

Lesson 5

Thursday 2/8/24

The Question of “Offsetting Benefit”

“They also suggest basic issues as to the justifiability of affording a juvenile less protection than is accorded to adults suspected of criminal offenses, particularly where, as here, there is an absence of any indication that the denial of rights available to adults was offset, mitigated, or explained by action of the Government, as *parens patriae*, evidencing the special solicitude commanded by the Juvenile Court Act.” (pp. 551-552).

The Key Procedural Error - Jurisdiction Waiver

- Even though the Court is concerned about the procedural issues raised above, it does not address any of those issues.
- Instead, it focuses on the more fundamental issue of whether the waiver of jurisdiction was valid.
- What is the concern about the waiver?

Counsel's Argument For Invalidating the Waiver

- No hearing was held.
- No findings of fact were made by the juvenile court.
- Juvenile court provided no reason for the waiver.
- Counsel was denied access to Social Services file which presumably was among the evidence considered by the Juvenile Court before its waiver decision.

Assumptions Behind the Supreme Court's Response

- Considerable latitude is necessary for the juvenile court to function properly. Complete latitude is not.
- Proceedings must meet “basic requirements of due process and fairness” and they must comply “with the statutory requirement of a ‘full investigation.’”
- Juvenile court has discretion but this is not “a license for arbitrary procedure.”

Further Commentary by the Court

- Juvenile court acted in “total disregard of a motion for hearing filed by counsel.”
- The juvenile court made its decision “without any hearing or statement or reasons.”
- And, the stakes are high: “the child will be taken from the Receiving Home for Children and transferred to jail along with adults and that he will be exposed to the possibility of a death sentence instead of treatment for a maximum, in Kent’s case of five years, until he is 21.”
- The Court continues: “there is no place in our system of law for reaching a result of such tremendous consequence without ceremony - without hearing, without effective assistance of counsel, without a statement of reasons.”

Supreme Court Holding (p. 554)

An explicit comparison of adult and juvenile processes:

- “It is inconceivable that a court of justice would proceed in this manner.”
- “It would be extraordinary if society’s special concern for children, as reflected in the DCJC Act, permitted this procedure.”
- “We hold that it does not.”

The Court's Argument

- Rationale #1: Juvenile Court's role as a social welfare agent is not a license to practice arbitrary procedure (p. 554).
- Rationale #2: The Juvenile Court's *parens patriae* role does not provide an absolute justification for minimizing or ignoring due process rules for kids (p. 555).
- Rationale #3: More was required than was done here (pp. 556-557).

What was Kent entitled to? (p. 557)

- A hearing.
- Access to the Social Services file and any other relevant notes or reports that are considered by the Juvenile Court.
- A statement of reasons or findings justifying the Juvenile Court's decision.
- Controlling constitutional principles of due process (5th Amendment) and assistance of counsel (6th Amendment).

The Court Stops Short

- The Court had a number of options at its disposal.
- The justices in the majority are clearly skeptical about the “actual practice” of the American juvenile justice system.
- But they don’t seem to be ready to say that juveniles should receive the same treatment as adults either: “We do not mean to indicate that the hearing to be held must conform with all of the requirements of a criminal trial or even of the usual administrative hearing; but we do hold that the hearing must measure up to the essentials of due process and fair treatment” (p. 562).
- The Court is implicitly embracing a “middle-ground” position. We will see more of this in the Gault decision the following year.

So, What's the Remedy? (pp. 564-565)

- Kent is already older than 21. His case can't be sent back to juvenile court.
- Kent wants the Court to vacate his Federal District Court convictions and to dismiss all indictments.
- The Court declines to do this. Instead, it orders a new hearing on whether the waiver decision was “inappropriate.” If it is, then Kent's convictions must be vacated.
- If the order is found to have been appropriate then the District Court can impose a new sentence.

Latent Function of Kent Decision

- Repeatedly, the Court expresses its views about problems with the way Kent's case was handled.
- The Court also notes that the DCJC is not unusual in any way.
- The Court confines its ruling in Kent to the issue of waiver.
- The language of the Kent ruling sends a signal to the legal community that the Court is ready to take on the issue of juvenile justice more broadly.

In re Gault (1967): Case Overview

- Case comes to the U.S. Supreme Court from the Arizona Supreme Court (AzSC).
- The AzSC had upheld the dismissal of a petition for a writ of habeas corpus seeking the release of 15 year old Gerald Gault from the State Industrial School in 1965.
- The basis for the petition was a claim that the Arizona Juvenile Code was unconstitutional because Gault's due process rights had been violated.
- The AzSC agreed that due process was required but they also held that Gault's treatment did not violate his due process rights.
- Justice Abe Fortas, writing for the majority of the U.S. Supreme Court reversed the AzSC's decision (8-1 decision).

Gerald Gault's Arrest



- 2/25/64: Gerald Gault was placed on six months' probation in Arizona for being "in the company of another boy who had stolen a wallet from a lady's purse."
- Complaint: A neighbor, Mrs. Cook, reported receiving an offensive telephone call.
- On the basis of this complaint, Gault and a friend, Ronald Lewis, are taken into custody by county sheriff on 6/8/64 at about 10 am.
- Parents were not notified of Gault's arrest until Gault's brother talked with the Lewis family after 6pm on 6/8/64.
- Deputy probation officer (and superintendent of the Detention Home) explained to the Gaults "why Jerry was there." He told them a hearing would be held in Juvenile Court at 3pm the following day, 6/9/64.

Petition to the Juvenile Court and Initial Appearance Before the Judge

- Officer Flagg filed petition with the Juvenile Court on 6/9/64.
- No copy of the petition was provided to Gault's parents and they did not see the petition until 8/17/64 (habeas corpus hearing).
- Content: "said minor is under the age of 18 years, and is in need of the protection of this Honorable Court; [and that] said minor is a delinquent minor."
- The 6/9/64 hearing: Gault, his mother, brother, Officer Flagg (and another officer), and the judge were present. The meeting was held in the judge's chambers. Mrs. Cook was not there and no detailed records about the meeting were kept.
- Apparently Gault was questioned by the judge during this meeting; after the meeting, Gault was returned to the Detention Home. He was released on 6/11 or 6/12. No records of the reasons for his detention and release were kept.

Delinquency Hearing

- Hearing was set for 6/15/64.
- On that day, Gault and his parents, Ronald Lewis and his father, Officer Flagg (and another officer) and the judge met.
- No transcripts of testimony and conflicts in the record about Gault's testimony that day.
- Mrs. Cook, the complainant was not present. Officer Flagg apparently spoke with her by phone one time on 6/9/64.
- The judge committed Gault, age 15, to the State Industrial School until age 21 "unless sooner discharged by due process of law."

Habeas Corpus Hearing

- No right of appeal in juvenile cases under Arizona law.
- 8/3/64: AzSC refers petition for writ of habeas corpus to the Superior Court for a hearing on 8/17/64.
- Juvenile Court Judge (McGhee) was cross-examined about his disposition of the case.
- He took into account that Gault was already on probation.
- He also noted that Gault was a “delinquent child” under Arizona law because his involvement in the offensive telephone call violated the Arizona Criminal Code. The penalty for violating the same criminal law as an adult would have been a \$5 to \$50 fine or imprisonment for not more than two months.
- The Superior Court dismissed the writ.

Gault's Argument to the Arizona Supreme Court (AzSC)

- Gault alleges that the Juvenile Code is unconstitutional because it does not require:
 - notice of charges
 - notice of hearing
 - a right of appeal
- Gault further argues that he was denied due process of law because of the lack of notice, deprivation of counsel, right to confront witness, the privilege against self-incrimination, use of unsworn hearsay testimony, and failure to keep records of the proceedings.
- Finally, Gault argues that he should not have been removed from his parents' custody without demonstrating their unsuitability.
- The AzSC doesn't buy it: they agree that Gault was entitled to due process of law but uphold the Superior Court's dismissal of the writ of habeas corpus.

Scope of the U.S. Supreme Court's Review

- The Court is not concerned with the criminal investigation of Gault's behavior.
- The Court is not concerned with the problems Gault encountered in appealing his case after he was adjudicated delinquent.
- The focus is going to be on notice of the charges and the judicial proceedings against Gault.