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Family Law—Application of the Rules Against Search and Seizure to Juvenile Delinquency Proceedings

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analysis of this problem was made by Judge Friendly in *Evans v. S. J. Groves and Son Co.*[56] When an accident involves a skidding vehicle, there is an immediate reaction suggesting that the skid alone was the cause of the accident. However, this does not answer the ultimate question of what caused the skid. It is certainly true that such skids usually occur on slippery roads. But, the propensity of these roads to be slippery is, generally, readily apparent to the driver due to conditions of snow, slush and/or ice. These patently hazardous conditions beckon the reasonably prudent driver to exercise a greater degree of caution in order to satisfy the standard of due care exacted by tort law.[57] It would seem to be only reasonable then, that "proof of a skid on a highway known to be dangerous takes a plaintiff far enough down the probability road to call on the defendants for an explanation and, in the absence of a satisfactory one, to go to the jury."[58]

Additional support for both of these arguments may be found in the philosophy embraced by the Court in the instant case.[59] The Court is accelerating the swing of the pendulum toward enlarging the spectrum of jury discretion in determining the issue of negligence.[59] It is an appraisal by the Court that the jury is better able to make an equitable determination of the presence or absence of negligence on an *ad hoc* basis than a Court is able to do by mechanically applying rigid categorical rules which themselves may have had their basis in the same speculation, conjecture and surmise so abhorred in *Galbraith* and *Lahr*.

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FAMILY LAW—APPLICATION OF THE RULES AGAINST SEARCH AND SEIZURE TO JUVENILE DELINQUENCY PROCEEDINGS

The petition charging Williams, a fifteen year-old boy, with being a juvenile delinquent, alleged that he broke into a resort cottage and stole some jewelry. Two hours after this theft, a security guard saw Williams acting in a suspicious manner elsewhere in the same resort. Although the guard did not see Williams commit or attempt to commit a crime,[1] he apprehended the youth and turned him over to the New York State Police. After being questioned in an approved facility,[2] Williams admitted the theft and took the police to his bungalow; there he returned the stolen jewelry. At 5:00 a.m., after reducing his confession to a written statement, he was released into the custody of his sister. During the entire period the police had Williams in custody, they failed to make any

56. 315 F.2d 335 (2d Cir. 1963).
57. See N.Y. Vehicle and Traffic Law § 1180(a), (c).
58. Evans v. S.J. Groves & Son, Co., 315 F.2d 335, 343 (2d Cir. 1963).
59. Instant case at 136, 216 N.E. at 325, 269 N.Y.S.2d at 117.

1. See N.Y. Family Ct. Act § 722; N.Y. Code Crim. Proc. § 183.
2. As required by N.Y. Family Ct. Act § 724(b)(ii) (here the Ellenville sub-station of the New York State Police).

effort to notify his parents of his detention, as required by statute.[3] At the hearing, respondent Williams contended: that the failure of the police to notify his parents rendered his confession involuntary and inadmissible;[4] that the police had no warrant to search his bungalow; and that by reason of his youth, he could not consent to such a search, so the evidence was illegally seized and ought to be suppressed. *Held*: (1) that the failure to notify the juvenile's parents, when viewed in the totality of the circumstances—the boy's age, the unlawfulness of his arrest by the guard, and the lateness of the hour—requires the conclusion that the confession was involuntary and therefore inadmissible;[5] (2) that the requirements of "due process" and "fundamental fairness" demand that the constitutional guarantee aginst unreasonable searches and seizures be extended to children charged with any act which if done by an adult would be a crime. *Matter of Williams*, 49 Misc. 2d 154, 267 N.Y.S.2d 91 (Ulster County Family Ct. 1966).

The aim of the juvenile court is the rehabilitation, as opposed to punishment, of delinquent youth through the paternal care and protection afforded by specially designed courts and institutions.[6] In stressing protection rather than punishment, this aim departs significantly from the tradition of the criminal law.[7] To effectuate its goals, the juvenile court has attempted to eliminate both the public scorn of a criminal conviction and the punitive character of its disposition.[8] Accompanying this rejection of criminality is a relaxation of criminal procedural safeguards. Because not all criminal procedural safeguards have been considered applicable, a continuing conflict as to which apply has ensued.[9] This conflict is due primarily to the struggle between supporters of traditional due process guaranties and advocates of the application of sociological concepts to benefit juveniles.[10]

Following the suggestion that it is more important to detect a tendency in a child toward delinquent conduct than to wait until he has committed a wrongful act before attempting rehabilitation,[11] the federal courts have permitted a liberal application of the *parens patriae* doctrine in juvenile proceedings. However, a district court has stated that unless the *parens patriae* theory of

3. N.Y. Family Ct. Act § 724(a).

4. Williams also claims that he immediately requested a lawyer and that he was struck by the interrogating officer.

5. See N.Y. Family Ct. Act § 724(d); Galleges v. Colorado, 370 U.S. 49 (1962); Haley v. Ohio, 332 U.S. 596 (1948); *cf.* People v. DeFlumer, 16 N.Y.2d 20, 209 N.E.2d 93, 261 N.Y.S.2d 42 (1965) (decided without reference to the Family Court Act).

6. Welch, *Delinquency Proceedings—Fundamental Fairness for the Accused in a Quasi-Criminal Forum*, 50 Minn. L. Rev. at 653 (1966).

7. *Id.* at 653-54. *Cf.* Swartz, *Punishment and Treatment of Offenders*, *supra* page —.

8. *Id.* at 654.

9. Paulsen, *Fairness to the Juvenile Offender*, 41 Minn. L. Rev. 547, 549 (1957); Brown, *The Constitutional Problems of the Juvenile Court Law*, 50 Women Law. J. 89 (and cases cited *id.* at 90) (1964); see Pee v. United States, 274 F.2d 556 (D.C. Cir. 1959) (and cases cited in Appendix B; *id.* at 563).

10. Application of Gault, 99 Ariz. 181, 190, 407 P.2d 760, 766-67 (1965), *appeal argued*, 35 U.S.L. Week 3209 (U.S. Dec. 13, 1966).

11. Boardman, New York Family Law 1139 (Biskind ed., Supp. 1966).

the juvenile court is carried out in practice, the commitment of a juvenile takes on the outlook of a criminal conviction and as such "cannot withstand an assault for violation of fundamental Constitutional safeguards."[12] A growing awareness of juvenile court frailties in attempting to apply the *parens patriae* doctrine is evidenced by many recent decisions, in which courts have begun to provide the juvenile those rights previously applicable, but discarded by the juvenile court experiment.[13] In *United States v. Dickerson*,[14] the District of Columbia District Court voiced its fear that constitutional rights were being abrogated by classifying what is in effect a criminal proceeding as a juvenile hearing. The New Jersey District Court in *Application of Johnson*,[15] stated that "the constitutional protections of fundamental fairness are [not] to be constricted. . . . [L]iberalizing criminal procedure is not intended to be nor can it be allowed, at the expense of constitutional safeguards." Chief Judge Prettyman in *Pee v. United States*[16] stated the present rule as to when juvenile courts are required to afford the child certain protections: "The constitutional safeguards vouchsafed a juvenile in such proceedings are determined from the requirements of due process and fair treatment, and not by the direct application of the clauses of the Constitution. . . ." It is thus clear that in federal cases "due process" guides the courts' treatment of juveniles. In *United States v. Morales*,[17] a district court following this trend toward a "due process" requirement, held that where a juvenile is charged with an act which if done by an adult would be a crime "due process and fundamental fairness compel the

12. White v. Reid, 125 F. Supp. 647 (D.D.C. 1954). Chief Judge Laws stated, "To send a juvenile to the usual penitentiary where hardened criminals are kept . . . [and] where the juvenile would . . . come into contact with them and suffer the same type of treatment would . . . stamp the case of the juvenile as a criminal case. . . . In such prosecutions, Constitutional safeguards must be vouchsafed the accused." *Id.* at 650-51. See the later opinion in the same case, 126 F. Supp. 867 (D.D.C. 1954).

13. In Haley v. Ohio, 332 U.S. 596 (1948), which was not a proceeding under a juvenile court act, the Supreme Court held that the method of obtaining a confession from a fifteen year-old boy, by continuous interrogation from midnight till 5:00 A.M., without the benefit of counsel or friend violated the due process of the fourteenth amendment. No "child can be . . . condemned by methods which flout constitutional requirements of due process of law." *Id.* at 601.

14. 168 F. Supp. 899, 901 (D.D.C. 1958) *rev'd on other grounds*, 271 F.2d 487 (D.C. Cir. 1959) (The court indicated that if the proceeding results in the loss of personal liberty the constitutional safeguards apply.); see also Alexander, *Constitutional Rights in Juvenile Court*, 46 A.B.A.J. 1206, 1207 (1960).

15. 178 F. Supp. 155, 160 (D.N.J. 1957).

16. Pee v. United States, 274 F.2d 556, 559 (D.C. Cir. 1959); see Alexander, *supra* note 14, at 1209; Welch, *supra* note 6, at 672. The District Court for the District of Columbia had already held that a juvenile's right to counsel is determined directly from the sixth amendment. Since juvenile delinquency is the determination of guilt for a specific criminal act, any juvenile proceeding alleging an act which would be a crime if committed by an adult is imbued with constitutional safeguards, *In re* Poff, 135 F. Supp. 224, 227 (D.D.C. 1955). The court reasoned that it was the legislative intent "to afford the juvenile protections in addition to those he already possessed under the Federal Constitution," *Id.* at 225. See Shioutakon v. District of Columbia, 236 F.2d 666 (D.C. Cir. 1956) (Fundamental fairness requires counsel in juvenile delinquency proceedings because of the consequent stigma and deprivation of liberty.).

17. 233 F. Supp. 160 (D. Mont. 1964).

same safeguards . . . as for an adult. . . ."[18] The Texas District Court agreed,[19] noting the growing concern over the juvenile court philosophy, quoting *Dickerson*[20] and stating, "the constitutional guaranty of fundamental fairness and due process is applicable to all proceedings . . . if the outcome may be deprivation of liberty of the person."[21]

The question of the constitutional validity of the *parens patriae* rationale for reducing procedural safeguards was treated by the Supreme Court in *Kent v. United States*.[22] The Court noted the growing gap between theory and practice in the juvenile courts, and evidence that some juvenile courts lack the necessary personnel to do a proper job. The Court agreed that in many cases the juvenile is getting the "worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children."[23] Consistent, however, with its policy of judicial restraint, the Court held that the above concern "does not induce us in *this* case to accept the invitation to rule that constitutional guaranties which would be applicable to adults charged with the . . . [same] offense . . . must be applied in juvenile court proceedings. . . ."[24] At present, the federal courts are measuring the juvenile proceedings against the standards of "due process" and "fundamental fairness." However, recent cases and particularly *Kent* show the Court's dissatisfaction with the manner of treatment afforded the juvenile under the present rationale and may be a forecast that the federal courts will soon require the same constitutional safeguards in juvenile cases as in criminal cases.

In New York, the constitutionality of *parens patriae* was first upheld in *People v. Lewis*.[25] The proceeding in *Lewis* took place under the Children's Court Act,[26] a statute by which, the Court of Appeals held, the concept of

18. *Id.* at 164-65. The court agrees with the opinion of Chief Judge Forman in Application of Johnson, 178 F. Supp. 155, 160 (D.N.J. 1957) that "the trend in recent decisions is to hold that there shall be no greater diminution of the rights of a child, as safeguarded by the Constitution, than should be suffered by an adult charged with an offense equivalent to the alleged act of delinquency of the child." By similar reasoning the right of a juvenile to counsel was affirmed by the Supreme Court in Gallegos v. Colorado, 370 U.S. 49, 54-55 (1962), a criminal case, which held that to let the confession of a fourteen year-old stand in view of the totality of the circumstances would be to treat him as if he had no constitutional rights.

19. Sawyer v. Hauck, 245 F. Supp. 55 (W.D. Tex. 1965).

20. United States v. Dickerson, 168 F. Supp. 899 (D.D.C. 1958), *rev'd on other grounds*, 271 F.2d 487 (D.C. Cir. 1959). "The test must be the nature and the essence of the proceeding rather than its title. If the result may be a loss of personal liberty, the constitutional safeguards apply." *Id.* at 902.

21. Sawyer v. Hauck, 245 F. Supp. 55 (W.D. Tex. 1965).

22. 383 U.S. 541 (1966).

23. *Id.* at 556.

24. *Id.* at 556 (Emphasis added.).

25. 260 N.Y. 171, 183 N.E. 353 (1932), *cert. denied*, 289 U.S. 709 (1933). The Court distinguished People v. Fitzgerald, 244 N.Y. 307, 155 N.E. 584 (1927), as being a criminal trial and not a juvenile proceeding even though it arose under the Buffalo Children's Court Act, N.Y. Sess. Laws 1925, ch. 385.

26. N.Y. Sess. Laws 1930, ch. 393.

crime and punishment had been removed, and by which "all suggestion and taint of criminality was intended to be and has been done away with."[27] Since the proceeding was not criminal, criminal procedural rights need not be applied. It was pointed out, however, that although the criminal constitutional safeguards are inapplicable, "there is no implication that a purely socialized trial of a specific issue may properly or legally be had."[28] Since not all the constitutional safeguards of a criminal trial apply to the juvenile proceeding, the legislature has a wide discretion in deciding the process of law due in this area.[29] The present Family Court Act expresses a determination to provide "due process of law."[30] The act seeks to distinguish the basically legal aspects from the social aspects of the proceeding by holding the hearing in two phases, an adjudicatory phase[31] and a dispositional phase.[32]

> There remains for establishment at the dispositional hearing the necessary allegations in the petition that the respondent requires supervision, treatment or confinement. . . .[33] Accordingly, if counsel can establish that notwithstanding the commission of the acts alleged in the petition no real purpose would be served by suspending judgment, probationary supervision, placement or commitment, there would be basis for dismissal of the petition and avoidance of whatever stigma or disability might otherwise attach to an adjudication of delinquency. . . .[34]

The petition itself must set forth fully the act complained of, and must be proved by a preponderance of competent evidence.[35] The term delinquency

27. People v. Lewis, 260 N.Y. 171, 176, 183 N.E. 353, 354 (1932), *cert. denied*, 289 U.S. 709 (1933) (Emphasis added.).

28. *Id.* at 178, 183 N.E. at 355.

29. N.Y. Joint Legis. Comm. on Ct. Reorg., Report II: Family Ct. Act 9 (1962).

30. *Ibid.*; see also comments to N.Y. Family Ct. Act § 311, at 47 and § 711, at 110. See Matter of Gregory W., 19 N.Y.2d 55, 224 N.E.2d 102, 277 N.Y.S.2d 675 (1966). Keating, J., writing for the majority, referring to the case of *People v. Lewis*, stated:

> We need not here engage in an extensive re-examination of that case because we believe that the rationale underlying that opinion has been rejected by the Legislature and that the specific holding of the case has been overruled by statute.
>
> While the Family Court Act specifically states that the proceedings held thereunder are not criminal in nature, the various provisions made for the protection of the rights of children who are charged with juvenile delinquency are indicative of a legislative recognition of the fact that such proceedings, resulting as they do in a loss of personal freedom, are at the very least quasi-criminal in nature. As the legislative committee report states: "Any commitment—whether 'civil' or 'criminal,' whether assertedly for 'punitive' or 'rehabilitative' purposes—involves a grave interference with personal liberty."

Id. at 62, 224 N.E.2d at 106, 277 N.Y.S.2d at 680.

31. N.Y. Family Ct. Act § 742 (embodies the legal aspects, the determination of whether the juvenile did the particular act charged).

32. N.Y. Family Ct. Act § 743 (whether the person alleged to be a juvenile delinquent requires supervision, treatment or confinement); see Isaacs, *The Role of the Lawyer in Representing Minors in the New Family Court*, 12 Buffalo L. Rev. 501, 511 (1963).

33. N.Y. Family Ct. Act § 731.

34. Isaacs, *supra* note 32, at 516; see N.Y. Family Ct. Act § 751; see also Laufer, *New Directions for Court Treatment of Youth*, 12 Buffalo L. Rev. 452, 466 (1963).

35. N.Y. Family Ct. Act §§ 731, 732, 742, 744; see Oughterson, *Family Court Jurisdiction.*

is retained to describe only those juveniles who have violated a criminal statute.[36] No adjudication is considered a forfeiture of any right or privilege: it does not disqualify any person from subsequently holding public office,[37] it is not deemed a conviction nor is the juvenile considered a criminal;[38] but the adjudication may be used by another court when considering, for purposes of sentencing, the childhood of the adult offender.[39] The law guardian system, provided in the act, reversed the earlier belief that lawyer participation was incompatible with the concept of "social courts" and implements the legislative finding that counsel is indispensible to the practical realization of due process.[40] The New York statute does not provide for "waiver" of jurisdiction.[41] Waiver in juvenile court occurs when, finding the delinquent not amenable to its rehabilitative purpose, the court transfers the youth to a criminal court, and thereby places him in the danger of a criminal proceeding. Although greater procedural safeguards are afforded in the Family Court, the practices and procedures found necessary in the criminal courts are not generally applied.[42] In addition many of the procedural safeguards mentioned in the Family Court Act do not as a matter of practice obtain.[43]

The acts leading to commitment for delinquency are those considered criminal when performed by an adult. The question is therefore raised as to the legality of tendering evidence obtained by an illegal search and seizure.[44]

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12 Buffalo L. Rev. 467, 474-75 (1963); see, *e.g.*, Matter of Doe, 44 Misc. 2d 678, 255 N.Y.S.2d 33 (Kings County Family Ct. 1964). The court stated that in juvenile delinquency proceedings less formal proof is needed than in criminal court; Matter of Rutane, 37 Misc. 2d 234, 234 N.Y.S.2d 777 (Kings County Family Ct. 1962). The court held that a confession of thirteen year old boy after seven hours of interrogation in a police station and absent a lawyer or parent is involuntary and inadmissible.

36. N.Y. Family Ct. Act § 712(a); Habitually disobedient juveniles or those beyond parental control are described as "persons in need of supervision." N.Y. Family Ct. Act § 712(b).

37. N.Y. Family Ct. Act § 782; see, *e.g.*, Hambel v. Levine, 243 App. Div. 530, 275 N.Y.Supp. 702, 703 (2d Dep't 1934): "The adjudication of the court will not operate to the detriment of the defendant in his desire to enter the civil service."

38. N.Y. Family Ct. Act § 781; see People v. Peele, 12 N.Y.2d 890, 891, 188 N.E.2d 265, 237 N.Y.S.2d 999, 1000 (1963): "[J]uvenile delinquency adjudications are not convictions of crime . . . in New York. . . ."; Application of Giroffi, 283 App. Div. 890, 130 N.Y.S.2d 28, at 29 (2d Dep't 1954): "An adjudication of juvenile delinquency is not a criminal conviction."

39. N.Y. Family Ct. Act § 784; see also Oughterson, *supra* note 35, at 478.

40. N.Y. Family Ct. Act § 241, 741; see Isaacs, *supra* note 32, at 501; Paulsen, *The New York Family Court Act*, 12 Buffalo L. Rev. 420, 423 (1963); see also Matter of Lang, 44 Misc. 2d 900, 904, 255 N.Y.S.2d 987, 991 (N.Y. County Family Ct. 1965): "[T]he Judge is required to advise the child of his right to remain silent, his right to be represented by counsel of his own choosing, and of his right to have a law guardian assigned. . . ."

41. *Cf.* N.Y. Family Ct. Act §§ 713, 715.

42. Matter of Jones, 43 Misc. 2d 390, 251 N.Y.S.2d 243 (Queens County Family Ct. 1964).

43. See generally *New York City Juvenile Delinquency Evaluation Project*, 15 Interim Report 10 (1960); Horwitz, *The Problem of the Quid Pro Quo*, 12 Buffalo L. Rev. 528, 531 (1963).

44. Mapp v. Ohio, 367 U.S. 643 (1961); People v. Loria, 10 N.Y.2d 368, 179 N.E.2d 478, 223 N.Y.S.2d 462 (1961); see also Samuels, Family Court Law and Practice in New York 307 (1964).

Eighty years ago, the Supreme Court held that the fourth and fifth amendments apply to all invasions into a person's privacy.[45] It is not the "breaking of his doors"[46] that constitutes the offense but rather the invasion of an individual's right of personal security[47] by the forcible extortion of testimony, and seizure of personal belongings.[48] The restrictions upon unlawful searches and seizures are designed to protect against invasion of privacy and are not merely rules of evidence to exclude unreliable or prejudicial facts.[49] In the case of *Mapp v. Ohio*, the Supreme Court stated that "all evidence obtained by searches and seizures in violation of the Constitution is, by that same authority, inadmissible in a state court."[50] The Court, however, has declined to clarify whether "all evidence" includes evidence to be used in a juvenile proceeding.[51] Juvenile delinquency proceedings in New York State are classified as non-criminal; therefore, an examination of the application of the rules against illegal search and seizure in non-criminal areas seems appropriate. New York cases dealing with search and seizure in the non-criminal area fall primarily into three categories: civil cases in which the unlawful search was conducted by a private individual; civil cases in which the unlawful search was conducted by a governmental official; and civil cases which are termed quasi-criminal because unlike civil proceedings they involve penalties, forfeitures, and other similarities to criminal law.

The first category is exemplified by *Sackler v. Sackler*.[52] The issue in *Sackler* was whether facts gained as the result of an illegal search by a private person should be excluded from evidence in a civil (divorce) proceeding. The majority noted that where evidence illegally seized by an official is accepted in evidence at a criminal trial the government is placed in the untenable position of attempting to enforce the law while at the same time encouraging its own officers to disobey it by rewarding the fruits of its defiance. In a divorce proceeding, on the other hand, since the government is not a party to the illegal search, the admission of this evidence would not encourage illegal forays by the police.[53] The Court of Appeals affirmed but limited the holding

45. Boyd v. United States, 116 U.S. 616 (1886).
46. *Id.* at 630.
47. *Ibid.*
48. *Ibid.*
49. Jones v. United States, 362 U.S. 257, 261 (1960).
50. Mapp v. Ohio, 367 U.S. 643, 655 (1961); *but see* Harling v. United States, 295 F.2d 161, 163 (D.C. Cir. 1961) decided within three weeks of and without mentioning Mapp stated that "safeguards of the criminal law, such as . . . the exclusionary Mallory rule, [354 U.S. 49 (1957)] have no general application in juvenile proceedings."
51. Kent v. United States, 383 U.S. 541 (1966).
52. 16 A.D.2d 423, 229 N.Y.S.2d 61 (2d Dep't 1962).
53. In his dissenting opinion, Judge Hopkins points out that private persons can still gain by defying the law. Observance of the exclusionary rule in all trials would satisfy the constitutional requirements; avoid the violence and trespass often involved in an unlawful entry and search; avoid breach of the peace by the lawful repulsion of the trespasser; and courts would not be asked to enforce one right and by so doing disregard a greater right. *Id.* at 432, 229 N.Y.S.2d at 70.

so that only evidence obtained by a private person by means of an illegal search and seizure is not for this reason to be rejected in a civil case.[54]

An an example of the second category, an action to collect double indemnity under an insurance policy, the plaintiff moved to exclude certain findings made by the county coroner (a public official) which she alleged to have been the result of an unlawful autopsy.[55] The court was of the opinion that there is merit to the widow's contention that *Mapp*[56] and *Loria*[57] apply to civil as well as criminal cases.[58] There appears to be no reason to follow different rules as to evidence obtained by search and seizure in violation of the Constitution; in both instances the evidence should be excluded. However, the court did not pass on the widow's motion.[59] A year later when this same question was again raised, the Court of Appeals reserved until an appropriate case the validity of an unlawful search by an official person.[60] The Court there held that the search of the defendant's house by a public officer without a warrant, however, was in violation of defendant's constitutional rights to the extent that the evidence was used in a criminal proceeding.[61]

Cases in the third category have held that although the proceeding was technically a civil proceeding it was in substance and effect criminal[62] since the object was to punish the individual. Any evidence obtained by a government official which could not be utilized in a criminal proceeding[63] cannot be utilized in a quasi-criminal proceeding.[64] The rationale of this holding is:

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54. Sackler v. Sackler, 15 N.Y.S.2d 40, 203 N.E.2d 481, 255 N.Y.S.2d 83 (1964); see also Price, *Evidence*, 17 Syracuse L. Rev. 376, 382 (1965).

55. Rocco v. Travelers Insurance Co., 38 Misc. 2d 311, 238 N.Y.S.2d 43 (Sup Ct. 1963).

56. Mapp v. Ohio, 367 U.S. 643 (1961).

57. People v. Loria, 10 N.Y.2d 368, 179 N.E.2d 478, 223 N.Y.S.2d 462 (1961).

58. They were also of the opinion that the dicta in Bloodgood v. Lynch, 293 N.Y. 308, 56 N.E.2d 718 (1944) was overruled. That dicta maintained that even if a statement in a civil case is illegally obtained by a police officer it would not be inadmissible into the record. The court in Rocco v. Travelers Insurance Co., 38 Misc. 2d 311, 238 N.Y.S.2d 43 (Sup. Ct. 1963), noted that Bloodgood was based upon People v. Defore, 242 N.Y. 13, 150 N.E. 585 (1926), *cert. denied*, 270 U.S. 657 (1926), a criminal case, which was overruled by Mapp v. Ohio, 367 U.S. 643 (1961); and People v. Loria, 10 N.Y.2d 368, 179 N.E.2d 478, 223 N.Y.S.2d 462 (1961).

59. Rocco v. Travelers Insurance Co., 38 Misc. 2d 311, 238 N.Y.S.2d 43 (Sup. Ct. 1963).

60. People v. Laverne, 14 N.Y.2d 304, 308, 200 N.E.2d 441, 443, 251 N.Y.S.2d 452, 455 (1964).

61. *Ibid.* Is the Court in fact saying that persons suspect of crime are to have greater protection against unconstitutional searches and seizures than are persons subject only to a civil proceeding? See Paulsen, *The Winds of Change: Criminal Procedure in New York 1941-1965*, 15 Buffalo L. Rev. 297, 315 (1965).

62. See, *e.g.*, Incorporated Village of Laurel Hollow v. Laverne Originals, Inc., 24 A.D.2d 616, 262 N.Y.S.2d 625 (2d Dep't 1965); Incorporated Village of Laurel Hollow v. Laverne, Inc., 24 A.D. 615, 262 N.Y.S.2d 622 (2d Dep't 1965).

63. People v. Laverne, 14 N.Y.2d 304, 308, 200 N.E.2d 441, 443, 251 N.Y.S.2d 452, 455 (1964).

64. Incorporated Village of Laurel Hollow v. Laverne Originals, Inc., 24 A.D.2d 616, 262 N.Y.S.2d 625 (2d Dep't 1965).

punishment involves the idea of penalty;[65] the basic character of a penalty does not change by being inflicted in a civil suit instead of a criminal action;[66] therefore a suit for penalty is within the constitutional exclusionary rule.[67]

The Appellate Division[68] has held that the exclusionary rule applies whenever a government official illegally seizes evidence to be used in a trial to impose official forfeitures, penalties, or similar sanctions.[69] The juvenile proceeding by its very nature imposes official forfeitures, penalties and sanctions.[70] In the Family Court case of *Matter of Ronny*,[71] the question of whether *Mapp* applied to a proceeding under the Family Court Act was squarely posed.[72] The court noted that the juvenile proceeding indeed seemed to be quasi-criminal in nature[73] and accordingly held that "young persons have the same constitutional rights as older ones. . . ."[74] This is not changed because the proceeding is termed civil.[75] "The purpose of the exclusionary evidence rule is to deter the police, and the police investigate cases involving children."[76]

The law in New York as to the applicability of the fourth amendment and the exclusionary rule of *Mapp* to *all* civil cases is unsettled. However, as to the juvenile proceeding, the Court of Appeals in *People v. Lewis*[77] had set down the law. Twenty-nine years later, constrained by *Mapp*, the New York Court of Appeals held that illegally obtained evidence would be excluded from all state trials.[78] The following year the New York Legislature enacted the Family Court Act and expressly provided the juvenile with "a due process of law."[79]

65. Incorporated Village of Laurel Hollow v. Laverne, Inc., 24 A.D.2d 615, 262 N.Y.S.2d 622 (2d Dep't 1965).

66. *Ibid.*; Boyd v. United States, 116 U.S. 616, 634 (1886); United States. v. Chouteau, 102 U.S. 603, 611 (1880).

67. Incorporated Village of Laurel Hollow v. Laverne, Inc., 24 A.D.2d 615, 262 N.Y.S.2d 622 (2d Dep't 1965); Boyd v. United States, 116 U.S. 616, 634 (1886); *cf.* Plymouth Sedan v. Pennsylvania, 380 U.S. 693 (1965).

68. Leogrande v. State Liquor Authority, 25 A.D. 225, 268 N.Y.S.2d 433 (1st Dep't 1966). Official person had unlawfully stopped and searched plaintiff's car and confiscated several cases of liquor.

69. *Ibid.* It was noted that this precise issue is not one that has been passed upon by the Court of Appeals.

70. See *infra*, note 104.

71. Matter of Ronny, 40 Misc. 2d 194, 242 N.Y.S.2d 844 (Queens County Family Ct. 1963) (Peace officer questioned Ronny, a juvenile who voluntarily submitted to a search of his person. The court found that the youth's consent was such as to legalize the search.)

72. *Id.* at 209-10, 242 N.Y.S.2d at 860. The court noted the sharp difference of opinion between Sackler v. Sackler, 15 N.Y.2d 40, 203 N.E.2d 481, 255 N.Y.S.2d 83 (1964), and Rocco v. Travelers Insurance Co., 38 Misc. 2d 311, 238 N.Y.S.2d 43 (Sup. Ct. 1963), but stated that whatever the right of the parties are in a civil divorce proceeding, the approach taken by Sackler has no application here.

73. Matter of Ronny, 40 Misc. 2d 194, 242 N.Y.S.2d 844 (Queens County Family Ct. 1963); *cf. In re* Holmes, 379 Pa. 599, 610, 109 A.2d 523, 530 (1954) (Musmanno, J., dissenting), *cert. denied*, 348 U.S. 973 (1955). Incarceration of youth is indeed punishment.

74. In Matter of Ronny, 40 Misc. 2d 194, 210, 242 N.Y.S.2d 844, 860 (Queens County Family Ct. 1963).

75. Paulsen, *The Juvenile Court and the Whole of the Law*, 11 Wayne L. Rev. 597, 611 (1965).

76. *Ibid.*

77. 260 N.Y. 171, 183 N.E. 353 (1932).

78. People v. Loria, 10 N.Y.2d 368, 179 N.E.2d 478, 223 N.Y.S.2d 462 (1961).

79. N.Y. Family Ct. Act § 711.

The Court of Appeals held that the exclusionary rule does not apply, when the illegal evidence is gathered by a private person.[80] The case of an official person gathering the illegal evidence is one step closer to a criminal prosecution and the decision becomes that much more difficult.[81] The Court of Appeals, in the one case that has reached it, has taken no stand on the question and accordingly reserved judgment.[82] In the quasi-criminal area no cases have reached the Court of Appeals. However, the Appellate Divisions in both the First and Second Departments have held that illegally obtained evidence may not be introduced.[83] In the only juvenile proceeding concerning search and seizure decided after *Mapp*, the Queens County Family Court held that such evidence in a juvenile (quasi-criminal) proceeding would fall within the exclusionary rule.[84]

The major issue presented by the instant case as stated by the court is,

> whether the Fourth Amendment's guarantee against unreasonable searches and seizures [applicable to state criminal proceedings] need not be extended to juvenile delinquency proceedings because of their noncriminal nature or whether a due process of law, which the Legislature says it is the intention of the Family Court Act to provide . . . [section 711], requires that the Fourth Amendment and the exclusionary rule of *Mapp v. Ohio* . . . be applied.[85]

In formulating the decision, Judge Elwyn relied on *Pee v. United States*,[86] which, in interpreting the Juvenile Court Act,[87] stated that the "constitutional safeguards vouchsafed a juvenile in such proceedings are determined from the requirements of due process and fair treatment, and not by the direct application of the clauses of the Constitution which in terms apply to criminal cases."[88] The court held that when the juvenile is charged with an act which

80. Sackler v. Sackler, 15 N.Y.2d 40, 203 N.E.2d 481, 255 N.Y.S.2d 83 (1964).

81. An official person gathers evidence as an agent of the official body he works for. The official body then, state or municipal, is involved in the unlawful gathering of illegal evidence; *cf.* Sackler v. Sackler, 16 A.D.2d 423, 229 N.Y.S.2d 61 (2d Dep't 1962).

82. People v. Laverne, 14 N.Y.2d 304, 308, 200 N.E.2d 441, 443, 251 N.Y.S.2d 452, 454-55 (1964).

83. See, *e.g.*, Incorporated Village of Laurel Hollow v. Laverne Originals, Inc., 24 A.D.2d 616, 262 N.Y.S.2d 625 (2d Dep't 1965); Incorporated Village of Laurel Hollow v. Laverne, Inc., 24 A.D.2d 615, 262 N.Y.S.2d 622 (2d Dep't 1965); Leogrande v. State Liquor Authority, 25 A.D.2d 225, 268 N.Y.S.2d 433 (1st Dep't 1966).

84. *Cf. In re* Contreras, 109 Cal. App. 2d 787, 790, 241 P.2d 631, 633 (2d Dist. 1952) (The Juvenile Court should never be made an instrument with which to deny a minor of any constitutional right offered an adult.); Lebel v. Swincicki, 354 Mich. 427, 437-38, 93 N.W.2d 281, 286 (1958) (Unlawfully obtained evidence is to be excluded from a civil trial.); State v. Herold, 94 Ohio L. Abs. 293, 297, 30 Ohio Op. 2d 135, 197 N.E.2d 906, 909 (Ct. Appeals 1964): "The Juvenile Court is a court of law and all the safeguards of due process should be adhered to meticulously."; *In re* Garland, 160 So. 2d 340, 344 (La. 4th Cir. 1964) (If the child is not shown by constitutional proofs to be a delinquent the Juvenile Court has no jurisdiction over him.); Application of Gault, 99 Ariz. 181, 407 P.2d 760 (1965), appeal argued, No. 116, U.S.L. Week 3209 (U.S. Dec. 6, 1966).

85. Matter of Williams, 49 Misc. 2d 154, 168-169, 267 N.Y.S.2d 91, 109 (Ulster County Family Ct. 1966) (Italics supplied.); Mapp v. Ohio, 367 U.S. 643 (1961).

86. 274 F.2d 556 (D.C. Cir. 1959).

87. 52 Stat. 596 (1938), as amended, D.C. Code §§ 11-901–11-950 (1951).

88. Pee v. United States, 274 F.2d 556, 559 (D.C. Cir. 1959).

if done by an adult would be a crime, fundamental fairness requires that the constitutional guarantee against unreasonable searches and seizures be extended to the juvenile. It is difficult to determine if the standard of due process applied here was that provided by the Constitution, or that provided by section 711 of the Family Court Act.

As to the second issue raised, the admissibility of the confession, the court stated that if the juvenile had in fact made a request for a lawyer, or had he been physically intimidated by the police, the confession would be involuntary and therefore, inadmissible. The court does not decide this issue of fact but holds rather that the police have a positive duty by statute[89] to take affirmative steps to contact the juvenile's parents before interrogating him. The question of whether failure to take such action alone so taints the confession with involuntariness has never been directly passed upon.[90] The court here holds that the totality of the circumstances[91] coupled with the necessity for the observance of fundamental fairness compel the conclusion that the element of compulsion was present and therefore, the confession was involuntary and inadmissible.[92]

Because it has been the tendency to read the fourth and fifth amendments as complementary, the criminal aspect of the guarantee against unreasonable search and seizure has been emphasized.[93] However, the procedural safeguards of the Constitution were developed long before the idea of a juvenile proceeding was conceived. These procedural safeguards set forth a due process to be followed in all trials in which the outcome might be a deprivation of liberty.[94] The fact that later some proceedings were termed civil, quasi-criminal, or criminal, is constitutionally unimportant; the outcome of the proceeding is the determining factor, not the label. It has been said that "basic human rights do not depend on nomenclature."[95] The purpose of the juvenile court was to get children out of and away from the criminal courtroom. It was the intention of the founders of the juvenile court to add to and implement the child's rights beyond what the Constitution provided,[96] not to detract from the child's existing rights.[97] Although reformation and rehabilitation have been

89. N.Y. Family Ct. Act § 724.

90. Matter of Dennis, 20 A.D.2d 86, 244 N.Y.S.2d 798 (4th Dep't 1963); Matter of Addison, 20 A.D.2d 90, 245 N.Y.S.2d 243 (4th Dep't 1963).

91. Disregard of N.Y. Family Ct. Act § 724, the boy's age, the unlawfulness of his arrest by the security guard, the lateness of the hour, the absence of parents or lawyer.

92. N.Y. Family Ct. Act § 724(d); Haley v. Ohio, 332 U.S. 596 (1948); Gallegos v. Colorado, 370 U.S. 49 (1962); *cf.* People v. DeFlumer, 16 N.Y.2d 20, 209 N.E.2d 93, 261 N.Y.S.2d 42 (1965) (decided without reference to the Family Court Act).

93. Johnson v. United States, 333 U.S. 10 (1948); Gouled v. United States, 255 U.S. 298 (1921); Boyd v. United States, 116 U.S. 616 (1886).

94. Coleman, *The Constitutional Rights of a Juvenile Delinquent*, 50 Women Law. J. 84, 85 (1964).

95. Trimble v. Stone, 187 F. Supp. 483 (D.D.C. 1960); Coleman, *supra* note 94, at 85.

96. Shioutakon v. District of Columbia, 236 F.2d 666 (D.C. Cir. 1956); *In re* Poff, 135 F. Supp. 224 (D.D.C. 1955); Alexander, *Constitutional Rights in Juvenile Court*, 46 A.B.A.J. 1206, 1208 (1960).

97. *Ibid.*

recognized as important objectives of criminal jurisprudence,[98] there is no suggestion that such objectives would justify a reduction in criminal safeguards.[99] It is the degree of interference by the state and not the motivation behind that interference which is important for fourteenth amendment due process.[100]

If we are to continue to deny the child the protections we extend to criminals we must at least insure that the child receive the full benefit of the *parens patriae* doctrine which has been offered in its stead. If the child is not in fact the beneficial recepient of this doctrine, then we have most certainly and most unjustly deprived him of his constitutional rights.[101] How far criminal procedural safeguards may be discarded seems to vary inversely with how far the philosophy of the juvenile court is realized in fact.[102] Over thirty years ago, in *People v. Lewis*,[103] it was found that all taints of criminality had in fact been removed and consequently the constitutional procedures afforded a criminal were no longer needed in a juvenile proceeding. However, this appears to have been a finding divorced from reality. It is presently clear that several criminal "taints" remain.[104] It is also apparent that facilities for institutionalized treatment appear to be badly lacking, as are trained personnel.[105] The child then appears to be receiving "the worst of both worlds." He gets neither the protections afforded adults nor the regenerative treatment postulated by *parens patriae*.[106] It is time we opened our eyes to this situation and stopped paying our children in counterfeit coin.[107] The instant case may provide a start.

ALAN EBER

98. Welch, *Delinquency Proceedings—Fundamental Fairness for the Accused in a Quasi-Criminal Forum*, 50 Minn. L. Rev. 653, 663 (1966); *cf.* Williams v. New York, 337 U.S. 241, 248 (1949).

99. Welch, *supra* note 98, at 663; Pointer v. Texas, 380 U.S. 400 (1965); Malloy v. Hogan, 378 U.S. 1 (1964); Gideon v. Wainwright, 372 U.S. 335 (1963).

100. Welch, *supra* note 98, at 663.

101. Paulsen, *Fairness to the Juvenile Offender*, 41 Minn. L. Rev. 547, 574 (1957).

102. *Ibid.*

103. 260 N.Y. 171, 183 N.E. 353, (1932), *cert. denied*, 289 U.S. 709 (1933).

104. Welch, *supra* note 98, at 655 (employers can still find out about delinquency records by asking prospective employee if he ever was adjudged a juvenile delinquent; *Id.* at 658: "[J]uvenile adjudged a delinquent is exposed to unambiguous criminal stigma."); see also S. Rep. No. 130, 85th Cong., 1st Sess. 175 (1957) (children's cases are handled like criminal cases but without the protections afforded criminals; N.Y. Family Ct. Act § 783 (Earlier convictions of juvenile delinquency may be considered for purposes of sentencing at a later trial; *In re* Holmes, 379 Pa. 599, 109 A.2d 523 (1954) (Musmanno, J., dissenting), *cert. denied*, 348 U.S. 973 (1955); Glueck, *Some "Unfinished Business" in the Management of Juvenile Delinquency*, 15 Syr. L. Rev. 628, 633 (1964) (stigma of a criminal conviction still present).

105. Kent v. United States, 383 U.S. 541 (1966); Isaacs, *The Role of the Lawyer in Representing Minors in the New Family Court*, 12 Buffalo L. Rev. 501, 506 (1963).

106. Kent v. United States, 383 U.S. 541, 556 (1966).

107. Paulsen, *supra* note 101, at 576.