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## Constitutional Law: Right to Counsel in Juvenile Court

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# NOTES

## CONSTITUTIONAL LAW: RIGHT TO COUNSEL IN JUVENILE COURT

The protection of the minor's constitutional rights during the course of proceedings in Juvenile Court is a problem which continuously confronts the courts. The problem came before the California Supreme Court in the case of *People v. Dotson*,<sup>1</sup> where the issue was whether a minor appearing before the Juvenile Court was denied due process of law when not advised of his right to counsel during the course of the proceedings.

The defendant, a minor, was arraigned in the Superior Court upon an indictment for the crimes of murder, burglary and robbery. The defendant at that time was represented by counsel appointed by the court. Upon learning that the defendant was a minor, proceedings in the Superior Court were suspended, and the minor was remanded to the Juvenile Court. In the Juvenile Court, the minor was not represented by counsel. The judge there, considering the prior delinquency record of the minor, his character, age and types of offenses committed, declared him an unfit subject for jurisdiction of the Juvenile Court, and recertified his case to the Superior Court for trial upon the indictment. The minor was again represented by counsel at the Superior Court trial, where he was found guilty on all three counts and convicted. Defendant on appeal assigned as error a claimed lack of representation by counsel in the Juvenile Court. The California Supreme Court, with one justice dissenting, held that lack of representation by counsel in Juvenile Court was not necessarily a denial of due process; that it was not a denial where no undue advantage was taken of the minor because of the absence of counsel.

The majority of the court asserted the well recognized principle that Juvenile Court proceedings are not criminal in nature even though a criminal charge is pending in the Superior Court.<sup>2</sup> The court further stated:

"They are in the nature of guardianship proceedings in which the state as *parens patriae* seeks to relieve the minor of the stigma of a criminal conviction and to give him corrective care, supervision and training."<sup>3</sup>

The court recognized that a defendant is entitled to be represented by counsel at all stages of a *criminal* proceeding,<sup>4</sup> but held that the proceedings before the Juvenile Court were not criminal in nature.

Prior to the establishment of the Juvenile Court system in the United States, our common criminal law did not differentiate between the adult and minor who had reached the age of criminal responsibility.<sup>5</sup> The criminal offender, regardless

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<sup>1</sup> 46 Cal. 2d 891, 299 P.2d 875 (1956).

<sup>2</sup> *Ibid.* See also *People v. Sanchez*, 21 Cal. 2d 466, 132 P.2d 810 (1942); *People v. Hoffman*, 199 Cal. 155, 248 Pac. 504 (1926); *In re Daedler*, 194 Cal. 320, 228 Pac. 467 (1924).

<sup>3</sup> 46 Cal. 2d at 895, 299 P.2d at 877. See also *In re Daedler*, 194 Cal. 320, 228 Pac. 467 (1924); *In re Dargo*, 81 Cal. App. 2d 205, 183 P.2d 282 (1947); *People v. Renteria*, 60 Cal. App. 2d 463, 141 P.2d 37 (1943).

<sup>4</sup> CALIF. CONST. art. I, § 13: "In criminal prosecutions, in any court whatever, the party accused shall have the right . . . to appear and defend, in person and with counsel." This right was specifically incorporated into CALIF. PEN. CODE § 858.

<sup>5</sup> Julian Mack, *The Juvenile Court*, 23 HARV. L. REV. 104 (1910).

of his minority was made amenable to the criminal law. The Juvenile Court Law<sup>6</sup> was promulgated in the various states to ameliorate the treatment of youthful offenders, not by punishing them for their wrongdoing, but by affording them guidance and care so that they may be returned to society as useful citizens.<sup>7</sup> This is the basic underlying philosophy of the Juvenile Court Law.

To accomplish its purpose, the proceedings then must be by nature informal<sup>8</sup> and without the adversary character of proceedings associated with other tribunals. The role filled by the Juvenile Court is not the determination of the innocence or guilt of the minor and punishment for crime, but the development of understanding of the minor's problem so that its solution may be found.<sup>9</sup> However, this does not mean that constitutional rights of the minor are to be totally disregarded.<sup>10</sup> The proceedings are to be conducted with a view toward balancing the individualized treatment of the child on the one hand, and the protection of his legal and constitutional rights on the other.<sup>11</sup>

A minority view which found expression in the dissent in the principal case, is that where a child commits an act which, if committed by an adult would constitute a crime, then due process of law requires that the minor be advised of his right to counsel before the Juvenile Court even though it is not a criminal tribunal.<sup>12</sup> Supporters of this view contend that proceedings resulting in the adjudication of the minor as ward of the Juvenile Court cannot be regarded as other than criminal proceedings.<sup>13</sup> They feel that commission of the youth to an institution is punishment exacted for his wrongdoing and that the child bears this stigma in society in his adult years. However, this view runs contra to section 736 of the California Welfare and Institutions Code which states:

An order adjudging a person to be a ward of the Juvenile Court shall not be deemed to be a conviction of crime.

The dissenting judge gave another reason for asserting the minor was denied due process of law. He felt that had the minor been represented by counsel in the Juvenile Court, he would have been in a better position to defend himself on the issue then involved. As a result, the Juvenile Court might have retained jurisdiction, possibly changing the outcome of the case considerably. Although this argument may seem plausible at first, it would be questionable whether the Juvenile Court judge could have been persuaded by counsel for the minor to retain jurisdiction, considering the prior record of the minor in this case.

<sup>6</sup> Juvenile Court Law is statutory, not common law. It has to do with the procedures in taking custody of the child, his care and discipline. The main purpose of the Juvenile Court Law is to prevent the delinquency of children. *People v. Deibert*, 117 Cal. App. 2d 410, 256 P.2d 355 (1953). See CALIF. WELF. & INST. CODE § 550.

<sup>7</sup> *In re Daedler*, 194 Cal. 320, 228 Pac. 467 (1924). See also 41 CORN. L.Q. 147 (1956); Julian Mack, *The Juvenile Court*, 23 HARV. L. REV. 104 (1910).

<sup>8</sup> *People v. Superior Court*, 104 Cal. App. 276, 285 Pac. 871 (1930); 15 CAL. JUR. 2d, *Delinquent Children* § 9 (1954).

<sup>9</sup> *Ibid.*

<sup>10</sup> *In re Rauch*, 103 Cal. App. 2d 690, 230 P.2d 115 (1951); *In re Hill*, 78 Cal. App. 23, 247 Pac. 591 (1926); *In re Tahbel*, 46 Cal. App. 755, 189 Pac. 804 (1920).

<sup>11</sup> CHILDREN'S BUREAU PUBLICATION, STANDARDS FOR SPECIALIZED COURTS DEALING WITH CHILDREN, 346 (1954).

<sup>12</sup> *In re Poff*, 135 F. Supp. 224 (D.D.C. 1955), favorably discussed in 54 MICH. L. REV. 1000 (1955).

<sup>13</sup> *In re Poff*, *supra* note 12; *In re Contreras*, 109 Cal. App. 2d 787, 241 P.2d 631 (1952). See dissenting opinion in *People v. Lewis*, 260 N.Y. 171, 183 N.E. 353 (1932).

The position maintained by the majority of the court concedes that the juvenile appearing before the Juvenile Court is to be accorded constitutional safeguards the same as he would have in criminal proceedings, but holds that this does not extend to advising the juvenile of his right to counsel. Recently courts have recognized that constitutional safeguards have been improvidently dispensed with to the injustice of the minor in cases where there is not sufficient evidence to sustain the minor's guilt,<sup>14</sup> or where counsel appointed for the minor was excluded from the proceedings.<sup>15</sup>

The dissenting opinion in the principal case relied heavily upon the case of *In re Contreras*.<sup>16</sup> There, Contreras, a minor, was charged with participating in a gang fight resulting in a stabbing. During the course of the Juvenile Court proceedings at which Contreras was not represented by counsel, a police officer testified that both the victim of the assault and Contreras' companion had told him that Contreras was responsible for the assault, although both the victim and the companion testified earlier, denying that Contreras was the responsible party. On the basis of the officer's hearsay and contradictory testimony, Contreras was adjudged a ward of the court and committed to the Youth Authority. The appellate court set aside the order of the Juvenile Court, holding that the youth's guilt had not been established by legal evidence and that if the minor had been represented by counsel, a considerable amount of the evidence given would have been excluded by timely objections.

Speaking with reference to the case of *In re Contreras*, the majority of the court in the principal case stated that that decision did not rest on the lack of counsel *per se*, but upon the admission of improper evidence which presumably would have been excluded had the minor been represented. Under the circumstances in that case, it was shown that unfair advantage had been taken of the minor by reason of his lack of counsel. In the principal case, the majority of the court concluded that there was no finding of unfair treatment or unfair advantage. Further, the Juvenile Court was not called upon at this stage of the proceeding to determine the complicity of the minor in the crime, but merely to determine whether the Juvenile Court was to take jurisdiction of the case. That the Juvenile Court judge may exercise his discretion with respect to accepting or denying jurisdiction is unchallenged.<sup>17</sup>

The "fairness" concept postulated by the majority of the court seems fairly in accord with the idea, expressed above, of bringing into harmony the individualized treatment of the youthful offender and the protection of his constitutional rights. This concept assumes: First, that the Juvenile Court judge is fair and honest in dealing with the matters before him; and second, that the case is appealed when appropriate and questions as to the proceedings are brought to the attention of the court on review. The recognition of the minor's constitutional rights would therefore rest in the sound discretion of the judge, subject to review, if the case be appealed.

This procedure has the advantage of avoiding an adversary character in the proceeding and permits the Juvenile Court judge to satisfactorily find a solution to the minor's problems in an atmosphere of informality.

<sup>14</sup> *In re Contreras*, *supra* note 13.

<sup>15</sup> *People ex rel. Weber v. Fifield*, 136 Cal. App. 2d 741, 289 P.2d 303 (1955).

<sup>16</sup> 109 Cal. App.2d 787, 241 P.2d 631 (1952).

<sup>17</sup> CALIF. WELF. & INSR. CODE § 831; *People v. Renteria*, 60 Cal. App. 2d 463, 141 P.2d 37 (1943).