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Criminal Law - Juvenile Delinquency Proceeding - Right to Trial by Jury

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CRIMINAL LAW—JUVENILE DELINQUENCY PROCEEDING—RIGHT TO TRIAL BY JURY—The New York Court of Appeals has overruled the New York Supreme Court, Appellate Division, which held that the Sixth and Fourteenth Amendments require a jury trial in a Family Court Proceeding charging one with being a juvenile delinquent based on an act which if committed by an adult would constitute a felony and thus entitle him to a jury trial.

In Re D., 313 N.Y.S.2d 704, 27 N.Y.2d 90 (1970).

A juvenile, fifteen years of age, was charged with delinquency for having intentionally shot and killed his father. The accusation describing the act stated: "if done by an adult would constitute the crime of Murder."[1]

After his arraignment, the youth filed a motion for a jury trial[2] which was denied. Further motions being denied, a conference was held and the youth was charged with a petition alleging violation of Penal Law § 120.25, the old petition being dismissed. Section 120.25, Reckless Endangerment in the First Degree, has a maximum sentence of seven years if committed by an adult. The youth admitted this charge, was adjudged a juvenile delinquent, and committed to an industrial school for a period not to exceed three years.

Contending he had the constitutional right to trial by jury, the youth appealed the juvenile court's decision to the New York Supreme Court, Appellate Division. In its analysis, the appellate division initially considered *In Re Gault*[3] which held that a juvenile delinquency proceeding in which a youth was found to have certain constitutional rights under the due process clause of the Fourteenth Amendment. The appellate court turned to *Duncan v. Louisiana*[4] which held that the Sixth

1. NEW YORK PENAL LAW § 125.25 (McKinley 1967).
2. Duncan v. Louisiana, 391 U.S. 145 (1968) where the United States Supreme Court held that the Fourteenth Amendment made applicable the Sixth Amendment's requirement of right to trial by jury in serious crimes, that the penalty authorized for the particular crime is of major relevance in determining whether it is serious, and a crime punishable by two years imprisonment was a serious crime. Hogan v. Rosenberg, 24 N.Y.2d 207, 299 N.Y.S.2d 424, 247 N.E.2d 260 (1969), the court interpreting *Duncan* held that the New York City Criminal Court Act § 40 authorized non-jury trials for misdemeanors was constitutional. *Duncan* was subsequently modified by Baldwin v. New York, 399 U.S. 66 (1970) which held that "no offense can be deemed petty for purposes of the right to trial by jury where imprisonment for more than six months is authorized."
3. 387 U.S. 1 (1967). *Gault* expressly limited itself to answering the following constitutional questions concerning a juvenile: a) notice of the charges; b) right to counsel; c) right to confrontation and cross-examination; d) privilege against self-incrimination; e) right to appellate review; f) right to transcript of the proceedings. It did not consider a juvenile's right to trial by jury.
4. 391 U.S. 145 (1968).

Amendment, made applicable to the states by the Fourteenth Amendment, requires a jury trial in a criminal court for all serious offenses, that the penalty authorized is of major importance in determining whether or not an offense is serious, and that a crime punishable by two years imprisonment is serious.

The appellate division felt the instant case was of a serious nature; the youth was subjected to the loss of his liberty for years, and since it was serious, certain constitutional "safeguards available to an adult may not be disregarded in a child's case."[5] For serious crimes, an adult has the constitutional right to trial by jury and when a youth may be "found to be delinquent and subjected to the loss of his liberty for years"[6] the juvenile has the same right to trial by jury.[7]

The New York Supreme Court, Appellate Division, found:

> the civil-criminal distinction between adult crimes and delinquency cases is non-existent insofar as a child's constitutional safeguards are concerned, particularly where the possible result of the proceedings is incarceration for a substantial period of time . . . and the existence of a right is not conditioned on the number of occasions that it will be put to use or the persons who will use it.[8]

In overruling the appellate division, the New York Court of Appeals stated: "trial by jury in cases involving juvenile delinquents is neither constitutionally required nor desirable and would inevitably bring a good deal more formality to the juvenile court without giving the youngster a demonstrably better fact-finding process than trial before a judge."[9] This decision has been appealed to the United States Supreme Court.

Relying on *Kent v. United States*,[10] *Gault*,[11] and the concurring opinion in *In Re Winship*,[12] the court felt the Kent decision did not require the juvenile delinquency proceeding to conform with all the requirements of a criminal trial, only due process and fair treatment. In *Gault*, the United States Supreme Court had not expressed an opinion on the other due process requirements. Justice Harlan's concurring opinion in *Winship* emphasized the position that proof beyond

5. *In Re* D., 310 N.Y.S.2d at 86, 34 A.D.2d at —.
6. 387 U.S. at 36.
7. 310 N.Y.S.2d at 89, 34 App. Div. at —.
8. *Id.* at 88-89, 34 A.D.2d at —.
9. 313 N.Y.S.2d at 707, 27 N.Y.2d at 95, 261 N.E.2d at 630.
10. 383 U.S. 541 (1966).
11. See note 3.
12. 397 U.S. 375 (1970).

a reasonable doubt in a juvenile delinquency proceeding would not interfere with the goal of rehabilitation, stigmatize the youth as a criminal, nor:

> *Burden the juvenile courts with a procedural requirement which would make juvenile adjudications significantly more time consuming or rigid.* (Emphasis New York Court of Appeals).
>
> Therefore we see no compelling reason why we should burden the court with a procedural requirement which would make such adjudications significantly time consuming, cumbersome, and result in a loss of secrecy which has always been deemed most desirable, since a jury trial would not necessarily afford the youngster a better fact-finding process.[13]

The establishment of separate courts for juvenile offenders originated in this country at the beginning of the 20th century. The first juvenile court was established by Illinois in 1899[14] and similar courts were subsequently created by other state legislatures. No juvenile delinquency act required a jury trial and this was not considered a deprivation of the youth's constitutional right; jury trials were deemed inapplicable to these proceedings. These courts were not considered criminal courts; nor were the acts of the youthful offenders considered to be crimes; rather, it was a proceeding to determine "whether the interests of the state and the child demanded that the guardianship of the state should be substituted for that of the natural parent"[15] under the doctrine of *parens patriae*. The acts creating these juvenile courts were held to be constitutional.[16]

For approximately fifty years only a minority of courts questioned the youth's constitutional rights in juvenile proceedings.[17] Finally in *Haley v. Ohio*,[18] Justice Douglas speaking for four Justices stated: "[n]either man nor child can be allowed to stand condemned by methods which flout constitutional requirements of due process of law."[19]

13. 313 N.Y.S.2d at 708, 27 N.Y.2d at 95, 261 N.E.2d at 629.
14. Act of 1899 also known as the Juvenile Court Act of Illinois.
15. See: People *ex rel.* Sanfilippo v. New York Catholic Protectory, 38 Misc. 660, 78 N.Y. Supp. 232 (1902); Commonwealth v. Fisher, 213 Pa. 48, 62 A. 198 (1905); *In Re* Gassaway, 70 Kan. 695, 79 P. 113 (1905); Pugh v. Bowden, 54 Fla. 302, 45 So. 49 (1907); *In Re* Sharp, 15 Idaho 120, 98 P. 563 (1908); Lindsay v. Lindsay, 257 Ill. 328, 100 N.E. 892 (1913).
16. *See* Mill v. Brown, 31 Utah 473, 88 P. 609 (1907); Marlowe v. Commonwealth, 142 Ky. 106, 133 S.W. 1137 (1911); Leonard v. Licker, 3 Ohio App. 377 (1914); Commonwealth v. Carnes, 82 Pa. Super. 335 (1923).
17. *See generally* People v. Fitzgerald, 244 N.Y. 307, 155 N.E. 584 (1927); People v. Lewis, 260 N.Y. 171, 183 N.E. 353 (1932); State v. Franklin, 202 La. 439, 12 So.2d 211 (1943).
18. 332 U.S. 596 (1948).
19. *Id.* at 601.

After this decision, courts began to inquire into the nature of the juvenile court proceedings.[20] These proceedings now were found to be quasi-criminal in nature[21] and the power of the state under the doctrine of *parens patriae* was not unlimited.[22] The informality of the proceedings was also questioned.[23]

In 1967, the United States Supreme Court in *Gault*[24] held that the Fourteenth Amendment due process clause required certain constitutional safeguards in a juvenile delinquency proceeding. However, trial by jury was not considered by the *Gault* Court.

The majority of state courts have continued to hold that the Fourteenth Amendment does not require a trial by jury in a juvenile delinquency proceeding.[25] *Gault* is read narrowly; it does not require juveniles to be treated as adults. While courts must operate within the constitutional guarantees of due process, it is necessary they retain their flexible procedures and techniques. Conversely, a minority has found the right to trial by jury in juvenile proceedings implicit in the *Gault* decision.[26]

After the *Duncan* decision, the United States Supreme Court declined in *In Re Whittington*[27] to answer the question whether the Federal Constitution requires the states to grant jury trials in juvenile court proceedings. Similarly, in *DeBacker v. Brainard*[28] the Supreme Court declined to answer the question whether a Nebraska statute[29] providing that juvenile hearings were to be without jury was constitutional since the juvenile was found to be delinquent prior to *Duncan*. Dissenting, Justices Douglas and Black, found the statute unconstitu-

20. *In Re* Contreras, 109 Cal. App. 2d 787, 241 P.2d 631 (1952); Holme's Appeal, 109 A.2d 523 (1954) (dissenting opinion).
21. *In Re* Gregory W. and Gerald S., 19 N.Y.2d 55, 224 N.E.2d 102 (1966).
22. 383 U.S. at 555. *Kent* also emphasized the necessity that the basic requirements of due process and fairness be satisfied in such proceedings.
23. See note 21; Equal Rights—For Whom?: Address by Justice Abe Fortas, 8th Annual James Madison Lecture, March 29, 1967, 42 N.Y.U.L.R. 401 (1967); Lehman, J., A Juvenile's Right to Counsel in a Delinquency Hearing. 17 JUVENILE COURT JUDGE'S JOURNAL 53 (1966).
24. See note 3.
25. Estes v. Hopp, 73 Wash. 2d 272, 438 P.2d 205 (1968); Commonwealth v. Johnson, 211 Pa. Super. 62, 234 A.2d 9 (1967).
26. Peyton v. Nord, 78 N.M. 717, 437 P.2d 716 (1968); *In Re* Rindell, 2 BNA CR. L. 3121 (Providence R.I. Family Ct. Jan. 1968); Nieves v. United States, 280 F. Supp. 994 (1968).
27. 391 U.S. 342 (1968).
28. 396 U.S. 28 (1969).
29. "Four of the seven justices of the Nebraska Supreme Court thought the Nebraska statutory provisions which require that juvenile hearings be without a jury, Neb. Rev. Stat. § 43-206.03(2) were unconstitutional. The Nebraska Constitution provides, however, that "No legislative act shall be held unconstitutional except by the concurrence of five judges." NEB. CONST., Art. V, § 2; 396 U.S. at 29 n.3.

tional: "[g]iven the fundamental nature of the right to jury trial as expressed in *Duncan*, there is no constitutionally sufficient reason to deprive the juvenile of this right."[30]

In *Winship*,[31] the last decision of the Supreme Court regarding juvenile rights, it was held that proof beyond a reasonable doubt is required to establish guilt in a juvenile court of a criminal charge and is as much required during the adjudicatory phase of the hearing as the other constitutional safeguards expressed in *Gault*. Citing *Gault*, the court felt civil labels and good intentions do not obviate the need for criminal due process safeguards in juvenile courts:

> Due process commands that a juvenile shall not lose his liberty unless the proof is such to convict him were he an adult. Nor would proof beyond a reasonable doubt destroy the beneficial aspects of the juvenile process such as the informality, flexibility, or speed of the hearing at which the factfinding takes place.[32]

As in *Gault*, Justice Brennan, speaking for the majority, limited the *Winship* decision, refusing to answer if other elements of due process and fair treatment were required in the adjudicatory phase of a delinquency proceeding.

Since the *Duncan* decision in 1968, numerous state courts have held the right to trial by jury is not required in a juvenile delinquency proceeding. In *Dryden v. Commonwealth*,[33] one of the earliest decisions, the Kentucky court stated:

> A trial by jury, with all the clash and clamor of the adversary system that necessarily goes with it, would certainly invest a juvenile proceeding with the appearance of a criminal trial, and create in the mind and memory of the child the same effect as if it were. Certainly we cannot regard a jury as a better, fairer, more accurate fact-finder than a competent and conscientious circuit judge. In our opinion there is more to be lost than gained.[34]

In Re Turner[35] expressed the viewpoint:

> The ultimate question is not one of guilt or innocence but rather what will best serve the interests of the child. We recognize the distinction between the adjudicative phase of a juvenile case and the dispositional phase. There is reason to believe, however, that,

30. *Id.* at 38.
31. See note 12.
32. *Id.* at 366.
33. 435 S.W.2d 457 (Ky. 1968).
34. *Id.* at 461.
35. 453 P.2d 910 (Or. 1969); *see also In Re* Fucini, 44 Ill. 2d 305, 255 N.E.2d 380 (1970).

> at least in cases of first offenders and of other children who have not yet embarked upon a criminal career, the adjudicative phase of their court experience represents an important rehabilitative opportunity.[36]

Likewise in *In Re Agler*[37] the Ohio court felt a juvenile could derive no benefit from a jury trial worthy of destroying his special status, and therefore, trial by jury was not an essential element in the adjudicative phase of a proceeding and was neither required by the Constitution nor sound public policy.

The United States Supreme Court has recently heard arguments by states denying jury trials for a youth in a juvenile delinquency proceeding: *In Re Burrus*[38] where the North Carolina court held that a juvenile proceeding is neither a criminal prosecution nor penal in character and the constitutional guarantee of trial by jury has no application to a proceeding under the Juvenile Court Act; and *In Re McKeiver*[39] where the Pennsylvania Supreme Court held that a jury trial is less essential and not so fundamental in a juvenile delinquency proceeding when it operates in the context of *all* the other constitutional safeguards. (Emphasis Pennsylvania Supreme Court). In *McKeiver*, the court felt there were four reasons why a trial by jury is less essential in a juvenile court proceeding and not constitutionally required: 1.) judges in juvenile courts see their role differently than their counterparts in criminal courts; 2.) the juvenile court system more fully utilizes various rehabilitative techniques; 3.) a declaration of juvenile delinquency is less onerous than a finding of criminal guilt; and 4.) a jury trial in a juvenile court proceeding would most disrupt the traditional character of the juvenile court system.

For three years the United States Supreme Court has delayed answering whether a jury trial is required in a juvenile proceeding. Since it has heard arguments in the *Burrus* and *McKeiver* cases, there is reason to believe the Supreme Court will now resolve the question.

If the Supreme Court decides it is unconstitutional to deny a youth a jury trial in a juvenile delinquency proceeding, it will probably cite

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36. 453 P.2d at 912-914.
37. 19 Ohio St. 2d 70, 249 N.E.2d 808 (1969); *see also In Re* Johnson, 254 Md. 517, 255 A.2d 419 (1969); *In Re* Wichard, 8 N.C. App. 154, 174 S.E.2d 281 (1970).
38. 275 N.C. 517, 169 S.E.2d 879 (1969) prob. juris. noted, 397 U.S. 1036, oral arguments before Supreme Court 12/9-10/70, 8 BNA CR. L. 4088, No. 128.
39. 438 Pa. 339, 265 A.2d 350 (1970) prob. juris. noted, 90 S.Ct. 2271, oral arguments before Supreme Court 12/10/70, 8 BNA CR. L. 4090, No. 322.

the late Justice Musmanno's dissent in *Holme's Appeal*[40] as in *Gault*. One complaint of the *Holme's* dissent remains:

> Are children entitled to the protection of the Sixth Amendment of the Constitution of the United States and Article 1 § 9 of the Constitution of Pennsylvania?[41]

It is submitted the Supreme Court will answer this question affirmatively and declare it unconstitutional to deny a youth a jury trial in a juvenile delinquency proceeding when he is charged with an offense which if committed by an adult would entitle the adult to trial by jury.

Every juvenile delinquency proceeding has two phases: the adjudicative phase where it is determined if the youth is a juvenile delinquent; and the dispositional phase where it is decided what type of rehabilitation will best serve the interests of the child and the state. Today, the majority of state courts believe the rehabilitative phase requires a relaxation of formalities in the adjudicative phase to achieve the greatest correctional effect; the adjudicative phase is considered part of the rehabilitative process.[42] A minority feel that rehabilitation is restricted to the dispositional phase and any rehabilitation achieved in the adjudicative phase cannot be balanced against the resulting loss of a youth's constitutional right to trial by jury.[43] In *Holme's Appeal*, Justice Musmanno stated:

> The question is not *how* Joseph Holmes should be treated, but whether he should be "treated" at all. Fairness 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. (Emphasis Justice Musmanno.)[44]

Though the courts have recognized these two phases, the present constitutional controversy has arisen because they have not divorced the adjudicative phase—whether the youth is a juvenile delinquent—with the dispositional phase—the rehabilitation the youth will receive if found delinquent. The preferential treatment received by the youth

40. 109 A.2d 523.
41. *Id.* at 533.
42. *See generally* Dryden v. Commonwealth, 435 S.W.2d 457 (Ky. 1968); *In Re* Turner, 453 P.2d 910 (Or. 1969); *In Re* Agler, 19 Ohio St. 2d 70, 249 N.E.2d 808 (1969); *In Re* Terry, 438 Pa. 339, 265 A.2d 350 (1970).
43. Nieves v. United States, 280 F. Supp. 994 (1968); Peyton v. Nord, 78 N.M. 717, 437 P.2d 716 (1968).
44. 109 A.2d at 528.

in the dispositional stage has been applied in the adjudicative stage, the result being a denial of the youth's constitutional rights. As Justice Musmanno stated in *Holme's Appeal*:

> If we were to accept the utterly illogical proposition that a child is better guarded by denying him the security of the above-mentioned constitutional guarantees, why shouldn't we then throw the same defensive armor around women who are invariably regarded as being less able to fend for themselves than men? And if the extravagant supposition is accepted that children and women are in a superior position of vantage *outside* the Constitution, why not turn out of the State's tabernacle of inalienable rights the crippled, the mutilated, the aged and the blind? Certainly they are entitled to the same privileges which go to helpless children and women. (Emphasis Justice Musmanno.)[45]

The adjudicative phase ". . . is a trial . . ."[46] regardless of the nametag stamped upon the proceedings by the legislature. Governed at times by a "calloused"[47] judge, due process is sometimes disregarded. The juvenile court judge "carries no magical fishing rod to draw forth the truth out of a confused sea of speculation, rumor, suspicion and hearsay."[48] "The factfinder will despite its best efforts sometimes . . . be wrong . . . there is always in litigation a margin of error."[49] This margin of error is substantially increased when the trier is a judge, despite his years of experience and judicial expertise. Trial by jury increases the probability one juror may not be convinced beyond a reasonable doubt. And it is this likelihood that a single juror may not be convinced beyond a reasonable doubt which the Constitution demands for the hardened criminal but which the state denies a youthful offender. As the late Justice Cohen stated in his dissent in *In Re McKeiver*:

> Informality and flexibility are not ends in themselves; the purpose of the adjudicatory stage is to determine whether the defendant is delinquent and some loss of informality and flexibility will not have a great effect on whatever rehabilitation the juvenile system can accomplish.[50]

Though some argue a juvenile delinquency proceeding protects the

45. *Id.* at 533.
46. *Id.* at 529.
47. *Id.* at 530.
48. *Id.* at 529.
49. 397 U.S. at 372.
50. 438 Pa. at 354, 265 A.2d at 357.

youth from the ordeal of trial, the ordeal of trial is no more exasperating to the youthful offender than commitment behind a barbed fence. The Sixth Amendment is not concerned with informality; nor with flexibility; rather, it requires a jury trial for all and it does not exclude children. Constitutional rights cannot be balanced upon a scale of flexibility and informality—they are too few and too precious. As Justice Musmanno stated in *Holme's Appeal*:

> What a child charged with crime is entitled to, is *justice, not parens patriae* . . . (Emphasis Justice Musmanno.)[51]

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JUVENILES—ADJUDICATION OF DELINQUENCY—MAXIMUM SENTENCES—The Pennsylvania Supreme Court has held that a juvenile may be sentenced to a longer maximum commitment than an adult tried for the same crime if the following conditions are present: 1.) the juvenile is notified at the outset of the proceedings of all factors upon which the state proposes to base the adjudication; 2.) the facts supporting the ultimate conclusions must be clearly found and set forth; and, 3.) it must be clear that during the longer commitment the juvenile will receive appropriate rehabilitative care.

Wilson Appeal, 438 Pa. 425, 264 A.2d 614 (1970).

On June 2, 1968, Charles Laverne Wilson and several other youths became involved in an interracial street fight in Lancaster, Pennsylvania. Although no one was seriously injured in the fray, and Wilson's involvement was confined to throwing a few punches, juvenile delinquency proceedings were subsequently brought against him.

During the delinquency hearing, the judge considered not only the street fight incident, but also Wilson's prior school suspension and burglary conviction as significant factors in finding him a delinquent. Neither Wilson's counsel nor his parents had any notice that these two additional factors would be considered in this hearing.

Wilson was adjudged a delinquent and was sentenced to the State Correctional Institution at Camp Hill, Pennsylvania.[1] His sentence,

51. 109 A.2d at 530.

1. 438 Pa. 425, 264 A.2d 614 (1970).