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## Role of the Attorney in Juvenile Court

Julian Greenspun\*

*Recognition of the right to counsel involves no necessary interference with the special purposes of juvenile court procedures; indeed it seems that counsel can play an important role in the process of rehabilitation.<sup>1</sup>*

A PROMINENT ATTORNEY in Cleveland recently remarked to me that he considered the Juvenile Court to be a mystery, which his firm tried to avoid as much as possible. The implication was that attorneys do not know what to expect once they enter this courtroom. This enigma has plagued many attorneys in the past; however, it is hoped that the *Gault*<sup>2</sup> decision will clarify the role of the lawyer in the Juvenile Court. Legislation on this problem is before the Ohio Legislature (for example) at the time of this writing (June, 1969).

Involvement with the Juvenile Court generally begins with a phone call from an hysterical parent who has had a petition filed against his youngster.<sup>3</sup> The first appointment with the parents will generally indicate that they are primarily concerned with getting their child out of the "mess" with as little embarrassment to themselves as possible. Sometimes, they are even concerned about their child's welfare. This gives rise to the attorney's greatest conflict; is it to be the child's or the parent's interest which he shall be representing? Needless to say, the attorney must be motivated by ethics and an intrinsic ingredient, often defined as conscience, to do what is best for the child.

Admittedly, this is easier said than done, particularly where an investigation reveals that the youngster's delinquent behavior is a result of his environment. The parents feel that the attorney was not retained to point out environmental shortcomings, but to "get the kid off the hook." Since it is the interest of the child which must be of primary concern, the attorney is called upon to use tactful dialogue in conveying the situation to the parents.

However, many attorneys remain motivated by the parents' interests. This point brings to mind David. David had a nasty habit of maliciously destroying the property of others. His parents' attorney made an investigation into the home situation and summarily concluded that the parents were wonderful individuals (particularly since they

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<sup>1</sup> In re *Gault*, 387 U.S. 1, at 38 (1967); Note, Rights and Rehabilitation in the Juvenile Courts, 67 Col. L. Rev. 281 (1967), 18 L. Ed. 2d 527 at 552, n. 64 (1967).

<sup>2</sup> In Re *Gault*, *supra* note 1.

<sup>3</sup> Levin, Role of the Lawyer in Juvenile Court Proceedings, 32 Penn. B. A. Q. 427 (1968).

were paying the fee) and that they were entirely incapable of neglecting David. He convinced the judge of the merits of the parents with such persuasive appeal that David was placed on probation in spite of a psychiatric recommendation to the contrary. Three weeks later David was picked up for carving intricate designs in crane tires with his switch-blade-knife.

In addition to being an advocate and a defender of constitutional and legal rights, counsel has an obligation at the first interview to explain the purpose and objectives of the Juvenile Court.<sup>4</sup> It is amazing to discover that so little is known about the Court by so many. One mother, whose son was charged with a traffic violation, asked me during the investigation if he might be sent to the Ohio State Reformatory!

After the investigation is completed (aids in investigation are explained *infra*), the advocate is prepared to enter the clandestine citadel, now armed with the guarantees imposed by *Gault*.<sup>5</sup>

Juveniles, prior to *Gault*, were sheltered from the procedures and dispositions received by adult criminal offenders,<sup>6</sup> under the assumption that the juvenile court was to act as a protective parent rather than a punitive authority.

In addition to the advantageous treatment received by juveniles prior to *Gault*,<sup>7</sup> this decision gave them the further protection of many of the important due process requirements of a criminal proceeding. The principal rulings of *Gault* may be summarized as follows: (1) the due process clause of the 14th Amendment applies to delinquency hearings which may result in confinement; (2) notice must be given in advance of the court proceedings and must set forth the alleged misconduct; (3) the child and his parents must be informed of the right to an attorney and if unable to afford one, the Court must show a willingness to appoint counsel to represent the child; (4) the privilege against self-incrimination applies and juveniles must be adequately apprised of their right to remain silent; and (5) absent an adequate and valid confession, confrontation and sworn testimony by witnesses available for cross-examination are essential. These elements apply solely to the hearing and not to prejudicial stages of the hearing.<sup>8</sup>

The elements are clearly set out, but the attorney still faces the dilemma of applying them to his particular case. Most of the elements are flexible in that some courts strictly adhere to them,<sup>9</sup> while others

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<sup>4</sup> Isaacs, *Lawyer in Juvenile Court*, 10 *Crim. L.Q.* 222 (1968).

<sup>5</sup> *In Re Gault*, *supra* note 1.

<sup>6</sup> *In Re Holmes*, 379 Pa. 599, 109 A.2d 523 (1954); *U.S. v. Borders*, 154 F. Supp. 214 (N.D. Ala. 1957); *State v. Couch*, 294 S.W. 2d 636 (Mo. App. 1956).

<sup>7</sup> *In Re Gault*, *supra* note 1.

<sup>8</sup> *Ibid.*

<sup>9</sup> *People v. Sykes*, 22 N.Y. 2d 159, 239 N.E. 2d 182 (1968).

interpret them liberally.<sup>10</sup> However, certain rules have developed from *Gault* which are consistently followed in Ohio and many Juvenile Courts in other states.

In most poignant terms the Supreme Court points out that the notice must set forth the particulars of the alleged misconduct.<sup>11</sup> This is of vital importance to the attorney since it allows him to prepare a defense, that is, to disprove the allegations of the petition. Although some courts, prior to *Gault*, held that the mere allegation of "delinquency" was sufficient,<sup>12</sup> it is inevitable that such flimsy, all inclusive allegations will not suffice in the future. However, inconsequential errors in the petition do not give attorneys a *carte blanche* to move for a dismissal or continuance if such errors may be easily rectified during or prior to the hearing. To resort to technicalities which do not hamper due process would be a wrongful injection of criminal adversary proceedings into the Juvenile Court.

### *In the Courtroom*

The primary significance of *Gault* is to insure the juvenile due process. However, this does not imply that the adversary system of the criminal court should be injected into juvenile court proceedings, thus turning the proceedings into a trial. Instead, the stress is upon safeguarding the youngster's right to due process while maintaining the atmosphere of a fair hearing. Thus, formality is avoided wherever possible and the informality of the proceedings has been frequently upheld by appellate courts on the basis that Juvenile Courts are non-criminal in nature.<sup>13</sup> As the *Gault* decision points out the hearing need not conform with all the requirements of a criminal proceeding but must measure up to the essentials of due process.<sup>14</sup>

The importance of maintaining a non-adversary procedure cannot be overstressed,<sup>15</sup> for an adversary system sets the stage for the entrance of the prosecutor's office and the Juvenile Court will inevitably become a criminal court. Remember, that the prosecutor's office is geared toward punitive measurements and the protection of society with

<sup>10</sup> *Sult v. Weber*, 210 So. 2d 739 (Fla. App. 1968).

<sup>11</sup> *In Re Gault*, *supra* note 1, at 31.

<sup>12</sup> *In re L* \_\_\_\_\_, 25 Ohio Op. 2d 369, 194 N.E. 2d 797 (1963); *In Re Duncan*, 62 Ohio L. Abs. 173, 107 N.E. 2d 256 (1951).

<sup>13</sup> *Cope v. Campbell*, 175 Ohio St. 475, 196 N.E. 2d 457 (1964); *Murphy v. City of New York*, 273 App. Div. 492, 78 N.Y.S. 2d 191 (1948); *In re DiMaggio*, 65 N.Y.S. 2d 613 (N.Y.C. Dom. Rel. Ct. 1946); *Cox v. Wood*, 152 Tex. 283, 256 S.W. 2d 841 (1953).

<sup>14</sup> *In Re Gault*, *supra* note 1, at 27-29.

<sup>15</sup> *Cope v. Campbell*, *supra* note 13; *In the Interest of Lindh*, 11 Utah 2d 385, 359 P. 2d 1058 (1961).

little thought of the child's welfare. This would produce not only an increase in commitments, but commitments to improper institutions.<sup>16</sup>

### *Attorney As an Advocate and Other Miscellaneous Vocations*

First and foremost the attorney is an advocate, a protector of constitutional rights. *Gault* undeniably thrusts this role into the Juvenile Court setting. But because of the nature of the Court, the attorney must not only be an advocate, but a quasi sociologist-psychologist. A dual role is assumed because he must not only protect the rights of the juvenile but must also consider his welfare. Frankly, "winning" the case is of secondary importance unless the juvenile is clearly innocent of the charge. Of equal, if not of primary concern, is the child's welfare. It has been observed on occasion that lawyers, after delinquency has been established by much more than a preponderance of evidence, revert and regress to irrelevant technicalities which have little bearing on due process. Victory is interpreted in terms of personal gain and the child's welfare is smothered by the cloak of adherence to rigorous procedure.<sup>17</sup>

If the attorney succeeds in getting the petition dismissed when the child is actually guilty, the child may come to believe that as long as he has a "mouthpiece" he can continue his pattern of delinquent behavior with impunity.<sup>18</sup>

### *Privilege Against Self Incrimination*

*Gault* held that a Juvenile Court judge must inform the parent and the child of their right to remain silent.<sup>19</sup> This appears to be an extension of *Miranda*<sup>20</sup> to the Juvenile Court.

Although a 1966 California decision rejected *Miranda* as pertaining to Juvenile Courts on the reasoning that a juvenile court procedure was

<sup>16</sup> Whitlatch, *The Gault Decision—Its Effect on the Office of the Prosecuting Attorney*, 41 Ohio Bar 41 (1968).

<sup>17</sup> Dr. Charles McKay of the Department of Sociology of Case-Western Reserve University related a unique but most poignant approach about the adherence of the adversary system to the letter of the law. His notion is in terms of, "How does the child perceive the situation." He doubts that the child would ever perceive it as one in which people are trying to help him, in the full fledged adversary proceeding, and that the child feels like a pawn, surrounded by formalities which he does not understand. Dr. McKay went on to say, "The main reason why he's (the child) there becomes lost as far as he's concerned. It's no longer a question of what he did but the emphasis shifts to the outcome which will be immediately most advantageous to him. This, of course, is getting him off the hook." Dr. McKay said that the parents are often guilty of this same error. That is, the parents and the attorney are not concerned with remedies, but the emphasis shifts to the specific act and what they're going to do with the child in terms of that act. The future of the child is forgotten. (Personal interview, April, 1969.)

<sup>18</sup> Alexander, *Constitutional Rights in Juvenile Court*, 46 A.B.A.J. 1206 (Nov. 1960).

<sup>19</sup> *In re Gault*, *supra* note 1, at 47.

<sup>20</sup> *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602 (1966).

not a criminal trial<sup>21</sup> this was overruled by *Gault* which specifically stated that the privilege against self incrimination is applicable to juveniles as well as adults.<sup>22</sup> However, this is not a right which should be abused by counsel. In cases where a child admits guilt to an attorney, but the attorney is fortified by the child's right to remain silent, he can obtain dismissal, and on issues not connected with guilt or innocence. This would encourage lawyers to advise their clients to remain silent and would necessitate a prosecutor, the result of which would be an adversary proceeding instead of a hearing.

The paramount purpose of maintaining a non-adversary proceeding is to elicit the truth, for it is only the truth which will benefit the child. For this reason counsel should permit his client to respond to the Judge concerning issues which are pertinent to the case. Too often an attorney may take advantage of the empty chair on the other side of the table, by advising his client before the hearing, to remain silent.

The attorney has a responsibility to adduce for the Court all facts and evidence which he has obtained. Such full disclosure will greatly eliminate the judge acting as prosecutor who would look unfavorably on hidden facts and conflicting testimony elicited by him at the hearing.<sup>23</sup>

### *Evidence—Hearsay*

*Gault* does not expressly prohibit the admissibility of hearsay in attaining fairness for the child at the hearing.<sup>24</sup> Generally, Courts have varied on the admissibility of hearsay. Some courts have acceded to the admission of most testimony.<sup>25</sup> The Supreme Court of Pennsylvania has held that a Juvenile Court may avoid the legalities of rules of evidence which are applicable to other hearings.<sup>26</sup> In Ohio, the hearsay

<sup>21</sup> *In re Castro*, 243 Cal. App. 2d 402, 52 Cal. Rptr. 468 (1966).

<sup>22</sup> *In re Gault*, *supra* note 1, at 55. For an early application of this principle laid down in the *Gault* decision see, *Ex parte De Grace*, 425 S.W. 2d 228 (Mo. App. 1968).

<sup>23</sup> Whitlatch, *The Juvenile Court—A Court of Law*, 18 *Wes. Res. L. Rev.* 1239 (1967).

<sup>24</sup> *In Re Gault*, *supra* n. 1.

<sup>25</sup> *In Re Rich*, 125 Vt. 375, 216 A. 2d 266 (1966). Likewise, the New York Family Court Act, Sec. 745, provides for the admission of all evidence, material and relevant, during the dispositional hearing, providing that the adjudication be based on a preponderance of evidence. Thus an open door is left for the admission of appropriate hearsay evidence, which seems to be the more generally accepted rule. References to this act may be found in the New York Standard Civil Practice Service, volume 24 (1964).

Compare, however, with a Nebraska decision which held that "Reports of an *ex parte* investigation made by investigators from the police and child welfare departments are not competent evidence in a proceeding to have a minor child declared a delinquent, and may not be considered by the court in the hearing and decision of a disputed issue." *In re Barkus*, 168 Neb. 257, 95 N.W. 2d 674 (1959).

<sup>26</sup> *In re Holmes*, *supra* note 6.

rule is frequently relaxed in administrative hearings,<sup>27</sup> but a judge may strike certain hearsay testimony.<sup>28</sup>

In considering *Gault*, therefore, the reasonable conclusion would be that hearsay is generally admissible provided that it does not hamper due process, and is material and relevant to the issues. For example, it is quite obvious that neighbors or teachers should not be permitted to testify as to the number of times they saw Johnny flatten tires or throw paperclips in the classroom and whose primary interest is in getting Johnny "out of their hair."

### *Evidence in General*

The rules of evidence which are generally applied to Juvenile Court are those shown by long experience as essential to getting at the truth with reasonable certainty.<sup>29</sup>

A bone of contention is whether the exclusionary rule prohibiting the admission of evidence illegally seized should be extended to Juvenile Courts. On a parallel with this is whether the requirement of *Miranda v. Arizona*<sup>30</sup> should apply to police interrogation of juveniles. Prior to *Gault* a few courts applied the *Miranda* case to juveniles.<sup>31</sup>

Technically, *Gault* does not apply to either of these situations since the Court states that it is not concerned with procedural or constitutional rights applicable to the pre-judicial stages of the juvenile process; although the court does mention that the police should inform children of their privilege against self incrimination.<sup>32</sup>

For those who believe that *Gault* should or will result in an extension of the exclusionary rule to Juvenile Courts the question is, as to juveniles, what is illegally obtained? As to adults evidence is admissible if the obtaining was incidental to a lawful arrest.<sup>33</sup> A lawful arrest exists when the police officer observed the adult committing a misdemeanor or has reasonable grounds to believe that the person has committed or is committing a felony.<sup>34</sup> However, where juveniles are concerned, a police officer may take the child into protective custody where he has legal grounds to believe that the child is delinquent and

<sup>27</sup> 1 Ohio Jur. 2d, Administrative Law and Procedure 102 (1953).

<sup>28</sup> *State v. Shardell*, 107 Ohio App. 338, 153 N.E. 2d 510 (1958); where the trial judge struck all hearsay evidence presented by the police officer, who obtained the prejudicial information from other boys not in the presence of the defendant.

<sup>29</sup> *People v. Lewis*, 235 App. Div. 559, 257 N.Y.S. 457 (1932); *U.S. v. Borders*, *supra* note 6; New York Family Court Act secs. 724, 734, 735.

<sup>30</sup> *Miranda v. Arizona*, *supra* note 20; holding that the privilege against self incrimination extends to police interrogation and that confessions illegally obtained are inadmissible as evidence.

<sup>31</sup> *In re Ronney*, 40 Misc. 2d 194, 242 N.Y.S. 2d 844 (1963); *Urbasek v. People*, 76 Ill. App. 2d 375, 222 N.E. 2d 233 (1966).

<sup>32</sup> *In re Gault*, *supra* note 1, at 55.

<sup>33</sup> *Mapp v. Ohio*, 367 U.S. 643, at 655, 81 S. Ct. 1684, at 1691 (1961).

<sup>34</sup> *Smith v. New Jersey*, 37 N.J. 481, 181 A. 2d 761, cert. denied 374 U.S. 835, 83 S. Ct. 1879 (1963).

it is not necessary that the child be committing a misdemeanor in the officer's presence or that cause exists for the officer to believe that the child has been involved in the commission of a felony.<sup>35</sup> The grounds for believing a child to be a delinquent are infinite and include such things as violation of curfew, failure to obey parents, and missing appointments with probation officers.<sup>36</sup> Since taking a child into custody is tantamount to a lawful arrest, but with a much wider range of permissibility for such action, it appears as though the exclusionary rule will be infrequently resorted to in Juvenile Court proceedings.<sup>37</sup>

### *Quantum of Proof*

To expand upon the degree of proof required, one must go from the part to the whole; that is from specific allegations in the petition to a finding of delinquency.

Where a petition makes specific allegations, the truth of the allegations must be established by a preponderance of evidence.<sup>38</sup> Thus, where an officer alleged that a minor assaulted him and the evidence elicited was that when the minor tried to escape from the police cruiser the officer hit his chin on the door, the court held that there was not a preponderance of evidence sufficient to sustain an allegation of assault.<sup>39</sup>

<sup>35</sup> In re L -----, *supra* note 12; New York has taken a more stringent approach regarding the taking of a child into custody. Under its New York Family Court Act, a police officer (Sec. 721), or a private person (Sec. 721), may take a child into custody only if he has done an act that in the case of an adult would constitute a crime. All other detention must be ordered by a family court, either through a summons (Secs. 736, 737), or under a warrant if the summons is ignored or is ineffective under the circumstances (Secs. 725, 738).

<sup>36</sup> Ohio Rev. Code, Sec. 2151.02; Many states have been gravitating away from frivolous ground for arresting adults. In New York prior to 1967, under vagrancy legislation, one could be "picked up" if he did not have a visible means of maintaining himself. Such legislation has been held unconstitutional in that it was a misuse of police power. Fenster v. Leary, 20 N.Y. 2d 309, 229 N.E. 2d 426 (1967).

Las Vegas (of all places) had a city ordinance which prohibited persons of "evil reputation" from meeting one another. In Parker v. Las Vegas Municipal Judge, 83 Nev. ---, 427 P. 2d 642 (1967), the ordinance was held unconstitutional, because it punished status rather than act plus intent. Perhaps as a result of such decisions, affecting adults, and in the shadow of *Gault*, such vague and indefinite Juvenile Delinquency legislation will no longer be acceptable.

<sup>37</sup> Although one might contend that the Exclusionary Rule of *Mapp* will seep into Juvenile Court proceedings, since the *Miranda* requirements have been invoked on occasion, several New York decisions have in fact, held that evidence unlawfully obtained is to be excluded in a delinquency proceeding, Matter of Williams, 49 Misc. 2d 900, 255 N.Y.S. 2d 987 (1965).

Thomas Whalen, a Cleveland attorney, who was a detective for the Cleveland Police Department for 25 years, litigates cases for delinquent Negroes on a no-fee basis. He states that the reason for his benevolence is that he is "bearing the cross" for so many years of physical abuse administered to the children once they were inside the paddy wagon. If these high handed police tactics still exist (and it is believed by many that they do) the doctrines of *Miranda* and *Mapp* should be ubiquitously applied in the court.

<sup>38</sup> In re L -----, *supra* note 12.

<sup>39</sup> *Ibid.*

Moving on to the whole, a delinquency proceeding is not criminal in nature and a mere preponderance of the evidence is sufficient to warrant a finding of delinquency, even though such determination involves a violation of a state criminal statute. This attitude is assumed by most states but exceptions can be found.<sup>40</sup> An Illinois court held that where the findings of delinquency for misconduct, which would be criminal if charged as an adult, is valid only when the acts of delinquency are proved beyond a reasonable doubt.<sup>41</sup> A New York court found that where a child is charged with arson, to be adjudged delinquent, he must be proven guilty beyond the reasonable doubt.<sup>42</sup>

### *Disposition*

Many attorneys feel that their duty ends upon adjudication. However, due to the nature of the juvenile court (that of providing for the welfare of the child), counsel must be prepared to represent his client in the dispositional phase of the hearing.<sup>43</sup> Perhaps this phase has cast the greatest but most rewarding responsibility upon the attorney; it requires him to be a quasi sociologist-psychologist and therefore a knowledge of the behavioral sciences and community facilities is a must.

A lawyer has many tools with which to work in this area, but by far the most important is the social investigation prepared by the court staff of probation officers, psychiatrists and psychologists. These people have the training and devoted most of their time gathering information, including financial resources, personality evaluations of the child, and psycho-dynamic interrelationships of the family.<sup>44</sup>

Attorneys frequently assume they have an innate God-given power of determining what really makes the child "tick." On one occasion,

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<sup>40</sup> *In re Bigsby*, 202 A. 2d 785 (D.C. App. 1964); *Johnson v. Johnson*, 30 Ill. App. 2d 439, 174 N.E. 2d 716 (1967); a recent Ohio decision, however, held that a juvenile court judge may, in his discretion, deny a request for a jury trial and decide the case on a preponderance of evidence, *In re Benn*, 18 Ohio App. 2d 97, 247 N.E. 2d 335 (1969).

<sup>41</sup> *In re Urbasek*, 38 Ill. 2d 535, 232 N.E. 2d 716 (1967).

<sup>42</sup> *In re Madik*, 233 App. Div. 12, 251 N.Y.S. 765 (1931).

<sup>43</sup> David Matza, professor of Criminology at University of California, Berkeley, points out that the correctional institution "label" stamps a boy with an indelible mark that others tend to judge him by. If a young adult says that "I stole a few cars when I was a kid," he is looked upon as only being a mischievous kid in his younger days. But, "I stole some cars when I was a kid and was at the reform school," means that not only was he mischievous but also he was in reform school. This puts him in a different perspective in other's minds, as well as his own, in that he is no "damn good," because the state has told him so.

In addition, Professor Matza further suggests that the child in Juvenile Court or in reform school quickly becomes aware that there are others who did the same thing he did and are out on the street. Of course, he feels that he got a "bum rap" and is impregnated with bitterness. Matza, *Delinquency and Drift*, at 101-104 (Wiley, 1964).

<sup>44</sup> *Juvenile Court of Cuyahoga County (Ohio) Probation Officers' Manual*, at 101 *et seq.* (1961).

after reading the social investigation, an elderly attorney slammed it down on my desk and mumbled "nonsense." He began ranting about the time he was in a barber shop in 1939, and accused Mussolini of being a "bum," which almost resulted in his throat being slit. "From that time," he said, "I have never made an error in character judgment."

The Ohio Revised Code has been amended to permit council to inspect the probation officer's and social worker's records used in the hearing.<sup>45</sup> The basic argument against this amendment was that such a disclosure would destroy the confidential relationship of the court worker and the client and would be disruptive of family relationships.<sup>46</sup> Rarely has this presumption been verified. However, on one occasion an attorney read in the psychiatric report that the child had been acting out as a result of an intolerable and insecure home situation. Counsel relayed this information to the mother, who in spite of her shortcomings, loved her child. The result was the destruction of any possibility the probation officer had of working with the boy and his family.

It is not enough to know what the record says, but one must understand what the record means. The attorney may ask the probation officer or the psychiatrist for explanations.

Once the attorney understands the child's psychological composition, and the community or state facilities available for treatment, he is in an excellent position to suggest to the court the type of treatment which would be best for the child. Most juvenile courts have a Division of Placement whose purpose is to determine the suitability of a child for a particular institution and to attempt to procure a placement at that institution. Consulting with the placement department will give the attorney a working knowledge of the various institutions and their requirements for admissibility.<sup>47</sup>

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<sup>45</sup> Ohio Rev. Code, Sec. 2151.35 (1966).

<sup>46</sup> Whitlatch, *supra* note 23. Dr. Charles McGhay of the Department of Sociology of Case-Western Reserve University elucidated on the necessity of accessibility of family records to attorneys. His well taken point is that many times a judge will make decisions based on the boy's previous record. If this is the case the attorney should have some information available to him, since the lawyer is representing the interests of the child, while the judge represents the interests of the child *and* the community. He further commented that if the lawyer maintains professional ethics there should be no disruption of family relationships, allowing of course, a margin of error for "downright ignorance." (Personal interview, April, 1969.)

<sup>47</sup> The Placement Department of the Juvenile Court of Cuyahoga County places children in private institutions across the country (as well as state schools in Ohio). In terms of cost of care, the least expensive is the famous Father Flanagan's *Boystown*. The county pays one dollar per day (a pittance), for boys which it places there. Devereux Schools, located in six states, charges approximately \$1000 per month for a child under its care. Generally, the parents of the child pay the bulk of the fee. Devereux facilities include an overall staff-student ratio of approximately one to one in their environmental therapy program, and a full time medical, psychological, psychiatric staff. There are myriad schools falling between *Boystown* and Devereux in terms of costs. Of course, the child's placement does not turn on cost of care, but

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Of course, placement in an institution is not always the right answer. For example, if the child's acting out is a result of an excess of idle time and a feeling of poor self-worth, perhaps the Job Corps or the Military might be the solution. There are many other possible recommendations such as foster home care, social service counselling and probation, to name a few.<sup>48</sup>

Admittedly, the probation report often determines the disposition. It is not inconceivable that the report may be biased by the probation officers prejudices or idiosyncracies. A lawyer can insure that the disposition is based on complete and accurate facts.

Counsel may also give the child and his family a voice in the proceeding by acting as their spokesman. As in one hearing, where the parents told their attorney of their desire to have their son at home and their willingness to go to a social worker. The attorney relayed this to the Judge prior to disposition and it prevented the boy from being sent to an institution.

Finally, the attorney can interpret the disposition to the family and help them to accept a proper disposition. To the parents, this could mean a job well done by the attorney, since it was primarily he, who helped secure the disposition. To the child it could prevent bitterness and resentment because he "got a fair shake."

If a child is placed on probation, the attorney *must* encourage cooperation from the parents and the child. The best example of what not to do is where a child was placed on probation and, while a probation officer was talking to the boy, his attorney (full of impatience) barked, "Yeh, Yeh! Let the kid go already, he spent five days in the Detention Home."

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rather on the child's needs if the money is available. Devereux for instance, is best suited for children of above average intelligence who are suffering from emotional disturbance. Boystown is generally available to economically deprived youths who have gravitated towards delinquency as a result of their environment.

<sup>48</sup> There are many such facilities available in the Cuyahoga County area, for which there is no charge. Catholic Big Brothers is one of these, whereat "big brothers" are assigned to fatherless boys who show signs of underdevelopment because of the lack of a male person in their lives, with whom to identify. Jewish Big Brothers also operate on the same principle, as does Protestant Big Brothers.

The Cuyahoga County Youth Service offers individual and group casework counselling for young people between the ages of 12 and 21 with personal, social and behavioral problems. The Mental Development Center of Case-Western Reserve University provides evaluation, parent guidance and counselling for children who have problems of slow mental development.

This is by no means an exhaustive list, but perhaps from this an attorney representing a child will become aware that everything is not "100%" when they leave the courtroom. He can be the catalytic factor, resulting in further help and guidance for his client.

### Conclusion

An attorney once commented that the *effect* of *Gault* was to place him in his proper role, that of an advocate whose sole purpose was to defend constitutional rights, and that he did not have to be a social worker or psychologist. But the effect of *Gault* is to bring counsel into the Juvenile Court,<sup>49</sup> which is a court with compassion.<sup>50</sup> Thus, being a special court, it requires special skills,<sup>51</sup> so that the client may not only receive due process, but if needed, will receive proper care.

Even though getting involved with the Juvenile Court necessitates the learning of new skills, it is well worth the extra effort. It will bring you the respect and admiration of the Juvenile Court and the community.

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<sup>49</sup> Does not the requirements of *Gault* that every child shall have the right to be represented by counsel mean that more lawyers are going to be in Juvenile Court? In a scholarly work, Professor B. George, Jr. of the University of Michigan School of Law, suggests that the attorney will have less difficulty, adapting to the procedures required by *Gault*, than the court staff will. George, *Gault* and the Juvenile Court Revolution, at 52 (Institute of Continuing Legal Education, 1968).

<sup>50</sup> Although it is felt that the Juvenile Court must have compassion because of the innocence and naiveté of juvenile offenders and the good possibility of rehabilitation at their young age, Sheldon and Eleanor Glück, in a study of delinquent youths, suggested that there is very little evidence of what kind of rehabilitation programs are successful. They emphasize that the basic reason for this is chronological maturation, to wit, they get married, settle down etc. and that this pulls them out of the street gang. Glück, *Later Criminal Careers* (Commonwealth fund, 1937).

Dr. Walter Reckless, noted authority on Criminology, also points out that the delinquents of today are not the criminals of tomorrow and that this presumption is verified by many studies of adult male prison populations, which have indicated that less than 50 percent of the adult prisoners were involved in any sort of delinquency. Reckless, *The Crime Problem*. (Appleton-Century-Crafts, 1961.)

<sup>51</sup> No doubt the attorney will confront more expert witnesses than in an ordinary criminal hearing, in that much emphasis is placed on the findings of the probation officers, psychologists and psychiatrist.