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# CONSTITUTIONAL SAFEGUARDS IN JUVENILE COURTS

John E. Powell\*

In a recent decision<sup>1</sup> the United States Court of Appeals for the District of Columbia Circuit held that proceedings in the Juvenile Court for the District of Columbia involving an allegedly delinquent child "are not criminal cases" and that "the constitutional safeguards vouchsafed a juvenile in such proceedings are determined from the requirements of due process and fair treatment and not by the direct application of the clauses of the Constitution which in terms apply to criminal cases." The decision is noteworthy, not only because of the importance of the court which decided it, but also because of the careful consideration which the court gave to the case. Before the argument in the Court of Appeals briefs were filed both on behalf of the appellants and on behalf of the United States; after the oral argument, at the request of the court, counsel for both sides submitted supplemental briefs and an additional brief was filed by amicus curiae appointed by the court. The opinion shows that the court considered a large part of the pertinent case law.

The Juvenile Court Act of the District of Columbia<sup>2</sup> is a codification of the 1933 revision of the Standard Juvenile Court Act prepared by the Committee on Standard Juvenile Court Laws of the National Probation Association.

The court's conclusion that juvenile court proceedings are not criminal cases is amply supported by the authorities, many of which are included in the appendix to the court's opinion. With respect to the applicability of the specific constitutional guarantees, some further discussion may be of interest.

Almost without exception it has been held that a child brought before the juvenile court on a charge of delinquency is not entitled by constitutional right to a jury trial in the determination of his delinquency status.<sup>3</sup> The same result has been reached in proceedings involving the revocation of a minor's parole, change of custody, and removal from one institution to another.<sup>4</sup> On the other hand, it has been held that in certain circumstances a juvenile has a constitutional right to trial by jury in a delinquency proceeding.<sup>5</sup>

The cases also agree that the absence of indictment by grand jury in the juvenile court does not violate the relevant constitutional guarantee.<sup>6</sup>

With respect to the question whether delinquency proceedings in the juv-

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\* Member of the Washington, D.C. Bar. This comment is based upon a brief prepared and filed by Mr. Powell as amicus curiae by appointment of the United States Court of Appeals for the District of Columbia Circuit in the case of *Pee v. United States*, Nos. 14425-28 (D.C. Cir. 1959). Mr. Powell was assisted by two third-year law students of Georgetown University Law Center: William R. Durland and John W. Mannix.

1 *Pee v. United States*, Nos. 14425-28 (D.C. Cir. 1959).

2 D.C. CODE ANN. §§ 11-901 to 950 (1951).

3 See, e.g., *People v. Fifield*, 136 Cal. App. 2d 741, 289 P.2d 303 (1955); *State v. Heath*, 352 Mo. 1147, 181 S.W.2d 517 (1944); *In re Gomez*, 113 Vt. 224, 32 A.2d 138 (1943); *Wissenberg v. Bradley*, 209 Iowa 813, 229 N.W. 205 (1929).

4 *Erwin v. Williams*, 253 S.W.2d 303 (Tex. Civ. App. 1952); *Harwood v. State ex rel. Pillars*, 184 Tenn. 515, 201 S.W.2d 672 (1947); *In re Haskins*, 198 S.W.2d 460 (Tex. Civ. App. 1946).

5 See, e.g., *State ex rel. Shaw v. Breon*, 244 Iowa 49, 55 N.W.2d 565 (1952).

6 *State v. Goldberg*, 124 N.J.L. 272, 11 A.2d 299 (1940); *State ex rel. Roberts v. Johnson*, 196 Iowa 300, 194 N.W. 202 (1923); *Childress v. State*, 133 Tenn. 121, 179 S.W. 643 (1915).

enile court bar subsequent prosecution in the ordinary criminal court on the ground of double jeopardy, there is some difference of judicial opinion. The majority holds that there is no bar,<sup>7</sup> but a contrary conclusion has been reached.<sup>8</sup>

The majority of courts have held that the privilege against self-incrimination is not applicable in delinquency proceedings in the juvenile court and, therefore, that the court may freely interrogate the juvenile and base its ultimate decision upon the results of that interrogation.<sup>9</sup> On the other hand, the privilege has been held to be applicable.<sup>10</sup>

The juvenile court statutes quite uniformly provide that the public shall not be admitted to delinquency hearings and the courts have consistently held that the constitutional requirement of a speedy and public trial is not applicable.<sup>11</sup> The juvenile court statutes usually authorize the court to conduct its hearings in an informal manner and it is generally the practice for the court to admit hearsay evidence in the form of reports of probation officers and to take testimony in the absence of the juvenile. These practices have been sanctioned in many decisions of which *In re Holmes*<sup>12</sup> may be cited as an example.<sup>13</sup> Notwithstanding the recognized rule that hearsay evidence is freely admissible in delinquency proceedings, findings of delinquency have been reversed in a number of cases because they were supported solely by hearsay evidence,<sup>14</sup> and Wigmore severely criticizes the practice of hearing testimony in the absence of the juvenile.<sup>15</sup>

With respect to the right to counsel, it has been held that the constitutional guarantee is not applicable in juvenile court proceedings.<sup>16</sup> On the other hand, some statutes either expressly provide that a child has a right to counsel in a delinquency proceeding or have been construed by the courts as so requiring. The latter is the case in the District of Columbia.<sup>17</sup> The California rule in this regard was summarized in *People v. Dotson*,<sup>18</sup> as follows:

The fact that a minor is not represented by counsel need not be a denial of due process in the Juvenile Court. . . . It is only when by

7 *Moquin v. State*, 216 Md. 524, 140 A.2d 914 (1958); *People v. Silverstein*, 121 Cal. App. 2d 140, 262 P.2d 656 (1953); *In re Santillanes*, 47 N.M. 140, 138 P.2d 503 (1943).

8 *United States v. Dickerson*, 168 F. Supp. 899 (D.D.C. 1958), *rev'd*, 271 F.2d 487 (D.C. Cir. 1959) upon the ground that jeopardy had not attached as a result of the proceedings in the juvenile court under the circumstances of the case. The court declined to decide whether jeopardy can ever attach to a disposition made by a juvenile court, either because the Constitution is directly applicable or because subsequent proceedings would be "fundamentally unfair."

9 *In re Holmes*, 379 Pa. 599, 109 A.2d 523, *cert. denied*, 348 U.S. 973 (1955); *In re Dargo*, 81 Cal. App. 2d 205, 183 P.2d 282 (1947); *People v. Lewis*, 260 N.Y. 171, 183 N.E. 353 (1932).

10 *Dendy v. Wilson*, 142 Tex. 460, 179 S.W.2d 269 (1944); *Ex parte Tahbel*, 46 Cal. App. 755, 189 Pac. 804 (1920).

11 *In re Mont*, 175 Pa. Super. 150, 103 A.2d 460 (1954); *State v. Cronin*, 220 La. 233, 56 So. 2d 242 (1951).

12 379 Pa. 599, 109 A.2d 523, *cert. denied*, 348 U.S. 973 (1955).

13 See also, *Annot.*, 43 A.L.R.2d 1128, 1141 (1955).

14 *In re Mantell*, 157 Neb. 900, 62 N.W.2d 308 (1954); *In re Sippy*, 97 A.2d 455 (D.C. Munic. App. 1953); *People v. Fitzgerald*, 244 N.Y. 307, 155 N.E. 584 (1927).

15 5 WIGMORE, EVIDENCE § 1400 (3d ed. 1940).

16 *Swann v. District of Columbia*, 152 A.2d 200 (D.C. Munic. App. 1959); *People v. Fifield*, 136 Cal. App. 2d 741, 289 P.2d 303 (1955); *Ex parte McDermott*, 77 Cal. App. 109, 246 Pac. 89 (1926).

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

18 46 Cal. 2d 891, 299 P.2d 875, 877 (1956).

such lack of representation of the minor undue advantage is taken of him or he is otherwise accorded unfair treatment resulting in a deprivation of his rights that it can be said he has been denied due process of law.

The majority of courts have concluded that a juvenile involved in delinquency proceedings has no constitutional right to bail.<sup>19</sup>

Notwithstanding the great number of decisions which hold that specific procedural constitutional guarantees are not applicable in juvenile court proceedings, there are a number of cases which hold that a juvenile is entitled to fundamental due process of law.<sup>20</sup> On the other hand, there are cases indicating that not even the constitutional guarantee of due process is applicable.<sup>21</sup>

The state of the law as disclosed by the foregoing summary has been the subject of considerable criticism both by judges<sup>22</sup> and in legal periodicals.<sup>23</sup> To the writer, dissatisfaction with the state of the law in this field seems justified. The laudable purposes of the Juvenile Court Acts must be accomplished by procedures which are legal and not at the cost of disregarding constitutional safeguards by deprivation of liberty without due process of law.<sup>24</sup> Constitutional guarantees are applicable as against all forms of governmental action,<sup>25</sup> regardless of the praiseworthiness of the state's motive, and juveniles stand in need of greater protection than adults, not less.<sup>26</sup>

Under the prevailing practice, juveniles are taken into custody without warrants, are detained in receiving homes or other places of detention sometimes for substantial periods of time, frequently as long as several weeks, without court order or other form of legal process, are questioned by the police and other investigating officers without the presence of counsel or relatives,<sup>27</sup> are sometimes required to re-enact the misdeeds that they are suspected of having committed and are otherwise treated in a manner that in the field of criminal law would constitute a substantial deprivation of constitutional right. It is certainly not an answer to the problems that these practices raise to say that the state does them under the guise of *parens patriae*; the provisions of the Bill of Rights are not addressed to individuals but only to state action and the state must accomplish its ends by different means from those that are available to parents.

In the light of the current trend of decisions it is to be expected that the

19 See, e.g., *In re Magnuson*, 110 Cal. App. 2d 73, 242 P.2d 362 (1952); *Espinosa v. Rice*, 144 Tex. 121, 188 S.W.2d 576 (1945); *State v. Clark*, 186 La. 655, 173 So. 137 (1937); but see *State v. Franklin*, 202 La. 439, 12 So.2d 211 (1943).

20 *White v. Reid*, 125 F. Supp. 647 (D.D.C. 1954); *In re McDonald*, 153 A.2d 651 (D.C. Munic. App. 1959); *In re Barkus*, 168 Neb. 257, 95 N.W.2d 674 (1959); *In re Alexander*, 152 Cal. App. 2d 458, 313 P.2d 182 (1957).

21 *Rule v. Geddes*, 23 App. D.C. 31 (1904); cf., *In re Holmes*, 379 Pa. 599, 109 A.2d 523, cert. denied, 348 U.S. 973 (1955).

22 *United States v. Dickerson*, 168 F. Supp. 899 (D.D.C. 1958) *rev'd*, 271 F.2d 487 (D.C. Cir. 1959); *In re Poff*, 135 F. Supp. 224 (D.D.C. 1955); *In re Contreras*, 109 Cal. App. 2d 787, 241 P.2d 631 (1952).

23 See, e.g., *Diana, The Rights of Juvenile Delinquents*, 47 J. CRIM. L., C. & P.S. 561 (1957); *Paulsen, Fairness to the Juvenile Offender*, 41 MINN. L. REV. 547 (1957); *Rubin, Protecting the Child in the Juvenile Court*, 43 J. CRIM. L., & P.S. 425 (1952); *Einnet, Fifty Years of the Juvenile Court*, 36 A.B.A.J. 363 (1950).

24 *In re Williams*, 157 F. Supp. 871, 876 (D.D.C. 1958), *aff'd sub nom.*, *Overholser v. Williams*, 252 F.2d 629 (D.C. Cir. 1958).

25 *Watkins v. United States*, 354 U.S. 178, 188 (1957).

26 *Williams v. Huff*, 142 F.2d 91 (D.C. Cir. 1944).

27 See *Harper v. Strange*, 158 F.2d 408 (D.C. Cir. 1946).

courts will continue to hold that only the due process provisions of the state and federal constitutions are applicable and that the specific guarantees of the right to counsel, etc., do not apply. It is, of course, possible that in the process of elucidating what due process requires the courts may make applicable many of the individual guarantees in much the same way as the Supreme Court of the United States has brought into section 1 of the fourteenth amendment many of the provisions of the federal Bill of Rights.<sup>28</sup> The difficulty with such a process is that judicial lawmaking ought to be interstitial. It is not well suited to filling out large lacunae in codes and statutes. In the writer's opinion, it is desirable that the Juvenile Court Acts be reappraised and revised so as to afford to juveniles by statute many of the rights of which they are now deprived. Specifically, it is suggested that the Juvenile Court Acts should provide the right to counsel, trial by jury in certain instances, the right to obtain release from detention pending final hearing, some form of protection against arbitrary apprehension and detention, the right to confront witnesses, and some privilege against self-incrimination.

The actual issue before the court in *Pee v. United States*<sup>29</sup> was whether the rights of the appellants had been violated by the admission in evidence against them of certain oral statements made by them to the police after they had been taken into custody and, apparently, before petitions against them were filed in the juvenile court. In outline, the facts were that the juveniles, aged approximately 17 years, were taken into custody by the police on July 3, 1957, and on the same day were taken to the Receiving Home maintained and operated by the Board of Public Welfare. On July 5, complaints to the juvenile court were filed against each of them. On July 18, the juvenile court judge signed waivers relinquishing jurisdiction of all three. On that day the juveniles were brought before a committing magistrate, who directed that they be held for action of the grand jury. They were indicted and their trial in the United States District Court for the District of Columbia began on December 11, 1957, and resulted in jury verdicts of guilty upon which judgments were entered. The District Judge admitted the statements upon the ground that Rule 5(a) of the Federal Rules of Criminal Procedure and *Mallory v. United States*<sup>30</sup> did not apply because the accused were either in the custody of the juvenile court or were being held for it when the statements were made and no other exclusionary rule was applicable.

As to this, the Court of Appeals held that the Federal Rules of Criminal Procedure and the *Mallory* rule do apply and said:<sup>31</sup>

In the cases at bar the District Judge was proceeding under the regular procedure of the District Court. The accused had been indicted; they were being tried by a jury on the indictment; the trial was public; they were found guilty of the offenses; and the court sentenced them to the penitentiary. Midway of the procedure, however, the District Judge imported from the Juvenile Court a rule of

28 See, e.g., *De Jonge v. Oregon*, 299 U.S. 353 (1937); *Grosjean v. American Press Co.*, 297 U.S. 233 (1936); *Powell v. Alabama*, 287 U.S. 45 (1932).

29 Nos. 14425-28 (D.C. Cir. 1959).

30 354 U.S. 449 (1957).

31 *Pee v. United States*, Nos. 14425-28 (D.C. Cir. 1959).

evidence, applicable in that court but not applicable in the regular procedure of the District Court. This was error. Since the juveniles had been removed from the processes specially provided for juveniles, they were subject to all the processes applicable to persons accused of crime and also, by reason of that fact, entitled to all the protections and privileges accorded to accused persons in criminal cases. The proceedings as to them, being "the regular procedure" of the District Court, were controlled by the Federal Rules. So the doctrine of the *Mallory* case applied.

Because the District Court had admitted the statements upon the assumption that neither the Federal Rules nor *Mallory* applied, the court set aside the adjudication and sentence, but not the verdict, and remanded the case to the District Court with directions to hold a hearing upon the question whether the *Mallory* case requires that the statements be held inadmissible.

There does not seem to be much case law on the question whether statements made by a juvenile while in the custody of the juvenile court may later be admitted against him if jurisdiction is waived by that court and he is subsequently tried in the ordinary criminal court. In *United States v. White*<sup>32</sup> Judge Holtzoff apparently held such statements to be admissible and the same result was reached in *Dearing v. State*.<sup>33</sup> On the other hand, the Supreme Court of Pennsylvania in *In re Holmes*,<sup>34</sup> suggested that such statements might not be admissible. A suggestion to the same effect has been made by the Children's Bureau of the United States Department of Health, Education and Welfare.<sup>35</sup>

The Juvenile Court Acts quite generally provide in one form or another that the disposition made and the evidence given in the court shall not be admissible against the child in any case or proceedings in any other court.

It would seem more consistent with the spirit of the Juvenile Court Acts that no statement made by a juvenile while in custody at any time prior to waiver by the juvenile court of jurisdiction over him should be admitted against him in a subsequent criminal trial.

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32 153 F. Supp. 809 (D.D.C. 1957).

33 151 Tex. Crim. 6, 204 S.W.2d 983 (1947).

34 379 P. 599, 109 A.2d 523, cert. denied, 348 U.S. 973 (1955).

35 *Standards for Specialized Courts Dealing with Children* 39, Children's Bureau Publication No. 346 (1954).