St. Mary's Law Journal

Volume 1 | Number 1 Article 2

3-1-1969

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DUE PROCESS AND THE JUVENILE OFFENDER

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For over sixty years after the enactment of the first Juvenile Court Act in this country,[1] the prevailing theory was that notions of due process were inapplicable to juvenile proceedings.[2] The leaders of the juvenile court movement at the turn of the century had as their goal the establishment of a system which would insure the education, protection and salvation of the errant child, rather than deterrence or retribution. "The child was not to be convicted, but was to be found dependent, delinquent or truant or discharged. The child was not to be sentenced to a reformatory or prison, but committed to the care of a probation officer or to the care of a friendly state institution. . . . [T]he effort being first, to find out what was the best thing to be done for the child, and secondly, if possible, to do it. It will be seen at once that this procedure contemplated a complete change. . . . The procedure contemplated care, attention and formation, rather than reformation."[3]

Part of the foundation for the juvenile court system consists of two Latin words—*parens patriae*.[4] The system embodies a plan under which the child "may be treated, not as a criminal, or legally charged with crime, but as a ward of the state, to receive practically the care, custody and discipline that are accorded to the neglected and dependent child, and which 'shall approximate, as nearly as may be, that which should be given by its parents.' "[5]

To accomplish these clearly desirable results, the juvenile court was shorn of all resemblance to a criminal court. In order to prevent the appearance that the child was being tried as a criminal, the hallmark of the new procedure was informality. Public hearings were to be avoided; the intervention of counsel was not required, since the juvenile judge represented both the child and the state.[6] Common law rules of evidence need not be strictly followed, since they were derived

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1 It is generally said that the first Juvenile Court Act was passed by the Illinois legislature in 1899.

2 Paulsen, *Kent v. United States: The Constitutional Context of Juvenile Cases.* 1966 SUP. CT. REV. 167, 171.

3 Hurley, *Origins of the Illinois Juvenile Court Law* in THE CHILD, THE CLINIC AND THE COURT, 328.

4 Translated as "parent of the country," or, less literally, "father of his country." BLACK'S LAW DICTIONARY 1269 (4th ed. 1951).

5 Pound, *The Juvenile and the Law,* in YEARBOOK, 1944, NATIONAL PROBATION AND PAROL ASSOCIATION 44145, quoting from report of the committee of the Chicago Bar Ass'n which drafted the Illinois Juvenile Court Act.

6 FLEXNER, OPPENHEIMER & LENROOT, THE CHILD, THE FAMILY AND THE COURT 4 (1929).

from considerations of extraneous policy. The court was not to be denied the use of evidence that might be essential to the salvation of the child merely because the evidence had been illegally obtained.

But, despite the emphasis on "treatment" and doing something "for" the child rather than "to" the child, it was clear that most youths who attracted the attention of the "fatherly" juvenile judge were receiving the protection of the state because they had engaged in conduct denounced by the criminal law. The "school" to which the youthful offender was committed, not for punishment but for training, could easily be mistaken, even after a more than superficial examination, for a prison. It is not surprising that the new procedure was challenged as an invasion of the constitutional rights of the child. But the Supreme Court of the United States remained aloof, and state tribunals beat back all attacks upon the citadel.[7]

Two reasons were given for rejecting the constitutional challenges. First, it was pointed out that most of the constitutional objections were based on provisions applicable only to criminal proceedings. Since the avowed purpose of the juvenile court was the education and training of the child, and not his punishment, the court was classified as a non-criminal court. The proceedings in juvenile cases, then, are "civil" and not "criminal," and constitutional provisions designed to protect the rights of defendants in criminal cases are not applicable.

In addition, the defenders of the juvenile system successfully invoked the *parens patriae* doctrine. *Commonwealth v. Fisher*,[8] is one of the cases most frequently cited in support of the argument that the juvenile court procedure does not offend against due process. There the Supreme Court of Pennsylvania resorted to both the "civil-criminal" dichotomy and the *parens patriae* rationale to uphold the Pennsylvania Juvenile Court Act of 1903. First, the Court pointed out that the juvenile court is concerned not with the punishment of offenders, but with "the salvation of children." Since the Juvenile Court Act merely provided a procedure insuring that children who ought to be saved will reach the court to be saved, it could "never be asserted as undue process for depriving a child of its liberty or property as a penalty for crime committed."[9]

The role of the *parens patriae* doctrine in saving the juvenile court procedure against constitutional attack finds excellent illustration in

[7] Fifteen leading cases upholding the constitutionality of juvenile court acts of 13 states are referred to in LOU, JUVENILE COURTS IN AMERICA 10 (1927).

[8] 213 Pa. 48, 62 A. 198 (1905).

[9] *Id.* at 200.

the *Fisher* opinion. "The natural parent needs no process to temporarily deprive his child of its liberty by confining it to his own home, to save it and to shield it from the consequences of persistence in a career of waywardness; nor is the state, when compelled, as *parens patriae,* to take the place of parents for the same purpose, required to adopt any process as a means of placing its hands upon the child to lead it into one of its courts."[10]

Finally, the *Fisher* opinion rejected the contention that the Pennsylvania statute deprived the minor of his liberty without due process because it deprived him of the right to trial by jury. This contention was disposed of by simply pointing out that "there is no trial for any crime here. . . . The very purpose of the act is to prevent a trial."[11]

Apparently, *Gallegos v. Colorado,*[12] while it involved an appeal from a conviction for murder in a criminal court, was the first case in which the Supreme Court turned its attention to the methods adopted by the states for handling juveniles. Robert Gallegos, aged 14, assaulted and robbed an elderly man of $13.00. Gallegos was picked up on January 1, 1959, and placed in a juvenile detention center. The next day his mother was denied permission to see him on the ground that she did not come during the one hour in the evening when the inmates were allowed visitors. On that same day, Gallegos admitted the robbery, and on January 3 a complaint was filed against him in Juvenile Court.

Gallegos signed a full confession on January 7 and was tried in Juvenile Court on January 16. He was committed to the State Industrial School. Thereafter, the robbery victim died. Gallegos was convicted of murder as the result of a trial during which the confession signed by him while being detained in Juvenile Hall was admitted into evidence.

The Supreme Court reversed the conviction because of the reception of the confession signed by the boy after he had been held for five days without being allowed to see a lawyer, parent or other friendly adult. Although there was no evidence of prolonged questioning, and the evidence indicated that Gallegos had been advised of his right to counsel but did not request to see either a lawyer or his parents, the Court held that a 14-year-old boy, "no matter how sophisticated, is unlikely to have any conception of what will confront him when he is made accessible only to the police." The Court made it clear that a child needs more, not less, protection than an adult.

10 *Id.*
11 *Id.*
12 370 U.S. 49, 82 S. Ct. 1209, 8 L. Ed. 2d 325 (1962).

The due process deluge which was to be loosed upon the juvenile court system was presaged by the roll of thunder emanating from the opinion in 1966 in *Kent v. United States*.[13] In *Kent* the Court made it clear that the "civil" nature of juvenile proceedings may be a fiction and that if an examination of the situation reveals that the non-criminal nature of the proceedings is a fiction, the fiction will be ignored. Nor was the Court impressed with the stated laudable purposes of the juvenile court system. After pointing out that recent studies raised serious questions whether actual performance measures up to theoretical purpose to a degree sufficient to justify the immunity of the juvenile process from safeguards applicable to adults, Mr. Justice Fortas delivered a body blow to the philosophy underlying the creation of juvenile courts:

> There is much evidence that juvenile courts. . . lack the personnel, facilities and techniques to perform adequately as representatives of the State in a *parens patriae* capacity, at least with respect to children charged with law violations. There is evidence, in fact, that there may be grounds for concern that the child receives the worst of both worlds; that he gets neither the protection accorded to adults nor the solicitous care and regenerative treatment postulated for children.[14]

Such language exposes the fictitious nature of the foundation which supports the juvenile court structure. The "civil" label is too transparent to hide the fact that a child committed to a "training" or "industrial" school is, in fact, being punished.

Although *Kent* raised the basic question of whether the practical shortcomings of the juvenile court system may be too great "to make tolerable the immunity of the process from the reach of constitutional guaranties applicable to adults,"[15] the case was decided on a narrower ground. Perhaps there were some who found comfort in the fact that the actual holding, requiring a hearing and access by the youth's counsel to the "social service" file before the juvenile court can waive its jurisdiction over a minor to the criminal courts, was based on the interpretation of the applicable statute. But it is clear that the Court placed primary reliance on substance and construed the statute in the context of constitutional principles. The opinion left little doubt that denial of important procedural safeguards in juvenile proceedings was vulnerable to attack on due process grounds.[16]

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13 383 U.S. 541, 86 S. Ct. 1045, 16 L. Ed. 2d 84 (1966).
14 *Id.* at 555.
15 *Id.*
16 Paulsen, *supra* note 2.

The promise, or threat, depending on one's point of view, implicit in *Kent*, was fulfilled in 1967 when the Court handed down its decision in *Matter of Application of Gault*.[17] This decision clearly rejected the notion that due process was a concept foreign to juvenile proceedings. "Under our Constitution, the condition of being a boy does not justify a kangaroo court."[18]

Gerald Gault attracted the protective eye of the State of Arizona when Mrs. Cook complained that he had made, over the telephone, remarks of an "irritatingly offensive, adolescent sex variety." Gerald was taken into custody and placed in a juvenile detention home. Although the Gault family was not notified, Gerald's brother found out where he was. Mrs. Gault went to the detention home where she was told the reason for Gerald's detention and informed that a hearing would be held the next day. The petition filed by the juvenile authorities alleged, without factual specification, that Gerald was a delinquent minor in need of the protection of the juvenile court. Neither Gerald nor any member of his family was furnished a copy of the petition.

On the next day, a hearing took place in the chambers of the juvenile judge. Present at the hearing were Gerald, his mother, his older brother and probation officers. The complainant, Mrs. Cook, apparently had more important business elsewhere. Neither Gerald nor his mother was told that he was entitled to counsel or that he had a right to remain silent. No sworn testimony was presented. No transcript, recording or memorandum of the hearing was made. According to testimony given by the judge and a probation officer at a subsequent habeas corpus proceeding, Gerald admitted making lewd statements to Mrs. Cook over the telephone. The hearing was then recessed, so that the juvenile judge might "think about" the case. Three days later, for some unexplained reason, Gerald was released and his mother was handed a typewritten note from a probation officer to the effect that a further hearing would be held, giving the date. On the day of the second hearing, Mrs. Cook again was absent. The juvenile judge, after reading a report which was not made available to Gerald or to any member of the Gault family, committed Gerald to the State Industrial School for the period of his minority, "unless sooner discharged by due process of law."[19]

No one can say that Gerald Gault was treated as though he were an adult defendant in a criminal proceeding. In order to avoid the possi-

[17] 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967).
[18] *Id.* at 28.
[19] The background of the Gault case is taken from Paulsen, *The Constitutional Domestication of the Juvenile Court*, 1967 SUP. CT. REV. 233, 234-36.

bility that he would be stigmatized as a criminal, the State of Arizona, in its role as *parens patriae*, had denied Gerald the following rights, all of which would have been accorded to an adult charged with crime: He was not given specific information of the charged offense. He was denied the right to be confronted by, and to cross-examine, the witnesses against him. He was not allowed to examine the referral report. He was denied the right to appeal. He was denied a detailed record of the proceedings. He was denied the right to a jury trial. He was not afforded counsel. He was not advised of his right to remain silent.

A cynic might conclude that the only right of which Gerald was not deprived was the right to a speedy trial.

The Supreme Court held that Gerald had been deprived of his liberty without due process of law.

The theory underlying the *Gault* decision is that the "rights and protections" afforded by the procedure in criminal cases are substantial, compared to the "mere verbiage" and "cliches" of special benefits under the juvenile court system.[20]

To what extent does the Supreme Court's disdain for fiction require that delinquency proceedings conform to the standards of procedure to which the criminal courts must adhere? In answering this question, attention will be given to the constitutional rights of an adult criminal defendant and an attempt will be made to determine how much of this protective mantle has now been draped protectively around the juvenile offender. At the outset, however, at least a superficial analysis of the language of the *Gault* opinion must be made.

The Supreme Court has firmly refused to be bound by the criminal-civil dichotomy, thus casting a shadow over a conceptual device which has shielded many "non-criminal" commitment procedures from the reach of due process requirements. Similarly, the thrust of the opinion penetrates the *parens patriae* shield which, in past years, has blunted constitutional assaults upon the juvenile system. The Court will look to the character of the sanctions imposed, rather than to the state's motives for action or the "feeble enticement of the 'civil' label-of-convenience."[21] Significant is the fact that only Mr. Justice Stewart wrote a full-fledged dissent based on the theory that juvenile proceedings are not adversary proceedings because they intend correction of a condition rather than punishment for crime.

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[20] 387 U.S. 1, 29-30, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967). *See* Welch, *Kent v. United States and In Re Gault*, 19 HASTINGS L.J. 29, 34 (1967).

[21] 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967).

On the other hand, the approach of the Court was cautious. The decision does not involve a wholesale transplant of procedural safeguards from criminal trials to delinquency proceedings. Although the decision leaves little doubt that divergence between criminal and juvenile proceedings are disfavored, the court's item-by-item approach to procedural standards leaves room for possible later distinctions between juvenile and criminal cases. Nor should sight be lost of the fact that the actual holding was limited to a declaration that due process required that a juvenile (1) be given adequate and timely notice of the nature of the charges against him; (2) be furnished counsel; (3) be granted the right to confrontation and cross-examination; and (4) be granted the benefit of the privilege against self-incrimination.

With these initial observations out of the way, we may consider the extent to which the requirements of due process necessitate a reform of juvenile procedure.

NOTICE

Eight of the justices agreed that due process requires adequate and timely notice of the nature of the charges against the juvenile. Notice given on the date of the hearing "is not timely; and even if there were a conceivable purpose served by the deferral . . . , it would have to yield to the requirement that the child and his parents or guardian be notified, in writing, of the specific charge."[22] There can be no argument with this portion of the holding. The child should certainly have an opportunity to meet the charges against him, and he cannot be expected to meet charges of which he is ignorant.[23]

RIGHT TO COUNSEL

If the proceedings may result in commitment to an institution where the child's freedom is curtailed, "the child and his parents must be notified of the child's right to be represented by counsel obtained by them, or if they are unable to afford counsel, that counsel will be appointed to represent the child."[24] Knowledge on the part of the child's mother that she could have appeared with counsel at the hearing is not enough. *Gault* requires express advice of the right to counsel.[25]

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22 *Id.* at 33.

23 Notice, of course, must be given sufficiently in advance of the hearing to give a reasonable opportunity to prepare.

24 387 U.S. 1, 41, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967).

25 *Id.*

"There is no material difference in this respect between adult and juvenile proceedings of the sort here involved."[26]

Several questions remained unanswered concerning the right to counsel. For the adult criminal, the right to counsel applies not only at the trial stage but at every "critical" stage of the proceeding, including "critical confrontations of the accused by the prosecution at pretrial proceedings when the results might well settle the accused's fate and reduce the trial itself to a mere formality."[27] Does the minor have the same right?

It should be noted that in *Gault* the right to counsel was given with reference to all proceedings "which may result in commitment to an institution in which the juvenile's freedom is curtailed." Was this language intended to impose a limitation on the right? Suppose that, under certain circumstances, the applicable statute provides no more than that children guilty of some acts or courses of conduct are subject only to being placed under supervision of a counsellor or probation officer, with no possibility of confinement. Since an adjudication of delinquency has come, in the words of Mr. Justice Fortas, "to involve only slightly less stigma than the term 'criminal' applied to adults,"[28] it can be argued that an adjudication of delinquency is, in itself, a serious matter, and that all reasons for requiring counsel apply even in proceedings which cannot result in confinement. An adjudication of delinquency can be a link in a chain of events which may have disastrous results.

SELF-INCRIMINATION

With Justices Harlan and Stewart dissenting, *Gault* extended the privilege against self-incrimination to juvenile proceedings. Once again, as in the case of right to counsel, the Court emphasized that it was "concerned only with a proceeding to determine whether a minor is a 'delinquent' and which may result in commitment to a state institution."[29]

The "confession" in *Gault* was made during the course of the hearing, and there was no evidence indicating any compulsion. The defect, then, lay simply in the failure to advise the child of his right to remain silent.

The question arises whether or not the privilege against self-incrim-

[26] *Id.* at 36.
[27] United States v. Wade, 388 U.S. 218, 224, 87 S. Ct. 1926, 18 L. Ed. 2d 1123 (1967), concerning the right to counsel at police line-up.
[28] 387 U.S. 1, 24, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967).
[29] *Id.* at 44.

ination protects the juvenile in the pre-adjudicative stages of a juvenile proceeding. According to *Miranda v. Arizona*,[30] in the case of an adult defendant, the privilege is "jeopardized" "when an individual is taken into custody or otherwise deprived of his freedom by the authorities in any significant way and is subjected to questioning. . . ."[31] *Miranda* holds that, unless other fully effective means are adopted to notify the person of his right to silence, he must be warned, prior to any questioning, that he has the right to remain silent, that anything he says may be used against him, that he has the right to the presence of counsel, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires. He must be given an opportunity to assert these rights throughout the investigation.[32] Since we are told in *Gault* that the privilege against self-incrimination is applicable in juvenile cases as it is with respect to adults,[33] it would appear that compliance with the requirements of *Miranda* is required in juvenile cases, and that the Miranda warning must be given the child before any questioning begins. To those who feel that full application of *Miranda* to juvenile cases may be unfortunate, some comfort can be derived from the fact that in *Gault* the Court pointed out that it was not "concerned with the procedures or constitutional rights applicable to the pretrial stages of the juvenile process. . . ."[34]

As Mr. Justice Fortas pointed out in *Gault*, "We appreciate that special problems may arise with respect to waiver of the privilege by or on behalf of children, and that there may well be some differences in technique—but not in principle—depending upon the age of the child and the presence and competence of parents."[35]

Assuming that after the Miranda warning has been given, the juvenile admits his guilt, will his confession be admissible at a subsequent hearing? Does the answer depend on the age of the child? May a parent waive the privilege on behalf of his child? May a lawyer waive it on behalf of his minor client? Truly, "special problems may arise with respect to waiver by or on behalf of children. . . ."

Confrontation and Cross-Examination

As already pointed out, the complaining witness did not appear in court during Gerald Gault's hearing. The precise holding relating to

30 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).
31 *Id.* at 478.
32 *Id.* at 479.
33 387 U.S. 1, 55, 87 S. Ct. 1428, 1458, 18 L. Ed. 2d 527 (1967).
34 *Id.* at 13.
35 *Id.* at 55.

confrontation and cross-examination in *Gault* is a rather limited one. "We now hold that, absent a valid confession, a determination of delinquency and an order of commitment to a state institution cannot be sustained in the absence of sworn testimony subjected to cross-examination in accordance with our law and constitutional requirements."[36] Does this mean that, given a valid confession, unsworn testimony and hearsay evidence may be admitted? Is the rule requiring evidence of proof of the *corpus delicti* by evidence *aliunde* the admission of the accused rendered inapplicable because the defendant is a person of tender years? Does an affirmative answer to this last question raise "equal protection" problems?[37]

Right of Appeal

Under the Arizona statute, as construed by the highest tribunal of that state, there was no right of appeal from the order of a juvenile court. Gault's complaint of this ruling was not considered by the Supreme Court, since the judgment of the Arizona Court was reversed for other reasons and, as Mr. Justice Fortas pointed out, "This Court has not held that a State is required by the Federal Constitution to provide appellate courts or a right to appeal at all."[38] Once again, it should be noted that if the sole basis for denying the right to appeal is the age of the defendant, a serious question relating to equal protection of the laws is raised. Further, as Mr. Justice Fortas illustrates, the failure to provide for an appeal may result in casting a burden upon the machinery for habeas corpus.[39]

Right to Transcript of Proceedings

The Arizona Court held that Gerald Gault was not entitled to a transcript because, under the applicable statute, he was not entitled to an appeal and any record of the proceedings was required to be destroyed after a specified period. The Supreme Court refused to rule on the question of whether the failure to provide a transcript of the delinquency hearings violated Gault's rights. It is clear that the failure to

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36 *Id.* at 57.

37 "No reason is suggested or appears for a different rule in respect to sworn testimony in juvenile courts than in adult tribunals." 387 U.S. 1, 56. "Particularly in delinquency cases, where the issue of fact is the commission of a crime, the introduction of hearsay . . . contravenes the purposes underlying the sixth amendment right of confrontation." Note, 67 COLUM. L. REV. 281, 336.

38 387 U.S. 1, 58, 87 S. Ct. 1428, 1459, 18 L. Ed. 527 (1967).

39 *Id.*

record the proceedings placed upon Gerald Gault, in a subsequent habeas corpus proceeding, the burden of attempting to reconstruct a record. If, under applicable state law, an adult defendant was *not* saddled with that burden, some serious equal protection problems arise.

Right to a Jury Trial

At the time that *Gault* was decided, the sixth amendment right to a jury trial had not been made applicable to the states. But in a 1968 decision, *Duncan v. Louisiana*,[40] the Court held that the right to trial by jury in "serious" criminal cases is a fundamental right which must be accorded to defendants in state courts under the due process clause of the fourteenth amendment. The Court stated that a crime punishable by as much as two years imprisonment is a serious crime, rather than a petty offense, so that a person charged with such a crime is entitled to a jury trial as a matter of right.[41] Since most of the juvenile acts in this country authorize commitment during the defendant's minority, and since, under the provisions of applicable state juvenile acts, the jurisdiction of the juvenile court does not extend to persons who have attained their eighteenth birthday, the applicability of *Duncan* to juvenile cases is obvious.

Public Trial

The sixth amendment guarantees the right to a public trial to a criminal defendant. *Gault* does not involve this question. The right to a public trial has been made applicable to the states as an incident of the due process clause of the fourteenth amendment.[42] But the lower federal courts have limited this right from time to time, in order to protect from publicity witnesses and defendants, toward whom the courts felt a certain tenderness. In these cases, embarrassment of the witnesses has been held a sufficient justification for exclusion of the public.[43] A similar rationale could be used to justify secrecy of juvenile proceedings whenever publicity would prejudice the child.[44]

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[40] 391 U.S. 145, 88 S. Ct. 1444, 20 L. Ed. 2d 491 (1968); *Cf.* Walker v. Sauvenet, 92 U.S. 90, 23 L. Ed. 678 (1876); Palko v. Connecticut, 302 U.S. 319, 58 S. Ct. 149, 82 L. Ed. 288 (1937); Irvin v. Doud, 366 U.S. 717, 81 S. Ct. 1639, 6 L. Ed. 2d 751 (1961).

[41] The Duncan case is noted in 21 Vand. L. Rev. 1099 (1968).

[42] In re Oliver, 333 U.S. 257, 68 S. Ct. 499, 92 L. Ed. 682 (1948).

[43] E. G. Melanson v. O'Brien, 191 F.2d 263 (1st Cir. 1951), upholding a statute excluding public while prosecutrix in rape case testified.

[44] Dendy v. Wilson, 142 Tex. 460, 179 S.W.2d 269, 274 (1944), excluding public from juvenile trials.

PRETRIAL PROCEDURES

The Court refused to consider the implications of *Gault* for the pretrial phase of the juvenile process.[45] Recent decisions, however, indicate a tendency to extend the Bill of Rights back into the pre-adjudicative stages of the criminal process, in order that the procedural safeguards of the adjudicative stage not be rendered illusory by the use of evidence obtained by the violation of rights in the pre-adjudicative stage.[46] Unless we are prepared to hold that the practices condemned in *Miranda v. Arizona*[47] and *Mapp v. Ohio*[48] become, somehow, more socially acceptable as the age of the accused decreases, there seems to be no reason to expect that the Supreme Court will condone violations of the rights of minors when similar practices would be held to violate the rights of adult criminal defendants.

CONCLUSION

Gault, perhaps, raises more questions than it answers. No one who reads *Gault* can disagree with the Court's conclusion that Gerald was treated unfairly. High crime rates among minors and the large number of recidivists indicate the failure of the system. All members of the Court, with the exception of Mr. Justice Stewart, agree that withholding the benefits of the due process clause does nothing for the young offender. Whatever the legitimate aims of specialized courts for children may be, these aims will not necessarily be impaired by affording them the protection of due process standards. There is nothing in *Gault* which requires that the "conception of the kindly juvenile judge be replaced by its opposite."[49]

True, *Gault* is premised upon a view of the juvenile court which is quite different from that which forms the foundation for the arguments of juvenile court enthusiasts. Although proponents of the juvenile court system were motivated by the most enlightened impulses, the resulting reality is unsatisfactory.

Gault leaves a number of constitutional issues unanswered. Does hearsay evidence have probative force in juvenile court? Does the fourth amendment exclusionary rule apply to juvenile proceedings?

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45 Textual material accompanying note 34, *supra*.
46 United States v. Wade, 388 U.S. 218, 87 S. Ct. 1926, 18 L. Ed. 2d 1123 (1967), involving lineups; Escobedo v. Illinois, 378 U.S. 478, 84 S. Ct. 1758, 12 L. Ed. 2d 977 (1964), involving interrogation of a suspect.
47 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).
48 367 U.S. 643, 81 S. Ct. 1684, 16 L. Ed. 2d 19 (1961).
49 387 U.S. 1, 27, 87 S. Ct. 1428, 1443, 18 L. Ed. 2d 527 (1967).

Is a juvenile entitled to a speedy trial? Is a juvenile offender entitled to bail?

Gault's rejection of the civil-criminal dichotomy raises some important questions concerning relaxed standards of procedure involving alcoholics, sexual deviates, narcotics addicts and, particularly, patients suffering from mental disorders. But that is another story.