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GAULT AND THE JUVENILE TRAINING SCHOOL

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As is usual with legal and social developments, there has been a very mixed reaction to *In re Gault*.[1] Some feel that *Gault* rings the death knell for the juvenile court and for training schools. The other extreme is elation over a decision that, they feel, was long over-due and is very commendable. The majority of training school superintendents are quite cautious about passing judgment in a hasty or premature manner. It would, they believe, be fallacious to attribute to *Gault* all the changes in the courts and training schools that have occurred since the decision was handed down on May 15, 1967. Since the careers of superintendents have been invested in supporting and improving the juvenile court process, it should be apparent that, although *Gault* presents a major challenge to administrators and their staffs, they will continue to fight to preserve the best interests of children.

Juvenile training schools are symbiotically joined to the juvenile court system, which originated in Illinois in 1899; Illinois saw the need for a training school resource and established its State Training School for Boys in 1903. There has continued to be interdependence between juvenile courts and training schools. As has been so frequently stated, serious concern was expressed that children were being given legal treatment as if they were fully responsible adults. Although driven by the impulsion and compulsion of youth and unable to understand legal procedures or to defend themselves in the legal actions brought against them, boys and girls were sadistically punished by private and public floggings, deprived of food, lodged in dungeons and cells along with adults, forced to do cruelly hard labor, and otherwise abused and neglected. Little or no effort was made to consider individual differences or special needs since justice was blind to these humanitarian aspects—the criminal code was followed rigidly. Trials, such as they were, usually resulted in a staged scene where non-lawyers and non-professionals ruled by prejudice and whim. Jerome E. Bates points out that, "[t]he interest of society in the reasons for anti-social behavior is of recent origin. Formerly society was mainly concerned with the apprehension and punishment of the criminal. Interest has now shifted from the fact of the crime to the motivations behind criminal acts."[2] Specialized court

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1. 387 U.S. 1 (1967).

2. Bates, *Abrahamsen's Theory of the Etiology of Criminal Acts*, 40 J. CRIM. L. C. & P.L. 471 (1949).

services and specialized treatment resources, including training schools, have given special recognition to children.

Lawyers and social workers joined efforts to improve services to children and to give greater protection to family life by developing laws, courts, institutions, and services to meet the special needs of children; emphasis was placed upon the authorities' playing parental roles as opposed to their former roles of vengeful punishers. The original Illinois juvenile court act of 1899 states,

> [t]his act shall be liberally construed, to the end that its purpose may be carried out, to wit: That the care, custody and discipline of a child shall approximate as nearly as may be that which should be given by its parents, and in all cases where it can properly be done the child be placed in an approved family home and become a member of the family by legal adoption or otherwise.[3]

Nevertheless, the new design was implemented by the old practitioners who were limited by the ignorance, fear, and misbeliefs of the past.

In varying degrees, this situation has existed to the present date. Mr. Justice Fortas, in the Court's opinion, points out that, "[j]uvenile court history has again demonstrated that unbridled discretion, however benevolently motivated, is frequently a poor substitute for principle and procedure."[4] The dream and the reality have been far apart. Yet the same can be said of criminal courts, recently described by Dean Barrett, who said, "[s]uddenly it becomes clear that for most defendants in the criminal process, there is scant regard for them as individuals. They are numbers on dockets, faceless ones to be processed and sent on their way. The gap between the theory and the reality is enormous."[5] It is this reality that those who work with children have resisted for over a half century. *Gault* raises this spectre in the minds of many of us who fully support due process but fear the "reality" for children.

Universities and law schools, I feel, have failed miserably in communicating juvenile court and training school concepts to student lawyers. Consequently, very few lawyers have training relevant to the juvenile court process. Children in trouble most frequently have lacked the funds, friends, and understanding that would attract and encourage legal counsel. When counsel has been obtained, he has generally been an untrained and uninformed lawyer who proceeds as if he were in criminal

3. Juvenile Court Act of Apr. 21, 1899, § 21, [1899] Ill. Laws 137.
4. *In re* Gault, 387 U.S. 1, 18 (1967).
5. PRESIDENT'S COMM'N ON LAW ENFORCEMENT & ADMINISTRATION OF JUSTICE, THE CHALLENGE OF CRIME IN A FREE SOCIETY 128 (1967).

court. And in most instances, little or no attention has been given to the emotional, cultural, mental, and social strengths and weaknesses of the child clients. When the above conditions are coupled with inadequate agency staff, funds, facilities, and other resources, the result, far too frequently, has been to turn a noble dream into a shoddy nightmare. Some extremists among professoinals of the permissvie school of thought, who would attribute *all* misbehavior to mental illness, have further contributed to a system neglectful of the rights and interests of both the children and the community.

Against these great odds, judges, administrators, and experienced staffs have achieved the near-impossible in bringing improvements to programs designed to provide suitable care and direction for children with exceptional needs. Yet high interest and motivation on the part of present-day lawyers and professionals in the behavioral sciences might have combined to more quickly reduce, if not eliminate, the dichotomy between law and social treatment. Dean Griswold delineated the high principles of this concept in 1951 when he said, "[i]n the second half of our century we are perhaps embarking on an era of investigation and research in which legislation and judicial reasoning will be based more and more on the study of the patterns of behavior and motivation that emerge from careful field investigations of the labors, agreements, and conflicts of men in the factory, the market-place, and the home."[6] Had more states and more courts carefully observed due process while individualizing concern for children, the *Gault* decision would not have been required.

We must, of course, be careful not to return children to fully equal status with adults as was the case before the juvenile court was established. They were then given equal "treatment" in the jails, asylums and penitentiaries. For decades, juveniles have received preferential treatment more commensurate with their youth and immaturity. Many daring departures from old penal concepts have resulted in the generous usage of probation, parole, temporary detention, foster care, group homes, work release, authorized absences, special schooling, medical and psychiatric care, and a host of other social services and innovations designed to improve the child and keep him in continuing contact with his community. Much of the recent progressive planning in adult penal settings is directly derived from programs proven to be helpful in working with juveniles. The juvenile court has also been inspirational to those providing treatment and care for the mentally ill and mentally retarded, and our society has been enriched and improved as a consequence.

6. S. GLUECK & E. GLUECK, UNRAVELLING JUVENILE DELINQUENCY (forward by E. Griswold 1951).

It is somewhat unfortunate that the *Gault* decision came at the very time that attention was being focused upon procedure in dealing with children. It must be emphasized that the states had been setting their legal houses in order in reference to juvenile court procedure. New York's Superintendent Hill reports that New York's Family Court Act of 1962[7] provided the safeguards now required by the *Gault* decision, and much concern is shown for the procedural rights of those who appear in the Family Court. The 1962 Act carefully provides for "adjudicatory hearings" and "dispositional hearings," preponderance of evidence, competency and relevancy of evidence, right to counsel, right to a law guardian provided at public expense, advice of the right to remain silent given "at the commencement of the hearing," time limitations on placements and commitments, notification of parents, and other elements closely paralleling the requirements set forth in *Gault*. This framework of procedural fairness along with safeguards against abuse has so revamped New York's juvenile system that *Gault* has had no direct impact.[8] From another state, Superintendent Sublett reports that

> Illinois anticipated the *Gault* decision with its new Juvenile Court law that went into effect August 5, 1965. The new law represented the first meaningful change in the Juvenile Court Act in Illinois since the original prototype of 1899. In anticipation of the State's Juvenile Act of 1965, the Court of Cook County instituted most of the recommended procedures as early as 1963. Cook County processes the majority of the delinquents in the State of Illinois. The procedures established in the Cook County Court and validated by the Juvenile Court Act of 1965 gave to the juvenile the protection implied in the *Gault* decision relative to due process, adjudicatory procedures, disposition of cases, and legal representation.[9]

Oregon's Juvenile Court Act of 1959[10] continues to stand the test of time. It was modeled after the 1954 Children's Bureau Standards for Juveniles and Family Courts as sponsored by the National Council on Crime and Delinquency, the National Association of Juvenile Court Judges, and the U.S. Department of Health, Education and Welfare, and it provides virtually all of the safeguards delineated in *Gault*. Thus, there

7. N.Y. FAMILY CT. ACT §§ 111-1019 (McKinney 1963). There has been a decrease in commitments which the New York superintendents of training schools feel is only temporary.

8. Letter from Benjamin J. Hill, Superintendent, Otisville State Training School Boys, St. Charles, Ill., to Amos E. Reed, Dec. 11, 1967.

9. Letter from Sam Sublett, Jr., Superintendent, Illinois State Training School for Boys, Eldora, Iowa, to Amos E. Reed, Dec. 5, 1967.

10. ORE. REV. STAT. §§ 419.472-419.990 (Repl. 1967).

has been no noticeable impact on Oregon's training schools since the *Gault* decision, and no writs of habeas corpus have been filed. Intake at the MacLaren School for Boys shows 493 for 1967 as against 499 for 1966 (an alltime high). The Hillcrest School for Girls showed an intake of 153 for 1967—an increase of 21 over 1966.

It is clear that states such as New York, Illinois, and Oregon have wisely provided due process without losing the benefits of individualization of care. As Dr. Paul Tappan reports, "[t]he full rigors of the criminal law are mitigated by reason of the offender's youth, but the judicial view would preserve in the hearings of children's courts a real test of the individual's status as a delinquent before applying to him the modern and individualized methods of treatment."[11] It would appear that this viewpoint would not be in opposition to treatment methods but would defer individualized methods until after a finding of delinquency.

Superintendent Tunney of New York has witnessed little or no effect from *Gault*. Although one may not totally agree with Superintendent Tunney, the merit of his evaluation must still be acknowledged:

> [i]t occurs to me that in view of the historical evolution of the Juvenile Court System, along with the development of a more complex society, such a decision as that of *Gault* was sooner or later bound to happen. Nor can I say that I am particularly unhappy about it, and it would seem that we are at last coming to grips with the fact that the doctrine on which the system was built has never really proved out. The emphasis of reforming the individual child by having a conglomeration of services available has at last given way to focusing our attention on changing society through economic and social means as a chief weapon in the fight against delinquency. The aspirations of what could be accomplished for the individual offender have failed miserably under goals. Staff have not been available in numbers that would afford meaningful supervision, the courts have not been provided with the resources the Juvenile Court theory required, and the informality of the proceeding has allowed for considerable miscarriage of justice without the promised rehabilitative effects. Along with tightening up the protection aspects of the criminal juvenile proceeding, we should see a renewed effort to keep juveniles out of the Court System. In short, the idea of reforming the individual through institutionalization has not been realized and the new emphasis

11. P. TAPPAN, PHILOSOPHY OF THE JUVENILE COURT, THE HANDLING OF JUVENILES FROM OFFENSE TO DISPOSITION 285 ( ).

> should be attacking the social evils, but providing complete protection for those who do find themselves in the court.[12]

Superintendent Huckabee of South Carolina believes that *Gault* ". . . destroys completely the concept of the juvenile courts as friends of the child with the capacity to act *in loco parentis* for the best interest of the child."[13] A correspondent in Connecticut felt that her state had provided legal safeguards for children and consequently the *Gault* decision was a long step backward. Superintendent Travisano of Iowa expressed the opinion that he really can't see how *Gault* has affected Iowa. He does wonder, ". . . if we are going to become all legal and/or criminal it might tend to reduce the use of alternatives a judge feels he has at his disposal."[14] Wisconsin's Dr. Prast agrees ". . . that juveniles should have the same rights afforded adults" but is reminded that ". . . in the case of adults, sometimes justice is very slow, and if these kids are going to spend months in limbo, so to speak, [he does] not think they will receive the help they need within reasonable time limits."[15] Dr. Prast was also somewhat concerned about lawyer's fees when the parents are unwilling or unable to pay them.

Throughout the nation, the number of court hearings involving training school staff is increasing and staff are expected to prove their allegations within a legal framework. Since the staff are more treatment than law oriented, there is a feeling that legal representation might, by necessity, become a component part of the institutional staffing pattern. In one recent New York case, Superintendent Costello reports, "[i]t was necessary for the institution staff to appear in court and be cross-examined by the attorney of a family that was objecting to extension of placement. In these proceedings only factual material was acceptable. Actually [the] case record was not admissible as evidence."[16] Some superintendents are observing that training school children are being taught not to admit any of their actions and are looking to attorneys to speak for them.[17]

As early as September 3, 1967, twenty-one juveniles already "had

12. Letter from Thomas E. Tunney, Superintendent, Training School for Girls, Hudson, N.Y., to Amos E. Reed, Nov. 28, 1967.

13. Letter from W. M. Huckakee, Superintendent, South Carolina School for Boys, Florence, S.C., to Amos E. Reed, Nov. 30, 1967.

14. Letter from Anthony P. Travisano, Superintendent, Iowa Training School for for Boys, Otisville, N.Y. to Amos E. Reed, Dec. 12, 1962.

15. Letter from Paul A. Prast, Superintendent, Kettle Morraine Boys School, Plymouth, Wis., to Amos E. Reed, Dec. 6 ,1967.

16. Letter from John B. Costello, Superintendent, State Agric. and Indus. School, Industry, N.Y., to Amos E. Reed, Dec. 1, 1967.

17. Letter from M. B. Kindrick, Superintendent, Gatesville State School for Boys, Gatesville, Tex., to Amos E. Reed, Dec. 5, 1967.

been released from the Wisconsin schools for boys at Wales and Plymouth, and the State Reformatory—on writs of habeas corpus. . . . They have charged, and the judges have agreed, that they were not represented by attorneys at the time of their trials and therefore were deprived of their constitutional rights."[18] According to a United Press International release of August 20, 1967, Attorney Joseph Prezlonik, Director of the Wisconsin judicare program for legal aid for indigents reported that, "[a]bout 150 of the juveniles in the Green Bay Reformatory had contacted his office for legal aid and had prepared petitions asking Brown County to appoint attorneys."[19] The challenge being given to Wisconsin involves several thousand children and youths in training schools and reformatories, on probation and parole, and under the supervision of the state's Welfare Department. Wisconsin Corrections Division Administrator Powers, thinks "[i]t would be unfortunate if a couple thousand [juvenile offenders] were just dumped out on the body politic" since "there are some pretty dangerous kids among them."[20] A girl at the Kansas Girls' Industrial School is reported to have been released from juvenile court wardship because of some legal technicality brought to light by her mother's attorney. The agency felt that the girl had, and still does have, serious emotional problems that will eventually lead to a mental hospital assignment or probably even prison. South Carolina has had several boys returned to the courts on writs of habeas corpus for retrial based on *Gault*. Several were released by the court and two were returned to the South Carolina School for Boys after trial. Three habeas corpus writs have been served on Superintendent Morello of the New Hampshire Industrial School. In some places in Kentucky, juvenile courts requested that training schools release certain children whose placements had been challenged. Also, some parents called the training schools and threatened legal action. In a number of these cases, the youths were released to avoid forcing the matter to a determination. In about half of these cases, the children became involved in serious difficulty and were shortly returned to custody by the juvenile court.[21]

It is of interest to note that several states have experienced reduced intake;[22] some reductions were drastic and some minimal. However, not all of these reductions could be attributed to *Gault*. Nine of the ten state operated facilities in Pennsylvania have experienced drastic reduc-

18. Milwaukee Journal, Sept. 3, 1967, at 1.
19. Milwaukee Journal, Aug. 20, 1967, at 13.
20. Milwaukee Journal, Sept. 3, 1967, at 1.
21. Letter from Robert P. McClure, Superintendent, Kentucky Village, Lexington, Ky., to Amos E. Reed, Dec. 29, 1967.
22. *See* Sheridan, *The Gault Decision and Probation Services*, 43 IND. L.J. ——— n.4 (1968).

toins in admission rates since June, 1967. Commitments at the State Home for Boys at Jamestown, N.J., in July, August, and September 1966 were 52, 41, and 65 compared with 35, 31, and 12 for the same months in 1967. Annandale commitments during July, August, and September 1966 were 70, 49, and 62 respectively compared with 65, 32, and 14 in 1967. Mr. Albert C. Wagner, New Jersey Director of Corrections and Parole states that, "[t]he effect of the Supreme Court rulings is seen also at the Residential Group Centers where the waiting list for boys has stood normally at about twenty was down to five at the end of October [*sic*]. Apparently, the courts are not referring for institutionalization any case where question may be raised with respect to the due process aspect of the proceedings."[23] Intake has also fallen off in Kentucky, New Mexico, Louisiana, New Hampshire, and Maryland. It is interesting to note that *Gault* has had no appreciable effect on training schools in Iowa, the District of Columbia, Maine, Arizona, California, Florida, New York, Illinois and Oregon.

There is mixed feeling about the greater involvement of attorneys in the juvenile court process. Some superintendents feel that the involvement of attorneys will inevitably lead to the education of these professionals whose training has been inadequate and incomplete insofar as matters pertaining to children are concerned. The lawyers may help to stabilize the family group, may give a positive image of authority, and may become a valuable counselor to the family. I can attest that families may be influenced by attorneys to function in a more socially effective manner.

Many side effects of *Gault* are being noted. Superintendent Walker of the New Mexico Boys' School reports that, "[t]here is an obvious increase in Probation Officer time spent on investigation and since Probation Officers are responsible for both investigations and supervision, this results in a decrease in time and services spent in the supervision of minors prior to commitment to the Boys' School and after release."[24] In addition, New Mexico reports a significant increase in returnees and a slowing down of the court process. New York Superintendant Hill advises that,

> [w]hile the *Gault* Decision has made no direct impact, it has, by virtue of its being a part of the increased concern for constitutional safeguards of individuals (including children), helped to increase our concern about what we are doing with and for

23. N.J. DIV. OF CORRECTION AND PAROLE, MONTHLY REPORT (Nov. 1967).
24. Letter from Glenn J. Walker, Superintendent, New Mexico Boys School, Springer, N.M., to Amos E. Reed, Dec. 13, 1967.

> the children who come to the attention of the Family Court. One outcome of the increase in procedural safeguards has been a greater thoughtfulness on the part of the courts in dealing with the cases which come before them. This thoughtfulness, in turn, has made an impact on [New York training schools' intake].[25]

Also, New York has ceased to transfer training school youths over sixteen to institutions under Department of Corrections jurisdiction. This appears to be the result of continuing concern about the constitutional rights of individuals.

Finally, Pennsylvania State Bureau Director Catalino says,

> [i]n the City of Philadelphia a strange phenomenon has occurred in that many of the boys who come before the court are immediately sent home for later hearings, and a majority of these seem to be making it reasonably well. However, this is merely conjecture, since it is reasonable to assume that these same boys may commit further offenses which may or may not be known to the police.[26]

One wonders about the future. Of course, there have always been those who would prefer to take the hard, legal line in dealing with children. One cannot help but wonder if *Gault* will strengthen their resolve. It is of interest that "[f]ollowing[Miami Police Chief]Headley's lead, Juvenile Court Judge Donald Stone called his own news conference . . . [12/28/67] and said he would become the first judge in Florida to 'take off the kid gloves' in dealing with juvenile offenders. All youngsters, suspected of felonies will be fingerprinted and mugged and the files turned over to law enforcement agencies."[27] It is one thing to have committed a felony; it is another thing to have been suspected of committing a felony. Hasty and arbitrary action in the later instance can be a mischief.

A number of training school superintendents have also conjectured about possible future effects of *Gault*. There appears to be a consensus that *Gault* will have far-reaching implications throughout the years ahead. As Superintendent Ziren of New York says, ". . . there is a feeling that we had better be sure of the facts before we make decisions."[28] Careless, slipshod, hasty and arbitrary acts will, more and more, invite

25. Letter from Benjamin J. Hill, *supra* note 8.
26. Letter from Anthony Catalino, Director, Bureau of Youth Development Institutions, Harrisburg, Pa., to Amos E. Reed, Dec. 6, 1967.
27. The Oregonian, Dec. 31, 1967, at 6.
28. Letter from Sidney Zirin, Superintendent, Tryon School for Boys, Johnstown, N.Y., to Amos E. Reed, Nov. 29, 1967.

restrictive rulings. Somewhat facetiously, Iowa's Superintendent Travisano observes that ". . . another interesting sidelight which could develop later on when and if jury trials become a part of juvenile court is whether a boy or girl can have a jury of his peers. It should be quite a decision to make."[29] Oklahoma Superintendent Carmel Bland's analysis of *Gault* leads him to conclude that:

1. [c]ertainly, it would seem that the juvenile courts will be committing less children to state institutions. Either they will find an alternative or they will release the children without action.
2. The children actually committed will be more sophisticated and probably will be more inclined to rely on legal procedures for release as opposed to change in their own attitude and problem handling abilities.
3. [I]t might affect some of our internal methods of investigation within the institution.
4. [H]e would suspect that the adversary system of legal procedure will be established in the juvenile courts, so that the guilt or innocence may rest on the skill of the attorney and while the rights of the child have been protected, the needs of the child have not been met.[30]

Another problem "may develop in regard to the handling and disposition of institutional discipline. Youths are becoming more aware of their rights and in some cases discipline is considered by them as being harsh and unjust. Youths may decide to file writs in the courts to contest the type of discipline that has been rendered and this will affect institutional operations."[31]

Over the years, courts have been very reluctant to interfere with institution administration for reasons that are obvious to all. Of course, if institutions are to merit the confidence of courts, they must keep their houses in order. But it is pointed out that most of the juveniles sent to training schools have committed acts that could legally justify their assignment to the state's care and custody. The children's acts are related to personal and social problems in need of attention. Superintendent Shumate of the Kansas Industrial School for Girls regrets that ". . . the Supreme Court, when considering the *Gault v. Arizona* case, considered only the constitutional rights of the individual involved and not whether

29. Letter from Anthony P. Travisano, *supra* note 14.

30. Letter from Carmel A. Bland, Superintendent, Helena State School for Boys, Helena, Okla., to Amos E. Reed, Dec. 12, 1967.

31. Letter from Marvin R. Hogan, Acting Superintendent, National Training School, Wash., D.C., to Amos E. Reed, Dec. 1, 1967.

he was in need of help with what appeared to be emotional problems."[32] New York's Superintendent Hill agrees that "children's rights are important and should be protected" but is "concerned over the possible implication that treatment of the problems of certain children are tied in with criminal procedure." He points out that

> [m]any of us have been fighting against this type of thinking and working to promote the welfare of children. The mental, emotional, and social health of our children should be our major concern. Lack of health in any of these areas calls for remediation. Unfortunately, the increased attention to procedural fairness may make it difficult for some children to get the help which they need. On the other hand, it may force the communities to develop new resources and strengths and expand existing ones so that children may be properly cared for and the family preserved.[33]

Reports from Kentucky are that there is a backlog of untreated children. Correspondents from Kentucky feel that many children who needed the state's services did not get them because the court placed them on probation where no actual supervision was given. If *Gault* increases this type of disposition, the children of the nation will undoubtedly be the losers. As a society, we will be doing a disservice to both the children and the general community. According to a report given by Congressman Roman C. Pucinski, there are now 48,500 youngsters in state training schools throughout the United States and that many thousands more are in need of help.[34] While training schools are expensive and imperfect, the services they provide are very essential. Only when families and local communities better meet their obligations to children can there be a reduced reliance upon training schools.[35]

We must be very careful not to return children and youth to the "equal" status with adults whose cases are sometimes backlogged on the dockets for years, whose lawyers sometimes have only met them at the time of trial, whose constitutional and human rights are repeatedly ignored in disgraceful county and city jails, etc. This kind of "equality" must be prevented. But we must also be careful not to be stampeded into believing that *Gault* leaves none of the benefits of the juvenile court process. The Court's opinion emphatically states:

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32. Letter from Dennis J. Shumate, Superintendent, Girls Indus. School, Beloit, Kan., to Amos E. Reed, Dec. 1, 1967.

33. Letter from Benjamin J. Hill, *supra* note 8.

34. Pucinski, *Catching Up with Juvenile Delinquency,* AM. J. CORRECTION 5 (Nov.-Dec. 1967).

35. *Id.*

> [w]e do not in this opinion consider the impact of these constitutional provisions upon the totality of the relationship of the juvenile and the state. We do not even consider the entire process relating to juvenile "delinquents." For example, we are not here concerned with the procedures or constitutional rights applicable to the pre-judicial stages of the juvenile process, nor do we direct our attention to the post-adjudicative or dispositional process.[36]

The Court further states:

> [t]he National Crime Commission Report recommends that "Juvenile courts should make fullest feasible use of the preliminary conferences to dispose of cases short of adjudication." since this "consent decree" procedure would involve neither adjudication of delinquency nor institutionalization, nothing we say in this opinion should be construed as expressing any views with respect to such procedure. The problems of pre-adjudication treatment of juveniles, and post-adjudication disposition, are unique to the juvenile process; hence what we hold in this opinion with regard to the procedural requirements of the adjudicatory stage has no necessary applicability to other steps of the juvenile process.[37]

It appears very plain, indeed, that Mr. Justice Fortas is recognizing that juveniles have special needs and that the juvenile court process is "unique." He emphasizes that "the observance of due process standards, intelligently and not ruthlessly administered, will not compel the States to abandon or to displace any of the substantive benefits of the juvenile process."[38] Mr. Justice Fortas then states that "[w]e do not mean by this [reference to recidivism] to denigrate the juvenile court process or to suggest that there are not aspects of the juvenile system relating to offenders which are valuable. But the features of the juvenile system which its proponents have asserted are of unique benefit will not be impaired by constitutional domestication."[39]

Training schools and courts must effect respect and cooperation between professional agency staffs and attorneys in order to preserve the individualization of treatment without sacrificing or ignoring basic constitutional rights. We cannot continue to neatly compartmentalize and

36. 387 U.S. 1, 13 (1967).
37. *Id.* at 31 n. 48.
38. *Id.* at 21.
39. *Id.* at 22.

fragment our services. We can and must have consistency *and* flexibility. The *Gault* decision should not deter us from this resolve. As the National Crime Commission Report carefully counsels,

> [t]he formal juvenile system should concentrate on those cases in which a need for coercive court authority has been demonstrated. Proceedings in these more serious cases must be characterized by safeguards commonly accepted as necessary to protect persons subject to coercive state authority, including counsel, confrontation of complainants, and exclusion of improper evidence. At all stages in the juvenile justice system, there is need for greater clarification and regularization in the exercise of discretion.[40]

It is evident that this philosophy has very strongly influenced the *Gault* decision. Some discretion is necessary since significant life actions and decisions do not lend themselves to neat cataloguing, but, of course, this discretion must not be unlimited or capricious.

It now seems that the die is cast and the issues joined. If training schools do not wish to invite restrictive judicial rulings, they must exercise the greatest care in their treatment of children. Since families and the general community are imperfect and since individual children have imperfections, it seems reasonable that special courts and training schools will continue to be called upon to help those children whose needs are exceptional. In providing this care and control, no license is given to ignore basic rights—nor should such license be given.

I believe that *Gault* can focus legal and agency attention upon those in greatest need. Expectations and goals may be delineated, treatments programmed, and results evaluated so that the greatest positive changes may be effected. *Gault* must stand the test of time. The fairness of that test rests upon the integrity, intelligence, and maturity of those responsible for its implementation. The training schools throughout the country will, it is felt, act responsibly in concert with the juvenile courts and other agencies and individuals involved in the process. My position is very close to that of Mr. Justice Harlan, concurring in part and dissenting in part with *Gault*, who approves of a due process that insures basic fairness and material for review but is not so restrictive that a major challenge is made to efforts to meet the needs of children in specially designed courts.[41] This position also allows for non-criminal procedure as it pertains to pre-adjudicatory actions. These actions would receive Supreme Court

40. PRESIDENT'S COMMISSION ON LAW ENFORCEMENT, *supra* note 5, at 293.
41. 387 U.S. 1, 65 (1967) (Harlan's separate opinion).

restrictive rulings only if challenges were made on specifics that clearly merit such rulings.

If training school staffs and others dealing with children do not panic as a result of *Gault*, I feel that training schools may more effectively fulfill the roles assigned to them. Of course, if will be a long, long, time before local communities are in a position to provide the special services required to meet the challenge presented by children and youth in need of treatment and control—the children's needs persist and multiply in spite of *Gault*. I am personally convinced that the Supreme Court would not deny the children access to treatment and control and sacrifice them on a legal altar of disinterest and unconcern. On the contrary, *Gault* should define limits while encouraging the states' concern for children.