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sidered by those who must rearrange the state's machinery to conform with the constitutional requirements. Proper conceptual orientation is essential—the English view that providing counsel is the state's responsibility, not the bar's. The devices used in German civil cases should be studied as a possible partial solution to Louisiana's problem.

The behavior of too many states has far too long been self-defeating—to a mandate they reply with inaction; to a challenge, with lethargy. Louisiana is now challenged to continue its tradition of sound legal progress supported by spirited civic action. The means are at our disposal.

Gerard A. Rault

FAIRNESS IN JUVENILE COURT*

Juvenile court legislation recognizes that children who break the law should be treated different from adult lawbreakers, and has sought to provide specialized correction and rehabilitation through limited publicity, informal hearings, social work, and probation.¹ In this area where little jurisprudence and few clear principles can be found, this Comment focuses on possible solutions to developing problems. It is concerned more with the delinquent child who commits a wrongful act than the neglected child who comes to the juvenile court because his parents have failed to care for him properly.

Rather than punishing a child, seeking retribution from him or merely protecting society from him, the juvenile court calls on the social worker to provide guidance and correction and to use the tools of modern psychology to help him into responsible

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1. See LA. R.S. 13:1561-1599 (1950); Standard Juvenile Court Act; Standard Family Court Act; Garrett, *When the Lawyer Comes to Juvenile Court*, mimeographed materials, St. Louis University Institute for Delinquency Control, 3d Inst. 1966; GLUECK, *UNRAVELING JUVENILE DELINQUENCY* (1950); Paulsen, *Fairness to the Juvenile Offender*, 41 MINN. L. REV. 547 (1957); Comment, 10 LOYOLA L. REV. 88 (1960).

adulthood. Juvenile court philosophy reflects the inclination that a child is not as culpable for his acts as an adult, so he is not to be punished.² Also present is the traditional notion that society, for its preservation, has an interest in the proper rearing of children. Since the first juvenile court was established in 1899,³ all states have adopted legislation providing special courts for juvenile offenders. In these courts, often termed non-criminal or civil, the constitutional and statutory protections of the criminal law have not been applied.⁴

Meanwhile, modern penology has attempted to apply some of these principles, notably individualized punishment and rehabilitation, to adults.⁵ The emphasis in criminal law has switched from retribution and punishment to emphasis on rehabilitation and preparation of the criminal for effective participation in society. As the treatment of adults and minors has merged somewhat, it has become apparent that children often receive little of the rehabilitation and treatment promised in exchange for lack of criminal law protections, often being denied liberty and subjected to control without effective safeguards. Responding to this, a movement has begun to provide juveniles with more effective protection against unjust incarceration and to award them some of the rights of their older brethren.⁶ This is in the context of a rising incidence of delinquency, increases in the number and proportion of children in society and awareness of the inadequacies of most juvenile courts.⁷

It is recognized that while not "criminal," juvenile courts are not truly "civil."⁸ The courts are being freed from a tyranny

2. See *State v. Malone*, 156 La. 617, 100 So. 788 (1924).

3. The first juvenile court was established in Illinois. Earlier, special treatment of juvenile offenders was provided within existing court structures. See Beemsterboer, *The Juvenile Court — Benevolence in the Star Chamber*, 50 J. CRIM. L., C. & P.S. 464 (1960).

4. *In re Tillotson*, 225 La. 573, 73 So. 2d 466 (1954); *In re Cook*, 145 So. 2d 627 (La. App. 4th Cir. 1962); Antieau, *Constitutional Rights in Juvenile Courts*, 46 CORN. L.Q. 387, 392 (1961); Beemsterboer, *The Juvenile Court — Benevolence in the Star Chamber*, 50 J. CRIM. L., C. & P.S. 464 (1960).

5. Comment, *Employment of Social Investigation Reports in Criminal and Juvenile Proceedings*, 58 COLUM. L. REV. 702 (1958).

6. See, e.g., *Kent v. United States*, 383 U.S. 541 (1966); *Shioutakeon v. District of Columbia*, 236 F.2d 666 (D.C. Cir. 1956); *In re Poff*, 135 F. Supp. 224 (D.D.C. 1955); *In re Garland*, 160 So. 2d 340 (La. App. 4th Cir. 1964); *In re Holmes*, 379 Pa. 599, 109 A.2d 524 (1954); Paulsen, *Fairness to the Juvenile Offender*, 41 MINN. L. REV. 547 (1957).

7. Wall Street Journal, Aug. 10, 1966, col. 1, p. 1; Antieau, *Constitutional Rights in Juvenile Courts*, 46 CORN. L.Q. 387 (1961); Glueck, *Roscoe Pound and Criminal Justice*, 10 CRIME & DELINQUENCY 314 (1964).

8. Some Louisiana courts have more correctly termed them "quasi-criminal."

of semantics and it is being realized that children need more protection in proceedings that can make them wards of the state, deprive them of their liberty until majority, stigmatize them as "reform school kids" and even de-parentize them.⁹ The question is how much protection they should have. Since the consequences may be drastic, the answer must be as much protection as is possible without impairing effective detection and treatment of delinquency. To give a child all the rights available to adults could result in a budding delinquent getting off, in a lack of rehabilitation for those who need it, and in requiring the type of hearing that would make effective rehabilitation difficult. While the consequences of juvenile court proceedings can be serious, they are not usually as serious as those of criminal proceedings; often, supervision and treatment are provided and are successful. Great care must be exercised in guiding the child who breaks the law; his first contact with the law is often the juvenile court, and lifelong attitudes can be formed by this contact.

Juvenile courts are hybrids whose procedures should be determined in an individual process, weighing different policies and interests. This paper develops such a process for arrest, detention, and some aspects of the hearing. In these areas, it seeks to recommend procedures that will ensure proper rehabilitation and treatment without unfairly depriving children of liberty and their right to remain with their family.

ARREST

Adult arrest standards are rigorous and getting stricter; warrants are favored over arrests without warrants, and arrests without warrants require probable cause, an inexact test being redefined into a substantial requirement.¹⁰ Should this high standard apply to apprehension of juveniles? Influential uni-

In re Owen, 170 La. 255, 127 So. 619 (1930); *State ex rel. Herbert v. Renaud*, 157 La. 776, 103 So. 101 (1925).

9. LA. R.S. 13:1580 (1950) illustrates the broad discretionary powers lodged in the juvenile courts for making dispositions, including probation or supervision in the child's home or in the care of any suitable person, assignment to the custody of a public or private institution in or out of the state, or other disposition "as the court may deem to be for the best interest of the child," including commitment to a mental institution.

Under R.S. 13:1580.1 (traffic hearings) juveniles may be fined up to \$200. This casts serious doubt on the non-criminal nature of the juvenile court in at least this type of proceeding. *Cf. Comment*, 10 LOYOLA L. REV. 88 (1960).

10. *Comments*, 26 LA. L. REV. 789 (1966), 26 LA. L. REV. 802 (1966).

form legislation adopts a lower standard;¹¹ most commentators oppose applying the adult test to children;¹² the courts have not yet required the adult standards.¹³ Louisiana legislation prescribes no standard for arrest or apprehension of juveniles, and the Louisiana courts have not required adult standards.¹⁴

Widely held is the view that apprehension of a juvenile is not an arrest.¹⁵ The standard acts so specify,¹⁶ and Louisiana legislation refers to the "holding of a child during the period in which he is awaiting a hearing of his case" as detention rather than arrest.¹⁷ This definition may be sufficient to ward off fourth amendment arrest requirements for juveniles since a distinction exists between the consequences of apprehending a juvenile and arresting an adult.¹⁸ Perhaps a more realistic concept is to consider such apprehension an arrest within the meaning of the fourth amendment, for the child in police or court custody is deprived of liberty. The fourth amendment might then apply, but with the recognition that because children are being dealt with, the probable cause and reasonableness tests would be legitimately more lenient. If the fourth amendment is not applied, there remains the problem of formulating constitutional requirements for children under a fourteenth amendment due process test.

Under either view, adult requirements should not be applied. Apprehension of juveniles is often for their own protection, and the results of the apprehension are not as drastic as for adults, for the juvenile is not subjected to criminal penalties.

11. Standard Family Court Act § 16; Standard Juvenile Court Act § 15.

12. *E.g.*, Paulsen, *Fairness to the Juvenile Offender*, 41 MINN. L. REV. 547 (1957).

13. *E.g.*, *In re Tillotson*, 225 La. 573, 73 So.2d 466 (1954).

14. See LA. R.S. 13:1561-1599 (1950). It could be that some provisions of the statute providing for detention of children could create some general arrest standards, especially R.S. 13:1577. See text accompanying note 40 *infra*. See also *In re Garland*, 160 So.2d 340 (La. App. 4th Cir. 1964); *In re Cook*, 145 So.2d 627 (La. App. 4th Cir. 1962).

15. MYREN & SWANSON, *POLICE WORK WITH CHILDREN* 35 (Children's Bureau Publication 399-1962), and state statutes there cited.

16. Standard Juvenile Court Act § 15; Standard Family Court Act § 16.

17. LA. R.S. 13:1569 (1950). See also *id.* 13:1577; *but cf.* LA. CODE OF CRIM. PROCEDURE art. 201 (1966) defining arrest as "the taking of one person into custody by another. To constitute arrest there must be an actual restraint of the person. The restraint may be imposed by force or may result from the submission of the person arrested to the custody of the one arresting him."

18. Under the criminal law, sentence may encompass capital punishment to probation. In the juvenile court, a child is usually placed on probation; the maximum detention is until majority. *But see* note 9 *supra* and accompanying text.

Since Louisiana does not provide for transfer of juveniles to criminal courts, fewer possibilities of criminal consequences arise than in some states.¹⁹ The state has a legitimate *parens patriae* interest in seeking to correct a misguided child; if such correction is reasonably attempted, there should be less ground needed for detention of juveniles than for adults. If post-arrest detention procedures and safeguards on police questioning are adopted to complement liberal arrest provisions, the child's rights would be adequately protected. The courts' tendency to strengthen adult arrest requirements reflects a distaste for the methods used by police in questioning and detaining persons after arrest. If the juvenile courts provide proper post-arrest safeguards, this psychological element could be removed from the process of formulating juvenile arrest requirements. Also, the nature of the juvenile court and its protective aspects justify a lesser standard for juvenile apprehension.

Louisiana seems to have no explicit standards for apprehension.²⁰ The legislation apparently establishes none, and the courts have not directly created any minimum requirement.²¹ Thus, police are left to exercise their discretion without the guidelines which are needed to ensure fairness to the juvenile.

Little difficulty arises when the juvenile is caught committing a crime or when the adult probable cause test is met;²² he should be arrested then. Instances in which lesser reason to arrest is present — the majority of cases — are the problem. Knowledge that a boy comes from a poor family situation or that a girl has a record of past offenses should not be sufficient; neither should bare suspicion. However, loitering on the streets late at night should be sufficient to require police action in some circumstances, at least in view of the protective aspects of the apprehension.

The Standard Family Court Act²³ provides for apprehension

19. Most states provide for such transfer. See Standard Juvenile Court Act § 10; cf. *State v. Bedford*, 193 La. 105, 190 So. 347 (1939); *State v. Dabon*, 162 La. 1075, 111 So. 461 (1927).

20. See note 14 *supra* and text accompanying note 40 *infra*.

21. See *In re Garland*, 160 So.2d 340 (La. App. 4th Cir. 1964), in which the court approved the taking of juveniles into custody when found on the street late at night.

22. The fourth amendment probable cause standards have been applied as minimum requirements for arrest of adults. Since the standards for children are usually accepted as being less stringent, it seems evident that the questionable area is whether a child can be arrested with less grounds. Virtually no writers or cases argue that the standard for children should be higher than for adults.

23. Standard Family Court Act § 16.

if (1) a juvenile violates a law or ordinance in an officer's presence, (2) the officer has reasonable grounds to believe the child has committed a felony, (3) the child would be endangered by his surroundings and removal is necessary to protect him, or (4) the officer believes the child has run away from home. A leading authority, Monrad Paulsen, formulates the requirement as "A policeman should be able to detain a child if he has reasonable grounds to believe the child is delinquent," admittedly a broader power than the standard act confers.²⁴ A good method would be to adopt the standard act's more definite enumeration of grounds to arrest, in addition to a modification of Paulsen's blanket formula.

The standard act's general rule — reasonable grounds to believe the child has committed a *felony* — may appear stricter than Paulsen's — reasonable grounds to believe the child is *delinquent* — but the standard act's enumeration of dangerous surroundings and running away from home as grounds for arrest lessens the distinction. What remains uncovered by the standard act and covered by Paulsen would be reasonable grounds to believe a child has committed a misdemeanor or violated an ordinance. In this class of cases, it seems that a juvenile should be subject to apprehension; he has possibly broken society's rules. Society may need protection, and the state has an interest in rehabilitating the child. Also, the child needs protection when it appears he is seriously neglected, so he should be subject to protective apprehension in such a case.

A possible statute could provide:

A juvenile may be taken into custody:²⁵

- (1) When there exists probable cause to arrest an adult,
- (2) When there exists probable cause to believe the child is delinquent or neglected. (Under La. R.S. 13:1570 (4) and (5) defining delinquency, this would be probable cause to arrest when the child violates any law or ordinance or the rules governing school attendance. Under (1), (2) and (3) of the statute, dealing with neglect,

24. Paulsen, *Fairness to the Juvenile Offender*, 41 MINN. L. REV. 547, 551 (1957).

25. Authorities prefer to use "apprehension," "detention," or "taking into custody," rather than "arrest," partly because of the criminal connotations of the word arrest. Cf. text following note 19 *supra*.

this would mean apprehension of an abandoned or improperly supported child, one who has run away or is incorrigible, or one whose associations are injurious to his welfare.)

(3) In these specific instances:

- (a) When the child is endangered by his surroundings and removal is necessary to protect him,
- (b) When there exists insufficient probable cause to apprehend under sections 1, 2 or 3(a), but the child is present at some place which, because of the nature of the place or the time, is manifestly unwholesome; however, this section only authorizes questioning at the scene; no further apprehension is allowed unless additional information brings the case under another section of this provision.

These standards are not rigid — less rigid than some suggest, but more so than no standard, which Louisiana seems to have now. Adoption of such apprehension rules should depend on adoption of specific post-arrest procedures, policemen trained to deal expertly with juveniles, and a professionally qualified juvenile court staff, to insure that the standards for arrest are not abused.

DETENTION AND QUESTIONING

To be consistent with the philosophy of juvenile court legislation, a child should not be incarcerated pending a hearing unless necessary to protect him or to protect society from him. It would be legitimately protecting a child to detain him when he is physically neglected by parents, when serious mental disorders seem present, or when he has no other place to go. It would be proper protection of society to detain when the crime a child is suspected of committing is a major felony, the presumption of guilt is great, and past behavior or present attitude indicate release may be followed by further misbehavior. In all other instances, a child should be released to his parents. Detention should never be a means of punishment or "treatment" before hearing.²⁶

26. In general, see MYREN & SWANSON, *POLICE WORK WITH CHILDREN* (Children's Bureau Publication 399-1962).

The decision to confine should not be made by the police, but by an officer of the juvenile court, preferably the intake officer,²⁷ under policies established by the judge. Of course, qualified patrol officers should be allowed discretion to dispose of cases with warnings and without detention, under court-established guidelines conforming to statutory minimums.²⁸ But, when a policeman believes detention is necessary, he should obtain permission from a court official. A qualified social worker with training in delinquency correction knowing the policies of the court and its philosophy should make the decision since he is more apt to decide in the best interest of the child. This requirement is analogous to taking an adult before a committing magistrate as soon as possible,²⁹ and should guarantee protection of the juvenile's rights to counterbalance liberal arrest standards.

If detention is authorized by a court officer, it should be in a special detention home and not in a jail where adults are kept.³⁰ If no juvenile home exists children should be detained in a completely separate part of the jail.³¹ While exposure to the depravity of a jail might have slight therapeutic value to deter a juvenile delinquent, it is scarcely worth subjecting a child to the company and instruction of major felons and homosexuals.

Experts argue that a juvenile should have a right to bail;³² this is too much of a concession. Children should have the right not to be detained at all pending a hearing, and to be released to parents immediately upon apprehension except in the cases outlined previously.³³ When it would be unwise to release children to parents who have neglected them, arrangements should be made with other relatives.

When a court officer authorizes detention, it should be limited to 24 hours; a child should then be released unless further deten-

27. LA. R.S. 13:1574 (1950) authorizes disposition of cases informally without court action. Such disposition is usually by the intake officer. The intake officer is also the screening agent who first deals with a child referred to the court and decides what immediate disposition — detention, informal counseling, filing a petition, further investigation, assigning probation officers — will be made.

28. MYREN & SWANSON, *POLICE WORK WITH CHILDREN* (Children's Bureau Publication 399-1962).

29. Cf. Comment, 26 LA. L. REV. 666, 686 (1966).

30. LA. R.S. 13:1577 (1950).

31. *Ibid.*

32. Antieau, *Constitutional Rights in Juvenile Courts*, 46 CORN. L.Q. 387, 393 (1961); Beemsterboer, *The Juvenile Court — Benevolence in the Star Chamber*, 50 J. CRIM. L., C. & P.S. 464, 469 (1958); Paulsen, *Fairness to the Juvenile Offender*, 41 MINN. L. REV. 547 (1957).

33. See text accompanying note 26 *supra*.

tion is authorized by the judge or a petition is filed.³⁴ Leaving further detention up to the judge would be an important protection for the child, would encourage expeditious police work, and would tend to prevent delay.

Admittedly, these guidelines are not new; most of them are required by Louisiana law, although not so explicitly or pervasively.³⁵ Present law requires a juvenile apprehended by police to be released to a parent or guardian upon a promise to produce the child in court "unless impracticable or inadvisable or has been otherwise ordered by the court."³⁶ Vagueness in the exception clause causes difficulty, for it is not clear what is "impracticable or inadvisable." A more explicit standard would better assure protection of the juvenile's rights. However, a recent case³⁷ indicates the courts will interpret the statute in favor of liberal release to parents: A 15-year-old boy was taken into custody when found on the street at 3:15 a.m., taken to a police station, and questioned until 9 a.m. Although the decision rested on other grounds (involuntary confession) the court indicated strongly that the police action was improper:

"A child so taken into custody merely for his own protection, however, should by all means be returned to his home or otherwise afforded the protection he needs; as a minimum, the provisions of LSA-R.S. 13:1577 should be followed.

"It would, we say, have been quite proper and conducive to Garland's welfare to have taken him off the street and to his home. But the police had no authority to *arrest* Garland without a warrant for his arrest just as they would have had no authority to arrest a major under the same circumstances; LSA-R.S. 15:59 and 15:60.

"We are of the opinion that under both LSA-R.S. 13:1577 and LSA-R.S. 15:59 the detention and interrogation of Garland by the Kenner police were unauthorized by law."³⁸

The statute requires that, if not released, the child should be taken immediately to the juvenile court or place of detention designated by the court or probation officer.³⁹ No child is to be

34. Cf. LA. R.S. 13:1577 (1950).

35. *Ibid.*

36. *Ibid.*

37. *In re Garland*, 160 So. 2d 340 (La. App. 4th Cir. 1964).

38. *Id.* at 342.

39. LA. R.S. 13:1577 (1950): "Whenever a child is taken into detention,

confined in a police station or jail, except those 15 years old or older who may be placed in part of a jail entirely separate from adults. Criminal penalties can be assessed an officer who violates these provisions.

While making these explicit provisions, the statute clouds their meaning by further providing that it is not to be construed to forbid an officer from immediately detaining a child found violating a law or ordinance or whose surroundings endanger his welfare. Also provided is that an officer detaining a child shall immediately, and in any event within twenty-four hours, report the fact to the court and then proceed as usual.⁴⁰ Reading these potentially conflicting parts of the statute together might permit a reconciliation by considering the latter section to refer more to apprehension than detention in the sense of keeping in custody for a period of time. Thus, the earlier-mentioned safeguards on keeping in custody would remain in effect as clearly stated and the latter provision would be some kind of arrest standard.⁴¹

Since few parishes provide detention homes for juveniles,⁴² it is unfortunate that many children must be confined in jails.

unless it is impracticable or inadvisable or has been otherwise ordered by the court, he shall be released to the care of a parent or custodian, upon the promise of such parent or custodian to bring the child to the court at the time fixed. The court may require a bond from such person for the appearance of the child; and upon the failure of such person to produce said child when directed to do so, the court may, in addition to declaring the bond forfeited, punish said person as in case of contempt. If not so released such child shall be taken immediately to the court or to the place of detention designated by the court or probation officer. Any police officer, sheriff, probation officer, or other peace officer violating any of the terms of this article may be judged guilty of contributing to the act or condition which would bring a child within the provisions of R.S. 13:1561 through 13:1592. Pending further disposition of the case, the child may be released to the care of a parent, agency or other person appointed by the court, or be detained in such place as shall be designated by the court or probation officer, subject to further order.

"Nothing in R.S. 13:1561 through 13:1592 shall be construed as forbidding any peace officer from immediately detaining any child who is found violating any law or ordinance, or whose surroundings are such as to endanger his welfare. In every case the officer detaining any child shall immediately, and in any event within twenty-four hours, report the fact to the court or probation officer and the case shall then be proceeded with as provided in R.S. 13:1561 through 13:1592.

"No child shall be confined in any police station, prison, or jail or be transported or detained in association with criminal, vicious, or dissolute persons; except that a child fifteen years of age or older may be placed in a jail or other place of detention for adults, but in a room or ward entirely separate from adults.

40. *Ibid.*

41. See text accompanying note 20 *supra*.

42. Detention homes are provided in Baton Rouge, New Orleans, Shreveport, and Monroe. One is to be constructed in Jefferson Parish.

However, it is provided that they may be detained in a private home or in a public or private institution.⁴³

It seems difficult to expand the protections in this area. Detention should be authorized when serious danger to self or society exists, and safeguards on even this limited class of detentions are ample. The thrust here should be to make statutory guidelines more specific and to enforce present rules. The former would be helpful, for while the enlightened courts interpret the statute within the juvenile court philosophy, not all courts are so enlightened.

However, much room for improvement exists in the matter of police questioning. There is a coercive aspect to all police interrogation; if such questioning is coercive to adults,⁴⁴ it is much more so when scared, naive children are involved. Both police and court official questioning must be re-examined in the light of *Miranda v. Arizona*⁴⁵ and the strict standards for adult questioning it established. It would be hard to justify extending the complete coverage of the fifth amendment prohibition against self-incrimination as interpreted by *Miranda* to a child, even though wards of the state presumably require more protection than adults. In dealing with children under fifteen, and to some extent, in dealing with those fifteen to seventeen, the privilege is somewhat meaningless. A child of this age cannot fully comprehend what it means to incriminate himself; he is less able to cope with refined interrogation techniques; he is in no position to make an intelligent decision as to whether to talk or not; the consequences of his actions are not understood by him; he may be incapable of waiving his rights and of understanding his rights.⁴⁶ This reasoning would perhaps lead to requiring that he be not questioned at all. But such a rule would emasculate the court. The aim of questioning by probation officers is ostensibly not to convict, but to provide the basis for rehabilitative treatment. Questioning and interviewing by court workers is aimed at eliciting an over-all view of the child's personality, background, and social conditions.⁴⁷ In many cases, the child is not

43. LA. R.S. 13:1577 (1950).

44. For a recent and thorough statement about the coercive aspects of police detention, see *Miranda v. Arizona*, 384 U.S. 436 (1966).

45. 384 U.S. 436 (1966).

46. *Cf. Williams v. Huff*, 142 F.2d 91, 92 (D.C. Cir. 1944); Antieau, *Constitutional Rights in Juvenile Courts*, 46 CORN. L.Q. 387, 406 (1961).

47. A discussion of the preparation and use of social studies is found in Comment, 58 COLUM. L. REV. 702 (1958); see also GILMA & LOW, *TRAINING*

brought to a hearing and is counselled informally; questioning is required to facilitate this process.⁴⁸ If the aim of the court is to rehabilitate, the worker must inquire about the commission of a delinquent act, the circumstances around it, and the reasons for doing it; this information is the basis of an intelligent counselling program. Some questioning by police is necessary to protect society and solve crimes. Yet, the justification for the state interfering and providing treatment is the fact that the child has done the act that requires treatment. It must first be established that the child did commit the act.⁴⁹ Also, realistically considering the non-civil nature of deprivation of liberty, the child could be convicting himself.

A possible solution is a right to counsel during interrogation. But presence of counsel during questioning by social workers would make good social analysis difficult. It would be practicable to have counsel present during police questioning as in criminal cases, although appointed counsel at this stage would create problems and would be expensive. A simpler solution with better possibilities of practical operation would be to allow questioning to solve crime and formulate a social summary, but to exclude all statements made by a child during questioning from the determination of whether the child has committed a delinquent act.⁵⁰ At the hearing, independent evidence or admission would be required to support an adjudication of delinquency. Once commission of the act is proved, the child's statements could be heard to assist in making a suitable disposition. Such a procedure would not unduly burden a court and would provide the child with significant protection.

Police questioning should be conducted under supervision of the court. Presence of probation officers during questioning is a possible solution, but it might interfere with the development of a good relationship with the child. If there is a detention home, questioning should be there rather than in jail. If there is no home, some standards as to the time and place allowed for questioning should be established by the court.

FOR JUVENILE PROBATION OFFICERS (Children's Bureau Publication 398-1962).

48. See note 27 *supra*; LA. R.S. 13:1574 (1950) provides for informal procedure without court hearing in some cases.

49. See *In re Pratt*, 222 La. 126, 62 So. 2d 124 (1953); *In re Sherrill*, 206 La. 457, 19 So. 2d 203 (1944); *In re Garland*, 160 So. 2d 340 (La. App. 4th Cir. 1964).

50. Cf. Antieau, *Constitutional Rights in Juvenile Courts*, 46 CORN. L.Q. 387, 407 (1961).

The Louisiana legislation does not create standards for police interrogation of juveniles. The courts have adopted the questioning regulations applicable to adults to a limited extent, at least with respect to involuntary confessions. *In re Garland* held: "This court is persuaded that the confessions thus obtained were not freely and voluntarily made and cannot be used against the juveniles . . . nor be admitted in evidence . . ." ⁵¹ Quoting from *Gallegos v. Colorado*, ⁵² the court continued:

"The youth of the petitioner, the long detention, the failure to send for his parents, the failure immediately to bring him before the judge of the Juvenile Court, the failure to see to it that he had the advice of a lawyer or friend—all these combine to make us conclude that the formal confession on which this conviction may have rested . . . was obtained in violation of due process." ⁵³

The positions of the United States Supreme Court and the Louisiana courts indicate that significant protection of a juvenile during detention and post-arrest questioning are required. As this view developed before *Miranda*, it would not be surprising for the high court to require the standard of that case for juveniles. Court officials and police would thus be wise to adjust their procedures to insure effective protection of juvenile rights in this area.

HEARING

The public is excluded from juvenile court hearings. La. R.S. 13:1579 allows only persons with a direct interest to be present. ⁵⁴ Protecting the juvenile from public stigma and the psychological disruptions of a public trial are strong justification for this procedure. ⁵⁵ However, a juvenile, his parents, or even the court (in limited circumstances) should be permitted to waive this secrecy and to have in attendance anyone the juvenile desires, even the general public. While few juvenile courts are star chambers, ⁵⁶ the spectre of secrecy can lead to speculation by

51. 160 So. 2d 340, 342 (La. App. 4th Cir. 1964).

52. 370 U.S. 49 (1962).

53. 160 So. 2d 340, 343 (La. App. 4th Cir. 1964).

54. See *State v. Cronin*, 220 La. 233, 56 So. 2d 242 (1951).

55. Antieau, *Constitutional Rights in Juvenile Courts*, 46 CORN. L.Q. 337, 398 (1961); Paulsen, *Fairness to the Juvenile Offender*, 41 MINN. L. REV. 547, 560 (1957).

56. "The powers of the Star Chamber were a trifle in comparison with those

the public whose approval is necessary for the courts' efficient functioning, and could lead to carelessness by a judge whose actions are not scrutinized by the public. While the public's presence could harm a juvenile, its absence could lead to inquisitorial tyranny. Further, the right to a public trial is for the defendant's protection, rather than society's; the juvenile should be allowed that protection if he or his proper representative requests it. Of course, no child should be deprived of the company of his parents at the hearing; their presence should be required, for a juvenile's problems are related to the family and solution of the problems requires family assistance and understanding.

It should be recognized that the hearing is a two-part process involving (1) determining whether a child is delinquent or neglected, and (2) making a disposition in the child's best interests. Some writers recognize this, but many statutes, including Louisiana's, do not.⁵⁷ In making dispositions, social studies, opinion testimony by probation workers and others, psychological test results, and information about the family should be received; nothing should be privileged at this second stage. However, more safeguards should surround the determination that the child has committed an act justifying state intervention, since the consequences of that intervention are serious.⁵⁸ Admissions of guilt should be lightly received; the juvenile should not be forced to incriminate himself at the hearing. No adjudication of delinquency should rest on a child's confession or admission alone; independent evidence should be required.⁵⁹ Too often, these safeguards are not maintained.

In a one-hearing procedure, it is difficult to separate the functions of adjudication and disposition. Judges often see social

of our juvenile courts and Courts of Domestic Relations. It is well known that too often the placing of a child in a home or even in an institution is done casually, perfunctorily or even arbitrarily. Moreover, effective preventive work through these Courts requires looking into much more than the bad external conditions of a household, such as poverty or neglect or lack of discipline. Internal conditions, a complex of habits, attitudes and reactions, may have to be dealt with and this means administrative treatment of the most intimate affairs of life. Even with the most superior personnel, these tribunals call for legal checks." Quoted in Glueck, *Roscoe Pound and Criminal Justice*, 10 CRIME & DELINQUENCY 314 (1964).

57. Beemsterboer, *The Juvenile Court—Benevolence in the Star Chamber*, 50 J. CRIM. L., C. & P.S. 464, 472 (1960). I.A. R.S. 13:1579 (1950) authorizes a one-hearing procedure without delineating the different aspects.

58. See *State v. Tomasella*, 206 La. 60, 7 So.2d 615 (1942).

59. Louisiana jurisprudence does not adhere to this view. *In re Tillotson*, 225 La. 573, 73 So.2d 466 (1954) held that a child's uncorroborated statement was sufficient basis for a juvenile court ruling that a child was in need of the court's protection. See also *State v. Cronin*, 220 La. 233, 56 So.2d 242 (1951); *In re Cook*, 145 So.2d 627 (La. App. 4th Cir. 1962).

studies before a hearing in order to be better informed about the case and to use it in interviewing the child, so it is difficult to conduct the adjudicatory part of the hearing without being influenced by social reports geared toward disposition.⁶⁰ A possible and attractive solution, used in New York City and Illinois,⁶¹ is the two-hearing approach. The first is devoted to a determination of whether a child committed an act. At the second, social studies and all types of testimony are heard to aid in disposition. Of course, this requires additional time and possible additional detention of the child. It may be more expensive. However, it would remove the need for extensive social summaries in cases in which a child is not adjudicated delinquent or neglected. If the juvenile or his attorney did not wish to contest an adjudication of delinquency, the first hearing could be waived. An interim between adjudication and disposition could facilitate arrangements for referral to social agencies and institutions.

Some authorities advocate abolition of the use of evidence that would not be admissible in criminal courts. Again, however, the nature of juvenile courts should be analyzed and rules of evidence framed in that context. The criminal and civil courts, for example, have been hampered by a complex hearsay rule that is being seriously questioned.⁶² If proper weight can be given to hearsay — a judge sitting alone should be qualified to evaluate it — it should be admitted.

If standards are established for apprehension and detention of juveniles, evidence obtained in violation of those rules should be excluded. The standards required by the fourth amendment should apply to exclude evidence obtained through unconstitutional searches and seizures. This would be a further check on police procedures and would protect the juvenile from unjust penalties. In the case of neglect adjudications, separate standards for searches and seizures might be allowed. For the reasons discussed earlier, statements made by a child in detention or before the hearing should not be admitted.⁶³

The juvenile should be afforded a right to counsel.⁶⁴ A lawyer with training in finding and weighing facts would assist the

60. Comment, 58 COLUM. L. REV. 702, 717, 719 (1958).

61. *Ibid.*; New York Domestic Relations Court Act § 61; ILL. REV. STAT. ch. 37, § 701-1 (Supp. 1966).

62. *E.g.*, ALI MODEL CODE OF EVIDENCE ch. VI (1942); Paulsen, *Fairness to the Juvenile Offender*, 41 MINN. L. REV. 547 (1957).

63. See text accompanying note 50 *supra*.

64. Antieau, *Constitutional Rights in Juvenile Courts*, 46 CORN. L.Q. 387,

child at the hearing. One of the deficient areas of the hearing is the fact-finding process on which a decision is made; it is possible for the conclusions of social workers inexperienced in the fact-finding, credibility-weighting process of the law to stand uncontradicted. A trained lawyer could put such testimony in perspective so that it is given proper weight. This skill of an attorney would balance the disadvantages of the use of hearsay. A lawyer is able to cross-examine witnesses and further the search for truth; he can relate to the child and his parents the policies and dispositions of the court so they will better cooperate in the treatment process. A lawyer also serves as a therapeutic agent; it is reassuring for the child to know that his parents or someone cares enough to provide every possible protection. These benefits, of course, are in addition to seeing that the child receives the benefit of his growing arsenal of rights.⁶⁵ Surely, this is more than sufficient reason to allow a juvenile and his parents to be represented by counsel. This representation should extend to both the adjudicatory and the disposition hearing.

Louisiana legislation is silent about this right in juvenile courts. Many states do provide for representation by retained counsel and some require appointed counsel for indigents.⁶⁶ The United States Supreme Court has not decided that either appointed or retained counsel be permitted in the usual juvenile court hearings. In some states making no statutory provision for counsel, the courts have established a right to retained counsel based on the general provisions regarding counsel in the state and federal constitutions. The question has not been presented in Louisiana,⁶⁷ but it is the practice of most juvenile courts to welcome lawyers at hearings and, in some cases, during intake interviews.⁶⁸ This is a wise practice, and should be incorporated in the legislation to insure effective protection in all cases.

Effective protection may also require appointing counsel for indigent juveniles. The implications of the *Gideon-Escobedo*-

404 (1961); Paulsen, *Fairness to the Juvenile Offender*, 41 MINN. L. REV. 547, 568 (1957).

65. In general see Skoler & Tenney, *Attorney Representation in Juvenile Court*, 4 J. FAMILY L. 77 (1964).

66. *Id.* at 78.

67. *Cf.* State v. Cronin, 220 La. 233, 56 So. 2d 242 (1951) (judge could exclude attorney, who previously intervened in an action, at the hearing when the juvenile stated she did not desire an attorney and her mother was present).

68. *Cf.* Skoler & Tenney, *Attorney Representation in Juvenile Court*, 4 J. FAMILY L. 77, 96 (1964).

Miranda decisions and their elevation of the right to counsel⁶⁹ present serious questions to the juvenile courts. However, requiring appointed counsel is a serious step that must be carefully made. The expense would be great; but, if associated with a public defender system, the costs would be kept reasonable low. It would seem that appointed counsel is not presently constitutionally required since the penalty that can be assessed is possibly not a "serious consequence" within the appointed counsel requirements of *Gideon v. Wainwright*,⁷⁰ at least under one possible interpretation of *Gideon*.⁷¹ But some states are now requiring appointed counsel.⁷² The United States Supreme Court has stressed its importance for juveniles in general, although the statements quoted below are in connection with a hearing to decide whether to transfer a juvenile to a criminal court and not the usual juvenile court hearing:

"Correspondingly, we conclude that an opportunity for a hearing which may be informal, must be given the child prior to entry of a waiver order. Under *Black*, the child is entitled to counsel in connection with a waiver proceeding, and under *Watkins*, counsel is entitled to see the child's social records. These rights are meaningless — an illusion, a mockery — unless counsel is given an opportunity to function.

"The right to representation by counsel is not a formality. It is a grudging gesture to a ritualistic requirement. It is of the essence of justice."⁷³

Lack of counsel, however, in the better courts with qualified judges and professionally trained staffs, does not seriously penalize the child. But too few courts have specially trained judges and expert staffs. Lawyers would have to be re-oriented to function properly in the informal juvenile court hearings, for few lawyers know how to conduct a case in juvenile court. This is due in part to lack of sufficient training in the law schools in the field of juvenile court practice.⁷⁴ Also, the juvenile is afforded some protection by a probation staff whose aim is to assist him in rehabilitation. This is a close question — but the

69. See Comment, 26 LA. L. REV. 666 (1966).

70. 372 U.S. 335 (1963).

71. Comment, 26 LA. L. REV. 666 (1966).

72. See Skoler & Tenney, *Attorney Representation in Juvenile Court*, 4 J. FAMILY L. 77 (1964).

73. *Kent v. United States*, 383 U.S. 541, 561 (1966).

74. Skoler & Tenney, *Attorney Representation in Juvenile Court*, 4 J. FAMILY L. 77, 88 (1964).

cost to society should be legitimately a great one before it is allowed to counterbalance the important right to appointed counsel.

The juvenile and his counsel or parents should have access to the information the court has in its social survey of the child.⁷⁵ It would at least insure a correct report since the parents or the child could dispute incorrect or exaggerated parts. In some cases, social information about inadequate parents might be harmful if disclosed to the child; in others, social workers would be unable to get information if confidentiality were not maintained. In those instances, the information could be disclosed to an attorney rather than to the juvenile or his parents.⁷⁶ In any event, the right to a hearing is worthless and rehabilitation a disservice if not supported by as much correct information as possible; full disclosure would increase the reliability of this information.

CURRENT DEVELOPMENTS

As mentioned earlier, juvenile court procedures are subject to increasing criticism, and courts have been active in affording more rights to juveniles accused of delinquency. An authoritative statement on the child's constitutional rights can be expected soon from the Supreme Court case of *In re Gault*,⁷⁷ which presents for decision whether Arizona's Juvenile Code deprives an accused child of due process in violation of the fourteenth amendment. It affords the court the opportunity to establish standards in the matter of right to counsel, propriety of informal hearings, right to appeal, and to have proceedings transcribed, whether the privilege against self-incrimination applies, whether a right of confrontation exists, and whether a general allegation of delinquency is sufficiently definite. The court, in view of its protection of rights of offenders in general and juveniles in particular⁷⁸ in recent times, would be reversing a trend if it failed to expand the juvenile's protections.

75. *Id.* at 86.

76. Comment, 58 COLUM. L. REV. 702, 725 (1958).

77. 99 Ariz. 181, 407 P.2d 760 (1965), *app. granted*, 34 U.S.L. WEEK 3428 (U.S. June 20, 1966) (no. 116).

78. *Kent v. United States*, 383 U.S. 541 (1966).

CONCLUSION

Legislation clarifying and establishing the rights of the child in juvenile court is needed; but these rights are of little value without effective implementation. What is required even more is better juvenile court judges and staffs.

Policemen dealing with juveniles must be trained to carry out their specialized role. Requirements that juveniles be detained in special homes and not in jails are of no value when no detention homes are built. Allowing or requiring lawyers in juvenile court hearings is a pseudo-right if attorneys do not understand the philosophy of the juvenile courts. Requiring approval of an intake officer before detaining a juvenile does no good if the officer is not professionally trained in juvenile delinquency corrections. Rehabilitation and treatment are illusory promises when delinquents are confined in overcrowded industrial schools without adequate staffs. Probation is no answer when the probation officer is incompetent or overworked.

It is here much work must be done, and done well, if the problem is to be solved. This goal of rehabilitation cannot be met by the lawyer — he can only suggest guidelines to protect rights — but by the legislator providing the resources and authority to establish a good system, and by social workers who will provide treatment and rehabilitation.

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