Maryland Law Review

Volume 25 | Issue 4 Article 4

Comments on the Juvenile Court

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COMMENTS ON THE JUVENILE COURT

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INTRODUCTION

The first juvenile court, established in Chicago in 1899,[1] was the result of the dedicated work of sound lawyers who realized the need for a specialized court to treat the problems of the juvenile offender. The enabling statutes providing for the court removed it from the orbit of the criminal system. The proceedings were to be of a civil nature, and the rigorous rules of evidence were relaxed in the discretion of the judge. The entire structure of the court was designed to handle different demands than those imposed on the ordinary criminal tribunal, and it was accordingly established as a branch of an existing equity court. The Circuit Court of Baltimore City, Division for Juvenile Causes, followed this original pattern.

The juvenile court thus became a specialized court, founded on the philosophy of individualized justice and combining in a legal tribunal both law and the social sciences dealing with human behavior. The blood lines of such a court go back through several centuries to the beginnings of equity jurisprudence. When the English Chancellors took jurisdiction over a child, they acted for the state as *parens patriae,* and the child become a ward of the court. Prevention of injury is an historical and integral characteristic of equity jurisprudence. The long-armed Court of Equity, with its emphasis on preventive techniques, is thus a peculiarly appropriate tribunal for handling cases of delinquent and neglected children.

These innovations in the handling of the juvenile offender established by the juvenile statutes prompted a questioning of the court's authority to separate parent and child. Not only the separation, but also the procedure by which it was accomplished necessitated a need for judicial reflection on the extent to which the state could assume the role of parent. In a leading case decided in 1928,[2] the Mississippi Supreme Court ruled that when the parents had failed in their duty to educate and raise the child so as to conform to society's standard of behavior, the state could intercede to help rehabilitate the child and prevent injury to society, even if separation of parent and child was the result. These same principles were recognized by the Maryland Court of Appeals even before the first juvenile court was established in Maryland.[3] In *Roth and Boyle v. House of Refuge,*[4] the court concurred in

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1. The latest version of this law may be found in SMITH-HURD ILLINOIS ANNOTATED STATUTES ch. 23, §§ 2001-2036 (1958).

2. Bryant v. Brown, 151 Miss. 398, 118 So. 184 (1928), 60 A.L.R. 1325 (1929).

3. The first Juvenile Court in Maryland was established in 1902, Laws of Maryland ch. 611 (1902).

4. 31 Md. 329 (1869). The court did not have the exact question of the right to detain minors in a House of Refuge before it. However, the majority judge stated

the opinion of a Pennsylvania case[5] which had discussed a House of Refuge, and held, "The House of Refuge is not a prison, but a school where reformation and not punishment is the end; . . . to this end, may not the natural parents, when unequal to the task of education, or unworthy of it, be superceeded by the *parens patriae,* a common guardian of the community?"[6]

The courts were also given an extended opportunity to examine the underlying principles and purposes on which the juvenile court was based because of the many challenges that were asserted to the constitutionality of juvenile proceedings. Such analysis led many courts to adopt the view that the standards applicable to juvenile courts are not the same as those for an ordinary criminal court.[7] The opinion of the Utah Supreme Court in *Mill v. Brown*[8] is typical of this attitude. In emphasizing the difference between the goals of juvenile and criminal courts, the court noted:

> Such laws are most salutary, and are in no sense criminal and not intended as punishment, but are calculated to save the child from becoming a criminal. The whole and only object of such laws is to provide the child with an environment such as will save him to the state and society as a useful and law-abiding citizen, and to give him the educational requirements necessary to attain the end. To effect this purpose some restraint is necessary.[9]

Among the most serious objections raised to the procedure used in juvenile cases is that the defendant in many instances is not afforded protection against self-incrimination and double jeopardy. Many jurisdictions do not recognize the right against self-incrimination in juvenile cases,[10] in accord with their belief in differentiating juvenile and criminal court procedure. As to double jeopardy, the Maryland Court of Appeals has implemented a similar philosophy in considering the question of whether an adjudication of delinquency places the offender in jeopardy so that a subsequent criminal trial would be double jeopardy. *Moquin v. State*[11] held that a prior adjudication by the Montgomery County Juvenile Court that the defendant, a sixteen year old boy, was a delinquent child was not a bar to a subsequent waiver of jurisdiction by the juvenile court and criminal prosecution in the circuit court for

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that the power conferred in relation to detention did not conflict with the Maryland Constitution, and he had appended the *Crouse* decision to his opinion for a statement of the reasons on which he relied.

5. *Ex Parte* Crouse, 4 Whart. (Pa.) 9 (1839).

6. *Id.* at 11.

7. See, *e.g.,* Wheeler v. Shoemake, 213 Miss. 374, 57 So. 2d 267 (1952). For other cases upholding juvenile court statutes against attack on constitutional grounds, see Cinque v. Boyd, 99 Conn. 70, 121 Atl. 678 (1923); Commonwealth v. Fisher, 213 Pa. 48, 62 Atl. 198 (1905); Dendy v. Wilson, 142 Tex. 460, 179 S.W.2d 269 (1944).

8. 31 Utah 473, 88 Pac. 609 (1907).

9. 88 Pac. at 613.

10. For a collection of cases considering the applicability of this rule, see Annot., 43 A.L.R.2d 1128, 1133–35 (1955).

11. 216 Md. 524, 140 A.2d 914 (1958).

the same offenses. The court held that the rule of double jeopardy is usually applicable only when the first prosecution involves a trial before a criminal court or at least a court empowered to impose punishment, and so did not govern the situation in the case.[12]

In furtherance of the effort to relieve the juvenile defendant of any criminal stigma, juvenile courts do not use a formal arrest warrant. Citation is adjudged an appropriate substitution for a warrant, and there is no arrest in the technical sense. When the juvenile is charged as a delinquent, the court at once takes him into custody, pending an investigation by a member of the court staff. The law of arrest is thus inapplicable to juvenile procedure in most jurisdictions,[13] and the complex constitutional issues regarding arrests are avoided.

While the juvenile court was able to successfully withstand virtually every constitutional attack upon its informal hearings during the first fifty years of its existence, the very informality of the hearing in many jurisdictions resulted in grave abuses. The inherent right of all litigants to fair treatment was at times ignored. In some cases parents did not know until they arrived in court the offense with which their children were charged. Many youths were taken from their homes and sent to training schools as delinquents on the sole basis of hearsay evidence gathered by well-intentioned social workers. The youths would never be confronted with their accusers at a hearing and were denied the right of cross-examination. Such inexcusable short cuts and looseness too frequently made a shambles of the administration of justice. Fortunately, since about 1950, the pendulum has swung in the other direction.

The appellate courts have responded to the abrogation of juvenile rights by reversing many adjudications where less than fair treatment was afforded the defendant. Failure to allow bail in a pending juvenile case,[14] allowing the use of hearsay evidence,[15] use of unsworn testimony against the defendant[16] and absence of confrontation and opportunity for cross-examination[17] have all been grounds for reversal. While the courts have been willing to accept somewhat more flexible and informal procedures in the juvenile court, these examples emphasize that an informal atmosphere is not a license for the judge to treat lightly the safeguards to which juvenile defendants are entitled. However, while enforcing procedural protection in juvenile court hearings, these decisions do not represent a retreat from the earlier cases holding the juvenile statutes constitutional.

An interesting problem is raised in the area of counsel for indigent juveniles and their families. The United States Constitution provides in part in the Sixth Amendment that, "In all criminal prosecutions,

12. *Id.* at 528, 140 A. 2d at 916. The court took the position that the juvenile act did not contemplate punishment, but rather an attempt to rehabilitate.

13. Comment, *The Juvenile Court — Benevolence In the Star Chamber,* 50 J. CRIM. L., C.&P.S. 464, 468 (1960).

14. Trimble v. Stone, 187 F. Supp. 483 (D.D.C. 1960).

15. *In re* Mantell, 157 Neb. 900, 62 N.W.2d 308 (1954).

16. *In re* Ross, 45 Wash. 2d 654, 277 P.2d 335 (1954).

17. *In re* Green, 123 Ind. App. 81, 108 N.E.2d 647 (1952).

the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense." The Supreme Court's historic decision in *Gideon v. Wainwright*[18] held that the right to counsel, guaranteed by the Sixth Amendment, extends to defendants in the states' criminal courts through the due process clause of the Fourteenth Amendment. The case has prompted wide discussion as to whether an indigent juvenile committed to a training school, without having counsel appointed for him, is deprived of "his liberty" without due process of law.[19] The District of Columbia has recognized that a juvenile is entitled to the assistance of counsel, and in the case of indigents, counsel should be appointed.[20]

To institute such a procedure naturally involves a substantial expense. Maryland, as well as most states, has no statutory provision or funds for such an innovation. The judges in most of them feel, I believe, that appointment of counsel is not a prerequisite to due process in juvenile proceedings. Many of them are pragmatists. They have misgivings about the inevitable danger of unconscionable delays, unwieldy numbers of requests for postponement of cases, and vastly increased backlogs of pending cases such as plague and handicap so many of our criminal courts. The trend, nevertheless, is toward the appointment of counsel for indigent juveniles.

It might be well for the Juvenile Court Committees of the State and Baltimore City Bar Associations to study and consider this question of appointed counsel for indigent juveniles in their next reports to their respective Associations.[21]

JUVENILE COURT PRACTICE IN BALTIMORE

Can a proper balance be struck between the basic philosophy of the juvenile court and its underlying informality, and the maintenance of procedural safeguards of due process, guaranteeing fundamental fairness in all hearings, criminal or civil? Some references to the twenty-year efforts of the Circuit Court of Baltimore City, Division for Juvenile Causes, to strike this balance may serve a useful purpose.

Proceedings are begun in the Circuit Court of Baltimore City, Division for Juvenile Causes, by the filing of a petition. The petition follows equity procedure and is drawn in simple language designed

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18. 372 U.S. 335 (1963).

19. The Standard Juvenile Court Act, 5 NPPA J. 105 (1959), provides for representation by counsel as follows:

> Prior to the start of a hearing, the court shall inform the parents, guardian or custodian, and the child when it is appropriate to do so, that they have a right to be represented by a counsel at every stage of the proceeding. If any of them requests it but is found by the court to be financially unable to employ counsel, counsel shall be appointed by the Court and, if necessary, compensated out of the funds in the court's budget. Upon a final adverse disposition if the parents or guardian is without counsel, the court shall inform them, and the child if it is appropriate to do so, of the right to appeal. . . .

20. *In re* Poff, 135 F. Supp. 224 (D.D.C. 1955); Shioutakon v. District of Columbia, 236 F.2d 666 (D.C. Cir. 1956).

21. See Paulsen, *Fairness to the Juvenile Offender*, 41 MINN. L. REV. 547, 568 (1957).

to be easily and clearly understood by the child and his parents.[22] The State is not a party to the proceeding, as in criminal cases, and the language used is not that associated with criminal prosecutions. The petition attempts to inform both child and parent of the specific nature of the complaint, and a copy of the petition is served upon the child and his parents, as the Rules of the Court require.

Hearsay evidence in the main is banned because the crystallized experience of centuries has proved such evidence to be of a usually undependable nature. The judge himself must rule out such evidence, as the juvenile and his parents, usually unrepresented by counsel, are generally unfamiliar with rules of evidence. There is no screening of petitions by social workers. All petitions are docketed and are heard by the judge or one of the court's two Masters in Chancery who usually handle preliminary hearings and make recommendations to the judge. All cases are heard in the court room, and the issue of delinquency is decided on the evidence produced. In all delinquency cases, the court enters a plea for the youth denying all allegations of the petition. There is no formal or other arraignment. Witnesses in support of the petition are called to testify in all cases and are subject to cross-examination by either the parents or the judge where the youth is without legal representation. No case is decided on a plea or admission by the party charged; all hearings require confrontation, and all witnesses are sworn. The author has found that the relaxed atmosphere and the informal, non-traumatic proceeding intended and provided by juvenile statutes depend far more on the manner, tone of voice and understanding of the judge than upon the presence or absence of any particular paraphernalia in the hearing room.

Every petition filed in the Baltimore Juvenile Court and served on the juvenile and his family advises in writing that the parent or guardian may employ a lawyer to represent the child, may have the court summons witnesses, and may pray a jury trial. This statutory provision for jury trials in juvenile cases is almost unique in this country. If no counsel is retained, the judge acting *in loco parentis* can with propriety assist them in the non-adversary proceeding, without essaying the dual role of judge and defense counsel.

The investigative report of social workers is never presented to the judge until after he has found a youth delinquent. Between the date of the hearing and the disposition of the case, such reports are

22. The following is a reproduction of the language used in a Juvenile Court Petition to advise the youth and his parents of the charge and of their rights:

TO PARENTS OR GUARDIAN:

This is a summons for you to be present in Court and to produce the child charged herein at the time stated on the reverse side of this petition. It is advisable that both parents attend this hearing.

The Rules of Court provide for a jury trial in all cases in the Division for Juvenile Causes, if election therefor shall be in writing and filed with the Clerk before the case is called for trial.

The Court will summons any witnesses, including character witnesses, whom you wish to appear in Court and testify for you. List their names and addresses on the witness sheet attached and return it promtply in the attached self-addressed envelope.

You may hire a lawyer to represent your child if you wish to do so. If you do, be sure to show this paper to him.

made available to his counsel of record. If counsel requests, another hearing is scheduled, and the social worker is required to take the witness stand subject to cross-examination.

Whenever a probation officer charges that the youth has violated his probation, he sets forth in writing the details of the alleged violation. A copy is duly served on the youth and his parents. A hearing is scheduled, the probation officer takes the witness stand, as do his witnesses, and all are duly cross-examined by the juvenile and his parents who are then given the right to testify. When the family has a lawyer, he, of course, conducts the defense.

The juvenile court hearings in Baltimore are not star chamber proceedings. All parties in interest and their witnesses attend. While the general public is not present, representatives from Baltimore hospitals, schools, colleges and civic associations interested in child welfare are frequently present. Court news reporters from all local newspapers are allowed to be present at juvenile trials. They give no names of the children involved or details whereby they may be identified, but are otherwise free to report the hearings, which is frequently done. A court reporter is present to take down all testimony in cases set for hearing before the judge. In cases heard by the Masters, a court reporter is not present, although one *should* be provided.[23] The juvenile court docket is, of course, a public record.

During the past twenty years, the Circuit Court of Baltimore City, Division for Juvenile Causes, has had before it more than 54,000 cases charging juvenile delinquency. Many hundreds of lawyers have appeared in these hearings. In two decades, there has not been an appeal from a decision to the Maryland Court of Appeals, nor has any lawyer requested the court to waive jurisdiction to the criminal court so that his young client might have a public trial and the benefit of certain constitutional safeguards available to those accused of crime. Neither has any aggrieved citizen petitioner, or victim of costly vandalism, or his counselor, asked such waiver so that the "young hoodlum" can be dealt with more realistically. While I am deeply conscious of real gaps between the high aims of the court and its day-by-day performance, I nevertheless believe that the absence of appeals during the last twenty years is a significant factor in appraising the attitude of Baltimore lawyers toward the juvenile court. It would seem that this record of no appeals is a manifestation by such attorneys that they believe the basic purposes of the Juvenile Court Act can be and are being carried out, while the inherent rights of the youth and his family and the community's interest in protection against vandalism and assaults are being safeguarded.

The late Roscoe Pound, one of America's foremost authorities on jurisprudence during the first half of this century, felt that the juvenile court was the greatest step forward in the administration of justice since the Magna Carta.[24] As he pointed out, the long over-due revision

23. A reporter is necessary in this situation in order to preserve a record from which an appeal may be taken. There may also be the need for a rehearing before the judge, and a record is necessary in such instances.

24. Glueck, *Roscoe Pound and Criminal Justice,* 10 CRIME AND DEL. 299, 336 (1964).

of antiquated rules of criminal procedure; the pre-sentence investigation; the growing recognition of the value of case work, psychiatry, and psychology by adult courts; the indeterminate sentence; and the wider use of probation by our more progressive criminal courts were all born in the juvenile court and adopted by other courts after their effectiveness had been tested there.

CONCLUSION

The juvenile court can achieve the salutary aims of its founders within the framework of the law, recognizing the legal rights of the youths, their parents and the community. To reach this goal, however, the informal practice of the juvenile court, designed to promote mutual confidence among judge, child, and family, and to provide an encouraging climate for the law's new partner, the behavioral sciences, must not relieve the judge of his responsibility to honor legal principles inherent in a fair civil hearing. How can this best be done?

Guidelines for Correct Juvenile Court Procedure

I.

Whenever state legislatures have enacted loosely worded juvenile statutes abounding in sweeping generalities, the statutes should be amended. Delinquency, dependency, and neglect, as grounds for the court's jurisdiction, should be specifically defined. The court is charged by law to act in the interest of the youth, but the charge applies only to the child over whom the court has authority, *i.e.*, a youth legally determined to be within its jurisdiction as set forth in the juvenile court statute. Guidelines are available in the Standard Juvenile Court Act.[25] Most states have, like Maryland, followed in the main the provisions of the Standard Act, thereby greatly lessening the chance of prejudicial error resulting in reversal. The statute should require a record of the proceedings from which it can be seen what has been done, and how, and on what basis. It should, of course, provide for a review through appeal.

II.

Each juvenile court should carefully draw its Rules of Court to clarify the requirements of the *ex parte* petition bringing the youth to court and to pinpoint the procedure for giving notice of the hearing to the family. The petition should set forth the facts upon which the charge is based in clear, non-technical language. The rules should also set forth other procedural requirements that guarantee the juvenile a full and fair hearing. Such rules have the force and effect of law for the juvenile court.

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25. 5 NPPA J. 105 (1959).

III.

Juvenile statutes should provide, as the Standard Juvenile Court Act recommends, that the juvenile court be a court of highest general trial jurisdiction. This will help assure that the juvenile court judge is trained in law, in full-time employ, and aware of the meaning and importance of due process as it has developed through many years in equity and other civil and criminal proceedings. Equity powers historically have been exercised only by the highest trial court. Experienced lawyers readily recognize that procedural safeguards and due process, as known in Equity Court practice, are the *sine qua non* of good juvenile court practice. They know—better than part time, politically appointed juvenile magistrates with short tenure—that the juvenile hearing, properly conducted, can be a very vital part of the treatment process. The character of the proceeding itself often contributes to respect for the law and aids in reclaiming the errant youth for useful citizenship. When the juvenile court is a court of highest general trial jurisdiction, there is greater probability that the judge assigned will know the importance of hearing both sides fully, of acting on evidence of logical probative force, and of separating the functions of accuser, prosecutor and judge. The tough and continuing task of securing adequate court staff and facilities is made easier by the court's position in the judicial hierarchy.