STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION AND STUDY

relating to

The Right to Counsel and the Separation of the Delinquent From the Nondelinquent Minor in Juvenile Court Proceedings

October 1960

LETTER OF TRANSMITTAL

To His Excellency Edmund G. Brown
Governor of California
and to the Members of the Legislature

The California Law Revision Commission was authorized by Resolution Chapter 202 of the Statutes of 1957 to make studies to determine (1) whether minors should have a right to counsel in juvenile court proceedings and (2) whether changes in the Juvenile Court Law or in existing procedures should be made so that the term "ward of the juvenile court" would not be applicable to nondelinquent minors. The Commission herewith submits its recommendation relating to these subjects and the study prepared by its research consultant, Professor Arthur H. Sherry of the School of Law, University of California at Berkeley.

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Executive Secretary

October 1960

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RECOMMENDATION OF THE CALIFORNIA LAW REVISION COMMISSION

Relating to the Right to Counsel and the Separation of the Delinquent From the Nondelinquent Minor in Juvenile Court Proceedings

Section 700 of the Welfare and Institutions Code gives the superior court, sitting as the juvenile court, jurisdiction over persons under the age of 21 years who are in need of supervision or care either because of the unfortunate condition in which they find themselves or because of their antisocial tendencies. When, after a hearing, the juvenile court finds that a person comes within any of the provisions of Section 700, the court may either admonish him and dismiss the petition or adjudge him to be a ward of the juvenile court. Upon adjudging a person to be a ward, the court may place the ward in the care of his parents under the supervision of the probation officer, may order him detained in local institutions (including the county jail if the ward is over 18), or may commit him to the Youth Authority. A ward may also be taken from his parents and placed in a foster home or in an institution devoted to the care of unfortunate children.

After a juvenile has been adjudged to be a ward of the juvenile court, the juvenile court may, at any time, change the original order, *e.g.,* the court may order a ward who had been placed in the care of his parents to be detained in an institution for juvenile offenders, or the court may change the nature and location of the detention previously ordered. There is no requirement that there be a hearing upon the necessity for changing the original order, for the court is regarded as the guardian of the juvenile exercising its lawful right to change the physical custody of its ward.

Even when a juvenile court proceeding is initiated because the juvenile involved is alleged to have violated a criminal statute, the proceeding is not regarded as a criminal proceeding. The theory of all juvenile court proceedings is that the State, acting through the juvenile court, steps in to fill a parental role. Because of its paternalistic character, the juvenile court operates differently from other courts. Its proceedings are not regarded as adversary proceedings in which guilt is to be established; the court is regarded as being concerned with diagnosing the juvenile's problem—whether of social maladjustment or the lack of adequate supervision or care—and finding an individualized solution for it. Therefore, the court proceeds informally and relies on reports of the court's staff which would be regarded as hearsay and inadmissible in other court proceedings. Because the proceeding is noncriminal, the procedural protections given an accused in a criminal case are inapplicable. There is no right to a jury trial, no right

to confront witnesses, no right to be warned against self-incrimination, no right not to be placed twice in jeopardy and no right to be admitted to bail. Although a juvenile who is represented by counsel may not be deprived of such representation at the original hearing, the juvenile court has no duty to inform the juvenile or his parents of their right to counsel. Moreover, if a hearing is held to determine whether an order relating to a ward should be changed, there is no right to counsel at that hearing.

In recent years, there has been increasing concern whether a judgment so substantially restrictive of the liberty of the individual should be made in a proceeding in which that individual is not represented by counsel and is unaware of his right to be so represented. There has also been increasing concern whether all juveniles within the jurisdiction of the juvenile court should be adjudged to be "wards." The indiscriminate use of this designation tends to foster the misconception that all wards are juveniles who have been involved in some kind of wrongdoing. Moreover, the indiscriminate use of this designation has been used to justify the denial of the right to counsel upon proceedings to change an order which merely placed a neglected child under supervision to an order committing the child to a correctional institution.

The Law Revision Commission recommends:

1. A statute should be enacted providing that a juvenile has the right to be represented by counsel in all proceedings of the juvenile court, including proceedings held to determine the necessity for modifying previous orders of the court.

2. Whenever a juvenile is brought before the juvenile court upon an allegation of misconduct, the juvenile court should be required to inform the juvenile and the parents, if present, of the juvenile's right to be represented by counsel. If counsel is desired, the juvenile should be given an opportunity to obtain counsel.

3. The parents of a juvenile who is brought before the juvenile court should be given the right to select counsel for the juvenile unless the court finds that their interest is adverse to the interest of the juvenile. If the parents' interest is adverse, the juvenile should be permitted to select counsel. In a proper case, the court should be empowered to appoint counsel for the juvenile.

The Law Revision Commission has considered whether it should recommend that counsel be furnished to juveniles at public expense. The Commission has decided not to make such a recommendation because the issue is primarily fiscal rather than legal in nature and hence is not an issue as to which it would be appropriate for the Commission to make a recommendation to the Legislature.

4. The parents of a juvenile who is brought before the juvenile court should have their right to be represented by counsel guaranteed by statute. The juvenile court should be required to inform the parents of the nature of the proceeding and of their right to be represented. The court should be required to allow the parents a reasonable time to obtain counsel.

5. The juvenile court should adjudge a juvenile to be a "ward" only if the court's jurisdiction over the juvenile is based upon the

juvenile's misconduct. If a juvenile is brought before the juvenile court merely because he lacks proper supervision or care, the court should adjudge the juvenile to be a "dependent child." The court should have no power to place a dependent child on probation, to detain a dependent child in the county jail or to commit a dependent child to the Youth Authority or to a local correctional institution unless the dependent child is also adjudged to be a ward because of his misconduct.

The Commission's recommendation would be effectuated by the enactment of the following measures:*

I

An act to add Sections 732.1, 732.2, 732.3 and 732.4 to the Welfare and Institutions Code, relating to juvenile courts.

The people of the State of California do enact as follows:

SECTION 1. Section 732.1 is added to the Welfare and Institutions Code, to read:

732.1. A person within the jurisdiction of the juvenile court or alleged to be within the jurisdiction of the juvenile court has the right to be represented by counsel in all proceedings of the juvenile court under this chapter, including but not limited to proceedings to determine whether a person comes within the provisions of Section 700, proceedings to determine the reasons for the necessity of the detention of such person under Section 729.5, and proceedings to change, modify, or set aside an order of the court under Section 745. Such counsel shall have all of the ordinary rights of an attorney representing a client, including but not limited to the right to discuss the case privately with his client, to object to the qualifications of witnesses and to questions propounded to them, and to cross-examine witnesses.

SEC. 2. Section 732.2 is added to the Welfare and Institutions Code, to read:

732.2. When a person named in a petition alleging that he is within the jurisdiction of the juvenile court under subdivision (f), (g), (h), (i), (j), (k) or (m) of Section 700[1] is brought before the court, the

* Matter in italics would be added to the present law; matter in "strikeout" type would be omitted from the present law.

[1] Section 700 of the Welfare and Institutions Code provides:

700. The jurisdiction of the juvenile court extends to any person under the age of 21 years who comes within any of the following descriptions:

(a) Who is found begging, receiving or gathering alms, or who is found in any street, road, or public place for the purpose of so doing, whether actually begging or doing so under the pretext of selling or offering for sale any article, or of singing or playing on any musical instrument, or of giving any public entertainment or accompanying or being used in aid of any person so doing.

(b) Who has no parent or guardian; or who has no parent or guardian willing to exercise or capable of exercising proper parental control; or who has no parent

court shall inform him and, if present, his parents, guardian or custodian of the substance of the allegations in the petition, of the nature of the proceedings and that he has the right to the aid of counsel. The court shall ask the person named in the petition and, if present, his parent, guardian or custodian if it is desired that the person named in the petition have the aid of counsel. If any of them answers in the affirmative the court must allow a reasonable time to obtain counsel. The court may appoint counsel for the person named in the petition on its own motion if it believes such appointment to be in the interest of justice.

SEC. 3. Section 732.3 is added to the Welfare and Institutions Code, to read:

732.3. Except when the court determines that the interest of the parent, guardian or custodian of a person named in a petition alleging that he is within the jurisdiction of the juvenile court is adverse to that of the person named in the petition, if such parent, guardian or custodian desires that the person named in the petition have the aid of counsel, the person named in the petition shall be represented by counsel selected by his parent, guardian or custodian without regard to his own wish not to be represented by counsel or to select different counsel to represent him.

When the court determines that the interest of the parent, guardian or custodian is adverse to the interest of a person alleged to be within the jurisdiction of the juvenile court, such person may be represented by counsel of his own choosing. If such person is unwilling or unable to select counsel, the court may appoint counsel for such person if it believes such appointment to be in the interest of justice.

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or guardian actually exercising such proper parental control, and who is in need of such control.

(c) Who is destitute, or who is not provided with the necessities of life by his parents, and who has no other means of obtaining such necessities.

(d) Whose home is an unfit place for him, by reason of neglect, cruelty, or depravity of either of his parents, or of his guardian or other person in whose custody or care he is.

(e) Who is found wandering and either has no home, no settled place of abode, no visible means of subsistence or no proper guardianship.

(f) Who is a vagrant or who frequents the company of criminals, vagrants, or prostitutes, or persons so reputed; or who is in any house of prostitution or assignation.

(g) Who habitually visits, without parent or guardian, a public billiard room or public poolroom, or a saloon or a place where any spirituous, vinous, or malt liquors are sold, bartered, exchanged, or given away.

(h) Who habitually uses intoxicating liquors or habitually uses opium, cocaine, morphine, or other similar drug without the direction of a competent physician.

(i) Who persistently or habitually refuses to obey the reasonable and proper orders or directions of his parents, guardian, or custodian; or who is beyond the control of such person.

(j) Who is a habitual truant from school within the meaning of any law of this State or is habitually insubordinate or disorderly while in attendance at school.

(k) Who is leading, or from any cause is in danger of leading, an idle, dissolute, lewd, or immoral life.

(*l*) Who is insane, feeble-minded, or so far mentally deficient that his parents or guardian are unable to exercise proper parental control over him, or whose mind is so far deranged or impaired as to endanger the health, person, or property of himself or others.

(m) Who violates any law of this State or any ordinance of any town, city, or county, or this State defining crime.

(n) Who is afflicted with syphilis, gonorrhea or chancroid and is in need of medical and custodial care, or both.

SEC. 4. Section 732.4 is added to the Welfare and Institutions Code, to read:

732.4. The parent, guardian or custodian of a person within the jurisdiction of the juvenile court or alleged to be within the jurisdiction of the juvenile court has the right to be represented by counsel in all proceedings of the juvenile court under this chapter. Such counsel shall have all of the ordinary rights and powers of an attorney representing a client, including but not limited to the right to discuss the case privately with his client, to object to the qualifications of witnesses and to questions propounded to them, and to cross-examine witnesses.

When a person named in a petition alleging that he is within the jurisdiction of the juvenile court is brought before the court, the court shall inform his parent, guardian or custodian, if present, of the substance of the allegations in the petition, of the nature of the proceeding, and that such parent, guardian or custodian has the right to the aid of counsel. If the parent, guardian or custodian indicates that he desires the aid of counsel, the court must allow a reasonable time to obtain counsel.

II

An act to amend Sections 551, 580, 603, 605, 640, 641.1, 643, 660, 673, 720, 724, 735, 738, 739, 740, 740.5, 743, 746, 750, 751, 753, 860, 861, 862, 867, 868.10, 869, 870, 871, 880, 884.5 and 886 of the Welfare and Institutions Code, and Section 1407 of the Probate Code, relating to juvenile courts.

The people of the State of California do enact as follows:

SECTION 1. Section 551 of the Welfare and Institutions Code is amended to read:

551. This chapter shall be liberally construed, to the end that the care, custody, and discipline of a ward *or dependent child* of the juvenile court, as defined in this chapter, shall approximate as nearly as possible that which should be given by his parents. In all cases where it can be properly done, the ward *or dependent child* of the juvenile court shall be placed in an approved family, with people of the same religious belief, and shall become a member of the family.

SEC. 2. Section 580 of the Welfare and Institutions Code is amended to read:

580. A judgment or decree of a juvenile court assuming jurisdiction and declaring any person to be a ward *or dependent child* of the juvenile court or a person free from the custody and control of his parents may be appealed from in the same manner as any final judgment, and any subsequent order may be appealed from as from an order after judgment; but no such order or judgment shall be stayed by such ap-

peal, unless suitable provision is made for the maintenance, care, and custody of such person pending the appeal, and unless such provision is approved by an order of the juvenile court. Such appeal shall have precedence over all other cases in the court to which the appeal is taken.

SEC. 3. Section 603 of the Welfare and Institutions Code is amended to read:

603. At any time the juvenile court, or the judge thereof, may, and upon request of the county board of supervisors shall, require the probation committee or the probation officer to examine into and report to the court upon the qualifications and management of any society, association, or corporation, other than a state institution, which applies for or receives custody of any ward *or dependent child* of the juvenile court. No probation officer or probation committee, however, shall, under authority of this section, enter any institution without its consent. If such consent is refused, commitments to that institution shall not be made.

SEC. 4. Section 605 of the Welfare and Institutions Code is amended to read:

605. The probation committee, when so directed by the court, shall exercise a friendly supervision and visitation over the wards *and dependent children* of the juvenile court. It shall furnish the court information and assistance whenever required, upon the request of the court; and from time to time it shall advise and recommend to the court such change or modification of the order made in the case of a ward *or dependent child* of the juvenile court as may be for the best interests of such person. Upon request of the judge, any member of the probation committee shall investigate the case of an alleged ward *or dependent child* of the juvenile court, and render a report thereon to the judge.

SEC. 5. Section 640 of the Welfare and Institutions Code is amended to read:

640. The probation officer shall be present in court to represent the interests of each such person when his case is heard, and shall furnish to the court such information and assistance as the court may require and shall make his report thereon at that time. If so ordered, he shall take charge of such person before and after the hearing. At any time the probation officer may bring any ~~such~~ ward *or dependent child* committed to his care before the court with written report and recommendation for such further order or other action as the court deems proper. Before any such ward *or dependent child* is recommitted, the probation officer shall inquire into the reasons assigned for such action and shall be present in court to represent the interests of ~~such~~ *the* ward *or dependent child*.

SEC. 6. Section 641.1 of the Welfare and Institutions Code is amended to read:

641.1. The probation officer is authorized to receive money, give his receipt therefor, immediately deposit such money in the county treasury, and direct the disbursement thereof in the same manner that county trust money is disbursed, in any of the following instances:

~~1.~~ *(a)* Money payable to a spouse or child in an action for divorce, separate maintenance or similar action, together with court costs and attorney's fees, upon order of a court of competent jurisdiction.

~~2.~~ *(b)* Money payable to or on behalf of a ward *or dependent child* of the juvenile court or a person concerning whom a petition has been filed in the juvenile court.

~~3.~~ *(c)* Money payable to, by or on behalf of probationers under the supervision of the probation officer.

~~4.~~ *(d)* Money payable to a child, wife or indigent parent when it has been alleged or claimed that there has been a violation of either Section 270, 270a or 270c of the Penal Code and the matter has been referred to the probation officer by the district attorney.

~~5.~~ *(e)* Gifts of money made to the county to assist in the prevention or correction of delinquency or crime, when the donor requests the probation officer to disburse such funds for such purposes and the board of supervisors accepts the gift upon such conditions.

~~6.~~ *(f)* Other similar cases.

In addition to the foregoing the probation officer is authorized to receive money payable to the county when ordered so to do by a court of competent jurisdiction. Such money shall be immediately deposited in the county treasury.

SEC. 7. Section 643 of the Welfare and Institutions Code is amended to read:

643. Every probation officer, within 90 days after the thirty-first day of December, of each year, shall make in writing and file as a public document a report to the judge of the juvenile court of the county in which such probation officer is appointed, and shall furnish to the board of supervisors of such county and to the Youth Authority a copy thereof. Such report, without giving names, shall show the exact number of wards *and dependent children* of such juvenile court that remain under the care and supervision of the court on such thirty-first day of December, segregating such wards *and dependent children* as to sex, the subdivision of Section 700 under which they were adjudged wards *or dependent children,* and the commitment or disposition order as such existed on said thirty-first day of December.

SEC. 8. Section 660 of the Welfare and Institutions Code is amended to read:

660. The board of supervisors in every county shall provide and maintain, at the expense of the county, in a location approved by the judge of the juvenile court, a suitable house or place for the detention of wards *and dependent children* of the juvenile court and of persons alleged to come under the provisions of Section 700. Such house or place shall be known as the "juvenile hall" of the county. Wherever in any provision of law reference is made to detention homes for juveniles, such reference shall be deemed and construed to refer to the juvenile halls provided for in this article.

SEC. 9. Section 673 of the Welfare and Institutions Code is amended to read:

673. Any county may join with one or more other counties to establish and maintain a suitable house or place for the detention of wards *and dependent children* of the juvenile court of such counties, to be known as the "joint detention home" of such counties. Any county maintaining such a home jointly with one or more other counties need not maintain a separate detention home.

SEC. 10. Section 720 of the Welfare and Institutions Code is amended to read:

720. A person subject to its jurisdiction may be brought before the juvenile court by any of the following means:

(a) A petition praying that such person be declared a ward of the juvenile court *or a dependent child of the juvenile court,* and be dealt with according to the provisions of this chapter.

(b) A petition that such person be declared free from the custody and control of his parents.

(c) Certification from any other court before which such person is brought, charged with the commission of a crime.

SEC. 11. Section 724 of the Welfare and Institutions Code is amended to read:

724. There shall be no fee for filing such petition nor shall any fees be charged by any officer for his services in filing or serving papers, or for the performance of any duty enjoined upon him by this chapter, except where the sheriff transports a person to a State institution. If the judge of the juvenile court orders that ~~the~~ *a* ward *or dependent child* go to a State institution without being accompanied by an officer or that ~~the~~ *a* ward *or dependent child* be taken to an institution by the probation officer of the county or parole officer of the institution or by some other suitable person, all expenses necessarily incurred therefor shall be allowed and paid in the same manner and from the same funds as would be allowed and paid were such transportation effected by the sheriff.

SEC. 12. Section 735 of the Welfare and Institutions Code is amended to read:

735. When any person under the age of ~~twenty-one~~ *21* years, alleged to come within the provisions of *subdivision (f), (g), (h), (i), (j), (k) or (m) of* Section 700,[2] is found by the court or judge to come within the said provisions, the court shall adjudge the person to be a ward of the juvenile court and shall in its judgment make a finding of the facts upon which the court exercises its jurisdiction over such person as a ward of the juvenile court. *When any person under the age of 21 years,* alleged to come within the provisions of subdivision *(a), (b), (c), (d), (e), (l) or (n) of Section 700, is found by the court or judge to come within the said provisions, the court shall adjudge the person to be a dependent child of the juvenile court and shall in its judgment make a finding of the facts upon which the court exercises its jurisdiction over such person as a dependent child of the juvenile court.* The court shall thereupon make such order or orders, in accordance with such

[2] The text of Section 700 of the Welfare and Institutions Code is set out in note 1, pages E-7 and E-8, *supra.*

findings, as may be necessary for the care of such ward *or dependent child* of the juvenile court. All commitment and recommitment orders shall be in writing, and shall be signed by the judge of the juvenile court.

Any person under the jurisdiction of the juvenile court under the provisions of subdivision (a), (b), (c), (d), (e), (l) or (n) of Section 700 on September 15, 1961, is a "dependent child of the juvenile court," and such person is not a "ward of the juvenile court" unless such person is also under the jurisdiction of the juvenile court under the provisions of subdivision (f), (g), (h), (i), (j), (k) or (m) of Section 700.

SEC. 13. Section 738 of the Welfare and Institutions Code is amended to read:

738. In a case where the residence of a ward *or a dependent child* of the juvenile court is out of the State and in another state, or in a case where the ward *or dependent child* is a resident of this State but his parents, relatives, guardian or person charged with his custody is in another state, the court may order the ward *or dependent child* sent to his parents, relatives, or guardian or to the person charged with his custody, and in such case may order transportation and accommodation furnished, with or without an attendant, as the court deems necessary. If the court deems an attendant necessary the court may order the probation officer or other suitable person to serve as such attendant and may order the necessary expenses of the ward *or dependent child* and of the attendant paid out of the appropriate funds of the county. In counties in which the probation officer is appointed by the board of supervisors, such expenses shall be authorized by the probation officer and claims therefor shall be audited, allowed and paid in the same manner as other county claims.

SEC. 14. Section 739 of the Welfare and Institutions Code is amended to read:

739. In all cases the court may determine whether or not the parents or guardian shall exercise any control of a ward *or dependent child* of the juvenile court or of any other minor person concerning whom a petition has been filed in accordance with the provisions of Sections 721 and 722, and may define the extent of control permitted; but no ward *or dependent child* of the juvenile court shall be taken from the custody of his parent or legal guardian without the consent of the parent or guardian, unless the court finds one of the following facts:

(a) That the parent or guardian is incapable of providing or has failed or neglected to provide proper maintenance, training, and education for the person.

(b) That the person has been tried on probation in such custody and has failed to reform.

(c) That the person has been convicted of crime by a jury.

(d) That the welfare of the person requires that his custody be taken from his parent or guardian.

SEC. 15. Section 740 of the Welfare and Institutions Code is amended to read:

740. When any person alleged to come within the provision of Section 700 is adjudged by the court or judge to come within the said provisions, and adjudged to be a ward *or dependent child* of the juvenile court *or both,* the court may make such order with respect to custody and placement of the ward *or dependent child* as the court deems to be in the best interest of the ward *or dependent child* and the community. The court may call upon the services of any public or private agency in making placement and providing supervision and may commit such person for such time as the court deems fit, but not beyond the time during which the court retains jurisdiction as prescribed by the provisions of Section 750 of this code, to the care of any of the following persons, associations, corporations, or institutions, as herein prescribed:

(a) To the home and care of some reputable person of good moral character.

(b) To the care of some association, society, or corporation embracing within its objects the purpose of caring for or obtaining homes for such persons, and willing and able to receive and care for such ward *or dependent child*.

(c) To the care of the probation officer, to be boarded out or placed in some suitable family home, in case provision is made by voluntary contribution, or otherwise, for the payment of the board of the ward *or dependent child* until suitable provision may be made for him in a home without such payment, the ward *or dependent child* to be subject to the supervision of the probation officer and the further order of the court; but no ward *or dependent child* of the juvenile court under the age of 16 years shall be boarded out in any boarding place other than a boarding place licensed by the Department of Social Welfare.

(d) *In the case of a ward,* to the care of the probation officer, on probation, the ward to remain in the home of the ward, or in any other fit home in which the court may order the probation officer to place him, subject to the visitation of the probation officer, to report to the probation officer as often as may be required, and to be subject to be returned to the court for further proceedings whenever such action may appear necessary or desirable. In all cases of probation the court may require as a condition of probation that the ward go to work and earn money for the support of his dependents or to effect reparation and in either case that he keep an account of his earnings and report the same to the probation officer and apply such earnings as directed by the court. The court may impose and require any and all reasonable conditions that it may determine fitting and proper to the end that justice may be done and that amends may be made to society for the breach of the law, for any injury done to any person resulting from such breach, and specifically for the reformation and rehabilitation of the ward.

(e) To the care of the probation officer, the ward or dependent child to remain in the home of the ward or dependent child, or in any other home in which the court may order the probation officer to place him, subject to the visitation of the probation officer, to be subject to be returned to the court for further proceedings whenever such action may appear necessary or desirable.

~~(e)~~ *(f) In the case of a ward,* to the Youth Authority.

(1) The Youth Authority shall accept a person committed to it pursuant to this section if it believes that the person can be materially benefited by its reformatory and educational discipline, and if it has adequate facilities to provide such care. No such person shall be transported to any facility under the jurisdiction of the Youth Authority, until the director thereof has notified the committing court of the place to which said person is to be transported and the time at which he can be received.

(2) The Youth Authority shall also accept a person committed to it pursuant to this section; provided, that the Director of the Youth Authority certifies that staff and institutions are available, (a) if he is a borderline psychiatric or borderline mentally deficient case, (b) if he is a sex deviate, unless he is of a type whose presence in the community, under parole supervision, would present a menace to the public welfare, or (c) if he suffers from a primary behavior disorder. No such person shall be transported to any facility under the jurisdiction of the Youth Authority, until the director thereof has notified the committing court of the place to which such person is to be transported and the time at which he can be received. To implement the administration of this paragraph, the Director of the Youth Authority and the Director of Mental Hygiene shall, at least annually, confer and establish policy with respect to the types of cases which should be the responsibility of each department.

~~(f)~~ *(g)* To the detention home.

(h) In the case of a ward, ~~or~~ if ~~said~~ *the* ward is of the age of 18 years or over and the court finds it necessary and advisable, to the county jail.

~~(g)~~ *(i)* To any other state or county institution now or hereafter established for the purpose of caring for and training persons that come within the provisions of this chapter or to the County Department of Public Welfare to be boarded out or place in some suitable foster family home licensed to receive and care for children under 16 years of age. Whenever the court makes such commitment to the County Department of Public Welfare, the welfare director or his deputies shall have direct access to the court in all matters pertaining to the welfare of children so committed and shall make reports to the court in such matters as the court may require.

Before any such person is conveyed to any such institution or department it shall be ascertained from the superintendent or director thereof that such person can be received.

Whenever the court, after hearing, is of the opinion that any person alleged or adjudged to come within the provisions of Section 700 or 701 of this code is mentally ill or if the court is in doubt concerning the mental health of any such person, the court may order that such person be held temporarily in the psychopathic ward of the county hospital for observation and recommendation concerning the future care, supervision and treatment of such person.

Whenever a person has been adjudged a ward *or dependent child* of the juvenile court and has been committed or otherwise disposed of as provided in this chapter for the care of wards *and dependent children* of the juvenile court, the court may order that ~~said~~ *the* ward *or*

dependent child be detained in the detention home, or ~~if said~~ *in the case of a* ward ~~is~~ of the age of 18 years or more, in the county jail, or otherwise, as to the court seems fit, until the execution of the order of commitment or of other disposition.

SEC. 16. Section 740.5 of the Welfare and Institutions Code is amended to read:

740.5. Whenever any person has been adjudged to be a ward *or dependent child* of the juvenile court, or whenever any person is alleged to come within the provisions of subdivision *(l)* of Section 700, and the court, after hearing, is in doubt concerning the state of mental health or the mental condition of the person, the court may commit the person to the Department of Mental Hygiene for placement in a state hospital or state home for the mentally deficient for a period of not more than 90 days, for observation of the mental health or the mental condition of the person and recommendations concerning his future care, supervision, and treatment. If the Department of Mental Hygiene has designated a particular state institution to receive minors so committed for observation, all commitments shall be made to the department for placement in the institution so designated. The superintendent of the institution to which the minor is so committed shall receive him, unless the institution is already full or the funds available for its support are exhausted, or if, in the opinion of the superintendent, the person is not a suitable subject for admission. Before such person is conveyed to the institution, it shall be ascertained from the superintendent thereof if the person may be accepted as herein set forth.

For each minor person so committed for observation the county from which he is committed shall pay the State at the rate of forty dollars ($40) per month for the time the person so committed remains in the state institution for observation. Such expense shall be considered expense of support and maintenance within the meaning of Article 10 of this chapter, and the county shall be entitled to reimbursement therefor from the earnings, property, or estate of the minor, or from his parents, guardian or other person liable for his support and maintenance, in accordance with the provisions of that article. Each county auditor shall include in his state settlement report, rendered to the Controller in the months of January and June, the amount due under the provisions of this section, and the county treasurer, at the time of settlement with the State in such months, shall pay to the State Treasurer, upon the order of the Controller, the amounts found to be due by reason of such commitments.

The medical superintendent or other person in charge of the state hospital or state home for the mentally deficient in which a minor person is placed for observation pursuant to this section shall, within 90 days, examine the person to determine the state of his mental health or his mental condition, and return him to the committing court, together with a report on the state of his mental health or mental condition, which shall include a diagnosis of the nature of his mental illness or disability, if any, and recommendations concerning his future care, supervision, and treatment.

If the medical superintendent or other person in charge of the state institution in which the minor has been placed for observation reports to the court that the minor is not affected with any mental illness, disorder, or other mental disability for which he might be committed to the Department of Mental Hygiene for placement in any state institution under Division 6 of this code, the court shall proceed with the case in accordance with the provisions of this chapter.

If the medical superintendent or other person in charge of the state hospital or state home for the mentally deficient in which the minor has been placed for observation reports to the court that the minor is affected with any mental illness, disorder, or other mental disability for which he may be committed to the Department of Mental Hygiene for placement in any state institution under Division 6 of this code, and recommends that the minor person be so committed, the juvenile court may direct the filing of a petition for such commitment in the court having jurisdiction to make such commitments, in accordance with the provisions of this code applicable to such commitments.

When the juvenile court directs the filing in any other court of a petition for the commitment of a minor to the Department of Mental Hygiene for placement in any state institution, the juvenile court shall transmit to the court in which the petition is filed a copy of the report of the medical superintendent or other person in charge of the state institution in which the minor was placed for observation. The court in which the petition for commitment is filed may accept the report of the medical superintendent or other person in charge of the state institution in lieu of the appointment, certificate, and testimony of medical examiners or other expert witnesses appointed by the court, if the laws applicable to such commitment proceedings provide for the appointment by the court of medical examiners or other expert witnesses, or may consider the report as evidence in addition to the certificates and testimony of medical examiners or other expert witnesses.

The jurisdiction of the juvenile court over the minor shall be suspended during such time as the minor is subject to the jurisdiction of the court in which the petition for commitment is filed, or under commitment ordered by that court.

SEC. 17. Section 743 of the Welfare and Institutions Code is amended to read:

743. *No person shall be committed to the Youth Authority unless such person has been adjudged a ward of the juvenile court pursuant to Section 735.* No ward of the juvenile court shall be committed to the Youth Authority unless the judge of the court is fully satisfied that the mental and physical condition and qualifications of the ward are such as to render it probable that he will be benefited by the reformatory educational discipline or other treatment provided by the Youth Authority.

SEC. 18. Section 746 of the Welfare and Institutions Code is amended to read:

746. No order of court or modification thereof in any juvenile court proceeding concerning any ward *or dependent child* of the juvenile

court shall be made either in chambers, or otherwise, unless notice of the application therefor has first been given by the judge or the clerk of the court to the probation officer.

SEC. 19. Section 750 of the Welfare and Institutions Code is amended to read:

750. The court shall retain the jurisdiction of any person who is ~~found~~ *adjudged* to be a ward *or dependent child* of the juvenile court until such ward *or dependent child* attains the age of ~~twenty-one~~ *21* years (unless, if the ward *or dependent child* is a girl, she is married with the consent of the court entered upon the minutes of the court), or, *in the case of a ward,* until the court is satisfied that the ward has fully reformed or that further direction and supervision under the provisions of this chapter are unnecessary or inadvisable for such reformation; but if the ward has attained the age of ~~nineteen~~ *19* years or more at the time of commitment the court shall retain jurisdiction for two years from and after the date of commitment.

SEC. 20. Section 751 of the Welfare and Institutions Code is amended to read:

751. After five years from the date on which the jurisdiction of the juvenile court over a ward *or dependent child* of the court is terminated, the judge or clerk of the juvenile court, or the probation officer, may destroy all records, papers, and exhibits in the proceedings concerning the ward *or dependent child.* For the purposes of this section "destroy" means destroy or dispose of for the purpose of destruction.

The juvenile court record, any minute book entries, dockets, and judgment dockets shall not be destroyed and shall constitute for all purposes the record in lieu of the records, papers, and exhibits destroyed.

SEC. 21. Section 753 of the Welfare and Institutions Code is amended to read:

753. Any person desiring the custody of a child who is a ward *or dependent child* of the juvenile court, or the child himself through a properly appointed guardian, may petition the court in the same action in which the child was found to be a ward *or dependent child* of the juvenile court for a hearing to change, modify or set aside any order of court previously made or to terminate the jurisdiction of the court. The petition shall be verified and, if made by a person other than the child or guardian, shall state the petitioner's relationship to or interest in the child and the reasons for the proposed change of order or termination of jurisdiction.

If it appears that the best interests of the child may be promoted by the proposed change of order or termination of jurisdiction, the court shall order that a hearing be held and shall prescribe how and to whom notice of said hearing shall be given.

SEC. 22. Section 860 of the Welfare and Institutions Code is amended to read:

860. If it is necessary that provision be made for the expense of support and maintenance of a ward *or dependent child* of the juvenile court or of a minor person concerning whom a petition has been filed in

accordance with the provisions of Section 721 and 722 of this code, the order providing for the care and custody of such ~~ward or~~ person shall direct that the whole expense of support and maintenance of such ~~ward or~~ person, up to the amount of twenty dollars ($20) per month be paid from the county treasury, and may direct that an amount up to any maximum amount per month established by the board of supervisors of the county be so paid. The board of supervisors of each county is hereby authorized to establish, either generally or for individual wards or *dependent children* according to classes or groups of wards *or dependent children*, a maximum amount which the court may order the county to pay for such support and maintenance. All orders made pursuant to the provisions of this section shall state the amounts to be so paid from the county treasury, and such amounts shall constitute legal charges against the county.

SEC. 23. Section 861 of the Welfare and Institutions Code is amended to read:

861. No order for payment shall be made in a sum in excess of the actual cost of supporting and maintaining ~~such~~ *the* ward, *dependent child* or other minor person.

SEC. 24. Section 862 of the Welfare and Institutions Code is amended to read:

862. If it is found that the maximum amount established by the board of supervisors of the county is insufficient to pay the whole expense of support and maintenance of ~~such~~ *a* ward, *dependent child* or other minor person, the court may order and direct that such additional amount as is necessary shall be paid out of the earnings, property, or estate of such ward, *dependent child* or ~~such~~ other minor person, or by the parents or guardian of such ward, *dependent child* or ~~such~~ other minor person, or by any other person liable for his support and maintenance, to the probation officer, who shall in turn pay it to the person, association, or institution that under court order is caring for and maintaining such ward, *dependent child* or other minor person.

SEC. 25. Section 867 of the Welfare and Institutions Code is amended to read:

867. Where the juvenile court has ordered payment of money to be made ~~;~~ for the cost of care, support or maintenance in any county institution or as reimbursement to the county for the expense of support and maintenance of any ward, *dependent child* or other minor person as provided in this article or as additional payment for the expense of support and maintenance of such ward, *dependent child* or other minor person to the person, association, or institution that under court order is caring for and maintaining such ward, *dependent child* or other minor person, either from the earnings, property, or estate of such ward, *dependent child* or other minor person, or by his parents or guardian, or by any other person liable for his support, upon affidavit of the probation officer that any payment is due and has not been made, execution may issue for such payment upon the order and at the discretion of the court.

SEC. 26. Section 868.10 of the Welfare and Institutions Code is amended to read:

868.10. In any case where a county has expended money for the support and maintenance of any ward, *dependent child* or other minor person, or has furnished support and maintenance, and the court has not made an order of reimbursement to the county, in whole or in part, as provided in this article, or the court has made and subsequently revoked such an order, if the ward, *dependent child* or other minor person or parent, guardian or other person liable for the support of the ward, *dependent child* or other minor person acquires property, money or estate subsequent to the date the juvenile court assumed jurisdiction over the ward, *dependent child* or *other* minor person or subsequent to the date the order of reimbursement was revoked, the county shall have a claim against the ward, *dependent child* or other minor person or parent, guardian or other person liable for the support of the ward, *dependent child* or other minor person to the amount of a reasonable charge for money so expended, or other expense of support and maintenance. Such claim shall be enforced by action of the district attorney on request of the board of supervisors.

SEC. 27. Section 869 of the Welfare and Institutions Code is amended to read:

869. No order for payment from the county treasury of the expense of support and maintenance of a ward *or dependent child* of the juvenile court shall be effective for more than 12 months, and no order for payment from the county treasury of the expense of support and maintenance of a minor person concerning whom a verified petition has been filed in accordance with the provisions of Sections 721 and 722 of this code, other than a ward *or dependent child* of the court, shall be effective for more than one month. Upon all hearings of the case of any ward *or dependent child* of the juvenile court the case shall be continued on the calendar, but in no instance to exceed 12 months.

When any ward of the juvenile court is, with the consent of the juvenile court of the county committing him and the officer in charge of the state school to which he was committed or in which he is confined, placed in a boarding home, foster home or work home, but continues to be under the supervision of such state school, the county may reimburse the boarding home, foster home or work home in an amount adequate for the maintenance of the ward, but not to exceed twenty-five dollars ($25) per month.

SEC. 28. Section 870 of the Welfare and Institutions Code is amended to read:

870. When any person has been adjudged to be a ward *or dependent child* of the juvenile court, and the court has made an order committing such person to the care of any association, society, or corporation, embracing within its objects the purpose of caring for or obtaining homes for such persons, the county in which such person has been committed may contract with such custodian, for the supervision, investigation, and rehabilitation of such person by such custodian, and may, pursuant

to such contract, pay to it, an amount, determined by mutual agreement, not to exceed the cost to such custodian of such service.

SEC. 29. Section 871 of the Welfare and Institutions Code is amended to read:

871. As used in this article "expense for support and maintenance" includes the reasonable value of any medical services furnished to the ward *or dependent child* at the county hospital or at any other county institution, or at any private hospital or by any private physician with the approval of the juvenile court of the county concerned, and the reasonable value of the ~~ward's~~ support *of the ward or dependent child* at any place of detention established pursuant to the provisions of Article 5 of this chapter or at any forestry camp, juvenile home, ranch or camp established within or without the county pursuant to the provisions of Article 12 or Article 13 of this chapter.

SEC. 30. Section 880 of the Welfare and Institutions Code is amended to read:

880. Whenever a petition is filed in the juvenile court of a county other than the residence of the person named in the petition, or whenever, subsequent to the filing of a petition in the juvenile court of the county where such person resides, the residence of such person is changed to another county, the entire case may be transferred to the juvenile court of the county wherein such person then resides after the court has made a finding of the facts upon which it has exercised its jurisdiction over such person and has adjudged such person to be a ward *or dependent child* of the juvenile court, and the juvenile court of the county wherein such person then resides shall take jurisdiction of the case upon the filing with it of such finding of the facts and order adjudging such person to be a ward *or dependent child* of the court and of an order transferring the case.

SEC. 31. Section 884.5 of the Welfare and Institutions Code is amended to read:

884.5. Whenever a ward *or dependent child* of the juvenile court is placed by order of the court within the care and custody or under the supervision of the probation office of the county in which the ward *or dependent child* resides, and it appears to the court that there is no parent, guardian, or person standing in loco parentis capable or willing to authorize remedial care or treatment for the ward *or dependent child,* the court may, after due notice to the parent, guardian, or person standing in loco parentis, if any, order that the probation officer may authorize such medical, surgical or dental care for the ward *or dependent child,* by licensed practitioners, as may from time to time appear necessary. Nothing heretofore stated in this section shall be construed as limiting the right of a parent, guardian, or person standing in loco parentis, who has not been deprived of custody and control by order of the court, in providing any medical or other remedial treatment recognized or permitted under the laws of this State. If the written report of a duly licensed physician indicates that immediate emergency medical or surgical care is required, the juvenile court may make an order authorizing the necessary medical or surgical care without notice to the parent, guardian, or person standing in loco parentis.

SEC. 32. Section 886 of the Welfare and Institutions Code is amended to read:

886. Any person adjudged to be a ward *or dependent child* of the juvenile court may be permitted by order of the court to reside in a county other than the county of his residence and the court shall retain jurisdiction over such person.

Whenever a ward *or dependent child* of the juvenile court is permitted to reside in a county other than the county of his residence, he may be placed under the supervision of the probation officer of such county, with the consent of the probation officer. The ward *or dependent child* shall comply with the instructions of the probation officer and upon failure to do so shall be returned to the county of his residence for further hearing and order of the court.

SEC. 33. Section 1407 of the Probate Code is amended to read:

1407. Of persons equally entitled in other respects to the guardianship of a minor, preference is to be given as follows:

(1) To a parent;

(2) To one who was indicated by the wishes of a deceased parent;

(3) To one who already stands in the position of a trustee of a fund to be applied to the child's support;

(4) To a relative;

(5) If the child has already been declared to be a ward *or dependent child* of the juvenile court, to the probation officer of said court.

A STUDY RELATING TO A JUVENILE'S RIGHT TO COUNSEL AND THE DESIGNATION OF NONDELINQUENT MINOR AS "WARD OF THE JUVENILE COURT" *

INTRODUCTION

Since the end of World War II the problem of coping with criminal delinquency on the part of children and young people has become a matter of serious public concern in almost every community in the nation.[1] Although most acute in the cities the problem is pressing elsewhere, particularly in the sprawling new communities which have grown up in the unincorporated areas adjacent to metropolitan centers.[2] The measures that have been taken to bring the situation under control reflect the hopes and theories of innumerable citizens, officials and experts in the behavioral sciences, but despite the most dedicated and informed efforts the volume of juvenile crime continues to grow.

Principal responsibility for the administration of procedures designed to control juvenile criminality falls upon a relatively new institution known in California and in most other jurisdictions as the juvenile court.[3] Its designation as a court, however, is sometimes misleading since its functions may embrace a great many more matters than those which are considered to be strictly judicial. Thus the judge of such a court may be responsible for the operation of detention facilities,[4] for the appointment of supervising and advisory committees,[5] for the conduct of studies in the field of juvenile crime prevention,[6] for the appointment and removal of probation officers, and for the direction of the court's probation staff.[7] While provision is made for the delegation of most of these administrative duties to the probation staff, responsibility for their proper performance remains with the judge.

* This study was made at the direction of the Law Revision Commission by Professor Arthur H. Sherry of the School of Law, University of California at Berkeley.

[1] Police departments in 1,473 cities in the United States reported that in 1957 more than half the persons arrested for burglary, larceny and auto theft were under the age of eighteen. See 1957 U. S. FEDERAL BUREAU OF INVESTIGATION, UNIFORM CRIME ANN. REP. 113-16.

[2] LOHMAN, JUVENILE DELINQUENCY 5 (Sheriff's Office, Cook County, Ill. 1957).

[3] The first juvenile court law in California appears in Cal. Stat. 1909, ch. 133, p. 213. It defines persons subject to the act in about the same pattern as Section 700 of the Welfare and Institutions Code but sets the age limit at eighteen. At present, the jurisdiction of the juvenile court pursuant to this statute was exercised by the superior court. Section 23 expressly provides that juvenile court proceedings are not criminal in character. *Id.* at 224.
An earlier law, Cal. Stat. 1889, ch. CVIII, p. 111, established a State Reform School for children between the ages of ten and eighteen who were convicted of crime. Commitments to the school required the consent of the youthful defendant. By Cal. Stat. 1911, ch. 369, p. 658, the age limit of persons subject to the law was raised to twenty-one where it has remained ever since. In 1937 the law was codified, becoming Chapter 2 of Division 2 of Part 1 of the Welfare and Institutions Code. Cal. Stat. 1937, ch. 369, p. 1021. Illinois, in 1899, was the first jurisdiction to enact a juvenile court law. Ill. Laws 1899, p. 131.

[4] See NATIONAL PROBATION ASS'N, COMM. ON STANDARD JUVENILE COURT LAWS, A STANDARD JUVENILE COURT LAW § 25 (rev. 1933); See also CAL. WEL. & INST. CODE §§ 660, 662, 674.

[5] CAL. WEL. & INST. CODE §§ 597, 606, 674.

[6] *Id.* § 606.

[7] *Id.* §§ 574, 631, 635; LOU, JUVENILE COURTS IN THE UNITED STATES 92 (1927).

The statutes defining the jurisdiction of juvenile courts commonly provide some measure of jurisdiction over adult offenders. This is usually limited to adults charged with misconduct involving minors which falls within the statutory definition of contributing to the delinquency or neglect of juveniles.[8] In California this jurisdiction is limited. The juvenile court is granted original jurisdiction to cause the accused to plead to a complaint charging the offense of contributing to the delinquency of a minor and it may proceed to dispose of the accused by sentence or probation in the event a plea of guilty is entered. If the plea is not guilty, the juvenile court is required to transfer the cause to the superior court for trial.[9]

In exercising jurisdiction over adults, the juvenile court follows the traditional patterns of the criminal law. In cases involving minors however, there are marked procedural differences which have their inspiration in the basic concept of the juvenile court as a guardian, protector and parent-substitute not only for the delinquent child, but also for the child who is destitute, abandoned or neglected.

With some significant exceptions,[10] juvenile court laws theoretically make no basic distinction between the delinquent child and the child without parents or guardian capable or willing to provide and care for it.[11] In either case, the juvenile court is considered as stepping in, on behalf of the State, to fulfill a parental role. In the discharge of this function or duty, it may be necessary in one case to provide medical care, shelter and education and, in another, to provide moral guidance and discipline. It is because of this concept that juvenile courts or, more precisely, specialized children's courts are governed by procedures which differ radically from the formal procedural techniques which are so fundamental in conventional courts of law.[12]

At the very outset of a proceeding in a juvenile court, for example, an investigation of the child who is the subject of the action is commenced by one of the court's probation officers. This individualized social study, which may be a continuing one during the entire period

[8] CAL. WEL. & INST. CODE § 702; U.N. COMPARATIVE SURVEY OF JUVENILE DELINQUENCY, Part 1, NORTH AMERICA 27 (rev. 1958).

[9] The law is not clear concerning the mode of accomplishing the transfer to the superior court, but it seems that the proper procedure should be by preliminary hearing before the judge of the juvenile court sitting as a committing magistrate. See 8 OPS. CAL. ATT'Y GEN. 289 (1946); People v. Superior Court, 104 Cal. App. 276, 285 Pac. 871 (1930).

[10] ARIZ. REV. STAT. ANN. § 13-821 (1956); DEL. CODE ANN. tit. 10, § 1101 (1953); NEB. REV. STAT. § 43-201 (Cum. Supp. 1959).

[11] "In most of the states having juvenile courts, the law covers dependent, neglected, and delinquent children. The differentiation in law is not always clear, for in many cases a child may be classified one way or another. In many statutes, the terms 'dependent' and 'neglected' are used interchangeably, although the recent tendency is to give these two terms distinctive meanings. In a few states, the term 'destitute' children has been used to embrace children defined under other laws as dependent. In some states to these three classes of cases, children who are mentally or physically defective, children who are truant, illegitimate, incorrigible, wayward or abandoned, and children who are found violating the child-labor law are added as distinct groups; but, in reality, most of these classes are only parts of the larger problems of delinquency, dependency, and neglect." LOU, *op. cit. supra* note 7, at 52.

[12] "The specialized court owes its origin to the humanitarian impulse and initiative of many lawyers, social workers, ministers and others who had become increasingly troubled by the treatment of children under the criminal law and whose efforts to correct this condition resulted in the establishment of the world's first juvenile court in 1899." CHILDREN'S BUREAU, U.S. DEP'T OF HEALTH, EDUCATION, AND WELFARE, STANDARDS FOR SPECIALIZED COURTS DEALING WITH CHILDREN 1 (Pub. No. 346, 1954). "The Juvenile Court Law requires that the superior court exercise the additional jurisdiction thereunder in a manner distinct from its regular mode of operation." People v. Sanchez, 21 Cal.2d 466, 471, 132 P.2d 810, 814 (1942).

of time that the child is subject to the court's jurisdiction and control, is actually the heart of the matter. Upon it depends the realization of the fundamental objectives of the entire juvenile court structure. It becomes, almost necessarily, the foundation for the treatment, care, discipline or other disposition that will constitute the end-product of the court's operation.[13]

Because of the great individual and social values which are at stake and the alarming growth of juvenile criminality, it is not surprising that treatment, care and rehabilitation have become the principal focus of attention in the juvenile court. Indeed, these are essential attributes of juvenile court philosophy. Unhappily, however, this preoccupation with problems of rehabilitation, beneficial as it may be in the case of the abandoned or neglected child, carries with it a serious danger of injustice to the child who comes before the court pursuant to a petition alleging that he has committed some act or acts of delinquency. This danger lies in the tendency to assume that the child requires treatment by virtue of his appearance in the court and a consequent failure to make a clear and objective determination of the fundamental issue: is it true that this child *is* a delinquent? [14]

The determination of this issue should be the first concern of the court, particularly where the allegation of delinquency is based upon conduct which, if committed by an adult, would be criminal. In most jurisdictions, however, there are few if any procedural requirements designed to safeguard whatever may be the rights to which an alleged juvenile delinquent may be entitled. Nor are those rights themselves defined with any degree of certainty or precision. In this circumstance, it is small wonder that some of those who appear before the juvenile court finds themselves subject to the court's jurisdiction without any adequate determination of the alleged fact of delinquency.[15]

It is not necessary to observe all of the exacting requirements of the criminal courts to meet the procedural needs of a juvenile court and also to insure a fair measure of due process. Indeed, this would defeat the very purpose of such specialized children's courts. On the other hand, it is not enough simply to direct the court to exercise its judicial functions in such vague and general terms as "the court shall proceed to hear and dispose of the case in a summary manner." [16] To the charge that juvenile court procedures operate to deprive persons brought before it of the traditional rights accorded adults accused of crime, the stereotyped answer is that these proceedings are civil in nature and not criminal.[17] Granting the validity of this characteriza-

[13] CHILDREN'S BUREAU, STANDARDS FOR SPECIALIZED COURTS DEALING WITH CHILDREN, *op. cit. supra* note 12, at 49-53. CAL. WEL. & INST. CODE §§ 638, 638.1, 639, 640.

[14] "In the United States generally, the children's courts are characterized by a skirting of the issue of guilt. Instead of attempting to determine initially whether the child is a delinquent, effort is directed toward discovery of *why* the child is 'in trouble' and to determine on the basis of his social and personality problems what measures the court may employ to treat him. In effect there is an assumption of delinquency based upon the child's appearance in court and a desire to provide him with the help that he requires." U.N. COMPARATIVE SURVEY OF JUVENILE DELINQUENCY, *op. cit. supra* note 8, at 36.

[15] *E.g., In re* Contreras, 109 Cal. App.2d 787, 241 P.2d 631 (1952).

[16] CAL. WEL. & INST. CODE § 732.

[17] Section 736 of the Welfare and Institutions Code provides: "An order adjudging a person to be a ward of the juvenile court shall not be deemed to be a conviction of crime." *In re* Brodie, 33 Cal. App. 751, 166 Pac. 605 (1917).

tion, it seems pertinent to remark that civil procedure in every jurisdiction is formal, detailed and comprehensive in its definition and protection of the rights of the litigants.

Among those rights, as in criminal cases, is the right to the aid and assistance of counsel.[18] So stated, it seems obvious that the right to counsel ought clearly to be recognized, protected and defined by juvenile court procedure as in any other case. Generally this has been recognized when the issue was squarely presented. In other circumstances however, it has not been protected and, as a general rule, it is not defined in juvenile court laws. California's Juvenile Court Law is one of those which leaves the subject unmentioned.

The primary purpose of this study is to answer the question whether or not this statutory silence should be replaced by explicit provision in the law of California. This requires some review of the history of the law in this State and in other jurisdictions and of the extent to which the courts have failed or succeeded in bridging the statutory gap. It also requires the drafting of the additions and amendments to the juvenile court law which will be required in the event that express recognition of the right to counsel in this tribunal appears desirable.

Secondarily, consideration will be given to the advisability of changing the terminology of this law so that not all children who come within the jurisdiction of the juvenile court will be designated indiscriminately as "wards of the juvenile court." It is believed that this term carries with it a connotation of delinquent conduct and that its employment with reference to the abandoned or neglected child may serve only to stigmatize the innocent.[19] There is good reason to believe that despite the law's express designation of juvenile court proceedings as noncriminal, the public's concept of the juvenile court is something very different.[20] Actually, revision of the present law to make a clear distinction between the delinquent and the nondelinquent child in the juvenile court would be consistent with existing provisions of the statute which require separation of the two groups whenever detention is necessary. For example, the law now provides that no persons detained because of misfortune shall be brought into direct contact or personal association with wayward persons[21] or with minors charged

[18] Powell v. Alabama, 287 U.S. 45 (1932); Mendoza v. Small Claims Court, 49 Cal.2d 668, 321 P.2d 9 (1958); Steen v. Board of Civil Service Commrs., 26 Cal.2d 716, 160 P.2d 816 (1945).

[19] See Calif. Senate Concurrent Resolution No. 31 (Reg. Sess. 1957), which states in its recital that "To be made a ward of the juvenile court often operates to the detriment of a minor when in later life he is required to show that fact in job applications and other documents of vital importance to his standing in the community; and . . . [that] such a stigma should not be allowed to attach to a minor who is merely a victim of circumstance and who is guilty of no wrongdoing."

[20] "It is . . . a delusion to say that a Juvenile Court record does not handicap because it cannot be used against the minor in any court. In point of fact it will be a witness against him in the court of business and commerce, it will be a bar sinister to him in the court of society where the penalties inflicted for deviation from conventional codes can be as ruinous as those imposed in any criminal court, it will be a sword of Damocles hanging over his head in public life, it will be a weapon to hold him at bay as he seeks respectable and honorable employment." From the dissent of Mr. Justice Musmanno in Holmes' Appeal, 379 Pa. 599, 612, 109 A.2d 523, 529 (1954). To the same effect, see CITIZENS' ADVISORY COMM. REP'T TO ATT'Y GEN. ON CRIME PREVENTION, JUVENILE VIOLENCE IN CALIFORNIA 56 (Feb. 1958).

[21] CAL. WEL. & INST. CODE § 553.

with the commission of any criminal offenses.[22] No reason is evident why this distinction should not be maintained in the final judgments of the court. On the contrary, it would seem to be a matter of even greater importance that here the unfortunate and the neglected child be plainly separated from the wayward and the delinquent.[23]

THE RIGHT TO COUNSEL IN JUVENILE COURT PROCEEDINGS

The Juvenile Court Concept

Origin and Development Generally

The juvenile court system of today is basically the same in both function and philosophy as that which prevailed at the turn of the century when the first juvenile court statutes were enacted. The system is predicated on the beliefs and still largely inspired by the sentiment of the pioneers who sought to salvage the youthful offender by methods that marked a clear break from the traditional processes of the criminal law. They spoke of "socialized justice" by which they meant a system which would unite the law with all of the sciences having to do with human behavior in an enlightened endeavor to treat each delinquent as an individual. The system was conceived of as being based on radically different principles from those which govern the processes of the criminal law:

> In place of judicial tribunals, restrained by antiquated procedure, saturated in an atmosphere of hostility, trying cases for determining guilt and inflicting punishment according to inflexible rules of law, we have now juvenile courts, in which the relations of the child to his parents or other adults and to the state or society are defined and are adjusted summarily according to the scientific findings about the child and his environments. In place of magistrates, limited by the outgrown custom and compelled to walk in the paths fixed by the law of the realm, we have now socially-minded judges, who hear and adjust cases according not to rigid rules of law but to what the interests of society and the interests of the child or good conscience demand.[24]

At the beginning, the juvenile court was established to treat the delinquent child. It was only later that its jurisdiction was expanded to include also the abandoned and neglected child and the child who required institutional treatment because of physical or mental disease or defect. And at the beginning there were some who expressed serious reservations about "summary justice" no matter how worthy and benevolent the motives of those who were charged with its adminis-

[22] *Id.* § 729.

[23] The general policy of the law requiring the physical separation of juveniles in detention from adult prisoners appears equally wise and reasonable. There is a continuing and serious failure, however, to carry it out. See Norman, *Juvenile Detention*, 3 NPPA J. 392 (1957); *The California Juvenile Court*, 10 STAN. L. REV. 471, 485 (1958).

[24] LOU, *op. cit. supra* note 7, at 2.

tration.[25] The courts however, upheld the juvenile court against every attack with almost unvarying uniformity and with complete acceptance of the underlying philosophy which inspired its establishment.[26]

There was precedent for the sympathetic attitude of the courts towards the juvenile court concept in their construction of legislation providing for reform or "industrial" schools to which delinquent minors might be committed. Statutes of this kind were common before any juvenile court system came into being. It is interesting to note that in sustaining the validity of the law establishing such schools, the language of the cases foreshadowed what was to become a familiar pattern. Thus, in 1899 the Supreme Court of Wisconsin wrote concerning an industrial school for girls:

> [T]he power to place children under proper guardianship has been exercised by chancellors and judges exercising chancery powers from time immemorial. . . . Such a proceeding is not a trial for an offense requiring a common-law, or any, jury. It was never so regarded in England, nor has it been in this country in but few instances. . . . [T]he proceeding is not one according to the course of the common law in which the right of trial by jury is guaranteed, but a mere statutory proceeding for the accomplishment of the protection of the helpless, which object was accomplished before the constitution without the enjoyment of a jury trial. There is no restraint upon the natural liberty of children contemplated by such a law,—none whatever; but rather the placing of them under the natural restraint, so far as practicable, that should be, but is not, exercised by parental authority. It is the mere conferring upon them that protection to which, under the circumstances, they are entitled as a matter of right. It is for their welfare and that of the community at large. The design is not punishment, nor the restraint imprisonment, any more than is the wholesome restraint which a parent exercises over his child.[27]

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[25] "It should not be forgotten that the performance of judicial functions always involves two processes: the first, to determine whether jurisdiction assumed for the purpose of an inquiry should be retained for the application of a remedy; the second, application of the remedy. The first seeks the facts; the second applies the law to the facts as ascertained. It is not obvious that the rights of the individual who holds the state at arm's length and says: 'The matters charged are false; government has no call to interfere with me' should be more strictly regarded during the first process than the second, when his status as a person with whom public interference is warranted has been established? Otherwise all that is necessary to justify a despotism is to make sure it intends to be benevolent." Waite, *How Far Can Court Procedure Be Socialized Without Impairing Individual Rights*, 12 J. CRIM. L., C & P.S. 339, 341 (1921).

[26] "The early juvenile court laws were challenged as unconstitutional because they did not accord to the child 'defendant' the right to trial by jury, appeal, or protection against deprivation of his liberty without 'due process of law,' constitutional guaranties to which persons charged with crime are entitled. But the courts have almost unanimously held the laws constitutional, on the theory that since their object was to save, not punish, the child, the proceedings in juvenile court were not criminal in nature, and the laws were therefore valid, even though they did not accord children such constitutional guaranties. Most juvenile court laws today try to make this point clear and to avoid misconceptions by including provisions that they should be liberally construed, that the proceeding is not criminal in nature, and the care, custody and discipline of children by the court should approximate as nearly as possible that which would be given by their parents." SUSSMAN, LAW OF JUVENILE DELINQUENCY: THE LAWS OF THE FORTY-EIGHT STATES, LEGAL ALMANAC SERIES No. 22, p. 15 (Oceana Pub. 1950). For a recent reiteration of the same concept, see *In re* Schubert, 153 Cal. App.2d 138, 313 P.2d 968 (1957).

[27] Wisconsin Industrial School for Girls v. Clark County, 103 Wis. 651, 664, 79 N.W. 422, 426 (1899).

Six years later, in *Commonwealth* v. *Fisher*,[28] the Pennsylvania Supreme Court pointed to the foregoing language in sustaining a statute which designated the court of quarter sessions as a "juvenile court" when caring for children. The *Fisher* case, however, went much further in suggesting that the boundaries of the juvenile court's power over wayward children were, at least in theory, so extensive that those subject to its jurisdiction could be brought into court without any process at all. If process, which presumably includes notice, could thus be dispensed with in juvenile court proceedings, it required no effort for the court to hold that since the subject of juvenile court action was not placed on trial for crime, there was no right to trial by jury as in a criminal case.[29]

Thereafter, as the Kansas Supreme Court noted,[30] the authorities are nearly all in agreement that statutes establishing juvenile courts are parental rather than criminal and, therefore, that jury trials may not be demanded in such courts as a matter of constitutional right. Through juvenile court laws, the state was held to be acting in *parens patriae,* a term which was frequently used in the earlier cases to describe the sovereign and traditional power of the state to exercise the power of guardianship for the protection and support of neglected children and the reformation of those who were found to be delinquent.[31]

In 1927, the New York Court of Appeals, while conceding that formal proceedings of proof cannot always be followed in disposing of children under the neglect and delinquency provisions of New York law and the statute creating the Children's Court of Buffalo, held in *People* v. *Fitzgerald* [32] that where delinquency proceedings were based upon the commission of an act which would be criminal if committed by an adult, the alleged act must be proved and must be proved by some kind of evidence. Hearsay and surmise were rejected as a basis for a finding of delinquency. In the words of the court:

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[28] 213 Pa. 48, 62 Atl. 198 (1905).

[29] "No provisions of the juvenile court law have given rise to more litigation than those which eliminate the right of trial by jury, right of public trial and other such protections ordinarily guaranteed in criminal prosecutions by the New Jersey Constitution. The result of this mass of litigation has been the unqualified rejection of claims that the act is an unconstitutional deprivation of these guarantees. The decisions have been justified on the grounds that the proceeding in the juvenile court is not the trial of a child accused of committing a crime but is a proceeding to save him from such an ordeal and possible imprisonment if the child is deserving. The proceeding being so non-criminal in nature it is not necessary to invoke these purely criminal safeguards. It was held to be within the authority of the Legislature to remove the constitutional guarantees by completely removing the penalties, and that the disposition of the child was for his benefit and merely an exercise of the state's long recognized role of *parens patriae.* The nature of the proceedings, and sanctions imposed are sufficiently non-criminal as to make unnecessary the invocation of these criminal safeguards. . . . [The statute] furthers the 'non-criminal' concept by attempting to remove all vestiges of criminality stating that no judgment shall be considered as a conviction of a crime and that the juvenile is not to be subject to the disabilities which attend a conviction. Unfortunately, it is increasingly clear that much of the stigma and loss of reputation which is a real part of criminal convictions still hovers about the juvenile court, but it is doubtful if this would be persuasive enough to invoke these constitutional rights since these rights aren't ordinarily considered as being aimed at avoiding such stigma." *Problems Arising Under the New Jersey Juvenile Court Law,* 11 RUTGERS L. REV. 641, 650 (1957).

[30] *In re* Turner, 94 Kan. 115, 145 Pac. 871 (1915).

[31] For examples of this approach see Wissenburg v. Bradley, 209 Iowa 813, 229 N.W. 205 (1929); State *ex rel.* Matacia v. Buckner, 300 Mo. 359, 254 S.W. 179 (1923); State v. Monahan, 15 N.J. 34, 104 A.2d 21 (1954); *In re* Santillanes, 47 N.M. 140 138 P.2d 503 (1943).

[32] 244 N.Y. 307, 155 N.E. 584 (1927).

> Our activities in behalf of the child may have been awakened, but the fundamental ideas of criminal procedure have not changed. These require a definite charge, a hearing, competent proof and a judgment. Anything less is arbitrary power.[33]

The limitations upon proceedings in children's courts that were spelled out by the *Fitzgerald* case had little immediate effect, even in New York. Just five years later the Court of Appeals disowned its former opinion in upholding the Children's Court Act of 1930 in *People* v. *Lewis*.[34] In the interim, the Children's Court of Buffalo had been abolished. In repudiating the *Fitzgerald* case, the Court of Appeals held that Buffalo's special, local court was actually a criminal court invested with jurisdiction to try accusations of crime under the general law against children who were designated "defendants" in the proceedings and formally adjudged "guilty" or acquitted. In contrast, the court pointed out that the new law abolished the concept of crime and punishment. The state, through this statute, proposes to extend the same aid, care and training to the child who is a delinquent because of a criminal act that it has long given to the child who is merely incorrigible, neglected, abandoned or destitute. Since the proceeding is not criminal in nature, the court concluded, there was neither right to nor necessity for the procedural safeguards prescribed by constitution and statute in criminal cases.[35]

The court's specific holding in the *Lewis* case was to the effect that a judgment of delinquency based upon the youthful offender's uncorroborated confession and where no warning against self-incrimination had been given was valid. The concluding portion of the opinion states some important qualifications, which curiously enough seem to dull the sharp edge of the distinction made earlier with respect to the *Fitzgerald* case:

> When it is said that even in cases of lawbreaking delinquency constitutional safeguards and the technical procedure of the criminal law may be disregarded, there is no implication that a purely socialized trial of a specific issue may properly or legally be had. The contrary is true. There must be a reasonably definite charge. The customary rules of evidence shown by long experience as essential to getting at the truth with reasonable certainty in civil trials must be adhered to. The finding of fact must rest on the preponderance of evidence adduced under those rules. Hearsay, opinion, gossip, bias, prejudice, trends of hostile neighborhood feeling, the hopes and fears of social workers, are all sources of error and have no more place in Children's Courts than in any other court.[36]

In *Dendy* v. *Wilson*,[37] the Texas Supreme Court upheld the constitutionality of the Texas Juvenile Delinquency Act of 1943. In this opinion, the court pointed out that although the law makes provision

[33] *Id.* at 316, 155 N.E. at 588.
[34] 260 N.Y. 171, 183 N.E. 353 (1932).
[35] For a summary of cases holding that constitutional guaranties do not apply in juvenile court proceedings, see Comment, *Due Process in the Juvenile Courts*, 2 CATHOLIC U.L. REV. 90 (1952).
[36] People v. Lewis, 260 N.Y. 171, 178, 183 N.E. 353, 355 (1932).
[37] 142 Tex. 460, 179 S.W.2d 269 (1944).

for trial by jury [38] it does not provide for conviction and punishment for crime. The juvenile court is not a criminal court but rather, its procedure is governed largely by civil rules. Nonetheless, the court held it was error for the juvenile court in this case to compel minors charged with delinquency to give incriminating testimony against themselves. This conclusion was reached because the constitutional privilege extends to both criminal and civil cases and because the act made no provision for immunity from future prosecution. Absent absolute immunity to those who are forced to give testimony in the juvenile court in all other courts, the opinion holds squarely that the Constitution of Texas protects minors from compulsory self-incrimination.

In 1946 the Texas Court of Civil Appeals prescribed the rules by which juvenile court hearings must be governed:

> The accused in such cases should be faced by the witnesses who give evidence against him and should be permitted to hear such evidence and have an opportunity to cross-examine the witnesses. The evidence given in such cases should also be confined to the charges alleged in the petition filed in the case. We are of the opinion, therefore, that the trial court erred in considering statements of a material nature made to him out of the presence and hearing of appellants. It was likewise error for the trial court to hear and consider hearsay evidence of a material nature and to hear and consider evidence about extraneous matters and misconduct of the child with which it was not charged in the petition presented in the case.[39]

The Nebraska Supreme Court came to similar conclusions in 1954 in the case of *Krell* v. *Mantell*.[40] The record showed that the minor in this case was committed as a delinquent after a hearing in which nothing but unsworn, hearsay testimony was produced. The court, undeluded by any *parens patriae* terminology, pointed out the obvious fact that a child found to be a delinquent may be deprived of his personal liberty. It followed therefore, that legislative authorization to the juvenile court "to hear and dispose of the case in a summary manner" does not imply that traditional and constitutional safeguards may be dispensed with and does not sanction dependence upon unsworn testimony.

In spite of growing recognition of the desirability of according some minimum of due process to minors appearing in juvenile courts elsewhere, Pennsylvania remained unmoved from the position it had taken in *Commonwealth* v. *Fisher*.[41] As late as 1954 it affirmed the commitment of a minor as a delinquent in a case in which it appeared that the minor had been compelled to answer an incriminating question in the juvenile court and where the proceedings were conducted without prior notice to the parents.[42] The decision in this case reiterated the

[38] Other jurisdictions also afford the right to trial by jury in the juvenile court. See COLO. REV. STAT. ANN. § 37-9-14 (1953); D.C. CODE ANN. § 11-915 (1951); NEB. REV. STAT. § 43-202 (1952).
[39] Ballard v. State, 192 S.W.2d 329, 332 (Tex. Civ. App. 1946).
[40] 157 Neb. 900, 62 N.W.2d 308 (1954).
[41] 213 Pa. 48, 62 Atl. 198 (1905).
[42] Holmes' Appeal, 379 Pa. 599; 109 A.2d 523 (1954) noted in 16 U. PITT. L. REV. 282 (1955).

parens patriae theme of the earlier cases, tracing it again to the ancient powers of Chancery in England and reaffirmed the concept of juvenile court proceedings as civil in nature, protective in purpose and benevolent in motive.

This decision provoked a pointed dissent by Mr. Justice Musmanno. He wrote in part:

> The question is not *how* Joseph Holmes should be treated, but whether he should be "treated" at all.
>
> There are two phases to every Juvenile Court proceedings: (1) Determination as to whether the juvenile involved is delinquent or not; (2) Decision as to whether the juvenile is to be returned to his home, placed in a foster home, or committed to a reform institution. It is the first phase with which we are most concerned in this appeal.[43]
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> * * *
>
> [A] very erroneous idea pervades the reasoning of the judges throughout, namely, that a Juvenile Court hearing is simply an administrative procedure because its purpose eventually is to provide education, care and supervision over the subject of its jurisdiction. But when the minor is charged with what (as against an adult), would be a felony, and the minor denies the charge, the resulting proceeding can only be a judicial *contest* to determine conflicting facts and contentions; and, being such, it is a *trial* in every sense of the word. . . .
>
> The Majority of this Court, as well as the courts below, have spoken almost feelingly of the great care that the State bestows on a juvenile after he has been adjudged a delinquent, pointing out that the State thenceforth regards him not as a criminal but as a ward. But fairness and justice certainly recognize that a child has the right *not* to be a ward of the State, *not* to be committed to a reformatory, *not* to be deprived of his liberty, if he is innocent.[44]

Origin and Development of the Juvenile Court in California

The first juvenile court law in California was enacted in 1909. As in other states, it has been preceded by statutes establishing industrial or reform schools to which youthful offenders might be committed upon conviction of crime, or in case of waywardness, abandonment or neglect.[45] In *Ex Parte Ah Peen*,[46] decided in 1876, the Supreme Court considered one of these statutes under which the petitioner for a writ of habeas corpus had been committed by a police judge in San Francisco. The court was urged to hold the proceedings invalid in that there was a deprivation of the right to trial by jury and a deprivation of liberty without due process of law. In denying the petition, the court used familiar language:

> It is obvious that these provisions of the Constitution have no application whatever to the case of this minor child. The action

[43] Holmes' Appeal, 379 Pa. 599, 611, 109 A.2d 523, 528 (1954).
[44] *Id.* at 613, 109 A.2d at 529. For a criticism of the lack of procedural safeguards and conditions in Pennsylvania youth institutions, see *Juvenile Justice: Treatment or Travesty?*, 11 U. PITT. L. REV. 277 (1950).
[45] See note 3 *supra* for the specific statutes.
[46] 51 Cal. 280 (1876).

> of the police judge here in question did not amount to a criminal prosecution, nor to proceedings against the minor according to the course of the common law, in which the right of trial by jury is guaranteed. The purpose in view is not punishment for offenses done, but reformation and training of the child to habits of industry, with a view to his future usefulness when he shall have been reclaimed to society, or shall have attained his majority. Having been abandoned by his parents, the State, as *parens patriae,* has succeeded to his control, and stands *in loco parentis* to him. The restraint imposed upon him by public authority is in its nature and purpose the same which, under other conditions, is habitually imposed by parents, guardians of the person, and others exercising supervision and control over the conduct of those who are by reason of infancy, lunacy, or otherwise, incapable of properly controlling themselves.[47]

This concept, without substantial change, was applied by the Supreme Court to California's first juvenile court law.[48] The main purpose of the act, according to the judges, was to provide for the care and custody of children who have shown, or who from lack of care are likely to develop, criminal tendencies, in order to have them trained to good habits and correct principles. In 1912 this definition of purpose was expanded to include a larger class than the criminally delinquent:

> [T]he act aims, as its principal object, at the proper custody and education of children who lack the care and control deemed essential to their right development, whether or not their situation be such as to be likely to lead them to actual crime.[49]

The case of *Matter of Guardianship of Michels,*[50] decided in the Supreme Court three years later, had to do with the effect of a decree of abandonment upon the rights of the parents to be appointed guardians of their child. The opinion is important because of the court's concern with the problem of due process in juvenile court proceedings. The opinion states, *inter alia,* that due process of law "unquestionably" demands some sufficient notice to the parents of the proceedings about to be taken, with an opportunity to the parents to be heard upon the issue. Trial by jury, however, was not so demanded since juvenile court proceedings are not criminal in nature but rather in the nature of guardianship proceedings.[51]

As in other jurisdictions, the question of the existence of the privilege against self-incrimination in juvenile court proceedings arose in California. In a forthright opinion by the District Court of Appeal in *In re Tahbel,*[52] the court held the privilege must be respected in the juvenile court and that there was no power to confine a minor or to declare him to be a subject of the court merely because of his refusal to answer incriminatory questions. The court acknowledged that personal liberty may be restricted as a result of the helpless or dependent

[47] *Ibid.*
[48] Nicholl v. Koster, 157 Cal. 416, 108 Pac. 302 (1910); and see Moore v. Williams, 19 Cal. App. 600, 127 Pac. 509 (1912).
[49] Matter of Maginnis, 162 Cal. 200, 204, 121 Pac. 723, 725 (1912).
[50] 170 Cal. 339, 149 Pac. 587 (1915).
[51] To the same effect, see *In re* Florance, 47 Cal.2d 25, 300 P.2d 825 (1956).
[52] 46 Cal. App. 755, 189 Pac. 804 (1920).

condition of individuals in various relations of life such as parent and child, guardian and ward, teacher and pupil. Such restrictions however, must be necessary ones and it is only restraints of this nature that the juvenile court law is intended to impose:

> True, the design of the act is salutary, and every effort should be made to further its legitimate purposes. But never should it be made an instrument for the denial of a constitutional right, even though the person seeking refuge in the asylum afforded him by the invocation of that right be but a poor, unfortunate minor, who, by reason of his evil tendencies or improper environment, must be taken from the sole care and custody of his own natural parents and placed under the control of the court.[53]

Not long thereafter, however, the Supreme Court made it plain that the right to a jury trial was not one which could be asserted in the juvenile court. This conclusion was supported by the familiar analogy of the Chancellor acting in *parens patriae* in an equitable proceeding, protective in purpose and noncriminal in character. In such proceedings, the "minor has no inherent right to a trial by jury in the course of the application of [the] beneficial and merciful provisions" of the juvenile court law.[54]

Thus in California notice of the pendency of proceedings and an opportunity for a hearing on the part of parents where the action of the court might operate to deprive them of the custody of a minor are recognized as essential to juvenile court due process.[55] On the other hand, a failure on the part of the court to warn against self-incrimination,[56] the use of a probation officer's report as evidence,[57] the denial of bail after a finding of delinquency and pending appeal,[58] and the rejection of the concept of double jeopardy have been held to be consistent with the benevolent purposes of the juvenile court law.[59]

In so holding, the California courts expressed the traditional view and repeated and developed the same concepts that have dominated judicial thinking in this field since the turn of the century.[60] Com-

[53] *Id.* at 762, 189 Pac. at 808.

[54] *In re* Daedler, 194 Cal. 320, 332, 228 Pac. 467, 472 (1924). In People v. Superior Court, 104 Cal. App. 276, 285 Pac. 871 (1930) it was observed that jury trials are "out of place . . . [and] might have an injurious effect, not only upon the methods, but upon the atmosphere and confidence that have been built up around the work of the Juvenile Court, and which are so largely responsible for its success." *Id.* at 282, 285 Pac. at 874.

[55] *In re* Spiers, 15 Cal. App.2d 487, 59 P.2d 838 (1936). This is the general rule. See Green v. State, 123 Ind. App. 81, 108 N.E.2d 647 (1952); People *ex rel.* Peltz v. Brewster, 232 App. Div. 1, 248 N.Y.S. 599 (1st Dep't 1931); People *ex rel.* Deordio v. Palmer, 230 App. Div. 397, 244 N.Y.S. 727 (2d Dep't 1930).

[56] *In re* Dargo, 81 Cal. App.2d 205, 183 P.2d 282 (1947).

[57] *In re* Halamuda, 85 Cal. App.2d 219, 192 P.2d 781 (1948).

[58] *In re* Magnuson, 110 Cal. App.2d 73, 242 P.2d 362 (1952); in this opinion the court notes that Section 828 of the Welfare and Institutions Code provides that *pending hearing* the judge may admit to bail or may otherwise provide for temporary custody but goes on to comment that after a declaration of wardship, "it would be surprising to find in this statute provisions for bail." *Id.* at 75, 242 P.2d at 364.

[59] People v. Silverstein, 121 Cal. App.2d 140, 262 P.2d 656 (1953).

[60] Juvenile Court proceedings are noncriminal: Thomas v. United States 121 F.2d 905 (D.C. Cir. 1941); *In re* Sharp, 15 Idaho 120, 96 Pac. 563 (1908); *Ex parte* Naccarat, 328 Mo. 722, 41 S.W.2d 176 (1931); Matter of Post, 199 Misc. 1075, 107 N.Y.S.2d 896 (Sup. Ct. 1951). There is no right to appeal: Wissenburg v. Bradley, 209 Iowa 813, 229 N.W. 205 (1929); Marlowe v. Commonwealth, 142 Ky. 106, 133 S.W. 1137 (1911). No right to jury trial: *Ex parte* Januszewski, 196 Fed. 123 (C.C.S.D. Ohio 1911); Commonwealth v. Fisher, 213 Pa. 48, 62 Atl. 198 (1905). And no right to bail: *Ex parte* Espinosa v. Price, 144 Tex. 121, 188 S.W.2d 576 (1945).

mencing with the basic premise that juvenile court proceedings are not criminal in nature, the results conform to a logical pattern that sometimes appears to be artificial. This is not to say that the results are bad; on the contrary, it seems certain that without adherence to the notion that the juvenile court is not a criminal court, that its processes are not punitive and that its primary purposes are rehabilitative, it would not be possible to have such an institution at all which could be an effective alternative to the criminal courts in delinquency cases. Some standards of due process, however, are essential. Assurance must be provided that procedures are fair, that there will be no miscarriages of justice and that individual rights will be respected.

We may have this assurance without jury trials, without public proceedings or without observing formal rules of evidence. There are thousands upon thousands of judicial and administrative proceedings so conducted; they are commonplace. Some basic rights, however, remain; of primary importance among them is the right to appear and defend in person and by counsel. What recognition has this right received in the juvenile court?

The Right to Counsel in Juvenile Court

Recognition in Other Jurisdictions

There are relatively few reported cases in which the question of the right to counsel in juvenile court proceedings has been presented. In practice, counsel seldom appear in such matters, but when they are present the propriety of their participation in the proceedings has rarely been questioned.[61] When the issue has arisen, it has usually been considered in terms of waiver of the right to counsel,[62] the right to have counsel appointed by the court where the alleged delinquent minor is indigent[63] and the duty of the court to inform the alleged delinquent of his right to counsel.[64] As in the case of other rights, these issues have been resolved in two ways: first, since the proceedings are not criminal there is no right to "appear and defend with counsel"; and, second, although the proceedings are not criminal, due process requires recognition of the right to legal representation.

The decisions of the California courts contain the most explicit language to the effect that there is no right to counsel in juvenile court proceedings.[65] Actually, the language of the courts overstates California's position, but it does underline California's emphasis on the noncriminal nature of juvenile court procedure to which the traditional safeguards of criminal court procedure need not be applied.

[61] "[T]he right to be represented by counsel is subtly discouraged, though it is never denied. The attitude prevails that an attorney is a wrench which is ready to be thrown into the court machinery. Attorneys are to be tolerated lest they get the 'wrong' impression of what the court is trying to do, but if they can be induced to accept the court's motives in a spirit of cooperation to do what, in the court's opinion, is 'best for the child,' so much the better." Diana, *The Rights of Juvenile Delinquents: An Appraisal of Juvenile Court Procedures*, 47 J. CRIM. L., C. & P.S. 561, 565 (1957).

[62] Williams v. Huff, 142 F.2d 91 (D.C. Cir. 1944); People on Complaint of Cohen v. Brown, 278 App. Div. 576, 102 N.Y.S.2d 1 (2d Dep't 1951).

[63] Rooks v. Tindall, 138 Ga. 863, 76 S.E. 378 (1912); People v. Harris, 343 Ill. App. 462, 99 N.E.2d 390 (1951).

[64] Dudley v. State, 219 S.W.2d 574 (Tex. Civ. App. 1949); Lazaros v. State, 228 S.W.2d 972 (Tex. Civ. App. 1950).

[65] People v. Fifield, 136 Cal. App.2d 741, 289 P.2d 303 (1955).

In other jurisdictions the approach has been different. As early as 1912 a Georgia court, while conceding that it was not necessary for a children's court judge to appoint counsel for an alleged delinquent, held that the court had discretion to make such an appointment.[66] Alabama acknowledged that its juvenile court procedure was not criminal, but suggested that the appointment of an attorney to represent a minor accused of delinquency might be a matter of right.[67] In its opinion in *In re Brown*,[68] the Texas Court of Civil Appeals observed that the participation of counsel in juvenile court proceedings ought to be encouraged by probation officers as a natural concomitant of their duties to guard and protect the rights of the alleged delinquent minor.

In other decisions it has been held that the failure to appoint a guardian *ad litem* or an attorney for a 13 year old boy, coupled with other circumstances, operated to deprive the boy of rights to which he was entitled;[69] that although a 17 year old juvenile could waive the right to counsel, such waiver must be "competent and intelligent";[70] and that it was error for the court to permit the attorney for a mother who was seeking to have her daughter committed as incorrigible, to enter an appearance for the daughter since his interest was obviously adverse.[71]

In 1955 the District Court in the District of Columbia in *In re Poff*[72] reached the issue squarely, and held that representation by counsel in the juvenile court was a matter of constitutional right. The petitioner in the *Poff* case, a habeas corpus proceeding, asserted that a judgment of the juvenile court by which he was committed as a delinquent minor was invalid, since he was not advised of his right to counsel. An earlier decision in the Municipal Court of Appeals for the District of Columbia had held that the constitutional right to counsel was not applicable in juvenile court proceedings because of their noncriminal nature.[73] The court in the *Poff* case conceded that this concept of the nature of the proceedings was correct, but felt that it could not overlook the fact that the ultimate function of the juvenile court required a determination of guilt or innocence in order to make an adjudication with respect to a charge of delinquency. The opinion then holds that the benevolent and protective purposes of the juvenile court law were intended to be in addition to the rights which the juvenile held in common with adults. In short, the legislative intent was to enlarge, not diminish these protections.

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[66] Rooks v. Tindall, 138 Ga. 863, 76 S.E. 378 (1912).

[67] *Ex parte* State *ex rel.* Echols, 245 Ala. 353, 17 So.2d 449 (1944). The point at issue in this case was the failure of the juvenile court to appoint a guardian ad litem as required by statute. It was contended that since the accused had been represented by counsel, there was no prejudicial error. In this connection, the opinion makes this response: "True, the infant was represented throughout by his attorney, rendering all the services for his client which a guardian ad litem could probably have rendered. But the law should be followed. To have an attorney representing the infant was entirely proper, may be a matter of right, especially where a pending prosecution for murder entered into the issue of juvenile delinquency." *Id.* at 356, 17 So.2d at 451.

[68] 201 S.W.2d 844 (Tex. Civ. App. 1947).

[69] People v. Harris, 343 Ill. App. 462, 99 N.E.2d 390 (1951).

[70] Williams v. Huff, 142 F.2d 91 (D.C. Cir. 1944).

[71] *In re* Sippy, 97 A.2d 455 (D.C. Munic. Ct. App. 1953).

[72] 135 F. Supp. 224 (D.D.C. 1955).

[73] Shioutakon v. District of Columbia, 114 A.2d 896 (D.C. Munic. Ct. App. 1955), *rev'd*, 236 F.2d 666 (D.C. Cir. 1956); this case is noted, 44 GEO. L. J. 138 (1955)

In support of its conclusions, the court cited *Dendy* v. *Wilson*,[74] the dissenting opinion of Judge Crane in *People* v. *Lewis*[75] and the California case of *In re Contreras*.[76] It notes that there is no unanimity of opinion concerning the application of constitutional guarantees to juvenile court proceedings and then holds:

> [W]here the child commits an act, which act if committed by an adult would constitute a crime, then due process in the Juvenile Court requires that the child be advised that he is entitled to the effective assistance of counsel, and this is so even though the Juvenile Court in making dispositions of delinquent children is not a criminal court.[77]

A little less than one year after the decision in the *Poff* case, the Municipal Court of Appeals for the District of Columbia came to the same conclusion in *Shioutakon* v. *District of Columbia*.[78] This was an appeal from the denial of a motion to vacate a judgment of commitment of a minor to a training school on the ground that the minor was not represented by counsel in the juvenile court nor was he advised of his right to counsel. In reversing the lower court, the decision points out that in any delinquency proceeding the juvenile court may act to deprive the minor of his liberty and the parents of his custody. In order to accomplish this, the juvenile court must find from the evidence whether the child has in fact committed an act of delinquency. The court goes on to assert that the serious nature of this adjudication suggests that Congress must have been aware of the need for the effective assistance of counsel in such proceedings. The opinion notes too, that under the rules of the juvenile court, a jury trial may be demanded, peremptory challenges may be exercised and written motions of various kinds may be made. In such circumstances it seemed obvious to the court that the assistance of counsel was essential:

> The "right to be heard" when personal liberty is at stake requires the effective assistance of counsel in a juvenile court quite as much as it does in a criminal court. The need is also apparent from the provision for a jury on demand. Clearly a child cannot, without the aid of counsel, competently decide whether he should exercise this right.[79]

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[74] 142 Tex. 460, 179 S.W.2d 269 (1944).

[75] 260 N.Y. 171, 179, 183 N.E. 353, 356 (1932).

[76] 109 Cal. App.2d 787, 241 P.2d 631 (1952).

[77] *In re* Poff, 135 F. Supp. 224, 227 (D.D.C. 1955). To illustrate the necessity for counsel, the court wrote:

"One more matter deserves comment. It is not disputed, aside from the constitutional considerations, that petitioner would have been entitled to a jury trial. This being so, who is to make the decision as to whether or not a jury trial should be demanded? Is a sixteen year old boy capable of deciding whether he should be tried by a jury or tried by a Judge? I do not think so." *Ibid.*

[78] 236 F.2d 666 (D.C. Cir. 1956), *reversing*, 114 A.2d 896 (D.C. Munic. Ct. App. 1955); this decision reversed the decision of the Municipal Court of Appeals which the District Court refused to follow in the *Poff* case. *In re* Poff, 135 F. Supp 224 (D.D.C. 1955).

[79] Shioutakon v. District of Columbia, 236 F.2d 666, 669 (D.C. Cir. 1956), *reversing*, 114 A.2d 896 (D.C. Munic. Ct. App. 1955). Following the *Shioutakon* decision, the Court of Appeals disposed of a related problem in McBride v. Jacobs, 247 F.2d 595 (D.C. Cir. 1957). In this case, the mother of the petitioner, who was committed as a juvenile delinquent, was notified in writing of her son's right to counsel. This was held not to be the equivalent of notice to the juvenile who must be advised personally and who, if he waives counsel, must waive intelligently.

Obviously not all minors are capable of making a waiver. Where the court finds for any reason the minor is not capable of a waiver the parent may so waive provided the court also finds there is no conflict of interest between them, and of course the waiver by the parent must be an intelligent, knowing act. *Id.* at 596.

The Supreme Court of New Hampshire, in 1957, relied in part on the *Poff* and *Shioutakon* cases in holding that the juvenile court of that state may not prohibit counsel from appearing in behalf of an alleged juvenile delinquent or his parent.[80] The main ground of the decision was a provision of the state's juvenile court law which, although not making express provision for counsel, provides that juvenile court hearings shall be attended only by parents, witnesses or others "in the interest of justice."[81] This provision the court interpreted to mean that the minor involved and his parents were entitled to the appearance and assistance of counsel.

Of primary importance in the opinion of the New Hampshire court is its stress on the proposition that the right to notice and the opportunity to be heard in special proceedings of a civil nature are generally considered to be basic essentials of most judicial proceedings. Concomitant of an opportunity to be heard in support of or in defense of a claim is the right to the assistance of counsel. The requirement of a hearing under the juvenile court law implies a right to the assistance of counsel in order that the parent or party may be fairly and intelligently heard.

Once granting the premise that the right to a hearing necessarily includes the right to the assistance of counsel, the conclusion seems inescapable that the right to appear and defend by counsel in juvenile court proceedings inheres not only in the concept of due process, but in the meaning of "hearing" as it is used in juvenile court laws.

It seems implicit in the language of those courts which have been reluctant to recognize the right to counsel in juvenile court proceedings that participation by counsel would in some way impair the effectiveness of the juvenile court laws and would in some way be inconsistent with the traditional *parens patriae* concept of specialized children's courts.[82] The New Hampshire Supreme Court, obviously aware of this feeling, made the point in the *Poulin* case that the right to counsel in juvenile courts has been emphasized by those most interested in the advancement and improvement of the juvenile courts. In support of this assertion, it invited attention to a publication of the Children's Bureau of the United States Department of Health, Education, and Welfare entitled *Standards for Specialized Courts Dealing with Children.*[83] This document was prepared in cooperation with the National Probation and Parole Association and the National Council of Juvenile Court Judges. It has much to say about the importance of providing the effective assistance of counsel for children who appear in juvenile courts upon charges of delinquent conduct. For present purposes, the following quotation will make this point abundantly clear:

> In sufficient time before the court hearing, the family and the child should be notified of their right to legal counsel. This may be done at the point of intake or by the probation officer in the course of helping parents and child understand the nature of the

[80] *In re* Poulin, 100 N.H. 458, 129 A.2d 672 (1957).
[81] *Ibid.*
[82] A recent study indicates that many California juvenile court judges believe that there is no need for attorneys in their courts. *The California Juvenile Court*, 10 STAN. L. REV. 471, 500 (1958).
[83] CHILDREN'S BUREAU, STANDARDS FOR SPECIALIZED COURTS DEALING WITH CHILDREN, *op. cit. supra* note 12, at 49.

court's proceedings. Many parents or children may not wish to be so represented, but others may insist on this right. *When they do, and if they are financially unable to employ counsel, the court should make counsel available.* (Emphasis added.)[84]

Recognition of the Right to Counsel in California

Explicit judicial recognition of the right to counsel in juvenile court proceedings in California has stopped far short of the position reached by the District of Columbia and New Hampshire. As in most jurisdictions the juvenile court law of this State is silent on this subject. It must be conceded however, that while the issue has been closely approached it has never been squarely presented with respect to delinquency proceedings nor has it come before the appellate courts in such a way as to compel thoroughgoing consideration on the merits.

One of the earliest cases suggestive of the problem held that a minor detained in juvenile hall pursuant to an order of the juvenile court could not be denied the right to consult with counsel with respect to criminal charges pending in another court.[85] Another held that counsel employed by a parent could be denied access to minors where the minors had been wards of the court for some four years and the proceeding was merely one for the change of their custody.[86] The court reasoned that the question was simply that of the right of the lawful guardian (the juvenile court) to change the physical custody of the wards. So viewed, the court felt that no legal rights of the minors were involved.

In a dependency proceeding entitled *In re Matter of Hill,*[87] however, it was held that since parents may be deprived of custody in such an action and be required to make support payments, they are entitled to be present to protect their interests and those of the child.[88] To this end, the court held they may produce evidence, cross-examine witnesses and be advised and represented by counsel.[89]

It was in the light of this meager background of precedent that *In re Contreras* [90] was decided in 1952. This case, it will be remembered, was cited in the *Poff* and in the *Poulin* cases [91] as authority for the proposition that the assistance of counsel in juvenile court proceedings is a matter of right. True, the decision contains some forceful and persuasive language to this effect, but it is so clearly dicta that it has been dismissed as of no significance in the opinions of the California courts which have followed. Dicta or not, however, what the court had to say in the *Contreras* case about the nature of juvenile court proceedings deserves consideration:

> Section 736 of the Welfare and Institutions Code provides than [*sic*] "An order adjudging a person to be a ward of the juvenile

[84] *Ibid.*
[85] *In re* Rider, 50 Cal. App. 797, 195 Pac. 965 (1920).
[86] *In re* McDermott, 77 Cal. App. 109, 246 Pac. 89 (1926).
[87] 78 Cal. App. 23, 247 Pac. 591 (1926).
[88] Denial of the parents' right to counsel in such a case is a "gross" denial of due process. Arizona State Dept. of Public Welfare v. Barlow, 80 Ariz. 249, 296 P.2d 298 (1956); and see *In re* Custody of a Minor, 250 F.2d 419 (D.C. Cir. 1957).
[89] Where children are in the custody of the court because of mistreatment at the hands of the parent, it seems that counsel for the parent may be barred from appearing for the children because of a conflict of interests. *In re* O'Day, 83 Cal. App.2d 339, 189 P.2d 525 (1948).
[90] 109 Cal. App.2d 787, 241 P.2d 631 (1952).
[91] *In re* Poff, 135 F. Supp. 224 (D.D.C. 1955); *In re* Poulin, 100 N.H. 458, 129 A.2d 672 (1957).

court shall not be deemed to be a conviction of crime." In consonance therewith it has been held that issues presented to the juvenile court may be determined upon the preponderance of the evidence (*Matter of Cannon,* 27 Cal. App. 549, 553 [150 P. 794]). In the instant proceeding the minor was not represented by counsel upon the hearing at which he was adjudged a ward of the court. A reading of the transcript of the testimony taken immediately suggests the probability that had the minor been represented by counsel considerable of the evidence given would have been excluded through timely objections.

While the juvenile court law provides that adjudication of a minor to be a ward of the court shall not be deemed to be a conviction of crime, nevertheless, for all practical purposes, this is a legal fiction, presenting a challenge to credulity and doing violence to reason. Courts cannot and will not shut their eyes and ears to everyday contemporary happenings.

It is common knowledge that such an adjudication when based upon a charge of committing an act that amounts to a felony, is a blight upon the character of and is a serious impediment to the future of such minor. Let him attempt to enter the armed services of his country or obtain a position of honor and trust and he is immediately confronted with his juvenile court record. And further, as in this case, the minor is taken from his family, deprived of his liberty and confined in a state institution. True, the design of the Juvenile Court Act is intended to be salutary, and every effort should be made to further its legitimate purpose, but never should it be made an instrument for the denial to a minor of a constitutional right or of a guarantee afforded by law to an adult.[92]

The court went on to make the distinction made in the dissenting opinion by Mr. Justice Musmanno in *Holmes' Appeal,*[93] between the minor who admits his delinquent conduct and the minor who, like Contreras, denies it. In the latter circumstance, "his liberty should not be taken from his [*sic*] until his guilt of the charges lodged against him was established by legal evidence."[94]

The question next arose in *People* v. *Fifield.*[95] The *Contreras* case was noted but disregarded on the ground that the reversal in that case did not turn on the question of the right to counsel but solely upon the lack of competent evidence to support the judgment of the juvenile court. The *Fifield* opinion opens with the statement that the only contentions made are that the minor was denied the constitutional rights to jury trial and representation by counsel. It then cites the cases which previously held that since juvenile court proceedings are not criminal in nature, there is no right to jury trial,[96] no right to be warned against self-incrimination,[97] no right not to be placed twice in jeopardy[98] and no right to be admitted to bail during the pendency

[93] *In re* Contreras, 109 Cal. App.2d 787, 789, 241 P.2d 631, 633 (1952).
[93] 379 Pa. 599, 109 A.2d 523 (1954).
[94] *In re* Contreras, 109 Cal. App.2d 787, 791, 241 P.2d 631, 634 (1952).
[95] 136 Cal. App.2d 741, 289 P.2d 303 (1955).
[96] *In re* Daedler, 194 Cal. 320, 228 Pac. 467 (1924).
[97] *In re* Dargo, 81 Cal. App.2d 205, 183 P.2d 282 (1947).
[98] People v. Silverstein, 121 Cal. App.2d 140, 262 P.2d 656 (1953).

of an appeal.[99] This leads the court to conclude: "By a parity of reasoning the guaranty of the right to counsel in criminal cases is likewise not applicable." [100]

The concluding portion of the opinion, however, qualifies the foregoing sentence by making it plain that if the alleged delinquent is actually represented by an attorney, he may not be deprived of the right to this representation. The point in the *Fifield* opinion is not "that the court refused to permit appellant to be represented by counsel, but that the court did not expressly advise the minor that she was entitled to be represented by counsel. (Cal. Const., art I, § 13; Pen. Code, §§ 858, 987.) No such duty was cast on the court by those provisions since they apply only to prosecutions for crime." [101] Thus, although most of the language of the opinion is squarely inconsistent with the principal theme of the *Contreras* dicta, the two cases are easily distinguishable on their actual holdings.

The most recent consideration of the problem appears in the opinion of the Supreme Court in the case of *People* v. *Dotson*.[102] Although at first glance it might appear that the court is not disposed to extend recognition to the right to representation by counsel in the juvenile court, the result rests upon much narrower ground and the words of the decision appear to carry the implication that denial of the right to counsel in the juvenile court may well amount to a deprivation of due process.

In this case, the defendant was arraigned in the superior court on charges of murder, burglary and robbery. He was represented by counsel. Since it appeared that the accused was a minor the matter was certified to the juvenile court which held a hearing for the purpose of determining whether it would retain jurisdiction or remand the defendant for prosecution under the general law. The accused's counsel did not appear at this hearing and no effort was made to urge the juvenile court to retain jurisdiction. The accused was remanded for trial as an adult and convicted. In his appeal he argued that he thought he had just as good an opportunity to make his defense in the superior court as in the juvenile court and that he was unaware of the fact that in the superior court he was subject to the risk of much more serious punishment than the juvenile court could impose. He attributed this lack of knowledge to the fact that he was not represented by counsel at the juvenile court hearing.

In answer to his contention that this lack of counsel was error, the Supreme Court first repeated the *parens patriae* or guardianship formula as the basis for distinguishing juvenile court proceedings from criminal actions. It next acknowledged that minors in the juvenile courts are as much entitled to constitutional guarantees as when subjected to criminal proceedings, citing the *Poff* and *Contreras* cases,[103] but added the qualification that "because of the nature of the proceedings, the denial of those requirements which have been recognized as elements of a fair trial does not necessarily deprive one of due process

[99] *In re* Magnuson, 110 Cal. App.2d 73, 242 P.2d 362 (1952); see *supra* note 58.
[100] People v. Fifield, 136 Cal. App.2d 741, 743, 289 P.2d 303, 304 (1955).
[101] *Ibid.*
[102] 46 Cal.2d 891, 299 P.2d 875 (1956); this case is noted in 5 U.C.L.A. L. REV. 142 (1958) and 8 HASTINGS L.J. 315 (1957).
[103] *In re* Poff, 135 F. Supp. 224 (D.D.C. 1955); *In re* Contreras, 109 Cal. App.2d 787 241 P.2d 631 (1952).

of law in juvenile court proceedings."[104] This is so with respect to the right to representation by counsel unless through such lack, "undue advantage is taken of [the minor] or he is otherwise accorded unfair treatment resulting in a deprivation of his rights."[105] The court found that no undue advantage was taken of the defendant in the instant case, particularly since the action taken in the juvenile court was not in any sense adverse to him. There was no attempt to determine the defendant's complicity in any wrongdoing but merely a discretionary determination that he was not a fit subject for the exercise of juvenile court jurisdiction. Thus, "under the circumstances here shown the defendant was not deprived of any constitutional right."[106]

The qualifying language of the opinion in the *Dotson* case and the narrowness of the issue upon which the *Fifield* decision is based makes it clear that, in spite of the negative attitude of the California courts towards square recognition of the right to counsel in the juvenile court, the issue remains open. It is probable too, that since the Supreme Court has quite recently affirmed the principle that the right to a hearing necessarily includes the right to appear and be represented by counsel,[107] the California courts will be impelled ultimately to concede that this right is a matter of due process in juvenile court hearings. In these circumstances, both the logic of the law and the basic purposes of the Juvenile Court Act point to the desirability of statutory recognition and definition of the right of minors to appear and defend by counsel in delinquency proceedings in this court.

The objective of securing individualized justice is at the heart of the concept of the juvenile or specialized children's court. To reach this objective it is essential that the legal and constitutional rights of parent and child receive adequate protection.[108] It is a perversion of reason to say that this is not necessary because an all-wise state acts through the juvenile court in the interest of the child and seeks neither to punish nor to restrain him. The judgment of a juvenile court may take a child from his home, keep him in custody while his ultimate disposition is being determined and commit him to an institution which, no matter how enlightened its administration, is actually a place of confinement. To risk the impositions of such sanctions against simple error, let alone arbitrary action, is plainly indefensible. Of all our traditional safeguards and precautions, the right to counsel is paramount.

With counsel to represent him, the alleged delinquent juvenile is at the outset in a position to make an effective demand for a determination of the basis for the court's assertion of jurisdiction over him.

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[104] People v. Dotson, 46 Cal.2d 891, 895, 299 P.2d 875, 877 (1956).

[105] *Ibid.*

[106] *Id.* at 896, 299 P.2d at 878. The limited scope of the actual ruling in the *Dotson* case has been thus described: "Yet it is hard to find a legal basis for insisting upon the right to counsel here. No adjudication of delinquency was made, no treatment prescribed. The action of the court was simply to let the criminal law take its course. A full criminal trial with all the protections will follow. The children's court plays a role in this instance not unlike that of a prosecutor in the exercise of his discretion. It makes a decision that a given case should go forward to trial. Although that decision is made after a hearing, the whole procedure seems too close to the ordinary processes of bringing an accusation to require that the youngster be represented by counsel at that stage." Paulsen, *Fairness to the Juvenile Offender*, 41 MINN. L. REV. 547, 572 (1957).

[107] Mendoza v. Small Claims Court, 49 Cal.2d 668, 321 P.2d 9 (1958).

[108] "Constitutional safeguards are just as applicable in a Juvenile Court proceeding as in any other." *The Attorney and the Juvenile Court*, 30 L.A. BAR BULL. 333 (1955); and see Breitenbach, *Due Process of Law for Youthful Offenders*, 32 CAL. B.J. 665 (1957); Diana, *supra* note 61.

In sufficient time before the court hearing, the family and the child should be notified of their right to legal counsel. This may be done at the point of intake or by the probation officer in the course of helping parents and child understand the nature of the court's proceedings. Many parents or children may not wish to be so represented, but others may insist on this right. When they do, and if they are financially unable to employ counsel, the court should make counsel available.[109]

Recommendation

In order to insure that the right to counsel is protected, the juvenile court law should be amended to require that the alleged delinquent minor and his parents or guardian be advised of the existence of this right and that the court be authorized to appoint counsel for those who desire such representation but who are without means to employ an attorney.

LIMITATION OF THE TERM "WARD OF THE JUVENILE COURT" TO DESCRIBE ONLY DELINQUENT MINORS OR JUVENILE OFFENDERS

Under existing provisions of the juvenile court law, the term "ward of the juvenile court" is applied to any minor who may be adjudged subject to the court's jurisdiction.[110] No distinction is made between the delinquent child and the child who comes within the protection of the court because of abandonment, dependency or neglect. Unfortunately, such indiscriminate use of this designation tends to foster the misconception that all wards are juveniles who have been involved in some kind of wrongdoing. Actually, such a designation is not necessary, since the judgment of the court may be expressed specifically in terms of abandonment, neglect or delinquency.

The term "ward of the juvenile court" is well established and it is understood generally by the public. It is not necessary to drop it completely in order to achieve the desirable distinction between the delinquent and the nondelinquent minor. Rather, what is needed are such amendments and additions to the present juvenile court law as will mark a clear separation in the terms of the law between the juvenile who is alleged to be delinquent and the juvenile who is innocent of wrongdoing. Basically, this can be accomplished by retaining the term "ward of the juvenile court" only with respect to proceedings involving delinquency and by separately defining the jurisdiction of the court over the nondelinquent minor.

[109] CHILDREN'S BUREAU, STANDARDS FOR SPECIALIZED COURTS DEALING WITH CHILDREN, *op. cit. supra* note 12, at 49.
[110] CAL. WEL. & INST. CODE § 735.

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