.S.2d 406, 408 (Fam. Ct. 1969).

[35] N.Y. FAMILY COURT ACT §§ 747, 748 (McKinney Supp. 1974):

> § 747. Time of fact-finding hearing
>
> A fact-finding hearing shall commence not more than three days after the filing of a petition under this article if the respondent is in detention.
>
> § 748. Adjournment of fact-finding hearing
>
> (a) If the respondent is in detention, the court may adjourn a fact-finding hearing
>
> (i) on its own motion or on motion of the petitioner for good cause shown for not more than three days, provided, however, that if the petition alleges a homicide or an assault by the respondent on a person incapacitated from attending court as a result thereof, the court may adjourn the hearing for a reasonable length of time;
>
> (ii) on motion on behalf of the respondent or by his parent or other person legally responsible for his care for good cause shown, for a reasonable period of time.
>
> (b) Successive motions to adjourn a fact-finding hearing may be granted only under special circumstances.

[36] *In re* Marie W., 62 Misc. 2d 585, 309 N.Y.S.2d 280 (Fam. Ct. 1970).

The *Model Rules* refer to the moving party as a "complainant" rather than a "petitioner." The word "petitioner" has been retained when New York cases are being discussed. In all other contexts, the word "complainant" has been used in accordance with the *Model Rules*.

The reasoning of these New York cases was reflected in a subsequent California decision. Proceeding on the assumption that it had the inherent power to order discovery, the California Supreme Court in *Joe Z. v. Superior Court*[37] held that the extensive civil discovery procedures were not and should not be available to juveniles. The court justified this decision on the ground that the policy of the juvenile code in promoting "expeditious and informal adjudications in juvenile court belies the wisdom or necessity of any indiscriminate application of civil discovery procedures."[38] Nevertheless, the court did not deny the juvenile petitioner the use of other discovery procedures. Instead, the quasi-criminal nature of delinquency proceedings led the court to grant juvenile courts the same degree of discretion possessed by courts in criminal cases to grant discovery[39] which would not "unduly hamper the prosecution or violate some other legitimate government interest"[40] by facilitating the elimination of an adverse witness or by influencing his testimony.[41]

The broadest interpretation of the discretionary powers of the juvenile court judge to grant discovery was expressed in the 1971 Illinois Supreme Court decision in *People ex rel. Hanrahan v. Felt.*[42] The juvenile court judge, in ruling upon the juvenile's petition to take the victim's deposition, felt compelled to approve the use of the discovery procedures applicable in civil cases because of the "civil" denomination of delinquency proceedings in Illinois and because "the underlying purpose of a delinquency proceeding would best be served by allowing broad pretrial discovery . . . [which] can insure that all relevant factual information is brought before the court."[43]

Entertaining an original proceeding for mandamus to compel the judge to vacate his pretrial discovery order, the Illinois Supreme

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[37] 3 Cal. 3d 797, 478 P.2d 26, 91 Cal. Rptr. 594 (1970).

[38] *Id.* at 802, 478 P.2d at 28, 91 Cal. Rptr. at 596 (citation omitted). Here the court cited *In re* Edwin R., 60 Misc. 2d 355, 303 N.Y.S.2d 406 (Fam. Ct. 1969).

[39] 3 Cal. 3d at 801, 478 P.2d at 28, 91 Cal. Rptr. at 596. In addition to citing many of its landmark cases granting discovery in criminal cases, the court also cites Boches, *supra* note 20, which concludes:

> Specific provision should be made for discovery at least as broad in scope as that currently provided in criminal courts. This would include the right of the minor to obtain such things as copies of his own statements, statements of the prosecution's witnesses, names and addresses of eyewitnesses known to the probation officer and notes used by the police officer in preparing his police report.

Boches at 87 (footnote omitted).

[40] 3 Cal. 3d at 804, 478 P.2d at 30, 91 Cal. Rptr. at 598.

[41] *See* People v. Lopez, 60 Cal. 2d 223, 246–47, 384 P.2d 16, 29, 32 Cal. Rptr. 424, 437 (1963).

[42] 48 Ill. 2d 171, 269 N.E.2d 1 (1971).

[43] *Id.* at 173, 269 N.E.2d at 2–3.

Court rejected the state's contention that the standard of proof and rules of evidence applicable in *criminal* proceedings, which by statute govern delinquency proceedings, made *civil* discovery procedures inapplicable.[44] Instead, it found that these provisions were intended primarily for the protection of the juvenile, and were not designed to prohibit the use of discovery procedures.[45] The court, however, while noting that the paramount concern of the juvenile code is the welfare of the juvenile, also recognized that the juvenile system safeguards another legitimate community interest—protection of the community from antisocial behavior.[46] Because of this dual function, the court held that the application of civil discovery procedures to juvenile proceedings should be discretionary rather than automatic: the juvenile court judge must balance those purposes of the delinquency proceedings which are furthered by civil discovery techniques—more complete and accurate fact determination—against the possible dangers to the community "in a particular attempt at discovery."[47] The court perceived these potential dangers to be harassment and intimidation of witnesses, suppression of

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[44] *Id.* The state's argument, when read against the juvenile court judge's reasoning, *see* text accompanying note 43 *supra,* demonstrates the paradox encountered when the labels "civil" and "criminal" become determinative of the rights to be granted to juveniles. Normally, the juvenile's counsel argues that the delinquency adjudication is criminal in nature and, therefore, that juveniles should receive all the safeguards available to a criminal defendant. The state, on the other hand, argues that juvenile hearings are civil (nonpunitive) in nature and that civil procedures should apply. However, with discovery, the positions are just reversed. Hoping to take advantage of the broader scope of civil discovery, the juvenile's counsel invokes the civil denomination of delinquency proceedings. The state meanwhile argues that delinquency adjudications were found to be "quasi-criminal" in *Gault,* thus mandating discovery only as broad as that in a criminal case. Obviously, labels cannot be determinative. *See* note 25 *supra.*

The argument for the state demonstrates the unfortunate tendency to consider *Gault's* analogy of a delinquency adjudication to a criminal trial and the subsequent grant of fundamental due process safeguards as tantamount to a holding that this juvenile proceeding is criminal in nature. However, this is a misapplication of *Gault.* As the Court has consistently said:

> [T]he juvenile court proceeding has not yet been held to be a "criminal prosecution," within the meaning and reach of the Sixth Amendment, and also has not yet been regarded as devoid of criminal aspects merely because it usually has been given a civil label.

McKeiver v. Pennsylvania, 403 U.S. 528, 541 (1971). *Accord, In re* Winship, 397 U.S. 358, 365-66 (1970); *In re* Gault, 387 U.S. 1, 17, 49-50 (1967); Kent v. United States, 383 U.S. 541, 555 (1966). The Court has traditionally emphasized the unique character of the juvenile court (based primarily on its rehabilitative philosophy) and, thus, there would seem to be nothing contradictory in granting due process safeguards to ameliorate the punitive aspects, while granting civil discovery to facilitate rehabilitation. Indeed, the Illinois Supreme Court so held. People *ex rel.* Hanrahan v. Felt, 48 Ill. 2d 171, 175, 269 N.E.2d 1, 3 (1971).

[45] 48 Ill. 2d at 175, 269 N.E.2d at 3.

[46] *Id.* at 175, 269 N.E.2d at 4. *See* TASK FORCE REPORT, *supra* note 4, at 8-9; F. ALLEN, *supra* note 6, at 53.

[47] 48 Ill. 2d at 175-76, 269 N.E.2d at 4.

evidence, and increased perjury.[48] Since the juvenile court had not considered these dangers in ordering the deposition, the court vacated its order and remanded the case for such a determination.[49]

MODIFIED DISCOVERY: AVOIDING THE OBJECTIONS TO FULL DISCOVERY

The cases rejecting unrestricted discovery in juvenile proceedings, discussed above, suggest three major objections to the employment of full civil discovery techniques: the inherent delay, the limits on the reciprocity of discovery, and the possibility of abuse. Although these objections were advanced against the use of full civil discovery in the juvenile context, any modified system of civil discovery in juvenile proceedings must also be tested against them.

Delay

1. Accommodation Within Present Statutory Schemes

Courts in both New York and California rejected civil discovery because they assumed that its use would result in delays exceeding statutorily prescribed time limits. Yet, neither court made an effort to accommodate civil discovery within the existing statutory schemes for delinquency adjudications.

The New York family court rejected civil discovery because any delay incurred in its use would have violated a legislative mandate that the factfinding hearing be held within three days after the filing of a petition[50] and that adjournments be strictly limited[51] if the juvenile must be kept in detention. The case requiring detention presents the most compelling argument for speed; yet detention of a delinquent many times results from the alleged commission of a serious crime,[52] the situation in which discovery is most needed. Thus, even though this singularly strict time limit does not apply if juveniles are not detained, it would nevertheless make inevitable the denial of even the more ex-

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[48] *Id.* at 173, 269 N.E.2d at 2.

[49] *Id.* at 176, 269 N.E.2d at 4.

[50] N.Y. FAMILY COURT ACT § 729 (McKinney Supp. 1974) provides that no juvenile may be detained for more than 72 hours or the next day the court is in session, whichever is sooner, without a detention hearing or the filing of a petition. Thus, there would be two three-day limits imposed: the first for a detention hearing or the filing of a petition and the second for the factfinding hearing.

[51] N.Y. FAMILY COURT ACT §§ 747, 748 (McKinney Supp. 1974), set forth in note 35 *supra*.

[52] Indeed, among the criteria used in determining whether a juvenile should be detained are: (1) the seriousness of the offense and (2) whether detention is required to protect the person or property of others. Sumner, *Locking Them Up*, 17 CRIME & DELINQUENCY 168, 176 (1971); HEW MODEL ACTS, *supra* note 4, § 20. *See* IND. ANN. STAT. § 31-5-7-12 (Code ed. 1973).

peditious modified discovery in just those situations where it would be most helpful.

The California Supreme Court rejected civil discovery because its inherent delay would have contravened the legislature's goal of speedy adjudication.[53] The California statute[54] which effectuates this policy, however, is more liberal in its timetable for disposition than its New York counterpart and is also more consistent with the time periods provided by other states and by the model acts.[55] Thus, the 15 day period provided by the California statute would allow sufficient time before the factfinding hearing to depose witnesses, using the restricted time periods of modified discovery. In cases where the juvenile need not be detained, there would be sufficient time for the operation of all modified discovery procedures. Thus, states with juvenile codes similar to California's, or patterned on the model acts, provide some relief from the rigor of apparently inflexible time limits and would allow the use of modified discovery within existing statutory schemes.

Moreover, the California juvenile code provides that the court, upon request of counsel for the minor, may continue the hearing beyond the statutory time limit.[56] Seemingly, courts in their zeal to expedite juvenile proceedings have overlooked or ignored the fact that a juvenile, in order to obtain the potentially significant benefits of successful discovery, might well acquiesce in any additional delay which would result from employing civil discovery procedures. It is even more likely that a juvenile would acquiesce in any additional delay under modified discovery, where the delay, if any, would be short, and the juvenile would be the party seeking to invoke discovery. A modified system of discovery would thus provide the added safeguard that if the juvenile and

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[53] *See* CAL. WELF. & INST'NS CODE § 680 (West 1972).

[54] CAL. WELF. & INST'NS CODE § 657 (West 1972).

> Upon the filing of the petition, the clerk of the juvenile court shall set the same for hearing within 30 days, except that in the case of a minor detained in custody at the time of the filing of the petition, the petition must be set for hearing within 15 judicial days from the date of the order of the court directing such detention.

[55] MODEL RULES, *supra* note 4, rule 17 (seven days); UNIFORM ACT, *supra* note 4, § 22 (ten days); *see, e.g.*, ILL. REV. STAT. ch. 37, § 704–2 (Smith-Hurd Supp. 1974) (ten days). *See* INDIANA SUPREME COURT ADVISORY COMMITTEE, JUVENILE RULES OF PROCEDURE 12(B), 17(B) (tent. draft July 5, 1974, unpublished). Rule 12(B) requires the juvenile court to set a time for a factfinding hearing, though setting no time limit. Rule 17, which governs the conduct of all hearings within that act, specifies in section (B) that if "the child is in detention, a fact-finding or waiver hearing, after such hearing has begun, may not be adjourned for more than three (3) days, except for the production of evidence or other proper cause." *Id.* Thus the timing of the adjudicative hearing would be in the hands of the juvenile court and not subject to strict time limits.

[56] CAL. WELF. & INST'NS CODE § 682 (West 1972).

his counsel feel that the potential harm from delay would be greater than the benefits of discovery, discovery need not be invoked.

2. The Impact of *In re Gault*

The rationale of *In re Gault* presents further argument for not adhering closely to the statutory limits set out above. These salutary state statutes, designed to prevent extended predisposition detention of delinquents in admittedly inadequate facilities, were enacted before the landmark decision in *Gault*.[57] In that case, however, the Supreme Court accorded juvenile delinquents fundamental due process protections, including the right to the assistance of counsel and the right to timely notice of hearings.[58] Both of these protections belie the benefit of inordinate haste before adjudication and thus conflict with such state statutes. In fact, the Supreme Court in *Gault* enunciated a requirement of *effective* assistance of counsel, stating:

> The juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it.[59]

Indeed, if the right to assistance of counsel is to be more than illusory, counsel must have sufficient time, at least at the adjudicative stage, to supplement, as well as scrutinize, the evidence and information presented in order to ensure reliable factual determinations.[60]

In response to the procedural revolution wrought by *Gault*, the Office of Youth Development of the Department of Health, Education,

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[57] TASK FORCE REPORT, *supra* note 4, at 36–37. A study prepared for the President's Committee on Law Enforcement and Administration of Justice found that in 1965, two-thirds of all juveniles apprehended were admitted to detention facilities and held there an average of 12 days. *Id.* at 37.

[58] See note 17 *supra* for the other protections granted by *Gault*.

[59] 387 U.S. 1, 36 (footnotes omitted). *See* PROP. IND. JUV. PROC. CODE, *supra* note 4, § 23, Comments:

> The . . . provision . . . requiring adjournment when the child's attorney had not had time to acquaint himself with the case . . . merely delineates what *Gault* requires on constitutional notice grounds—that child, parents, and counsel must have adequate time to prepare to meet the charges.

[60] Wizner, *The Child and the State: Adversaries in the Juvenile Justice System*, 4 COLUM. HUMAN RIGHTS L. REV. 389 (1972).

> Whatever the focus, fact-finding is the primary task of the adjudicatory phase of the juvenile court proceedings. One-sided investigations by social workers and police have led to reports which contain questionable data. Juveniles' social files, often introduced at the adjudicatory hearing, typically contain rumor, gossip and prejudicial school and probation reports, as well as psychiatric reports full of professional jargon that impresses judges. Psychiatric testing done under court auspices has produced results which differ significantly and prejudicially from test results obtained by defense experts.

Id. at 397–98 (footnotes omitted).

and Welfare promulgated a model juvenile court code which accommodates the still valid concern for limiting the length of detention with the right to effective assistance of counsel in a way which would facilitate the full implementation of modified discovery. The Bureau accomplished this by retaining a requirement that an adjudicative hearing be commenced within ten days from the date the petition is filed if the youth is denied release at his detention hearing,[61] but excluded the following situations, *inter alia*, from this ten-day limit:

> (1) The period of delay resulting from other proceedings concerning the child, including but not limited to, an examination and hearing relating to mental health, pre-hearing motions, waiver motions, and hearings on other matters, but not to exceed an additional period of 20 days (Saturdays, Sundays and holidays included) except with the consent of the child and the child's counsel where the child in custody is denied unconditional release at the child's detention or shelter care hearing;
>
> (2) The period of delay resulting from a continuance granted at the request of the child and the child's counsel . . . .[62]

By implementing such simple provisions, states revising their juvenile codes[63] could ensure accurate factual determinations by providing sufficient time before an adjudicative hearing to allow counsel to employ modified discovery. Such discovery, with its shortened periods for invocation, would also comport with the spirit, as well as the intent, of the relevant state statutes to prevent long delays when juveniles must be detained.

In sum, "modified discovery" would allow sufficient time to provide effective assistance of counsel, as mandated by *Gault*, while creating a minimum of delay under the existing framework of most state juvenile codes.

Limits on the Reciprocity of Discovery

A further objection to modified discovery is that it would afford the juvenile discovery rights greater than those of the complainant. In matters pertaining to the conduct which serves as the basis for the delinquency charge, the juvenile would be free to discover whatever evi-

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[61] HEW MODEL ACTS, *supra* note 4, § 17(a)(1).

[62] *Id.* §§ 17(b)(1), (2).

[63] The Supreme Court has expressly invited states to experiment with and innovate their juvenile systems: "We are reluctant to disallow the States to experiment further and to seek in new and different ways the elusive answers to the problems of the young . . . . The States, indeed, must go forward." McKeiver v. Pennsylvania, 403 U.S. 528, 547 (1971).

dence the complainant intends to use, but the complainant could not force the juvenile to divulge his own knowledge of the evidence.[64] At least one court has found this lack of reciprocity to be prejudical to the complainant,[65] in part because the relevant evidence may be limited to the juvenile's delinquent acts, such that the juvenile will have unrestricted discovery against the complainant, while the complainant will find all "discoverable" evidence to be privileged.[66]

In areas of privilege, however, discovery is never symmetrically reciprocal. Rules of civil procedure limit discovery to evidence not privileged.[67] However much this may give advantage to the holder of the privilege,[68] the advantage is one inherent in the recognition of privileges *per se*, and marks the point where the concern for the fullest disclosure of facts is counterbalanced by other policies. The remedy, however, is not to deny full discovery to the juvenile: this would in many cases allow the juvenile to build an effective defense only if he waived his constitutional privilege against self-incrimination.[69] Rather, it must be recognized that juvenile proceedings are not sporting events but quests for truth.[70] This theoretical need for equality is counterbalanced by the reality that delinquency proceedings may result in incarceration. Mere speculations of prejudice should not justify the denial of the broadest discovery of facts possible.[71]

A subsidiary problem of reciprocity is that, to be effective, discovery must be conducted by an attorney. While the juvenile is now guaranteed the right to an attorney,[72] the complainant—a layman—often is not.[73] In such circumstances, discovery could be effectively conducted only on behalf of the juvenile.[74]

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[64] See notes 19–20 *supra* & text accompanying for discussion of the impact of the juvenile's privilege against self-incrimination on civil discovery.

[65] *In re* Marie W., 62 Misc. 2d 585, 588, 309 N.Y.S.2d 280, 284 (Fam. Ct. 1970).

[66] *See* note 20 *supra*.

[67] FED. R. CIV. P. 26.

[68] To the extent that complainant is precluded from using discovery, it restricts his ability to obtain evidence and prepare his case, and to this extent can be seen as allowing a tactical advantage to the juvenile. *Cf.* Louisell, *Criminal Discovery: Dilemma Real or Apparent,* 49 CALIF. L. REV. 56, 57 (1961); Traynor, *Ground Lost and Found in Criminal Discovery,* 39 N.Y.U.L. REV. 228 (1964).

[69] *Cf.* State *ex rel.* Keller v. Criminal Ct., 317 N.E.2d 433, 438 (1974), *citing* Wardios v. Oregon, 412 U.S. 470, 476 (1973).

[70] Brennan, *The Criminal Prosecution: Sporting Event or Quest for Truth?,* 1963 WASH. U.L.Q. 279.

[71] The New York court merely asserted that "granting unilateral pre-trial discovery for the sole benefit of the respondent would be prejudicial to the petitioner." *In re* Marie W., 62 Misc. 2d 585, 588, 309 N.Y.S.2d 280, 284 (Fam. Ct. 1970).

[72] *In re* Gault, 387 U.S. 1, 41 (1967).

[73] *See, e.g.,* IND. ANN. STAT. § 31-5-7-8 (Code ed. 1973).

[74] *See In re* Edwin R., 60 Misc. 2d 355, 357, 303 N.Y.S.2d 406, 408 (Fam. Ct. 1969).

Under older juvenile codes, it was not thought necessary to provide counsel for the complainant since the juvenile court judge was expected to play an active role in the adjudication—assisting both the prosecution and the defendant in eliciting the facts. This practice, in which the judge acts on behalf of the state as *parens patriae*,[75] has come under increasing criticism.[76] The trend now is to recognize that it is the state, rather than the complainant, which is the real party in interest to the proceeding against the juvenile,[77] and to provide a prosecuting official to represent the interests of the state.[78]

Cf. In re Edgar L., 66 Misc. 2d 142, 145, 320 N.Y.S.2d 570, 573–74 (Fam. Ct. 1971), where the court states:

> The petitioner raises the question as to the practicability of requiring bills of particulars in the Family Court. He argues that because often petitioners appear without attorneys, this might discourage lay persons from exercising their rights to bring a complaint in the Family Court. I do not believe that this is a tenable argument. If a bill of particulars is justified because it is necessary to the defense, it is justified whether or not petitioner is represented by counsel.

But see In re Santos C., 66 Misc. 2d 761, 322 N.Y.S.2d 203 (Fam. Ct. 1971).

[75] Ketcham, *The Unfulfilled Promise of the American Juvenile Court,* in JUSTICE FOR THE CHILD 22 (M. Rosenheim ed. 1962).

[76] Ketcham, *Legal Renaissance in the Juvenile Court,* 60 Nw. U.L. REV. 585, 593 (1965); Wizner, *supra* note 60. *See In re* Gault, 387 U.S. 1, 27–32 (1967); Kent v. United States, 383 U.S. 541, 554 (1966).

[77]
> The filing of a petition is merely a method whereby the people and the court may be informed of the situation which the petitioner alleges to exist, and the people become the real party complainant and must prosecute the proceedings.

H. LOU, *supra* note 21, at 100.

[78] *See* MODEL RULES *supra* note 4, rule 24; HEW MODEL ACT, *supra* note 4, § 14, Comment, which states:

> This section places the responsibility upon the Prosecuting Officer to represent the petitioner where the petition alleges either that the child is neglected or delinquent. This is an appropriate function for the Prosecuting Officer since the State is the real party in interest to the proceedings. Such a requirement obviates the necessity of either the judge or the probation officer to assume a prosecutorial function which would be wholly inappropriate for them in view of their other roles in the total proceedings.

See, also, UNIFORM ACT, *supra* note 4, § 24(b); INDIANA SUPREME COURT ADVISORY COMMITTEE, JUVENILE RULES OF PROCEDURE 17(f) (tent. draft July 5, 1974, unpublished), which states: "At fact-finding hearings . . . , the interests of the State shall be represented by the prosecuting attorney of the judicial circuit or his deputy or by counsel of the department of public welfare."

Compare Act of Dec. 23, 1963, Pub. L. No. 88–241, § 1, 77 Stat. 500 (1963), *as amended,* D.C. CODE ENCYCL. ANN. § 16-2305(f) (Supp. V, 1967), which provided that the corporation counsel could assist the juvenile court "upon request," *with* the new code which requires his participation by making the District of Columbia a "party to all proceedings." D.C. CODE ENCYCL. ANN. § 16-2305(f) (Supp. 1974). He is also required to "present evidence in support of all petitions." *Id.* § 16-2316(a). *See also* TASK FORCE REPORT, *supra* note 4, at 34; N.Y. FAMILY COURT ACT § 254(a) (McKinney Supp. 1974), which provides:

> The family court or the appropriate appellate division of the supreme court may request the appropriate corporation counsel or county attorney to present the case in support of the petition when, in the opinion of the family court or appellate division such presentation will serve the purposes of the act. When so requested, the corporation counsel or county attorney shall present the case

Abuse

The Illinois Supreme Court pointed to the potential for abuse inherent in attempts at discovery as its reason for denying the *"automatic* application of discovery provisions applicable to civil cases."[79] The court believed that the dangers of harassment and intimidation of witnesses, supression of evidence, and perjury[80] would be greater in juvenile proceedings than in the ordinary civil case because juveniles face the possibility of incarceration.[81] Thus, the juvenile court judge was required to weigh the possibility of these abuses against the benefits of discovery before approving discovery.[82]

This same argument has been raised repeatedly against attempts to broaden discovery in the criminal system;[83] however, the argument remains speculative[84] because the connection between expanded discovery and perjury or harm to witnesses has not been demonstrated.[85]

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in support of the petition and assist in all stages of the proceedings, including appeals in connection therewith.

[79] People *ex rel.* Hanrahan v. Felt, 48 Ill. 2d 171, 175, 269 N.E.2d 1, 4 (1971) (emphasis added).

[80] *Id.* at 173, 269 N.E.2d at 2.

[81] *Id.* at 175, 269 N.E.2d at 3.

[82] *Id.* at 175, 269 N.E.2d at 4.

[83] This view was expressed by Chief Justice Arthur T. Vanderbilt in State v. Tune, 13 N.J. 203, 210-11, 98 A.2d 881, 884 (1953):

> In criminal proceedings long experience has taught the courts that often discovery will lead not to honest fact-finding, but on the contrary to perjury and the suppression of evidence. Thus the criminal who is aware of the whole case against him will often procure perjured testimony in order to set up a false defense . . . . All these dangers are more inherent in criminal proceedings where the defendant has much more at stake, often his own life, than in civil proceedings. The presence of perjury in criminal proceedings today is extensive despite the efforts of the courts to eradicate it and constitutes a very serious threat to the administration of criminal justice and thus to the welfare of the country as a whole.

[84] Supreme Court Justice William J. Brennan, Jr. has responded to the Vanderbilt view:

> [H]ow can we be so positive criminal discovery will produce perjured defenses when we have firmly shut the door to such discovery? That alleged experience is simply non-existent. . . .
>
> I must say I cannot be persuaded that the old hobgoblin perjury, invariably raised with every suggested change in procedure to make easier the discovery of the truth, supports the case against criminal discovery. I should think rather that its complete fallacy has been starkly exposed through the extensive and analogous experience in civil causes where liberal discovery has been allowed and perjury has not been fostered. Indeed, this experience has suggested that liberal discovery, far from abetting, actually deters perjury and fabrication.

Brennan, *supra* note 70, at 290-91.

[85] As one court noted: "[T]he point is built one-sidedly of untested folklore." United States v. Projansky, 44 F.R.D. 550, 556 (S.D.N.Y. 1968).

> It may be, of course, that the "hobgoblin," like other things that alarm us in the night, is simply the heightened after-image of genuine experience which cannot be altogether denied or discounted. But nobody knows the degree of the prob-

Indeed, the limited data gained from the use of an experimental Vermont statute[86] which allowed the use of depositions by criminal defendants lend no support to this argument.[87]

The A.B.A. has also suggested that the strength of this intimidation and perjury argument has been ebbing recently, "perhaps [as] the result of recognizing the fact that the dangers envisioned from broad discovery can reasonably be anticipated in only a small minority of criminal cases."[88] Similarly, Professor Louisell has stated:

> The law should take account of these realities, and draw the line between the typical, and organized, crime. In the usual criminal case, the norm would be discovery as full-fledged as that which now characterizes civil litigation. . . . Discovery, however, would be withheld, or perhaps allowed subject to restrictions, upon a showing by the state that by reason of the nature of the accused's associations . . . , it would likely lead to improper uses such as threats to witnesses. Among such restrictions might be delaying the time of allowance of discovery.[89]

The rationale of this observation would be even more compelling in the juvenile system where the "defendants" are youths whose potential for such abuse is generally less than the typical criminal, let alone a member of an organized crime syndicate.[90]

> ability of perjury; certainly, nobody has even a hunch sufficient to override the solid claims of all defendants because some may use a legitimate means of trial preparation (the way some always do) as a device for the subversion of justice.

Id.

[86] No. 147, [1961] Vt. Acts 174–75 (repealed 1973).

[87] This experiment centered on a 1961 Vermont statute granting full discovery powers to defendants in criminal cases—allowing a defendant, on a showing that the witness's testimony may be relevant to the trial or of assistance in the preparation of his defense, to take depositions of witnesses. Langrock, *Vermont's Experiment in Criminal Discovery,* 53 A.B.A.J. 732, 733 (1967).

The author goes on to say that:

> The statute provides that the right to take depositions shall be granted on motion before an appropriate judge. In practice, however, these provisions have seldom been used, as after the first few months of experience, depositions were taken almost universally by stipulation . . . .
>
> . . . .
>
> It is also interesting to note that there was not a single mention of an instance of abuse of these statutes.
>
> . . . .
>
> The parade of "horribles" escaping from Pandora's box as proposed by the opponents of change in this are numerous. They include possible intimidation of witnesses [and] better opportunity to prepare perjured testimony . . . . The interesting thing shown by Vermont's experience is that all the "horribles" are imaginary.

Id. at 733–34.

[88] A.B.A. PROJECT, *supra* note 11, at 37.

[89] Louisell, *supra* note 68, at 100.

[90] Additionally, many juvenile courts are empowered to waive jurisdiction to criminal

Nevertheless, should the possibility of abuse arise in an individual case, the civil code provides for protective orders which require a positive showing of potential abuse before limiting or denying discovery.[91] Thus, even if the court's fear of abuse were justified, the resulting problem could be handled by protective orders within the framework of the modified code advocated here.

CONCLUSION

Upon examination, the objections lodged against the use of civil discovery techniques in delinquency adjudications are not persuasive and would not pose an impediment to the adoption of a modified code of civil discovery for use in the adjudicative phase of juvenile delinquency proceedings. During this time of widespread experimentation and modernization of juvenile codes, such a provision could be readily implemented through the promulgation of court rules or through legislation. This reform would assist the juvenile court in ascertaining reliable information upon which intelligent and appropriate dispositions

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courts when confronted with a serious offense or a recalcitrant offender. *See generally* Kent v. United States, 383 U.S. 541 (1966). It has been suggested that the court should be able to waive its jurisdiction when the case involved a juvenile who is sixteen or older and has committed an act which would be a felony if committed by an adult and where the court finds that the safety of the community clearly requires that the juvenile continue under restraint for a period beyond his minority. U.S. DEP'T OF HEALTH, EDUCATION, AND WELFARE, WELFARE ADMIN., CHILDREN'S BUREAU, STANDARDS FOR JUVENILE AND FAMILY COURTS 34-35 (prepared by W. Sheridan 1966). The Indiana Supreme Court Advisory Committee, in its proposed *Juvenile Rules of Procedure,* provided that a waiver proceeding may be instituted if the juvenile is fifteen or older, if there are reasonable grounds to believe that the juvenile committed an act which would constitute a crime if committed by an adult, and if:

> (b) One of the following conditions exists:
>
> > (1) The offense is one of a particularly heinous or aggravated character, greater weight being given to offenses against the person than to offenses against property, and that the child is beyond rehabilitation under the regular juvenile procedures; or,
> >
> > (2) The offense, even though of a less serious nature, is part of a repetitive pattern of juvenile offenses from which it is concluded that said child is beyond rehabilitation under the regular juvenile procedures; and that
>
> (c) Waiver of jurisdiction is necessary for the protection of the public or is found to be in the best interests of the public generally.

INDIANA SUPREME COURT ADVISORY COMMITTEE, JUVENILE RULES OF PROCEDURE 15(B)(1), (3) (tent. draft July 5, 1974, unpublished). Thus, the possibility for abuse is even further removed because the cases involving the most serious offenders will be waived into criminal courts.

[91] Upon motion by . . . the person from whom discovery is sought, and for good cause shown, the court . . . may make any order which justice requires to protect a party or person from annoyance, embarrassment, [or] oppression . . . .

FED. R. CIV. P. 26(c).

could be based, by providing the accused juvenile a full opportunity to present his case.

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