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Constitutional Law: The Jury and the Juvenile Court

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CONSTITUTIONAL LAW: THE JURY AND THE JUVENILE COURT

McKeiver v. Pennsylvania, 403 U.S. 528 (1971)

Appellant, age 16, was identified as one of twenty to thirty youths who allegedly pursued three young teenagers and took twenty-five cents from them. He was charged with robbery, larceny, and receiving stolen goods as acts of juvenile delinquency. At the adjudication hearing his attorney's request for a jury trial was denied. Appellant was subsequently adjudged a delinquent[1] and placed on probation.[2] The Pennsylvania supreme court granted leave to appeal and held there was no constitutional right to a jury trial in juvenile court.[3] On appeal[4] the United States Supreme Court affirmed and HELD, trial by jury in a state juvenile court is not constitutionally required.[5]

With the advent of juvenile court legislation, first enacted in Illinois in 1899,[6] a juvenile court system based upon rehabilitation rather than punishment developed throughout the United States.[7] Through the doctrine of *parens patriae*, the primary role of the judge was not to ascertain guilt or innocence but rather to decide the best course of rehabilitation to save the

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1. PA. STAT. ANN. tit. II, §243(4) (1965), provides in pertinent part that the words "delinquent child" include: "(a) A child [minor under the age of 18] who has violated any law of the Commonwealth or ordinance of any city, borough, or township . . . ."

2. McKeiver had not been previously arrested and had a record of gainful employment. The court described the testimony of two of the victims as somewhat "inconsistent" and "weak." The Commonwealth's evidence consisted only of the two victims' testimony. One described the robbery as a gang effort, while the other testified that the thief acted alone. Both stated the robber did not have glasses, but McKeiver has worn glasses since childhood. Both said the robber rode a bicycle throughout the event and yet one stated he identified the robber, McKeiver, by his distinctive walk. *In re* Terry, 438 Pa. 339, 341-42, 265 A.2d 350, 351 (1970).

3. On appeal the state supreme court consolidated McKeiver's case with that of Edward Terry to consider the single question of a constitutional right to a jury trial in juvenile court. Edward Terry, age 15, was charged with assault and battery of a police officer and conspiracy as acts of juvenile delinquency. His attorney's request for a jury trial was denied, and Terry was adjudged a delinquent on the charges and committed to a youth development center. *In re* Terry, 438 Pa. 339, 265 A.2d 350 (1970).

4. On appeal to the Supreme Court the cases of McKeiver and Terry were consolidated with *In re* Burrus, 275 N.C. 517, 169 S.E.2d 879 (1969). *Burrus* itself was a consolidation of the cases of Barbara Burrus and 45 other juveniles, all of whom were adjudged delinquents on misdemeanor charges under North Carolina law. In each case, counsel's request for a jury trial was denied, and the general public was excluded from the trials.

5. 403 U.S. 528 (1971). Blackmun, J., announced the Court's judgments and delivered an opinion in which Burger, C.J., and Stewart and White, JJ., joined. White, J., filed a concurring opinion. Brennan, J., filed an opinion concurring in *McKeiver* and dissenting in *Burrus*. Harlan, J., filed an opinion concurring in the judgments. Douglas, J., filed a dissenting opinion in which Black and Marshall, JJ., joined.

6. Ill. Laws 1899, §§1-21, at 131 (repealed 1966).

7. Prior to the juvenile court system, youthful offenders were afforded constitutional safeguards similar to those provided adult criminal offenders and were often given long prison sentences, incarcerated with hardened criminals, and in some instances even executed. Paulsen, *Fairness to the Juvenile Offender*, 41 MINN. L. REV. 547, 548 (1957).

child from a "downward career."[8] If the parental authority needed by the child was absent or ineffectively administered the state could intervene and, if necessary, confine the child.[9] Non-adversarial proceedings were fashioned to permit the judge the greatest possible flexibility in exercising his expertise and quasi-parental authority over the child.[10] The juvenile was, therefore, not afforded the usual constitutional safeguards, and both the right to trial by jury and the right to a public hearing began to disappear.[11]

The ambitions of the juvenile court system were never fulfilled. Juvenile court judges were not well qualified;[12] the juvenile delinquent was still regarded as no less than a young criminal;[13] and the public refused to provide workable child care centers.[14] The reliability of the juvenile court proceedings became disputable, but arguments questioning the constitutionality of the system were unsuccessful because the juvenile court was not regarded as a criminal court, and therefore due process did not apply.[15]

In *In re Gault*[16] and *In re Winship*[17] the Supreme Court declared that

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8. Mack, *The Juvenile Court*, 23 HARV. L. REV. 104, 119-20 (1909).

9. Since juvenile proceedings are, in theory, wholly rehabilitative in spirit, the adjudication of guilt or innocence is not of prime concern. Thus, it has been argued that it may not be in the child's best interest to win the particular case before the court. *See In re* Winship, 24 N.Y.2d 196, 199, 247 N.E.2d 253, 255, 299 N.Y.S.2d 414, 417 (1969), *rev'd*, 397 U.S. 358 (1970).

10. Note, *Rights and Rehabilitation in the Juvenile Courts*, 67 COLUM. L. REV. 281, 281-82 (1967).

11. *E.g.*, FLA. STAT. §39.09(2) (1969). At the present time Florida is one of at least 29 states plus the District of Columbia that by statute deny juveniles the right to a jury trial. The following 10 state statutes provide for some form of jury trial: COLO. REV. STAT. ANN. §37-8-3 (1963); KAN. STAT. ANN. §38-808 (Supp. 1970); MICH. COMP. LAWS ANN. §712A.17 (1967); MONT. REV. CODES ANN. §10-604.1 (Supp. 1970); OKLA. STAT. ANN. tit. 10, §1110 (Supp. 1970); S.D. COMPILED LAWS ANN. §26-8-31 (1967); TEX. REV. CIV. STAT. ANN. art. 2338-1, §13(b) (1971); W. VA. CODE ANN. §49-5-6 (1966); WIS. STAT. ANN. §48.25(2) (Supp. 1970); WYO. STAT. ANN. §14-115.24(c) (Supp. 1971).

12. *See* PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, THE CHALLENGE OF CRIME IN A FREE SOCIETY (1967). Of the 2,987 juvenile court judges in 1964, one-half had no undergraduate degree, one-fifth had no college education at all, and one-fifth were not members of the bar. *Id.* at 80.

13. The early reformers sought to avoid the stigma of criminality by labeling the child a delinquent rather than a criminal; however, an objective look at the outcome reveals the same basic stigma being attached to the youth, rendering him undesirable in the competitive business world. *See In re* Gault, 387 U.S. 1, 23-24 (1967); *In re* Holmes, 397 Pa. 599, 611-12, 109 A.2d 523, 528-29 (1954) (Musmanno, J., dissenting), *cert. denied*, 348 U.S. 973 (1955).

14. The industrial or reform school is often no more than a prison where the child is confined with other "delinquents" who have been convicted "for anything from waywardness to rape and homicide." *In re* Gault, 387 U.S. 1, 27 (1967). *See* Rappeport, *Determination of Delinquency in the Juvenile Court: A Suggested Approach*, 1958 WASH. U.L.Q. 123, 126-27.

15. Dendy v. Wilson, 142 Tex. 460, 179 S.W.2d 269 (1944). *See generally* Thomas v. United States, 121 F.2d 905 (1941); *In re* Turner, 94 Kan. 115, 145 P. 871 (1915); Wade v. Warden, 145 Me. 120, 73 A.2d 128 (1950).

16. 387 U.S. 1 (1967).

17. 397 U.S. 358 (1970).

certain procedural safeguards of the criminal process are applicable to juvenile hearings and due process requires a juvenile be afforded the right: (1) to have adequate notice of the charges against him;[18] (2) to counsel;[19] (3) to protection against self-incrimination;[20] (4) to confront accusing witnesses;[21] and (5) to be found delinquent beyond a reasonable doubt.[22] The *Gault* court noted that the juvenile proceeding is comprised of three separate stages: (1) the pre-judicial, which includes arrest, detention, and interrogation; (2) the adjudicative, which is the hearing itself; and (3) the dispositional, in which the judge, attempting to correct adverse influences on the child, determines the proper disposition of the case.[23] The scope of *Gault* and *Winship* was limited solely to the factfinding or adjudicative stage. The court felt that during this stage the emphasis should be placed upon the reliability of the guilt-determining process rather than upon insuring an informal rehabilitative atmosphere.[24]

The impact of *Gault* was as great in its implications as in the fundamental rights it deemed absolutely necessary. In concluding that juveniles are deprived of a constitutional right to liberty when confined to an institution,[25] the Court cast doubt upon the validity of the *parens patriae* rationale as applied to the adjudicative hearing.[26] *Gault* also established that juveniles may not be denied specific constitutional safeguards simply by labeling the juvenile proceeding as "civil" rather than "criminal."[27]

At the time of this policy change the Supreme Court had not yet decided whether the right to a jury trial was to be imposed upon the states through the due process clause of the fourteenth amendment.[28] However, in *Duncan v. Louisiana*[29] the Court held that due process requires the states to provide a jury trial in "serious" criminal cases.[30] This right was extended in *Bloom*

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18. *In re* Gault, 387 U.S. 1, 33-34 (1967).
19. *Id.* at 41.
20. *Id.* at 55.
21. *Id.* at 56-57.
22. *In re* Winship, 397 U.S. 358, 361 (1970).
23. *In re* Gault, 387 U.S. 1, 13 (1967).
24. For an empirical study on the application of the *Gault* decision in Florida juvenile courts, *see* Note, *Delinquency and Denied Rights in Florida's Juvenile System*, 20 U. FLA. L. REV. 369 (1968).
25. *In re* Gault, 387 U.S. 1, 27-28 (1967).
26. *Id.* at 24-25, 27. However, the Court inferred that the *parens patriae* rationale may still serve a useful function in the non-adjudicative stages. *Id.* at 21-23.
27. *Id.* at 17, 24. The Court emphasized the fact that Gault was to be confined for up to six years in an institution in lieu of a maximum sentence of two months that could have been imposed on an adult committing the same act.
28. The Supreme Court had the chance to rule on the issue of a juvenile's right to jury trial in DeBacker v. Brainard, 183 Neb. 461, 161 N.W.2d 508 (1968). However, in a per curiam opinion the case was dismissed since Duncan v. Louisiana, 391 U.S. 145 (1968), was to receive prospective application only. DeBacker v. Brainard, 396 U.S. 28 (1969).
29. 391 U.S. 145 (1968).
30. *Id.* at 149. *Duncan* failed to give any clear definition as to what constitutes a "serious" crime, but it did indicate that the dividing line may depend on the maximum amount of time one may be deprived of his liberty. *Id.* at 159.

v. Illinois[31] to criminal contempt proceedings, traditionally exempt from the jury trial requirement.[32] Both cases stress that possible incarceration, rather than the character of the offense or the name given the proceeding, determines whether a jury trial is an essential element of due process. Thus, these two cases along with *Gault* arguably justify a finding that due process includes the right to a jury trial when a child faces a substantial loss of liberty. The *Gault* decision, however, provides no workable standard for determining the applicability of other procedural safeguards not already imposed on juvenile hearings.[33]

This lack of a definitive standard has split lower courts on the question of a juvenile's right to trial by jury. The majority of post-*Gault* decisions have denied a juvenile's right to a jury trial for one or more of the following reasons: (1) juvenile trials are not basically criminal proceedings and therefore do not require jury trials;[34] (2) the persistent validity of the *parens patriae* approach negates the need for a jury;[35] or (3) the constitutional right to trial by jury does not extend to juveniles.[36] However, those courts that have extended jury trials to delinquency proceedings have concluded that *Gault* destroyed the civil/criminal distinction between juvenile and adult proceedings, and therefore the possibility of incarceration was serious enough to require a jury trial.[37]

In deciding whether a juvenile has a constitutional right to a jury trial, the Court in the instant case had to consider whether *Duncan*[38] compelled a finding that such a right exists. The majority relied on a footnote in the

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31. 391 U.S. 194 (1968).

32. *Id.* at 195-97.

33. In addition to trial by jury, *Gault* and *Winship* did not determine the applicability of the following procedural rights: (1) privilege against unreasonable searches and seizures; (2) extension of Miranda v. Arizona, 384 U.S. 436 (1966), to pretrial statements; (3) right to bail; (4) right to appeal; and (5) right to a free transcript.

34. *E.g., In re* Fucini, 44 Ill. 2d 305, 255 N.E.2d 380 (1970); Bible v. State, 253 Ind. 373, 254 N.E.2d 319 (1970); Hopkins v. Youth Court, 227 So. 2d 282 (Miss. 1969); *In re D.* 27 N.Y.2d 90, 261 N.E.2d 627, 313 N.Y.S.2d 704 (1970); *In re* Agler, 19 Ohio St. 2d 70, 249 N.E.2d 808 (1969); Commonwealth v. Johnson, 211 Pa. Super. 62, 234 A.2d 9 (1967); Yzaguirre v. State, 427 S.W.2d 687 (Tex. Civ. App. 1968).

35. *E.g.*, Robinson v. State, 227 Ga. 140, 179 S.E.2d 248 (1971); State v. Turner, 253 Ore. 235, 453 P.2d 910 (1969); Commonwealth v. Johnson, 211 Pa. Super. 62, 234 A.2d 9 (1967); Yzaguirre v. State, 427 S.W.2d 687 (Tex. Civ. App. 1968); Estes v. Hopp, 73 Wash. 2d 272, 438 P.2d 205 (1968).

36. *E.g.*, Dryden v. Commonwealth, 435 S.W.2d 457 (Ky. 1968); *In re* Johnson, 255 Md. 1, 255 A.2d 419 (1969); *In re* J. W., 106 N.J. Super. 129, 254 A.2d 334 (Juv. & Dom. Rel. Ct. 1969); *In re* Burrus, 275 N.C. 517, 169 S.E.2d 879 (1969); State v. Turner, 253 Ore. 235, 453 P.2d 910 (1969); *In re* Terry, 438 Pa. 339, 265 A.2d 350 (1970).

37. *E.g.*, Nieves v. United States, 280 F. Supp. 994 (S.D.N.Y. 1968); DeBacker v. Brainard, 183 Neb. 461, 161 N.W.2d 508 (1968), *appeal dismissed*, 396 U.S. 28 (1969) (a majority of four of the seven judges of the Nebraska supreme court opined that juveniles had a constitutional right to a jury trial, but the Nebraska constitution required the concurrence of five judges to hold a legislative act unconstitutional); People v. Day, 61 Misc. 2d 786, 306 N.Y.S.2d 610 (Herkimer County Ct. 1969); *In re* Rindell, 2 BNA CRIM. L. REP. 3121 (R.I. Fam. Ct. 1968).

38. *See* text accompanying note 29 *supra*.

Duncan case[39] as well as on the lack of a jury requirement in other non-criminal cases[40] to establish that the jury is not a necessary element to a fair trial. A careful reading of *Duncan*, however, reveals that the *Duncan* footnote does not support the majority's position. In *Duncan* the Court abandoned the traditional selective incorporation formula of whether *any* fair and equitable legal system could be imagined without a particular safeguard, and adopted a formula of whether a particular safeguard was fundamental to the *Anglo-American* system of legal justice. Therefore, when the *Duncan* court acknowledged that it could easily imagine a fair and equitable criminal system that used no juries, it simply illustrated that the existence of such systems is no longer pertinent because it would be foreign to the *Anglo-American* system.[41] Furthermore, reliance upon the nonjury aspects of other proceedings such as equity and probate avoids the direct issue of whether the juvenile proceedng is meaningfully different, in form or consequence, from the adult criminal proceeding.

The majority concluded that the role of the due process clause in juvenile proceedings is to ensure "fundamental fairness."[42] This is the same approach used by the Court in *Gault* and is distinguishable from the "total incorporation" theory proposed by Justice Black, which would require juveniles to be tried in accordance with all the safeguards of the Bill of Rights.[43] The fundamental fairness approach to the due process clause created some confusion because it was not certain whether the *Gault* Court was concerned with the due process standard applicable in state criminal prosecutions or whether it was formulating a different selective due process standard applicable only to the juvenile proceeding.[44] In the instant case the majority chose to follow the latter interpretation and adopted a selective incorporation approach, which required balancing the desirability of a jury trial in a juvenile proceeding with the possible burden its presence might place on the substantive benefits of the juvenile system.[45]

Since the emphasis in *Gault* and *Winship* was on insuring the reliability of the factfinding procedures, the majority reasoned that the imposition of the jury trial on the juvenile court system would not greatly strengthen the factfinding process and would possibly destroy advances the juvenile system has made.[46] The instant court argued that a jury trial requirement would place

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39. 403 U.S. at 547, *citing* Duncan v. Louisiana, 391 U.S. 145, 149-50 n.14 & 158 (1968).

40. 403 U.S. at 545.

41. *See In re* Terry, 438 Pa. 339, 352, 265 A.2d 350, 356 (1970) (dissenting opinion).

42. 403 U.S. at 543.

43. *In re* Gault, 387 U.S. 1, 61 (1967) (concurring opinion).

44. This confusion can be seen in the split among lower courts on the issue of a juvenile's right to jury trial. *See* notes 34-37 *supra* and accompanying text.

45. 403 U.S. at 547-50. This approach is analogous to the item-by-item procedure that the Court had previously taken with respect to the rights of adult defendants in criminal courts. Note, *The Supreme Court, 1966 Term*, 81 HARV. L. REV. 69, 172-73 (1967).

46. 403 U.S. at 547. The Court did not list the present advantages of the non-adversarial nature of the juvenile system. Those most often mentioned include: (1) the flexibility accorded judges who are experts in sifting out the real problems behind a juvenile's misconduct; (2) separate treatment for juveniles; (3) confidentiality of juvenile records; and

the juvenile "squarely in the routine of the criminal process,"[47] and thus would destroy the informal, protective, and rehabilitative aspects of the juvenile court.[48] However, as the dissent noted, this need not be so.[49] The fallacy in assuming that the juvenile system will collapse because of the intrusion of the jury is in the failure to distinguish the factfinding, or adjudicatory, stage from the dispositional aspects of a juvenile proceeding.[50] A jury determines only whether a specific act was committed and is solely concerned with the adjudicative stage of the hearing. The need for flexibility and informality exists primarily on the dispositional side where the jury has no place or function. The judge would still be free to prescribe the formula that will best aid the particular youth. Furthermore, the informality and protective aspects of the hearing are not ends in themselves,[51] and their curtailment during the adjudicatory stage would have only a minor effect on the beneficial aspects of the juvenile system, which mainly occur with the prejudicial and dispositional stages.[52]

The majority also argued that a jury trial would possibly destroy the privacy of the proceedings.[53] There is strong evidence that juvenile proceedings do not remain confidential;[54] moreover, the right to jury trial does not necessarily clash with the demand for privacy. A jury trial would not be mandatory, and thus the child and his parents could waive the right to obtain maximum secrecy at the hearing.[55] Also, the Supreme Court in *Williams v. Florida*[56] held that twelve jurors are not necessarily required

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(4) a reduction of the stigma accompanying an adjudication of criminal misconduct. *See In re* Gault, 387 U.S. 1, 22-25 (1967).

47. 403 U.S. at 547.

48. *Id.* at 545-47.

49. 403 U.S. at 565-66 (Appendix to dissent).

50. The Court in *Gault* was careful to make this distinction. *See* text accompanying notes 16-24 *supra*.

51. *See* Paulsen, Kent v. United States: *The Constitutional Context of Juvenile Cases*, 1966 S. Ct. Rev. 167, 186.

52. *See In re* Terry, 438 Pa. 339, 354, 265 A.2d 350, 357 (1970) (dissenting opinion).

53. 403 U.S. at 545. The majority was fearful that inclusion of a jury would lead to public juvenile trials. Justice Brennan, however, apparently favors the public trial as a method of protecting the juvenile from governmental oppression and the biased judge. Justice Brennan therefore concurred in *McKeiver*, since Pennsylvania did not ban public juvenile trials, and dissented in *Burrus* because North Carolina law permitted exclusion of the general public. *Id.* at 553-57.

54. The court records are often made available to the police, FBI, and various governmental agencies. Note, *Juvenile Delinquents: The Police, State Courts, and Individualized Justice*, 79 Harv. L. Rev. 775, 800-01 (1966). Moreover, in many states the exclusion of the general public from a juvenile hearing is discretionary with the judge. *E.g.*, Fla. Stat. §39.09 (2) (1969).

55. A survey of delinquency cases in those jurisdictions providing for juvenile jury trials revealed that requests for juries are not unmanageable. Over a five-and-one-half year period only 4 juvenile courts, out of 26 surveyed, showed more than 15 jury trial requests and more than 15 such trials held, or both. 403 U.S. at 561-62 (dissenting opinion).

56. 399 U.S. 78 (1970). The Court noted that the number of jurors should be large enough to prohibit outside intimidation, promote group discussion, and fairly represent a cross section of the community. *Id.* at 100. *See* Comment, *Florida's Six-Member Criminal*

in a state court. A panel of substantially fewer than twelve on a juvenile jury could meet the requirements for due process and thereby decrease the possibility of public exposure. Thus, it would be possible to preserve the right to a jury's determination of fact; the child could decide either to exercise this right or waive it to acquire maximum privacy.

Although the issue was never specifically discussed, the majority opinion seemingly accepted the premise that juvenile deliquency proceedings, in many respects, have become no less than criminal trials.[57] Justice Harlan, in his concurring opinion, argued that if this premise were true then juveniles would be constitutionally entitled to jury trials under the *Duncan* rationale.[58] The majority reasoned, however, that the juvenile court system contemplates fairness, concern, sympathy, and paternal attention and that these elements provide a rational basis for treating juveniles differently from adults in certain matters of criminal procedure.[59] This approach may be desirable in certain circumstances. In Florida, for example, a juvenile must take affirmative action within ten days after filing notice of appeal,[60] while the adult criminal is given twenty days.[61] The legislative purpose, however, was to resolve quickly the status of the child in order to expedite rehabilitation.[62] Application of different appellate procedures would therefore seem reasonable. But, as examined previously, the Court's reasons for holding that due process does not entitle the juvenile to a jury trial are no longer founded in fact.

The instant case indicates a reversal of the previous trend extending to the juvenile the total elements of due process of law as applied to the adult criminal defendant. It would now seem that those procedural safeguards not already afforded the juvenile[63] will be incorporated into the juvenile pro-

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57. 403 U.S. at 550.

58. *Id.* at 557. Justice Harlan concurred in the judgments on the grounds of his dissent in *Duncan*, that is, jury trials are not constitutionally required of the states.

59. *Id.* at 550.

60. *See* FLA. APP. R. 3.5 (a).

61. FLA. APP. R. 6.7 (a).

62. *Cf. In re* Evans, 116 So. 2d 783 (3d D.C.A. Fla. 1960). See Comment, *Beyond* Gault *and* Winship — *The Best of Both Worlds*, 22 U. MIAMI L. REV. 906, 911 (1968).

63. *See* note 33 *supra*. It would appear that these unincorporated procedural safeguards do not pose as great a threat to the current juvenile system and should survive the balancing test of the present Court. For example, extension of the right to bail and the guarantees of Miranda v. Arizona, 384 U.S. 436 (1966), could provide substantial benefits while imposing little or no burden. The Supreme Court has stressed that juvenile admissions and confessions require special caution. *In re* Gault, 387 U.S. 1, 45 (1967). Such caution is certainly required in respect to confessions obtained at pre-hearing interviews conducted without counsel. The major argument against extending the *Miranda* safeguards to pretrial statements is that the juvenile should be encouraged to confess and assume an attitude of trust and confidence toward the juvenile officials. This argument, however, was partially rejected by the Court in *In re* Gault, 387 U.S. 1, 51-52 (1967). It also clearly loses a great deal of viability when balanced against the possibilities of coercion. Furthermore, a pre-interview procedure conducted in accordance with the *Miranda* guarantees would not greatly hamper the procedures of the juvenile system and would help to impress upon the child the gravity of the situation and help reduce the chances of an unreliable confession.

ceeding only after a balancing against the ideals of the juvenile court system, even though these ideals do not coincide with realities of the system. Perhaps it was just this type of situation that prompted the Warren Court to observe:[64]

> While there can be no doubt of the original laudable purpose of juvenile courts, studies and critiques in recent years raise serious questions as to whether actual performance measures well enough against theoretical purpose to make tolerable the immunity of the process from the reach of constitutional guarantees applicable to adults.

ROBERT HUGHES BLANK

EMINENT DOMAIN: PUBLIC PURPOSE AND CONSERVATION OF NATURAL RESOURCES

Seadade Industries, Inc. v. Florida Power & Light Co., 245 So. 2d 209 (Fla. 1971)

Florida Power and Light Company condemned petitioner's land by eminent domain in order to construct a discharge water canal emptying into Card Sound and Biscayne Bay. Seadade resisted the taking, claiming it was adverse to the public interest and a gross abuse of the condemning authority's discretion because approval from federal, state, and local pollution authorities had not been obtained prior to condemnation. Further, there was evidence the heated discharge waters would damage the ecology of Biscayne Bay.[1] Florida Power claimed the taking was for a public purpose and necessary to its operation, that all statutory requirements pertaining to condemnation had been met,[2] and that the condemnation proceeding could not be disturbed unless Seadade demonstrated illegality, bad faith, or gross abuse of discretion.[3] The Third District Court of Appeal found that the taking

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A constitutional right to bail should also be extended to the juvenile system. The right to bail is based upon a presumption of innocence and serves to prevent punishment, absent an adjudication of guilt, while allowing the accused to assist unhampered in the preparation of his defense. These considerations are as applicable to juveniles as to adults. The main argument against extending bail to the juvenile system is based upon the child's need for immediate care. Discharge to the child's parents may not provide this care; indeed, the parents may be the source of the child's problem. In such instances, release may be extremely detrimental to the child. However, a general right to bail could still be accorded with provision for an exception for those children dependent upon the state for adequate care. *See* Trimble v. Stone, 187 F. Supp. 483 (D.D.C. 1960).

64. Kent v. United States, 383 U.S. 541, 555 (1966).

1. The environmental issues of the instant case were also raised in federal court. *See* United States v. Florida Power & Light Co., 311 F. Supp. 1391, 1392 (S.D. Fla. 1970).

2. FLA. STAT. §§73.021-.171; 74.011-.121; 361.01 (1969).

3. *See* Canal Authority v. Miller, 243 So. 2d 131 (Fla. 1970).