Miranda Guarantees in the California Juvenile Court

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COMMENTS

MIRANDA GUARANTEES IN THE CALIFORNIA JUVENILE COURT

In June of 1966, the United States Supreme Court decided the case of *Miranda v. Arizona.* In this decision the court held that a confession by a suspect during police interrogation would not be admissible unless the police could prove that the accused freely gave his statement after receiving the following procedural guarantees. An adult arrested by the police must be warned of his constitutional rights when the focus of the investigation changes from investigatory to accusatory. Before asking the suspect any questions, the police must tell him that he has the right to remain silent, that he has the right to have counsel present, that the state will provide counsel if he is indigent, that if he does choose to answer, his statements may be used against him in court. If the suspect begins to answer questions, but then decides to remain silent, the police interrogation must stop. If the suspect indicates he wishes to have a lawyer, questioning must stop until a lawyer arrives and has time to talk with the accused. Waiver of these rights is possible if it is made knowingly and intelligently; the burden is on the police to demonstrate that a valid waiver has been made.

A child may come within the jurisdiction of the juvenile court under California Welfare and Institutions Code section 602 if he has committed an act which would be an adult misdemeanor or felony. Only evidence which is admissible in an adult criminal trial can be considered by the court when it is determining jurisdiction in the case of a section 602 child. Therefore, the *Miranda* conditions-precedent to the admission of confessions seem to apply. Even if *Miranda* does apply in determining jurisdiction, the child has no protection during the juvenile court intake process; counsel is not available to insure his right not to incriminate himself. A California District Court of Appeals has held that the *Miranda* procedural guarantees as set forth by the Supreme Court do not apply to the California juvenile court. The opinion of *In re Castro* held these

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2 Id. at 442, citing and approving Escobedo v. Illinois, 378 U.S. 478 (1964).
3 Id. at 472.
4 Id. at 444-45.
5 CAL. WELF. & INST. CODE § 701.
8 Ibid.
guarantees inapplicable because a juvenile proceeding is not criminal in nature and the court seeks only to help the child by giving him guidance that his parents should have given.

This comment will demonstrate that euphemisms such as "treatment" and "ward" do not change the fact that a juvenile proceeding is criminal in nature; that the child has his liberty taken away by the state and is tainted by his "treatment" record; that a juvenile has the right not to be "treated" unless the state can clearly prove by independently acquired, objective evidence that he must be treated; that the guarantees of *Miranda v. Arizona* should apply to California juvenile court proceedings to determine the child's constitutional rights.

**THE NATURE OF THE PROCEEDING**

Courts have traditionally paid lip service to the proposition that juvenile proceedings are not criminal in nature, but resemble a guardianship action with the state acting as *parens patriae*. There have been several statements from the judiciary in direct contradiction to the general view. The foremost statement in California is from *In re Contraras:*9

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 a crime, nevertheless, for all practical purposes, this is a legal fiction, presenting a challenge to credulity and doing violence to reason. . . .

It is common knowledge that such 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. . . . And further as in this case, the minor is taken from his family, deprived of his liberty and confined in a state institution. . . .10

At least one jurist approves, labeling a juvenile proceeding as *sui generis*.11 Another jurist points out that as soon as the juvenile denies that he has committed the act alleged, the proceeding becomes a judicial contest to determine conflicting facts and contentions, therefore a trial in every sense of the word.12 A federal judge said that it is unnecessary to determine whether a juvenile proceeding is purely civil or criminal in nature. Whether the enforced restraint be "in jail, penitentiary, reformatory, training school, or other institution is im-

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10 *Id.* at 789-90, 241 P.2d at 633.
material. What matters is the potential loss of liberty.\textsuperscript{13} Therefore, constitutional limitations are applicable. Responding to an argument that a juvenile proceeding is not criminal in nature, a federal court held that the ultimate function of a juvenile court is to determine the guilt or innocence of the child.\textsuperscript{14} These comments from judges and legal writers indicate a current movement to reappraise the true nature of the juvenile court proceeding. The remainder of this section will explore juvenile intake procedures, informal probation, the petition hearing, the character of the court’s disposition after jurisdiction is found, and the effects of a juvenile record on the child’s future. An appraisal of California juvenile court proceedings can only be made after exploring these areas.

\textit{Intake}

The processing of a juvenile by the police and juvenile probation officer, subjects the youth to procedures which may deprive him of his constitutional rights and create an adverse impression of the law which will last the juvenile for his lifetime and affect his future behavior. The California Welfare and Institutions Code\textsuperscript{15} allows a policeman to take a person who is under eighteen years old into custody if the officer has reasonable cause for believing that the minor may fall under the juvenile court jurisdiction as a dependent child,\textsuperscript{16} a child who has delinquent tendencies,\textsuperscript{17} or a child who has violated a law of the State of California or the United States.\textsuperscript{18} Section 625 does not require that the arresting officer first obtain a warrant in cases where the suspected act is a misdemeanor not committed in his presence. Adults may be arrested for committing a misdemeanor only when the act is committed in the presence of the officer, or the officer has a warrant for the suspect’s arrest.\textsuperscript{19} Therefore, the law intended to protect the minor’s best interests and to nurture respect for authority appears to allow a policeman to take a juvenile into custody for the commission of a misdemeanor on the suggestion of an unfriendly neighbor.

A Governor’s Special Study Commission was created to study the California state juvenile court law and to make recommendations for its revision. In its report in 1960, the Commission suggests that to curb unwarranted police detention and unadjudicated dispositions, the arresting officer be compelled by statute to follow one of

\begin{itemize}
\item \textsuperscript{13}United States v. Dickerson, 168 F. Supp. 899, 901 (D.C. Dist. 1958).
\item \textsuperscript{14}In re Poff, 135 F. Supp. 224, 225 (D.C. Dist. 1955).
\item \textsuperscript{15}CAL. WELF. & INST. CODE § 625(a).
\item \textsuperscript{16}CAL. WELF. & INST. CODE § 600.
\item \textsuperscript{17}CAL. WELF. & INST. CODE § 601.
\item \textsuperscript{18}CAL. WELF. & INST. CODE § 602.
\item \textsuperscript{19}In re Milstead, 44 Cal. App. 239, 186 Pac. 170 (1919); CAL. PEN. CODE § 835.
\end{itemize}
three courses of action after he has taken a child into custody: (1) release the minor without unnecessary delay; (2) cite him to the probation department and release him to his parents after they have agreed to appear before a juvenile probation officer; (3) deliver him without unnecessary delay to a juvenile probation officer. Section 626 of the Welfare and Institutions Code follows the recommendations of the Commission except for one very important difference: part (a) in the code section states that a police officer "may release such minor . . . ." The Commission report suggests the wording "he must without unnecessary delay release a minor . . . ." There is a possibility of police abuse of the release alternative. This detention at the whim of the police would directly circumvent the intent of the law, and result in the same situation that existed before the 1961 revision of the California juvenile court system. If the police choose the alternative in section 626(c), they may still detain the youth overnight at the police station, if the juvenile facility is closed. Even though the police are required to release the minor after his parents promise to appear before a probation officer, this provision is also loosely constructed so that there is some latitude on how long the child may be held before the promise must be signed by his parents. One purpose of the Commission's recommendations was to point out the abuses of police detentions of juveniles and unadjudicated dispositions by an agency outside the juvenile court. The 1961 revisions still allow some of these detention abuses to exist.

Juveniles who have committed serious offenses and whom the arresting officer thinks should be detained are referred directly to a juvenile probation officer. The probation officer is required by statute to immediately investigate the "circumstances of the minor and the facts surrounding his being taken into custody . . . ." In these instances the probation officer continues the questioning already started by the police. The child may already be intimidated by the strange circumstances of the police and juvenile officers' interro-

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20 REPORT OF THE GOVERNOR'S SPECIAL STUDY COMMISSION ON JUVENILE JUSTICE, part 1, at 65 (1960) [hereinafter cited as COMM'N RPT.].
21 Ibid. (Emphasis added.)
23 39 Ops. CAL. ATTY. GEN. 269 (1962). Even though this problem may only arise in the smaller counties of the state, detention by police under these circumstances could still involve a significant number of children.
24 CAL. WELF. & INST. CODE § 626(h).
25 CAL. WELF. & INST. CODE § 626. The arresting officer's decision to refer a minor to juvenile court may be prejudiced: for example, poor and minority children are referred before middle class children, and resistant youths are referred before cooperative ones. See generally 25 FEDERAL PROBATION 47 (1961); 79 HARV. L. REV. 775, 782 (1966).
26 CAL. WELF. & INST. CODE § 628.
gations. The probation officer questions the child alone; the situation is inherently coercive. These children need protection of their constitutional rights even more than those who are released to their parents under section 626(c).

A child faces a maximum of two and one half days without counsel, plus an additional fifteen days in custody, before the state must prove the jurisdiction of the juvenile court. The probation officer must release the minor after his preliminary questioning unless (a) the minor's own safety would best be served by detention, (b) detention of the minor is necessary for the protection of the person or property of another, (c) the minor is likely to flee the court's jurisdiction, or (d) it appears that the minor has violated an order of the juvenile court. Statute requires that a minor under eighteen in the custody of a peace officer or probation officer must be released within forty-eight hours unless a petition has been filed by the juvenile probation officer. The code requires that a hearing be held before a judge or referee to decide whether a minor should be detained; this detention hearing must be held before the end of the next judicial day following the filing of the probation officer's petition. Therefore a maximum of two and one half days could pass while the minor is legally detained and questioned, before he or his parents have the statutory right to the presence of counsel. At the detention hearing, the child may receive an additional fifteen days of detention, pending the hearing on the petition filed by the probation officer. Bail is not available to the child; habeas corpus may also be not available because the fifteen day detention period might lapse before relief could be given. The minor is at the mercy of the court. Although the amount of detention before the petition hearing will be less for a juvenile than for an adult criminal awaiting trial in superior court, he is still incarcerated just as the criminal is.

Informal Probation

In all cases the probation officer may place the child on a program of informal probation not to exceed six months. Before the child can be placed on informal probation, the probation officer must conclude that the minor is within the jurisdiction of the ju-

27 Ibid.
venile court or soon will be, and have the consent of the minor’s parents.\textsuperscript{33} There are two inherent dangers in the informal probation alternative. The conditions of probation curtail the child’s freedom, differing only in degree from actual incarceration; this curtailment is imposed without judicial determination. As indicated in the Governor’s Special Study Commission on Juvenile Justice, the supervision pattern for informal probation was the same as that for formal probation in three fourths of the counties of the state.\textsuperscript{34} The second inherent danger of informal probation is that the child may be later tried for the same act in an adult criminal court. The code section which prevents further criminal prosecution of an act committed by the juvenile which has been dealt with in juvenile court applies only when a petition has been filed.\textsuperscript{35} Consent from the parents may be influenced by the power of the probation officer to file a petition in juvenile court naming their child. The child has his liberty taken away in substantially the same manner as he would if a petition had been filed and jurisdiction found; but, he has no guarantee that he may not be tried later in a criminal court, and he has not had the benefit of an adjudication of his responsibility for the act he is charged with. The possible benefits of informal treatment are outweighed by the danger of loss of liberty without adjudication of the minor’s guilt.

\textit{Hearing}

The code provides for a hearing to determine whether the child is within the court’s jurisdiction\textsuperscript{36} and what disposition is necessary. Any evidence relevant to the acts alleged in the petition is admissible.\textsuperscript{37} From the mass of relevant evidence, the court must consider only that which is admissible in a criminal trial; a preponderance of such evidence must exist for jurisdiction in section 602 cases. For determining jurisdiction in section 600 or section 601 cases, section 701 further provides that the court must find that a preponderance of evidence admissible in a civil case has been presented.\textsuperscript{38} The effect of this section\textsuperscript{39} is to allow juvenile courts to acquire jurisdic-

\begin{footnotes}
\item[33] \textit{CAL. WELF. \\ & INST. CODE} § 654.
\item[34] \textit{COMM’N RPT.} pt. II, at 47, table 57.
\item[35] \textit{CAL. WELF. \\ & INST. CODE} § 606. “When a petition has been filed in a juvenile court, the minor who is the subject of the petition shall not thereafter be subject to criminal prosecution based on the facts giving rise to the petition unless the juvenile court finds that the minor is not a fit and proper subject to be dealt with under this chapter and orders that criminal proceedings be resumed or instituted against him.”
\item[36] \textit{CAL. WELF. \\ & INST. CODE} §§ 700, 701.
\item[37] \textit{CAL. WELF. \\ & INST. CODE} § 701.
\item[38] \textit{Ibid.}
\item[39] \textit{Ibid.}
\end{footnotes}
tion without establishing the child's responsibility beyond a reasonable doubt, as in an adult criminal trial.

Although the code requires that the court's jurisdiction be determined before disposition is made, the usual practice is to decide both aspects of the case in a single bifurcated hearing. Section 706 of the Welfare and Institutions Code requires that the court receive the probation officer's social study report and consider it while making disposition of the case. The social study report contains information of the child's background, past juvenile court contacts, family and home conditions, and of the child's activities in school and with his peer group. Although the code requires that the report be used to make a proper disposition of the youth after jurisdiction has been found, the report may sometimes influence the judge's decision on jurisdiction. The evidence which was admitted at the hearing, but which cannot be considered in finding jurisdiction, is nevertheless before the judge and may also influence the determination of jurisdiction.

**Character of the Wardship Disposition**

After the court has determined that the minor is within its jurisdiction as a section 601 or 602 child, it may make three types of dispositions. It may refuse to adjudge the child a ward of the court and put him on probation not to exceed six months; it may declare the child to be a ward of the juvenile court and commit him to juvenile hall or similar facility for a period not to exceed three months; or if the child is declared to be a ward under section 602 he may be sent to a treatment facility of the California Youth Authority. Section 506 requires dependent children to be separated from section 601 and 602 wards. Section 601 wards and less experienced 602 wards may be mixed with more experienced delinquents. Confinement in a California Youth Authority facility or juvenile hall is not a pleasant experience. As Justice Musmano states in his dissent in *In re Holmes*,

The appellee Commonwealth categorically declares in its brief that "commitment to an industrial school is not punishment." But it certainly does not come under the classification of pleasure.

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41 CAL. WELF. & INST. CODE § 725.
42 CAL. WELF. & INST. CODE § 730.
43 CAL. WELF. & INST. CODE § 731.
44 CAL. WELF. & INST. CODE § 506.
45 10 STANFORD L. REV. 471, 519 (1958); COMM'N RPT. pt. I, at 82.
To take a child from the comfort of his home ... and confine him to a building with whitewashed walls regimented routine [sic] and institutionalized hours is punishment in the strictest sense of the word.47

A recent article submits that however lofty the institution's purposes for treating the children, they are little better than prisons for the young.48

Stigma

One of the main purposes of the juvenile court law is to protect the child offender from the stigma of a criminal conviction. Section 503 of the Welfare and Institutions Code states that an order declaring a minor to be a ward of the court will not be considered a criminal conviction for any purpose, nor shall the proceeding be considered criminal. The intent of the act is very commendable, but does not describe the true effect of a juvenile record. Quoting again from Justice Musmano's dissent in Holmes,

To say that a graduate of a reform school is not to be "deemed a criminal" is very praiseworthy but this placid bromide commands no authority in the fiercely competitive fields of everyday life...

The grim truth is that a Juvenile Court record is a lengthening chain that its riveted possessor will drag after him through childhood, youthhood, adulthood and middle age.49

While the code may refer to the child as a ward, and to the proceeding as in the nature of a guardianship, the public clearly does not hold the same view.50

The stigma of juvenile contact attaches to the child by press releases of his arrest and public access of his juvenile record. A child's record is created by each contact with authority.51 Although access to the petition in juvenile court and the accompanying social study is limited by statute,52 all other records held by the court and

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47 Id. at ———, 109 A.2d at 530.
48 Paulsen, Fairness to the Juvenile Offender, 41 MINN. L. REV. 547, 550 (1957).
51 When a youth is stopped by a peace officer, even though he releases the child, the officer will frequently file a contact report. If the youth is detained and taken by the officer to police headquarters, an arrest record may be filled out. If the youth is cited or taken to a juvenile probation officer, a file will be opened in the juvenile probation department. 79 HARV. L. REV. 775, 784-85 (1966); 3 SANTA CLARA LAW. 119, 121 (1963). Not only may these records be kept by each agency with which the juvenile comes in contact, but also in central files for the county. COMM'N RPT. pt. II, at 100.
52 CAL. WELF. & INST. CODE § 827. Access is limited to authorized court per-
police are open to the public. An employer or prospective employer cannot be prevented from requesting information concerning a prospective employee's previous records for arrests and detentions. Record of an arrest or detention as a juvenile is usually enough to prejudice the consideration of an application for a job, a college or university admission, or military service.

Not only is the child's record open to public inquiry, but its circulation is not adequately controlled. The code only attempts to control juvenile records in the possession of the Bureau of Criminal Identification and Investigation, and even this attempt is ineffective. Information can be freely disseminated by any other agency without including the disposition of the case. The record of a youth who was certified to juvenile court but had no petition filed is freely distributed by local agencies and may be sent to the F.B.I. or C.I.I. Without any adjudication the child is tainted by his contact with juvenile court.

A person may petition the court to have his juvenile records sealed. The court may determine that the person is entitled to have his records sealed pursuant to the code section. This provision's effect is not very great. The juvenile court may retain jurisdiction over a ward until he reaches the age of twenty-one.

sonnel, the minor, his parents or guardian, the attorneys for the parties, and other persons designated by the juvenile court judge.

56 Cal. Welf. & Inst. Code § 504. Only if the bureau includes a statement of the disposition of the case, may it transmit information to another agency. This is contrary to the recommendations of the Governor's Commission which would have prohibited any agency from transmitting information to the F.B.I. or C.I.I. on the juvenile unless he had been declared a ward of the court or had jurisdiction waived by the court. Comm'n Rpt. pt. I, at 52.
57 Comm'n Rpt. pt. I, at 52. "[A] juvenile may acquire a C.I.I. or F.B.I. record even though he was arrested in error! The problem is further aggravated by the wide dissemination of these records to police, state agencies and national agencies."

58 Cal. Welf. & Inst. Code § 781. A person may petition the juvenile court to have his juvenile record sealed if he has had a petition filed against him in the past, or if he was taken before a probation officer pursuant to section 625(c). If five years have passed since the person was last in contact with the juvenile court and the court determines that the person has not been convicted of a felony or of any misdemeanor involving moral turpitude, and rehabilitation has been attained to the satisfaction of the court, the judge may order the records of the juvenile offenses sealed. See generally 40 Ops. Cal. Atty. Gen. 50 (1962).
59 Cal. Welf. & Inst. Code § 607. William L. Tregoning, Deputy Director of the California Youth Authority, states that the de facto age limit for juvenile court jurisdiction is eighteen; children over that age are prosecuted in criminal court as a matter of course. Interview on August 11, 1965, in 79 Harv. L. Rev. 775, 793 n.83 (1966). Although section 607 permits retention of jurisdiction for two years over a
a person must wait five years after his last contact with juvenile court before he can petition to have his records sealed, he may not be able to petition until he is twenty-six years old. The damage has been done by that time. His juvenile record has been examined by the military, federal and state agencies, and future employers. The stigma of a "non-criminal" contact has already made its effect.  

The manner in which the juvenile is handled during intake and at the hearing to determine the court's jurisdiction, and the future effects of a juvenile court record, belie an "in the nature of a guardianship" characterization of the proceedings. The proceedings are very much criminal in nature; the child must be able to protect himself from his "protectors." Miranda guarantees should apply to the juvenile court.

**APPLYING MIRANDA**

**Constitutional Guarantees for Juveniles**

Are constitutional guarantees normally applicable to adult criminals also applicable to juveniles in the juvenile court process? Several writers and judges have answered this question in the affirmative. A United States District Court has held that before enactment of federal juvenile court legislation, a child was subject to the same punishment as an adult, that in the absence of any juvenile court legislation, the child would be entitled to the same rights as the adult criminal. Therefore, the court reasoned, the safeguards created by the juvenile court act are in addition to those already possessed by the child. The juvenile court act enlarged the rights of the child by giving additional juvenile protections to supplement the rights held by all adults in criminal actions.  

A California case, *In re Alexander,* held, "While the proceedings in the juvenile court are for the welfare of boys and girls, still they deprive individuals of liberty. Therefore, the administration of this law must conform to constitutional guarantees of due process of law."

Another United States District Court noted a recent trend in juvenile decisions indicating that the juvenile should have the same

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63 *Id.* at 461, 313 P.2d at 184, quoted with approval in *In re Macidon*, 240 A.C.A. 666, 676, 49 Cal. Rptr. 861, 867-68 (1966).
constitutional guarantees as an adult charged with the same acts.\textsuperscript{64} A special committee of the Los Angeles Bar Association stated that constitutional safeguards should be just as applicable in a juvenile court proceeding as in another proceeding in which personal and property rights are involved.\textsuperscript{65}

In a publication of 1954, the Children’s Bureau of the Department of Health, Education and Welfare stated that special safeguards should surround a police interview with a child.\textsuperscript{66} The child’s immaturity and the possibility of waiver of jurisdiction by the juvenile court and criminal prosecution require that the child and his parents be informed of their right to have counsel present and to refuse to answer questions. J. L. Allison, Executive Director of the National Legal Aid and Defenders Association, argues that if the charge against the juvenile is serious, counsel should be available to the child at all stages of the processing, including intake.\textsuperscript{67}

\textbf{Right Against Self-Incrimination}

In 1920, a California District Court of Appeal held that a minor was entitled to the protection of article 1, section 13 of the California Constitution which guarantees the right of a citizen to remain silent when being examined in a criminal case.\textsuperscript{68} This court said,

\begin{quote}
The words "criminal case," as used in section 13 of article I of the Constitution, are broader than "criminal prosecution." To bring a person within the immunity of this provision, it is not necessary that the examination of the witness should be had in the course of criminal prosecution against him, or that a criminal proceeding should have been commenced and be actually pending. It is sufficient if there is a law creating the offense under which the witness may be prosecuted.\textsuperscript{69}
\end{quote}

\textit{Tahbel} held that the child could not be compelled to confess to the charge against him in juvenile court.\textsuperscript{70}

In \textit{Miranda} the court said that there can be no doubt that the fifth amendment of the United States Constitution applies to all situations where the individual’s freedom of action is curtailed by

\begin{footnotes}
\item[65] 30 L.A. BAR BULL. 333, 335-37 (1955).
\item[68] In re Tahbel, 46 Cal. App. 755, 189 Pac. 804 (1920).
\item[69] Id. at 758-59, 189 Pac. at 806.
\item[70] Id. at 762, 189 Pac. at 808.
\end{footnotes}
being compelled to testify against himself. Although the right against self-incrimination applies to a juvenile court in California, a 1947 California case holds that even though a child may not be compelled to incriminate himself, the court is not required to warn the minor of his right.

Therefore, as the law now stands in California, a child being processed in the juvenile court has the right not to incriminate himself, but may assert this right only if he knows of it. He also has the right to counsel, only if he asserts this right. The inconsistencies are clear. The United States Supreme Court said in *Escobedo v. Illinois*:

> [N]o system of criminal justice can, or should, survive if it comes to depend for its continued effectiveness on the citizens' abdication through unawareness of their constitutional rights. . . . If the exercise of constitutional rights will thwart the effectiveness of a system of law enforcement, then there is something very wrong with that system.

This applies with added emphasis to the juvenile court situation where one of the announced goals of the system is to develop respect for equal justice and law and order in the youthful offender. If the right against self-incrimination can be used by some children, it must be equally available to all.

In *Miranda* the court held that counsel was necessary to protect the fifth amendment rights of the individual being questioned by the police. This would apply with more force to a juvenile proceeding where the individual being questioned does not have the capacity of an adult. The substantive guarantees of *Miranda* which compel the police to inform the individual of his rights not to incriminate himself and to have counsel present, even if he cannot afford it, must be applied to the juvenile. If counsel is not available to the juvenile at the intake stage, the right against self-incrimination, which *Tahbel* gives him, is without substance and easily circumvented by the interrogating officer.

**Right to Counsel**

Statute provides for notice of right to counsel at two places in the proceedings: at the detention hearing, and in the notice of

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71 384 U.S. at 467.
72 *In re* Dargo, 81 Cal. App. 2d 205, 183 P.2d 282 (1947). This opinion cites *In re Tahbel* with approval.
74 *Id.* at 490.
75 384 U.S. at 469.
76 CAL. WELF. & INST. CODE § 633.
the hearing to determine wardship.\textsuperscript{77} In a recent California Supreme Court case, telephone notice to the mother that her son was being detained and that he had a right to counsel at the detention hearing, along with personal service of notice of the detention hearing containing the same warning, was held sufficient notice of the right to counsel.\textsuperscript{78} This case, \textit{In re Patterson}, impliedly holds that a judge does not have to place anything in the record to indicate that he has made an examination of the facts and has determined that a proper warning of the right to counsel has been made to the parents and the child.\textsuperscript{79} The child may be without remedy if in fact improper notice was given to the parent and the court made no indication in the record; \textit{In re Patterson} holds that a reviewing court must assume that the trial court made this determination on proper examination of the facts if nothing in the record contradicts this presumption.\textsuperscript{80} The legislature must have considered the right to counsel in juvenile proceedings to be warranted, or the statutes would not have provided for it. By inference from \textit{Patterson} the existing provisions for informing the child and his parents of this right are inadequate. No provision is made for the parent who cannot read English, or who does not understand the nature of the right to counsel and the possible results of the juvenile hearing. A waiver of the right may be assumed by the court if no counsel is present at the hearings. A knowing, intelligent waiver is not required.

If the youth and his parents are indigent, counsel may be appointed; but, this right is at the judge's discretion in section 601 cases and non-felony section 602 cases. Juveniles charged with committing an act which would be an adult felony are entitled to appointed counsel only if the minor or the parent so requests.\textsuperscript{81} The burden of requesting appointed counsel will be on the minor when the parents of the child are apathetic or have an adverse interest, or when they are not given proper notice. It is inconsistent that children are not entitled to acquire property or enter into contracts in California, but have the power to waive the right to counsel in a hearing which may affect their future liberty. Quoting from \textit{People v. Dorado},\textsuperscript{82} "The defendant who does not ask for counsel is the

\textsuperscript{77} \textit{CAL. WELF. \\& INST. CODE} § 659.

\textsuperscript{78} \textit{In re Patterson}, 58 Cal. 2d 848, 850-51, 377 P.2d 74, 76, 27 Cal. Rptr. 10, 12 (1962).

\textsuperscript{79} \textit{Id.} at 854, 377 P.2d at 78, 27 Cal. Rptr. at 14 (as interpreted in dissent of Traynor, J.).

\textsuperscript{80} \textit{Id.} at 853, 377 P.2d at 77, 27 Cal. Rptr. at 13.

\textsuperscript{81} \textit{CAL. WELF. \\& INST. CODE} § 634. The court may or may not, at its discretion, decide to compensate counsel which it appoints. 38 \textit{OPS. CAL. ATTY. GEN.} 154 (1961).

\textsuperscript{82} 62 Cal. 2d 338, 398 P.2d 361, 42 Cal. Rptr. 169 (1965).
very defendant who most needs counsel." While the adult criminal has the right to counsel which is not dependent on his request, a minor with less experience and capacity is burdened with the initiative to request counsel. Miranda should apply so that the right to counsel given by the legislature will be an effective protection of the minor's rights.

**Problems of Counsel During Juvenile Intake**

Before Miranda can be implemented in juvenile proceedings, courts must conclude that the problems connected with the presence of counsel are outweighed by the good that can be accomplished. The first problem that must be resolved is that of waiver.

Does the child have the capacity to understand the warnings which Miranda requires? If so, can he make a valid waiver of his right to counsel and silence? The case of Gallegos v. Colorado provides the answer to both questions. The prosecution contended that the five-day detention and immaturity of the youth were immaterial in determining whether the confession was coerced because the basic ingredients of the youth's confession came "tumbling out" as soon as he was arrested. The court answered the argument by stating:

He [the child] cannot be compared with an adult in full possession of his senses and knowledgeable of the consequences of his admissions. He would have no way of knowing what the consequences of his confession were without advice as to his rights—from someone concerned with securing him those rights—and without the aid of more mature judgment as to the steps he should take in the predicament in which he found himself. A lawyer or an adult relative or friend could have given the petitioner the protection which his own maturity could not. . . . Without some adult protection against this inequality, a fourteen year old boy would not be able to know, let alone assert, such constitutional rights as he had.

Therefore, a child brought before a probation officer should be given the warnings required in Miranda in the presence of an adult relative or friend, or his counsel. He should not be able to waive this right by himself.

When a juvenile is taken into custody during the nighttime,
what will be the effect of counsel not coming directly to the juvenile hall? California Welfare and Institution Code section 628 provisions should apply; the probation officer must not question the child until counsel is present or waiver has been made by the rule set out above. The probation officer would then make the usual pre-hearing detention decision as required by section 628, and delay his questioning until counsel is present.

With the current state of the bar's education, would an attorney be able to provide the quality of counsel needed in the juvenile court application of Miranda? Although a recent survey of juvenile court judges\textsuperscript{86} found that sixty-eight per cent of those questioned welcomed lawyers in all hearings before the court, three major shortcomings of lawyers were discussed.

The surveyed judges agreed that in general, attorneys lacked understanding of juvenile court philosophy. Adversary oriented lawyers generally are not fully prepared to deal with an informal court which attempts to "treat." Another article suggests that the presence of an attorney may prevent the court from working with the child to his best interests.\textsuperscript{87} A recent article states that attorneys as a group present a major stronghold of reaction against psychiatry and modern juvenile court methods.\textsuperscript{88}

Generally, a lawyer is not trained to relate to the social ramifications of his acts.\textsuperscript{89} In the Skoler and Tenney survey, ninety-six per cent of judges surveyed thought that counsel appearing in juvenile court needed special training and orientation beyond normal "defense counsel" skills.\textsuperscript{90}

In representing children before the court at hearings, attorneys now may fail to dissociate the interests of the parent from the interests of the child.\textsuperscript{91} The case frequently arises where a child runs away from home and does not want to return. In his flight he may commit a delinquent act. His interests may sometimes be better served if he is taken out of the home environment. In these cases will counsel retained by the parents represent the child's best interests?

\textsuperscript{86} Skoler and Tenney, Attorney Representation in Juvenile Court, A Survey of Juvenile Court Judges Serving the Nation's Largest Metropolitan Areas, 4 J. Fam. Law 77, 88 (1964). While this survey is addressed to the problems of representation by counsel at wardship hearings, many points raised are applicable to representation in the intake process.

\textsuperscript{87} Furlong, The Juvenile Court and the Lawyer, 3 J. Fam. Law 1, 19 (1963).

\textsuperscript{88} Id. at 29-30.

\textsuperscript{89} Id. at 4-5.

\textsuperscript{90} Id. at 93-94 (1964).

\textsuperscript{91} Id. at 90-91.
With counsel available to the minor during intake, will children develop an attitude of trying to beat the rap? What effect will this attitude, if it develops, have on future behavior? These questions are beyond the scope of this comment. But another consideration, however, should be what effect current inconsistencies and prejudiced dispositions have on the child's future attitudes?

The present assumption among probation officers and juvenile court theorists is that a confession of guilt by the juvenile is essential to developing a proper program of rehabilitation and treatment. Is this assumption valid? This consideration is also beyond the scope of this comment. There is a dearth of legal writing on this problem area. At least one writer has stated that even though a juvenile usually confesses his guilt to be an act he has committed, he may retain a sense of injustice based on defective cognizance.

Would the probation officer, "friend-of-the-child" relationship be threatened by counsel's presence during intake? The duty of the probation officer is to gather information for the court to use in a future jurisdiction and disposition hearing. Under the present system, the probation officer attempts to "develop a personal relationship" with the child. He tries to win the child's trust and respect; a confession, he urges, is the only way to clear the child's conscience and will result in better treatment. If a petition is filed in juvenile court, the child sees the probation officer presenting information to the court like a policeman. The court finds jurisdiction on the probation officer's information and makes a disposition based on the probation officer's report. The child concludes that he has been "conned." "Trust" and "friendship" disappear; the child is now to be treated by a man he doesn't trust; this attitude may be retained and affect future behavior.

What positive value would the presence of counsel during intake have? In addition to protecting the minor's constitutional rights during intake, counsel may also assist the probation officer or police by making the child's meaning understood if answering questions is in the child's best interests. This would insure a full accurate report to the court.

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92 79 Harv. L. Rev. 775, 779-83 (1966).
93 Matza, Delinquency and Drift 107 (1964).
94 Cal. Welf. & Inst. Code § 581. "The probation officer . . . shall furnish to the court such information and assistance as the court may require . . . ." Cal. Welf. & Inst. Code § 628: "Upon delivery to the probation officer of a minor who has been taken into temporary custody under the provisions of this article, the probation officer shall immediately investigate the circumstances of the minor and the facts surrounding his being taken into custody . . . . "
95 Matza, Delinquency and Drift 145-49 (1964).
If the child's case is not referred to the court for hearing, the attorney can assist the probation officer in developing a plan of supervision to the best interests of the minor.\textsuperscript{97} Probably the most valuable contribution that the attorney will make during intake is to make the child feel that he is being treated justly. The relation between criteria of judgment and disposition in juvenile court is obscure to the child.\textsuperscript{98} If legal order is to exist and be respected, the subjects of it must feel that justice prevails. A child may drift into delinquent behavior when a sense of injustice prevails in his view of the legal order.\textsuperscript{99}

If an attorney is present to interpret the workings of juvenile court to the child, individualized justice will be better understood by the child; the negative effect of the child's observation of inconsistencies will be mitigated.

**Conclusion**

To characterize the juvenile court as civil is to ignore the obvious criminal character of the proceedings. Children are arrested just like adult criminals, often for less cause. The children may be incarcerated prior to the hearing on a juvenile probation officer's petition. As a result of the juvenile court jurisdictional hearing, a child may have his liberty taken away either partially or completely. As a result of his contact with juvenile court, the child will have a record which the public considers *de facto* criminal.

In rendering individualized justice, juvenile courts presently subject the children before them to inconsistent treatment which deprives them of their constitutional rights. A child has the right not to incriminate himself, if he is aware of it. An indigent child has the right to appointed counsel if he or his parents request it, but even then this right is at the judge's discretion in non-felony cases. A child may be "convicted" by a preponderance of evidence; such "conviction" may be influenced by evidence not admissible in a criminal trial.

As various authorities have agreed, constitutional guarantees normally applicable to adult criminals should also apply to children in juvenile court. The inherent risks of applying the processes of

\textsuperscript{97} 30 L.A. BAR BULL. 333, 341 (1955).
\textsuperscript{98} See Matza, *Delinquency and Drift* 115 (1964).
\textsuperscript{99} Id. at 102. "Legal institutions, however, are an important element of society, and by the very terms of sociological theory—the relation of man to society—their connection with crime warrants consideration ... But we sociologists have continued to ignore the sense in which crime is a particular reaction to legal institutions." *Id.* at 4.
law to the individual demand that a child have the right to counsel during intake and throughout the remainder of the juvenile court process. The procedural guarantees set forth in *Miranda v. Arizona* will remedy many inequities and will provide much needed protection of minor's constitutional rights.

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