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Due Process in Juvenile Proceedings

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Again the agency provides an escape. In the case of an overriding need which cannot otherwise feasibly be met the plaintiffs granted relief in the above cases will lose their right to relief.

The trend toward strong case law against racial and economic discrimination in site selections for low and moderate income housing is clear. Unfortunately the reality of bureaucratic nonsense leaves doubts about effective implementation of the law.

HENRI NORRIS

Due Process in Juvenile Proceedings

The juvenile court proceeding has all the procedures of a misdemeanor or felony court when the records of juveniles are not impounded. There are many cogent reasons for this position. An "uninformed" juvenile either looks upon the peace officer as a friend or a foe, depending upon the posture the juvenile is in. If he is apprehended in the commission of an offense, he views the police officer as a foe. Instantly there is belief of being deprived of freedom. A juvenile not in trouble or not acquainted with the courts, may believe that the quickest way out is to admit or affirm every inquiry of the officer.

A juvenile summoned to appear in juvenile center to report to a probation officer believes that the probation officer is there to help him, not knowing that the probation officer may bring the complaint against him. The juvenile again will be prone to affirm or agree to almost any statement of the probation officer.

In the application of the due process clause, the law should go further than *Gault v. United States*.¹ In this case a fifteen year old boy was the offender. The Supreme Court of Arizona affirmed a dismissal of a petition for a writ of habeas corpus which sought the release of Gerald Francis Gault, who had been committed as a juvenile delinquent to the State Industrial School by the Juvenile Court of Gila County, Arizona. Here it was stated that Gault was denied various procedural due process rights. It was held by the Arizona State Supreme Court that, "the Arizona Juvenile Code impliedly included the requirements of due process in delinquency proceedings, and that such due process requirements were not offended by the procedure leading to Gault's commitment."

These five things are essential to the youth in and outside the court: (1) knowledge of pre-waiver statements, (2) full investigations of the

¹ 387 U.S. 1 (1966).

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incidents and proceedings, (3) preliminary hearings, if necessary, (4) rulings on *Miranda v. Arizona*² concerning self incrimination, and (5) the rights to counsel, to waive jurisdiction and to remain silent, as enumerated in *Escobedo v. Illinois*.³

1. *Pre-waiver Statements*—These are statements that are made by the youth before any adjudication is started. The youth probably in these situations says things that he does not know will be used against him in the court proceedings and are put on record and introduced as evidence against him at the trial. Pre-waiver statements may be against the better interest of the youth and should not be admissible into evidence by the court unless the constitutional safeguards have been met. If the youth is of adult age, but he made the statements while in custody at a minor age, the statements are usually admissible because the youth is then being tried as an adult. An example of admissible statements can be found in *State v. Smith*.⁴ This New Jersey case stated that “pre-waiver statements by a child were admissible in subsequent adult criminal proceedings notwithstanding the absence of a preliminary hearing or examination as required in criminal cases under its rules.”

Following the McNabb-Mallory exclusionary doctrine of federal courts,⁵ any confessions that are given under duress (such as prohibiting one from having his human rights—using the toilet facilities, smoking a cigarette, having a drink of water), are not admissible. Anything of this nature implies that the person was held against his will and without substantial grounds to be held. This is in violation of rule 5a of the Federal Rules of Criminal Procedure which requires “that a person under arrest be taken to a committing magistrate without unnecessary delay.”

A good example of violation of the McNabb-Mallory Rule is *Edwards v. United States*.⁶ This case involved robbery by juveniles who were prosecuted following waiver of juvenile court jurisdiction. One of the juvenile defendants appealed. The court of appeals stated that the confessions and admissions were made by the juveniles to the police and the robbery victim, and since these statements were omitted in the court proceeding, it was the right of the robbery victim to testify on the witness stand that he personally heard the juvenile defendant make such statements. This is admissible under the hearsay rule of evidence, be-

² 384 U.S. 436 (1966).

³ 378 U.S. 478, 12 L.Ed.2d 977, 84 S.Ct. 1758 (1964).

⁴ 161 A.2d 520 (1960).

⁵ *Mallory v. United States*, 354 U.S. 449 (1957).

⁶ 330 F.2d 849 (1964).

cause the person testifying actually saw the juvenile and heard him make the statement. It was pointed out though that the robbery victim did not recognize the defendants until he was told by the police that the defendants were the robbers, and then the victim affirmed the identity of the defendants. The author does not agree with the court that this should be admissible as a positive identification; but she does agree with the court that the victim can enter into evidence statements that he himself heard. In this case we see that the juveniles made the confessional statements and the admissions before trial and they were admissible. They were admissible because they were put into evidence by the victim's testimony, and not by the court or police as hearsay or incompetent evidence. A youth as well as an adult should be safeguarded from pre-waiver of jurisdiction statements, for those statements could make a court of law decide against the youth.

Police should follow the rules of the District of Columbia Code of 1961, 16-2306(a) which says that police should take the person to the custody of the probation officer or other person designated by the court, or take the person immediately to court or place of detention. By this rule, this would eliminate a lot of unnecessary detention on the part of the officers, and would eliminate the amount of statements that the youth would make out of panic, fright, and fear.

2. *Full investigations*—It is necessary in some juvenile cases for an order to be made for "full investigation" and to make available all previous records of the youth so as to find out if a fair and impartial trial has been conducted. In *Kent v. United States*⁷ a sixteen year old was arrested for housebreaking, robbery, and rape and the court wanted to waive its jurisdiction and send the youth's case to the United States District Court of the District of Columbia. The youth's attorney objected to this procedure and ordered that a "full investigation" be had on the youth's probation records and his juvenile court social service file on the petitioner (youth) to see if the juvenile court's waiver of the trial was valid. He was overruled by the District Court; therefore, the youth was tried, and convicted. The petitioner raised the question of the validity of the juvenile court's waiver of jurisdiction on appeal. The United States Court of Appeals of the District of Columbia affirmed the waiver and procedure leading to the waiver to be valid. But it was later reversed and held invalid. The basic ruling of this case is that the "Juvenile Court

⁷ 383 U.S. 541 (1966).

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Act”⁸ requires full investigation and makes the juvenile court records available to persons having a legitimate interest in the protection of the child. These provisions relating to due process and assistance of counsel entitle a juvenile to a hearing, to access by his counsel to social records, and probation or similar reports which are presumably considered by the juvenile court, and to a statement of the reasons for the juvenile court’s decision sufficient to enable meaningful appellate review thereof.

Full investigations can stop a lot of youths from going into higher courts and being tried as adults. The youths would be tried in the court of their own jurisdiction because these are youths who need more understanding and patience than higher courts have time to give.

3. *Preliminary hearings*—According to Federal Rule of Criminal Procedure number 5, a preliminary hearing without unnecessary delay does not apply in juvenile proceedings. This should be changed in my opinion. A preliminary hearing is the tool by which the court decides if there is probable cause or not. It is not fair for a youth to be tried in a juvenile or in an adult court without a preliminary hearing to see if he actually is to blame for the deed that was done or if he was an accomplice, or whatever. Preliminary hearings are very important in adult adjudications and should be in juvenile cases also. This is a complete denial of a right which a youth should be afforded for part of his due process in law. This federal ruling should be amended to extend to the juveniles. In *Harling v. United States*⁹ it was said that “from the moment a child commits an offense, he is in effect exempt from criminal law unless and until the juvenile court waives its jurisdiction and he may even be exempt thereafter if the district court decides that *parens patriae* plan of juvenile court should be applicable to him.” This is based on Rule 54b of the Federal Rules of Criminal Procedure. The author totally disagrees with this ruling because here again it is a complete denial of the juvenile’s due process rights.

4. *Miranda Ruling*—*The Miranda* case, *supra*, deals with the fifth amendment to the Constitution of the United States which states that a person should be able to safeguard himself from self-incrimination. He should be able to plead the Fifth Amendment and not feel that the court or officers or jury will hold that against him. The author feels that the *Gault* case, *supra*, could apply under this *Miranda* rule. In the *Gault* case

⁸ D. of C. CODE, ch. 9, title 11.

⁹ 416 F.2d 405 (1969). Writ of cert. den. to U.S. Court of Appeals for Ninth Circuit, 397 U.S. 917, 25 L.Ed.2d 97, 90 S.Ct. 922 (1970).

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the prior record of the juvenile was entered into evidence against the better interest of the youth. The youth or his counsel could say that this is self-incrimination and against the better interest of the youth, and should not be admissible as evidence against the youth.

5. *Escobedo Ruling*—This case was an Illinois case which stated that persons under the due process clause of the sixth and fourteenth amendments to the Constitution of the United States should be given their right to counsel and representation before and during trial and should be apprised of their constitutional rights so that they will not put themselves in jeopardy against their better interest. It is the author's firm opinion that all youths should be given their constitutional rights and human rights and the needed due process protection, just as adults, if not more so, because they are not as aware of the implications.

CONCLUSION

Sweeping reforms are needed in handling juvenile offenders. There should be an initial program of probation without a finding for first offenders. All juvenile records should be impounded and opened only upon the showing of good cause to be determined by a hearing. Opening of a juvenile's file should not be granted *ex parte*.

All decisions in juvenile court should be appealable. All out-of-court admissions or confessions from the adjudicatory stage of juvenile proceedings denied in court should be excluded.

SHEILA M. PARRISH

The Insurance Contract and Policy in General as it Relates to North Carolina

INTRODUCTION

A contract of insurance as taken from N.C. Gen. Stat. § 58-3, is an agreement by which the insurer is bound to pay money or its equivalent or to do some act of value to the insured upon, and as an indemnity or reimbursement for, the destruction, loss, or injury of something in which the other party has an interest.

A contract of insurance can further be defined as a method to indemnify the assured for loss. It is that portion of a contract under which a company agrees to indemnify the assured for loss or damage from perils therein defined, with provision for subrogation of the company to the right of assured against third persons. However that part of the contract