JUVENILES—INTERROGATION—*Parens Patriae v. Miranda*: CONFLICTING INTERESTS—*State v. In the Interest of R.W.*, 115 N.J. Super. 286, 279 A.2d 709 (App. Div.), *cert. granted*, 59 N.J. 289, 281 A.2d 802 (1971).

In December of 1969, R.W., a borderline mentally-retarded boy of 12 years with an I.Q. of 72, was taken into custody and, together with his 15-year-old companion, was charged with unlawfully taking a bike, flashlight, jacket, and knife from Gimbel's and J. C. Penney's department stores. In the absence of their parents, the juveniles were questioned in the early morning hours at police headquarters by a detective assigned to the juvenile bureau. During this interrogation, R. W. admitted that he took some of the articles found in his possession and claimed the other articles were stolen by his companion. These admissions were deemed admissible evidence in R.W.'s later formal juvenile hearing, at which he was adjudicated a juvenile delinquent. Because of his prior record the boy was sentenced to Skillman Training Center, which is a division of the State Home for Boys specifically geared to the preadolescent.[1]

The record indicated that, at the time of their arrest, the juveniles refused to reveal their true names and addresses. As a result of this, the police were unable to contact their parents, but proceeded to question them and elicited an oral confession from R. W.[2] The interrogating officer testified that he had advised them of their rights to remain silent, to have counsel present, and that anything they said could be used against them in a subsequent proceeding.[3] An appeal was filed for the reasons that: first, the court had failed to determine whether the confession was voluntary; second, the *Miranda* warnings given were in-

1 State v. In the Interest of R.W., 115 N.J. Super. 286, 288-92, 279 A.2d 709, 710-12 (App. Div.), *cert. granted*, 59 N.J. 289, 281 A.2d 802 (1971). R.W. had a juvenile record dating back 2½ years. His first offense was breaking, entering, and larceny, for which he was found guilty and placed on probation. This was followed by five subsequent complaints of larceny which were sustained. He was sent to Menlo Park Diagnostic Center for an examination which reported him to be borderline mentally-retarded. They recommended placement in a private training school such as Johnstone Training and Research Center or the Elwyn School in Pennsylvania. A commitment to a private facility needs the application and approval of the parents, and the parents of R.W. refused to give their approval at that time. Shortly after this, R.W. was again found guilty of breaking, entering, and larceny, after which he was continued on probation. This was followed by the present charge for which he was sentenced by the court to Skillman. Finally, his parents applied for private placement, which effected his parole from Skillman and his placement in Johnstone, where he was at the time of his appeal. This appeal was pursued at the insistence of R.W.'s mother.

2 *Id.* at 289, 279 A.2d at 711.

3 *Id.* at 292, 279 A.2d at 712.

complete; and third, the absence of a parent, an advisor, or an attorney rendered the confession inadmissible.[4] Appellant's contention that the *Miranda* warnings were deficient was based on the fact that the officer had failed to inform the juveniles that counsel could be afforded to them free of charge.[5]

The argument that the trial court erred because it failed " 'to determine whether or not the confession was voluntary' "[6] was probably founded on the statement made in *In re Gault*[7] that:

> If counsel was not present for some permissible reason when an admission was obtained, the greatest care must be taken to assure that the admission was voluntary, in the sense not only that it was not coerced or suggested, but also that it was not the product of ignorance of rights or of adolescent fantasy, fright or despair.[8]

Although the voluntariness of the confession is closely related to appellant's other two arguments, it is not synonymous with them. *Miranda* warnings can be given and parents may be present, but the confession can still be involuntary. The above quotation, taken together with the statement that "admissions and confessions of juveniles require special caution,"[9] could be construed to place a duty on the trial court to analyze all the circumstances surrounding the juvenile's admissions, especially in situations where neither counsel nor parents are present. However, whether such a duty exists has not been determined, and the court in *R. W.* has not answered the question since it found appellant's argument to be unclear.[10] It can only be postulated that the argument was based on the above language of *Gault*, since there is no elaboration of it reported in the court's opinion.

As to the applicability of *Miranda*, Judge Gaulkin, writing for the court, admitted that "*Gault* . . . probably made it necessary to give juveniles (and their parents, if present) the *Miranda* warnings."[11] However, he also found that these warnings would be useless to the juvenile in many instances since he would not have the ability to comprehend their significance due to his age or mental capability. Because of this, the thrust of the decision was that the *Miranda* rule should not be "mechanically . . . applied when dealing with juveniles of a tender

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4 *Id.* at 288, 279 A.2d at 710.
5 *Id.* at 292, 279 A.2d at 712.
6 *Id.* at 288, 279 A.2d at 710.
7 387 U.S. 1 (1967).
8 *Id.* at 55 (footnote omitted).
9 *Id.* at 45.
10 115 N.J. Super. at 288, 279 A.2d at 710.
11 *Id.* at 295, 279 A.2d at 714.

age" or with those whose mental capacity is below certain levels.[12] The court felt that in juvenile matters the usual remedy for noncompliance with *Miranda*, the exclusion of the confession at trial, should not automatically apply. Instead, the test was said to be one of

> utmost fairness, without force or other improper influence, mental or physical, and in accordance with the highest standards of due process and fundamental fairness.[13]

Fundamental fairness[14] was defined in *R.W.* as that treatment which affords to a juvenile every consideration that his age and other surrounding circumstances may require, which includes the presence of parents, when available, and recitation of the *Miranda* warnings to the child or his parents.[15] Though the court recognized that *Gault* probably mandated the giving of *Miranda* warnings, and it included within the test of fundamental fairness both the warnings and presence of parents, it still concluded that where the "parents cannot be found or cannot or will not attend," and even in the absence of *Miranda* warnings, a juvenile may be interrogated.[16]

The court's approach and its solution were based on the basic philosophy of the juvenile system, which is to help the juvenile offender. The facts of this case present a controversy requiring a balancing of the

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12 *Id.* The New Jersey courts have been reluctant to significantly extend *Gault:*

> It is inconceivable to us, however, that our highest court attempted, through *Gault*, to undermine the basic philosophy, idealism and purposes of the juvenile court. We believe that the Supreme Court did not lose sight of the humane and beneficial elements of the juvenile court system; it did not ignore the need for each judge to determine the action appropriate in each individual case; it did not intend to convert the juvenile court into a criminal court for young people.

State in Interest of J.W., 57 N.J. 144, 145-46, 270 A.2d 273, 274 (1970) (quoting from Commonwealth v. Johnson, 211 Pa. Super. 62, 234 A.2d 9 (Super. Ct. 1967); *accord*, State in Interest of K.V.N., 116 N.J. Super. 580, 283 A.2d 337 (App. Div. 1971) (Court admits to the "seeming reluctance of our courts to extend the *Gault* philosophy further than necessary." *Id.* at 586, 283 A.2d at 340).

13 115 N.J. Super. at 296, 279 A.2d at 714.

14 Justice Harlan, in *In re Gault*, stated that in order to guarantee fundamental fairness and yet allow the State to respond effectively to the problem of juvenile crime

> only three procedural requirements should . . . now be deemed required . . . by the Due Process Clause of the Fourteenth Amendment: first, timely notice must be provided to parents and children of the nature and terms of any juvenile court proceeding in which a determination affecting their rights or interests may be made; second, unequivocal and timely notice must be given that counsel may appear . . . in behalf of the child and its parents, and that in cases in which the child may be confined in an institution, counsel may, in circumstances of indigency, be appointed for them; and third, the court must maintain a written record, or its equivalent, adequate to permit effective review on appeal or in collateral proceedings.

387 U.S. at 72 (Harlan, J., concurring in part and dissenting in part).

15 115 N.J. Super. at 295, 279 A.2d at 714.

16 *Id.* at 296, 279 A.2d at 714.

three fundamental roles of the juvenile court, namely, parental substitute, social agency, and court of law.[17] The theory underlying the system has traditionally been to afford assistance, as opposed to punishment, for the juvenile offender.[18] Thus, until recently, the role of parental substitute has been the one emphasized. However, a recognition that the juvenile system has been unable to attain its goals and has failed to provide the rehabilitative assistance needed by the juvenile has caused a contemporary trend to provide the legal protections heretofore preempted by *parens patriae*.[19]

Prior to *Miranda v. Arizona*,[20] the guideposts for development of the juvenile's legal protection were the traditional notions of due process and fundamental fairness.[21] Accordingly, recognizing the desirability and necessity for having the parents of the juvenile present during custody, several legislatures have mandated that the police or other party having custody of the child make at least a reasonable attempt to notify the parents or guardian immediately upon assuming custody.[22]

The Supreme Court, in *Gallegos v. Colorado*,[23] held that the confession of a 14-year-old, whose parents were denied visitation, was inadmissable on the ground that it was involuntarily obtained. Their decision, which reversed defendant's murder conviction, was based on the totality of the circumstances. Specifically, the age of the defendant, his extended internment, the failure to notify his parents, and the

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17 See the discussion of the role of the juvenile court judges in Sheridan, *New Directions for the Juvenile Court*, 31 FED. PROB. 15 (June 1967). For a general discussion of the recent developments in defining the proper roles of juvenile courts and counsel, *see* Irving, *Juvenile Justice—One Year Later*, 8 J. FAM. L. 1 (1968).

18 THE PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: JUVENILE DELINQUENCY AND YOUTH CRIME 1 (1967). *See also* Thomas v. United States, 121 F.2d 905, 908 (D.C. Cir. 1941) (juvenile statute does not allow interpretation that disposition of a minor in a juvenile court proceeding constitutes conviction of a crime); State in the Interest of K.V.N., 112 N.J. Super. 544, 549, 271 A.2d 921, 924 (Union County Juv. & Dom. Rel. Ct. 1970), aff'd, 116 N.J. 580, 283 A.2d 337 (App. Div. 1971).

19 *See, e.g., In re* Winship, 397 U.S. 358 (1970); *In re* Gault, 387 U.S. 1 (1967); Kent v. United States, 383 U.S. 541 (1966); *cf.* McKeiver v. Pennsylvania, 403 U.S. 528 (1971). *See also* T. RUBIN & J. SMITH, THE FUTURE OF THE JUVENILE COURT: IMPLICATIONS FOR CORRECTIONAL MANPOWER AND TRAINING 2-5 (1968); S. WHEELER & L. COTTRELL, JR., JUVENILE DELINQUENCY ITS PREVENTION AND CONTROL 32-33 (1966); Rubin, *The Juvenile Court System in Evolution*, 2 VALPARAISO U.L. REV. 1 (1967).

20 384 U.S. 436 (1966).

21 Gallegos v. Colorado, 370 U.S. 49 (1962); Haley v. Ohio, 332 U.S. 596 (1948) (methods used in obtaining confession from 15-year-old boy charged with murder violated due process).

22 *See, e.g.*, CAL. WELF. & INST'NS CODE § 627 (West 1966); FLA. STAT. ANN. § 39.03 (3) (1961); N.J.R. 5:8-2(c) (1971); N.Y. FAMILY CT. ACT § 724(a) (McKinney 1963).

23 370 U.S. 49 (1962).

absence of counsel were deemed sufficient to constitute a denial of due process.[24] Justice Douglas, writing for the majority, commented:

> [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. . . .
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> . . . He cannot be compared with an adult in full possession of his senses and knowledgeable of the consequences of his admissions. . . . Adult advice would have put him on a less unequal footing with his interrogators. . . . To allow this conviction to stand would, in effect, be to treat him as if he had no constitutional rights.[25]

Subsequent to *Miranda*, the New York Supreme Court, Appellate Division, decided the case of *In re D*,[26] wherein a 15-year-old appealed a judgment of delinquency for his part in a homicide. The facts of the case indicate that the boy was taken into custody at his home while his mother was present. However, the police neither informed the mother that her son was under suspicion for the commission of robbery and homicide, nor informed her of her son's rights. While at the police station the juvenile was given the *Miranda* warnings and interrogated in the absence of either his parents or an attorney. For these reasons, appellant claimed that his signed confession was involuntary and a violation of due process.[27] Although the trial court proceedings took place prior to *Gault*, the appellate court, armed with *Miranda*, the New York Family Court Act mandating that notice be given to his parents,[28] and a progressive attitude, reversed the decision.

> [T]he cautioning of the juvenile and the taking of his statements at the station house, in the absence of his mother and counsel, [did] not satisfy due process requirements.[29]

In a recent California case,[30] the state supreme court overturned the murder conviction of a juvenile who had been refused the right to see his parent during interrogation. After having waived his substantive *Miranda* rights, he requested the presence of his father, which

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24 *Id.* at 55.

25 *Id.* at 54-55. *See also In re* Garland, 160 So. 2d 340 (Ct. App. La. 1964) (confession obtained from 15-year-old boy following six-hour interrogation, and who at that time was not connected to any crime, constituted a denial of due process).

26 30 App. Div. 2d 183, 290 N.Y.S.2d 935 (1968).

27 *Id.* at 186, 290 N.Y.S.2d at 938.

28 N.Y. FAMILY CT. ACT § 724(b) (McKinney Supp. 1971-72).

29 30 App. Div. 2d at 186, 290 N.Y.S.2d at 938. *See In re* L, 29 App. Div. 2d 182, 287 N.Y.S.2d 218 (App. Ct. 1968) (murder confession obtained from 14-year-old boy rendered inadmissible on grounds that boy's mother was not advised of his right to counsel).

30 People v. Burton, — Cal. 3d —, 491 P.2d 793, 99 Cal. Rptr. 1 (1971).

was denied. This request was construed by the court as an invocation of his fifth amendment privilege, and the right to counsel was thereby extended to include the right to the presence of his parents.[31] The rationale for including this within the *Miranda* safeguards was that:

> It would certainly severely restrict the "protective devices" required by *Miranda* in cases where the suspects are minors if the only call for help which is deemed an invocation of the privilege is the call for an attorney. It is fatuous to assume that a minor in custody will be in a position to call an attorney for assistance and it is unrealistic to attribute no significance to his call for help from the only person to whom he normally looks—a parent or guardian. It is common knowledge that this is the normal reaction of a youthful suspect who finds himself in trouble with the law.[32]

Some state legislatures, in recognition of the contemporary trend, have taken an even more advanced "constitutionally oriented" approach to juvenile proceedings.[33] The states of Colorado and Oklahoma have enacted legislation which effectively protects the rights of juveniles who become subject to interrogation. In these states, admissions which have been elicited during a police interrogation without the benefit of a parent, guardian, or counsel, may not be admitted into evidence in a subsequent court proceeding.[34]

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31 *Id.* at —, 491 P.2d at 797-98, 99 Cal. Rptr. at 5-6.

32 *Id.*

33 *See, e.g.*, CAL. WELF. & INST'NS CODE §§ 625, 634 (West Supp. 1971) (*Miranda* warnings must be given to child at time of being taken into custody, and court shall appoint counsel for minor if "he appears at the hearing without counsel . . . unless there is an intelligent waiver of the right of counsel by the minor."); KAN. STAT. ANN. § 38-839 (Supp. 1971) (right to counsel at "any stage of the process" after having been taken into custody).

34 COLO. REV. STAT. § 22-2-2 (c) (Cum. Supp. 1967) provides:

> No statements or admissions of a child made as a result of interrogation of the child by a law enforcement official concerning acts which would constitute a crime if committed by an adult shall be admissible in evidence unless a parent, guardian, or legal custodian of the child was present at such interrogation, and the child and his parent, guardian, or legal custodian were advised of the child's right to remain silent, that any statements made may be used against him in a court of law, the right of the presence of an attorney during such interrogation, and the right to have counsel appointed if so requested at the time of the interrogation.

OKLA. STAT. ANN. tit. 10, § 1109 (a) (Supp. 1971) provides:

> No information gained by questioning a child shall be admissible into evidence against the child unless the questioning about any alleged offense by any law enforcement officer or investigative agency, or employee of the court, or the Department is done in the presence of said child's parents, guardian, attorney, or the legal custodian of the child, and not until the child and his parents, or guardian, or other legal custodian shall be fully advised of their constitutional and legal rights, including the right to be represented by counsel at every stage of the proceedings, and the right to have counsel appointed by the court and paid out of the court fund if the parties are without sufficient financial means; pro-

In addition to the question of the *Miranda* warnings, *R.W.* presents a unique problem regarding the safeguards applicable to juvenile custodial proceedings. Unlike the prior cases, where the parents were available or where the police made no attempt to notify the parents, the question here is whether, after making an unsuccessful attempt to reach the parents, and apprising the juvenile of his rights, the police may *then* interrogate the child and have his subsequent admissions considered voluntary.

Relying on *State v. Smith*,[35] the court in deciding this issue reasoned that an interrogation could afford the juvenile an opportunity to successfully explain his conduct to the satisfaction of the police and thereby effect his immediate release and a dismissal of the complaint.[36] In *Smith*, the New Jersey Supreme Court interpreted the rule which instructs the police to make "immediate arrangements" to take the juvenile home or place him in an approved detention facility as not precluding the opportunity for the police to question him beforehand "where that course is desirable or important."[37] The *Smith* court held the interrogation of 17-year-old defendants to be proper on the basis that it is fundamental to the process of law enforcement that police have the right to question suspects pursuant to a criminal investigation. It felt that the right of the police to question adults extended to the interrogation of juveniles who were approaching adult age and were suspected of a serious crime.[38] However, this case was decided prior to *Miranda*, which negated the right of the police to question suspects unless the proper procedural safeguards are complied with before interrogation. Therefore, the underlying rationale in *Smith* for allowing

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vided, however, that no legal aid or other public or charitable legal service shall make claim for compensation as contemplated herein.

35 32 N.J. 501, 161 A.2d 520 (1960).

36 115 N.J. Super. at 297, 279 A.2d at 715.

37 32 N.J. at 533, 161 A.2d at 537. N.J.R. 5:8-2 (1971) provides in part:

(a) . . . The officer taking the juvenile into custody shall make immediate arrangements to release him to the custody of a parent, guardian, relative, neighbor or other suitable adult custodian upon the promise of such person to assume responsibility for the presence of the juvenile in court should a hearing be scheduled. In appropriate circumstances, the juvenile may be released in the custody of a probation officer or other person designated by the court. . . .

(b) . . . A law enforcement officer shall release a juvenile in accordance with the provisions of paragraph (a) except where

(1) the nature of the conduct charged is such that the physical safety of the community would be seriously threatened if the juvenile were not detained; or

(2) the physical or mental condition of the juvenile makes his immediate release impractical; or

(3) there is no appropriate adult custodian who agrees to assume responsibility for the juvenile and a release on summons to the juvenile is not appropriate.

38 32 N.J. at 535, 161 A.2d at 538.

the interrogation of juveniles has been invalidated, and reliance on it in *R.W.* was clearly inappropriate.

The arguments of the court in favoring the questioning of juveniles when parents are not available are couched within the terms of the "best interest" doctrine. The court postulated that an immediate questioning would enable the child to give a good account of himself and hence be released.[39] It also cautioned that, if *Miranda* were strictly applied, any admissions of a serious nature and the fruits thereof would be barred from evidence, and in such instances the proper help and correction needed by the child would be denied.[40]

In short, it is the familiar *parens patriae* doctrine, wherein the primary motivation of the juvenile courts is the best interests of the child, that has dominated the thinking of these courts since their inception and has proven to be the paramount rationale for the holding in *R.W.* A more pragmatic consideration for allowing juveniles to be questioned when their parents are not present, and the child does not cooperate by providing his correct name and address, is the added burden placed upon the police, in this or similar circumstances, to seek out the absent parents before proceeding with their investigation. These arguments have merit, but when weighed against individual rights, they lose considerable force. The court conceded that "when the age (or the mentality) of the youth falls below a certain level, the *Miranda* warnings . . . mean little or nothing to him."[41] Furthermore, it was specifically admitted that R.W. "did not have the age, mentality . . . or experience to understand"[42] these warnings. In essence, therefore, the court has said that the warnings *should* be given, but are of no value as a protective device and do not necessarily *have* to be given before interrogation.

The *Miranda* warnings were devised to protect the adult offender against the abuses of police interrogation.[43] The court in *R.W.*, however, made it clear that these warnings have no significant value to the juvenile in a custodial situation. Should not juveniles be afforded a safeguard sufficient to protect their rights against these same abuses?

To fully protect the juvenile it is essential that the presence of parents be required during interrogation, notwithstanding the inability to immediately locate them. To not require their presence under

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39 115 N.J. Super. at 297, 279 A.2d at 715.

40 *Id.* at 298, 279 A.2d at 716. *See also* Note, *Juvenile Delinquents: The Police, State Courts, and Individualized Justice*, 79 HARV. L. REV. 775, 780-81 (1966).

41 115 N.J. Super. at 294, 279 A.2d at 713.

42 *Id.* at 293, 279 A.2d at 713.

43 Miranda v. Arizona, 384 U.S. 436, 467 (1966).

these circumstances is to say that any child falling within the pattern of *R.W.* has, in fact, no effective constitutional protection. Furthermore, to mandate that the police attempt to notify the juvenile's parents, while allowing them to interrogate when the parents cannot be found, is to discriminate between those juveniles whose parents appear and those whose parents do not. In the former case the juvenile will be more adequately equipped to protect his rights since he will have adult help; whereas in the latter case the juvenile's rights may suffer because he is left to fend for himself. The rights of juveniles should not be made to depend upon mere happenstance or fortuitous circumstances.

The judiciary has traditionally enjoyed wide discretion in deciding juvenile matters and has often reached beyond the formal record when making such decisions. In his introductory remarks, Judge Gaulkin indicated that the boy was presently in the institutional facility best suited to his needs, and that a reversal was likely to cause his immediate release.[44] It appears that these facts, coupled with apparent parental irresponsibility, played an integral part in the subsequent decision of the court. Under the circumstances of this case the court was directly confronted with the choice between upholding the legal rights of the juvenile or implementing the underlying theory of the juvenile system. From the prior history of R.W., it was apparent that he was in need of care. However, for the court to provide such care it was necessary to hold that the exclusionary rule of *Miranda* was inapplicable and that the presence of parents was not essential to interrogation. Consequently, the court obtained the desired result for R.W., but in doing so they were forced to set a precedent restricting the rights of all juveniles.

To decide which should be the primary role of the juvenile court, it is necessary to take cognizance of the fact that:

> There is widespread conviction that the juvenile justice system is, in large part, an outright failure. It not only frequently fails to rehabilitate, but it also fails to live up to ordinary standards of human decency.[45]

In light of the lack of modern institutional facilities and the inability to provide programs that do, in fact, rehabilitate, the rationale for de-emphasizing constitutional formalities fails. Because of the limita-

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44 115 N.J. Super. at 292, 279 A.2d at 712.

45 U.S. DEP'T OF HEALTH, EDUCATION & WELFARE, TOWARD A POLITICAL DEFINITION OF JUVENILE DELINQUENCY 2 (1970). *See* THE PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, THE CHALLENGE OF CRIME IN A FREE SOCIETY 80 (1967).

tions inherent in the judicial process, the courts should endeavor to provide the service for which they are suitably equipped—the safeguarding of human rights and liberty. Applying this philosophy to custodial interrogation, the best method for safeguarding human rights is to mandate that the parents, or a suitable representative or guardian,[46] be present in order to protect the juvenile from both the direct and subtle pressures against which he cannot adequately defend himself. This is the course that is being furthered in proposed New Jersey legislation concerning the proceedings in the Juvenile and Domestic Relations Court, which provides:

> (a) A child shall be represented by counsel at every critical stage in proceedings under this article.
> (b) Unless a child is advised by counsel, his statements made to a law enforcement officer or probation officer shall not be used to support the allegations of a complaint under this article nor shall they be used in a criminal proceeding prior to conviction. Extrajudicial statements of a child, unless corroborated by other evidence, shall not be sufficient to support a complaint under this article.[47]

This proposal should serve, at least, as a partial antidote for the precarious position of the juvenile which was described by Justice Fortas:

> [T]here may be grounds for concern that the child receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children.[48]

Elaine Davis

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[46] The President's Commission on Law Enforcement recommends:

> Counsel should be appointed as a matter of course wherever coercive action is a possibility, without requiring any affirmative choice by child or parent.

Id. at 87.

[47] Legislation proposed by the N.J. State Bar Assoc., Sub-committee on Juvenile Delinquency.

[48] Kent v. United States, 383 U.S. 541, 556 (1966).