STATUTORY VAGUENESS IN JUVENILE LAW: THE SUPREME COURT AND *MATTIELLO v. CONNECTICUT*

The Supreme Court in the landmark case of In re *Gault*[1] made a major contribution toward revolutionizing state juvenile court systems. The primary issue resolved in that case was the validity of denying juvenile defendants procedural rights guaranteed to adults in criminal proceedings. Writing for the Court, Mr. Justice Fortas clearly established that such denial is unconstitutional.

The basis for the long line of precedents allowing juvenile courts carte blanche to disregard procedural guarantees[2] was the theory that courts were acting *in loco parentis,* that they were not punishing offenders, but were merely sending delinquents to rehabilitative institutions.[3] Armed with this reasoning state courts time and again threw up the shield of *parens patriae*[4] to fend off allegations that juvenile defendants were denied constitutional rights.

Mr. Justice Fortas responded to this argument with a thorough analysis that destroyed the myth of the rehabilitative nature of juvenile

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

[2] Some of the cases and the rights they have found unavailable are: Cinque v. Boyd, 99 Conn. 70, 121 A. 678 (1923) (constitutional rights generally); Childress v. State, 133 Tenn. 121, 179 S.W. 643 (1915) (grand jury); *In re* Mont., 175 Pa. Super. 150, 155-56, 103 A.2d 460, 463 (1954) (speedy public trial); Lindsay v. Lindsay, 257 Ill. 328, 100 N.E. 892, 895 (1913) (jury trial); People v. Lewis, 260 N.Y. 171, 177, 183 N.E. 353, 354 (1932) (self-incrimination); *In re* Dargo, 81 Cal. App. 2d 205, 183 P.2d 282 (1947) (self-incrimination); *In re* Holmes, 379 Pa. 599, 109 A.2d 523 (1954) (right to confront witnesses); People *ex rel.* Weber v. Fifield, 136 Cal. App. 2d 741, 289 P.2d 303 (1955) (right to counsel); *In re* Magnuson, 110 Cal. App. 2d 73, 242 P.2d 362 (1952) (bail); People v. Silverstein, 121 Cal. App. 2d 140, 262 P.2d 656 (1953) (double jeopardy).

[3] Professor Tappan succinctly describes this phenomenon:

> By a convenient but highly misleading sophistry, [juvenile courts] . . . maintained that the child is not charged with a "crime," "convicted" as a "criminal," nor "sentenced to a punishment." Rather, he is merely "adjudicated" under a "petition" as a "delinquent," studied to determine how he may be "saved," and then "treated" in his own best interest.

Tappan, *Unofficial Delinquency,* 29 NEB. L. REV. 547, 548-49 (1950).

A noteworthy exception among pre-*Gault* opinions is *In re* Contreras, 109 Cal. App. 2d 787, 241 P.2d 631 (Dist. Ct. App. 1952).

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

Id. at 789, 241 P.2d at 633.

[4] With regard to the notion of *parens patriae,* Mr. Justice Fortas said in *Gault:*

> The Latin phrase proved to be a great help to those who sought to rationalize the exclusion of juveniles from the constitutional scheme; but its meaning is murky and its historic credentials are of dubious relevance.

387 U.S. at 16 (1967).

For a brief discussion of the history and theory of the juvenile court movement, see Ketcham, *The Unfulfilled Promise of the American Juvenile Court,* in JUSTICE FOR THE CHILD 22 (M. Rosenheim ed. 1962); *Welch*—Delinquency Proceedings—*Fundamental Fairness for the Accused in a Quasi-Criminal Forum,* 50 MINN. L. REV. 653 (1966).

reformatory institutions and exposed the harsh realities of the juvenile courts.[5] He described the institutions to which the youthful offenders were sent for supposed rehabilitative care:

> It is of no constitutional consequence—and of limited practical meaning—that the institution to which he is committed is called an Industrial School. The fact of the matter is that, however euphemistic the title, a "receiving home" or an "industrial school" for juveniles is an institution of confinement in which the child is incarcerated for a greater or lesser time. His world becomes "a building with whitewashed walls, regimented routine and institutional hours . . . ." Instead of mother and father and sisters and brothers and friends and classmates, his world is peopled by guards, custodians, state employees, and "delinquents" confined with him for anything from waywardness to rape and homicide.[6]

He concluded that the distinction between a "penal" and a "rehabilitative" or "nonpenal" hearing was not viable since the institution to which the juvenile was committed in the nonpenal hearing was too much like the jail of the convicted defendant. Eminent authorities agree with this pessimistic evaluation.[7]

Justice Fortas also expressed the Court's concern for the severe social consequences following a determination of delinquency—consequences almost as harsh as those attending criminal conviction. He commented that

> [t]his claim of secrecy . . . [of detention hearings] is more rhetoric than reality. Disclosure of court records is discretionary with the judge in most jurisdictions. Statutory restrictions almost invariably apply only to the court records, and even as to those the evidence is that many courts routinely

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[5] *See also* P. TAPPAN, JUVENILE DELINQUENCY 196 (1949); Antieau, *Constitutional Rights in Juvenile Courts*, 46 CORNELL L.Q. 387 (1961); Ketcham, *The Unfulfilled Promise of the American Juvenile Court*, *supra* note 4; THE PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND THE ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: JUVENILE DELINQUENCY AND YOUTH CRIME 7 (1967) [hereinafter cited as TASK FORCE REPORT]. Referring to the unrealized protective and rehabilitative philosophy of the juvenile court, Professor Tappan notes that "the slightest inspection of the characteristic methodology and personnel of the children's court, the detention facility, or the training school, should disillusion any one but the most ingenuous about these euphemisms." Tappan, *Unofficial Delinquency*, *supra* note 3, at 549.

[6] 387 U.S. at 27 (footnotes omitted).

[7] *See* Antieau, *Constitutional Rights in Juvenile Courts*, *supra* note 5, at 387-93. Although any generalization concerning the overall effectiveness of state reform institutions is difficult, the President's task force on juvenile delinquency made this assessment of institutionalization as a dispositional alternative: "Institutionalization too often means storage—isolation from the outside world—in an overcrowded, understaffed, high-security institution with little education, little vocational training, little counseling or job placement or other guidance upon release. Programs are subordinated to everyday control and maintenance." TASK FORCE REPORT 8.

> furnish information to the FBI and the military, and on request to government agencies and even to private employers. Of more importance are police records. In most States the police keep a complete file of juvenile "police contacts" and have complete discretion as to disclosure of juvenile records. Police departments receive requests for information from the FBI and other law-enforcement agencies, the Armed Forces, and social service agencies, and most of them generally comply. Private employers word their application forms to produce information concerning juvenile arrests and court proceedings, and in some jurisdictions information concerning juvenile police contact is furnished private employers as well as government agencies.[8]

Thus, after lengthy analysis of certain constitutional rights guaranteed to individuals and their importance to the juvenile defendant,[9] the Court held that due process required that they be available in juvenile court systems. As Mr. Justice Fortas stated in *Kent v. United States,* without this protection "the child receives the worst of both worlds: . . . he gets neither the protections accorded to adults nor the solicitious care and regenerative treatment postulated for children." [10]

Mattiello v. Connecticut [11] presented an excellent opportunity for the Court to extend the logic of the *Gault* opinion.[12] Frances Mattiello,

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[8] 387 U.S. at 24-25 (footnotes omitted). *See also* Ketcham, *The Unfulfilled Promise of the American Juvenile Court, supra* note 4, at 22.

[9] 387 U.S. at 31-57. The *Gault* decision required that juvenile courts give adequate notice of scheduled court proceedings, appoint counsel to represent juvenile defendants, and recognize the right of such defendants to confront their accusers, cross-examine witnesses and invoke their constitutional privilege against self-incrimination. The Court did not rule on the asserted rights to appellate review of juvenile court decisions and to a transcript at state expense. *Id.*

[10] 383 U.S. 541, 556 (1966) (footnote omitted).

[11] 4 Conn. Cir. 55, 225 A.2d 507 (App. Div. 1966), *cert. denied,* 154 Conn. 737, 225 A.2d 201 (1966), *prob. juris. noted,* 391 U.S. 963 (1968), *petition for cert. dismissed,* 395 U.S. 209 (1969).

[12] Some critics may argue that the Court really never intended that the *Gault* opinion be extended. It is true that Justice Fortas attempted at one point in the opinion to limit the meaning of the case:

> We do not in this opinion consider the impact of these constiutional 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. See note 48, *infra.* We consider only the problems presented to us by this case.

387 U.S. at 13. However, the sentence following the above limitation has direct bearing on the issue here: "These relate to the proceedings by which a determination is made as to whether a juvenile is a "delinquent" as a result of alleged misconduct on his part." *Id.* Since vague statutes go directly to the point of what is or is not proscribed conduct, and since vague statutes directly affect the determination of whether the youth is in fact "delinquent," it would appear that the matter discussed in this comment certainly does fall within the bounds of *Gault.* Furthermore, it is apparent that Justice Fortas was really concerned that the holding did not overformalize the juvenile process so that it would be impossible for authorities to dispose

an unmarried girl of seventeen, was arrested on March 17, 1966, and charged with being "in manifest danger of falling into habits of vice," a violation of a Connecticut statute.[13] On April 15, Miss Mattiello's attorney, a court appointed public defender, filed a demurrer to the charge, claiming the terms "habits of vice" and "vicious life" were so vague and uncertain that the state statute on its face violated the due process clause of the fourteenth amendment.[14] The Connecticut circuit court overruled the demurrer and, following a hearing, sentenced the defendant to the Connecticut State Farm for Women until she reached the age of twenty-one.[15] The appellate division of the circuit court affirmed, relying on the argument rejected by the Supreme Court in *Gault*: that is, that the proceedings were civil in nature, that the purpose of the statute was protective rather than punitive,[16] and that the due process clause was therefore inapplicable.[17] The Connecticut Supreme

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of some problems in a more expeditious manner. This theory is supported by Fortas's cross-cite to footnote 48 of the opinion where he discusses matters such as preliminary conferences which can be used by juvenile court judges to dispose of cases short of adjudication. *Id.* at 31 n.48.

[13] CONN. GEN. STAT. ANN. § 17-379 (1960). The full text reads:

> Any unmarried female between the ages of sixteen and twenty-one who is in manifest danger of falling into habits of vice, or who is leading a vicious life, or who has committed any crime, may, upon the complaint of the prosecuting attorney of the circuit court, be brought before said court for the circuit within whose jurisdiction she resides or is found, and, upon conviction thereof, may be committed, until she has arrived at the age of twenty-one years, to the custody of any institution, except Long Lane School, chartered by the general assembly or incorporated under the general laws for the purpose of receiving and caring for females who have fallen into or are in danger of falling into vicious habits.

[14] Brief for Appellant at 5, Mattiello v. Connecticut, 395 U.S. 209 (1969).

[15] *Id.*

Miss Mattiello was also charged with violations of CONN. GEN. STAT. ANN. § 53-219 (1960) (forbidding walking with a lascivious carriage), and CONN. GEN. STAT. ANN. § 53-175 (1960) (disorderly conduct). She was acquitted of the disorderly conduct charge but found guilty of lascivious carriage. Her appeal, however, was based solely on the conviction under CONN. GEN. STAT. ANN. § 17-379 (1960).

It should also be noted that juveniles are often incarcerated by juvenile courts for longer sentences than can be meted out to adults for the identical misdeed. For example, if Frances Mattiello was convicted of soliciting for purposes of prostitution she would serve a maximum 30 day jail sentence or pay a $50 fine, but a girl of 16 convicted of "being in manifest danger of falling into habits of vice" can be committed for 5 years, or until she reaches age 21. *Compare* CONN. GEN. STAT. ANN. § 53-235 (1958) *with id.* § 17-379 (1960).

[16] State v. Mattiello, 4 Conn. Cir. 55, 225 A.2d 507, 511 (App. Div. 1966). Div. 1966).

[17] *Id.* at 62, 225 A.2d at 511. Assuming, arguendo, the validity of the court's decision that juvenile detention statutes are nonpenal, the court's assertion that the void-for-vagueness rule applies only to penal statutes is unwarranted. For example, in A. B. Small Co. v. American Sugar Ref. Co., 267 U.S. 233 (1925) the Supreme Court applied constitutional standards of specificity in a civil contract dispute. The Court noted:

> The ground or principle of the [vagueness] decisions was not such as to be applicable only to criminal prosecutions. It was not the criminal penalty that was held invalid, but the exaction of obedience to a rule or standard which was so vague and indefinite as really to be no rule or standard at all.

Id. at 239.

Referring to the applicability of a void-for-vagueness rule to noncriminal proceedings, one writer has noted that the seriousness of the penalty imposed by the

Court denied Miss Mattiello's petition for certification in December, 1966.[18]

The United States Supreme Court noted probable jurisdiction in June, 1968.[19] However, in an unexpecetd move, the Court, after hearing argument, dismissed the petition for want of a properly presented federal question.[20] It is the contention of this Comment that the *Mattiello* case presents a situation to which the logic of *Gault* is so patently applicable that dismissal of the case by the Supreme Court was an unacceptable response to pressing problems that threatens to undermine the advancements of *Gault* itself.[21]

It is clear that if used as the basis for an adult criminal prosecution, the Connecticut statute would be unconstitutionally vague. In *Musser v. Utah*,[22] the Supreme Court concisely summarized reasons for requiring precise statutory definition.[23] In *Musser* the Court vacated the petitioner's conviction for "conspiracy to commit acts injurious to public morals," [24] because the Utah statute failed to "give adequate guidance to those who would be law-abiding, to advise defendants of the nature of the offense with which they were charged, or to guide courts in trying those who are accused." [25] These same criticisms can be leveled at the Connecticut delinquency statute. The statute affords neither child nor parents a clear statement of proscribed conduct and fails to provide

statute has been an extremely important factor in determining whether a statute will survive attack on vagueness grounds. Amsterdam, *The Void-For-Vagueness Doctrine In the Supreme Court*, 109 U. PA. L. REV. 67, 69-70 n.16 (1960). If statutes imposing severe penalties demand more stringent standards of specificity than statutes having less drastic effect, the fact that Connecticut's "manifest danger" statute provides for commitment from age 16 until age 21 warrants strict application of the vagueness test. *See* Giaccio v. Pennsylvania, 382 U.S. 399, 402 (1966) (statute permitting jury to assign prosecution costs to acquitted defendant if it found him guilty of "some misconduct" did not pass vagueness test); Jordon v. DeGeorge, 341 U.S. 223, 231 (1951) (test applied to statute permitting deportation upon conviction of a "crime involving moral turpitude").

[18] 154 Conn. 737, 225 A.2d 201 (1966).

[19] 391 U.S. 963 (1968).

[20] 395 U.S. 209 (1969).

[21] This contention is made in spite of the fact that it is never easy to explore the reasons which underlie the Supreme Court's denial of certiorari in a given case. Admittedly, the only certain reason which may be given is that fewer than four of the Justices saw fit to review the decision of the lower court as a matter of "sound judicial discretion." Maryland v. Baltimore Radio Show, Inc., 338 U.S. 912, 917-19 (1950). Nevertheless the dismissal of *Mattiello* could support those who might wish to resist the advances of *Gault*.

[22] 333 U.S. 95 (1948).

[23] For another concise discussion of vagueness, see Connally v. General Constr. Co., 269 U.S. 385, 391 (1926), where the Supreme Court recognized requirements of statutory definiteness basic to all statutes proscribing certain conduct:

> That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties, is a well-recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law. And a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law.

[24] 333 U.S. at 97.

[25] *Id.*

courts with a fixed standard by which to measure conduct. If a child is not "informed as to what the State commands and forbids," [26] notice by way of court proceedings is obviously too late to change the conduct. Juveniles and their parents need, and are entitled to, advance notice of the specific conduct which may result in the state exercising its powers of *parens patriae* and perhaps committing the juvenile to an institution.

In addition to the problems of prior notice, blatant injustices are invited at the trial. If the statute under which a juvenile is charged is so uncertain and all-encompassing that the state need prove no specific crime or course of harmful conduct, defense counsel has little idea of what he must defend against, and thus minimal opportunity to be effective.[27] Second, the judiciary and the police must be given adequate guidelines to determine whether conduct has been proscribed by the state. Provisions such as those found in the Connecticut statute encourage the courts and the police to evaluate conduct on the basis of personal morality and subjective considerations, rather than by reasoned application of objective rules.[28] The President's task force on juvenile delinquency found that such vague and all-encompassing statutes, especially when administered with the informality characteristic of juvenile courts, "establish the judge as arbiter not only of the behavior, but also of the morals of every child (and to a certain extent the parents of every child) appearing before him." [29] Furthermore, statutory uncertainty, combined with sharply varying community referral practices, may often result in commitment of one juvenile, but not another, although both are apprehended for the same conduct.[30] The potential for discriminatory enforcement is patent.[31]

The *Musser* case also illustrates one final problem of vagueness in juvenile detention statutes. In *Musser*, the Supreme Court remanded to the state court for a determination of the meaning of the statute as developed by judicial decisions.[32] However, there is a conspicuous

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[26] Lanzetta v. New Jersey, 306 U.S. 451, 453 (1939).

[27] "Catchall" provisions which specify no particular criminal act make it virtually impossible for defense counsel to argue that his client's conduct did not fall within the broad perimeters of the statute. In Giaccio v. Pennsylvania, 382 U.S. 399, 404 (1966), the Court stated: "[I]t would be difficult if not impossible for a person to prepare a defense against such general abstract charges as 'misconduct,' or 'reprehensible conduct.'"

[28] *See* P. TAPPAN, JUVENILE DELINQUENCY 210 (1949); Tappan, *Unofficial Delinquency, supra* note 3, at 550. For example, a judge incensed by a teenager with an illegitimate child could easily find statutory authorization under typical delinquency provisions for committing the defendant to an institution. Young, *Court-Ordered Contraception,* 55 A.B.A.J. 223 (March, 1969). In a recent Connecticut case, commitment proceedings under § 17-379 were begun on charges that an unwed, pregnant girl was "in manifest danger of falling into habits of vice." Telephone conversation with Mr. Joseph Harbaugh, Chief Public Defender for the State of Connecticut, Aug. 13, 1969.

[29] TASK FORCE REPORT 25; *see* Tappan, *Judicial and Administrative Approaches to Children With Problems,* in JUSTICE FOR THE CHILD, *supra* note 4, at 144, 156-57.

[30] *See* F. SUSSMAN, JUVENILE DELINQUENCY 23 (1950).

[31] *See, e.g.,* Hague v. CIO, 307 U.S. 496 (1939).

[32] 333 U.S. at 97-98.

absence of common law development for the typical juvenile delinquency statute. This is due to the large number of unofficial adjudications,[33] the lack of public records and case reports in jurisdictions requiring confidentiality,[34] and the dearth of juvenile court rulings challenged at the appellate level.[35] Thus a typical delinquency statute, which is vague on its face, cannot be saved by the clarifying gloss of accumulated judicial interpretation, because generally there is none.[36]

Applying the principles in *Musser,* it is certain that the Connecticut statute would be declared unconstitutionally vague. Thus the only question remaining is identical to that resolved in *Gault:* whether it is valid to deny juvenile defendants the rights of due process accorded to adults.

The Connecticut court reasoned that since Miss Mattiello's proceedings were civil, and the purpose of the statute protective rather than punitive, the vagueness principle was inapplicable.[37] However, this is precisely the same rationale rejected by Justice Fortas in *Gault.* The Supreme Court clearly stated that state penal institutions are so lacking in therapeutic value[38] and the consequences of conviction are so harsh that this process cannot possibly be considered protective.[39] The juvenile defendant has as much at stake in his hearing as the adult defendant has at trial.

Other justifications for broad delinquency statutes, not mentioned by the Connecticut court, also fail upon close examination. For example, some experts maintain that broad statutes facilitate early intervention, allowing the reformative influence of juvenile courts and training schools to reach the delinquent before he commits more serious crimes.[40] But this argument, too, relies on the premise that the process

[33] P. TAPPAN, JUVENILE DELINQUENCY 183 (1949).

[34] Text accompanying note 8 *supra.*

[35] Elson, *Juvenile Courts & Due Process,* in JUSTICE FOR THE CHILD, *supra* note 4, at 95, 98.

[36] *See* Quick, *Constitutional Rights in the Juvenile Court,* 12 HOW. L.J. 76, 87 (1966). The mounting attack on vague disorderly conduct and vagrancy statutes, most of which are more tightly drawn than the delinquency provisions discussed here, supports this conclusion. George, *Gault: Notice and Fair Hearing,* in GAULT: WHAT NOW FOR THE JUVENILE COURT 71, 80 (V. Nordin ed. 1968). *See also* Douglas, *Vagrancy and Arrest on Suspicion,* 70 YALE L.J. 1 (1960); Watts, *Disorderly Conduct Statutes In Our Changing Society,* 9 WM. & MARY L. REV. 349 (1967).

[37] State v. Mattiello, 4 Conn. Cir. 55, 62, 225 A.2d 507, 511 (App. Div. 1966).

[38] It should be noted that at the Connecticut State Farm for Women, Miss Mattiello will be associating with persons convicted of felonies and misdemeanors such as prostitution, intoxication, and drug use. *See* CONN. GEN. STAT. ANN. § 17-360 (1958). Although girls committed pursuant to § 17-379 are segregated from the felons, they participate in the same programs and receive only that rehabilitative treatment afforded misdemeanants. F. LOVELAND, THE CORRECTIONAL INSTITUTIONS AND SERVICES OF CONNECTICUT 45-47 (1966). Though equipped with rehabilitative facilities, the State Farm is still a penal institution. *See* United States *ex rel.* Robinson v. York, 281 F. Supp. 8, 14-15 (D. Conn. 1968).

[39] Text accompanying notes 6-8 *supra.*

[40] Rosenheim, *Perennial Problems in the Juvenile Court,* in JUSTICE FOR THE CHILD, *supra* note 4, at 12.

is rehabilitative—a premise rejected in *Gault*.[41] If communities actually provided the resources necessary for effective rehabilitative treatment, the result might well be different. But early intervention and confinement in existing institutions may actually help to fix delinquency in a child, because he begins to think of himself as a delinquent and structures his behavior accordingly.[42] Moreover, as *Gault* points out, detention may leave a permanent blemish on the individual's record which will continue its detrimental effect even if the institution should succeed in its intention to reform the juvenile.[43]

Furthermore, any attempt to deal with precriminal delinquency may be limited by the inability of modern criminology to produce a reliable method of predicting criminal conduct on the basis of juvenile behavior.[44] Professor Tappan argues:

> The law may not [aside from such special situations as attempts and conspiracy] impose anticipatory control upon the individual who has not yet offended against it . . . . It cannot without grave injustices prevent the first offense through efforts at personality diagnosis and treatment . . . . Preventive work may be done best by home, neighborhood, and church, or in their failure by social agencies especially designed for familial, financial, occupational, medical, psychiatric, and other therapy. Where all of these fail, as evidenced by specific overt misconduct violative of the law, the courts for delinquency must be resorted to for the special and intensive therapy and retraining.[45]

This logic would prohibit entirely early intervention by the courts for the purpose of preventive detention. However, whatever the merits of this contention may be, it is certain that such intervention is worse than useless when there is no substantial possibility of rehabilitation.

Broadly phrased delinquency statutes have also been defended on grounds that the sound discretion of prosecutors and juvenile court judges constitutes a sufficient safeguard against injustice. Professor Monrad Paulsen earlier expressed such a view, but more recently he has

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41 Text accompanying notes 5-10 *supra*.

42 TASK FORCE REPORT 7-8; *see* Tappan, *The Adolescent in Court*, 37 J. CRIM. L. & CRIMINOLOGY 216, 221 (1946-47).

43 Text accompanying notes 6-8 *supra*.

44 TASK FORCE REPORT 8: Tappan, *The Adolescent in Court, supra* note 42, at 227.

Broad vagrancy statutes, like broad delinquency statutes, are defended on the ground that since vagrancy is a preliminary stage of serious criminality, early intervention is vital to community interests. However, there is no statistical correlation between vagrancy and criminality significant enough to warrant such intervention Foote, *Vagrancy-Type Law and Its Administration*, 104 U. PA. L. REV. 603, 627 (1956).

45 Tappan, *The Adolescent in Court, supra* note 42, at 227-28. Professor Tappan further observes that "the expansive drive in some courts toward problem-solving for all comers has resulted in attenuated, inexact, and ineffectual service." *Id.* 223.

admitted skepticism about the ability of juvenile courts and understaffed intake and referral agencies to enforce delinquency provisions in a discriminating manner.[46] Finally, as noted above,[47] loosely framed detention statutes encourage enforcement officers to adjudge delinquent conduct which offends personal sensibilities. Such personal judgments lead to discriminatory enforcement, rather than the uniform application which the Constitution demands.

Finally, it might be questioned whether there are sufficient prosecutions under the vague clauses of delinquency statutes to warrant concern. But according to national juvenile court records, children alleged to have violated laws that apply only to juveniles, such as curfew regulations, and children variously designated as "ungovernable," "incorrigible," or "in need of supervision" account for over twenty-five per cent of the total number of juveniles brought before the courts, and for twenty-five to thirty per cent of the population of state institutions for delinquent children.[48] During the period 1961-1967, 560 prosecutions were brought under Connecticut's "manifest danger" statute; 256 of these resulted in convictions. When Frances Mattiello was committed, she joined 148 other girls in the Connecticut State Farm for Women held for violations of section 17-739.[49] Such figures indicate that prosecutors use vague delinquency statutes to full advantage.

Indignation over the Supreme Court's failure to confront the grave constitutional problems inherent in the Connecticut manifest danger statute may be assuaged by reports of an informal agreement among state prosecutors to discontinue its enforcement.[50] However, such relief should be short-lived. First, an individual prosecutor, anxious to establish a reputation for aggressive criminal law enforcement, may well attempt to reactivate the statute. A prosecutor not party to the gentlemen's agreement is all the more likely to do so. In addition, the agreement provides no remedy to those juveniles who are victimized by its breach.

Second, and most important, is the fact that the Connecticut statute does not stand alone. In Alabama, for example, a minor who is "guilty

[46] The earlier view was expressed in Paulsen, *Fairness To The Juvenile Offender*, 41 MINN. L. REV. 547 (1957). However, Professor Paulsen explained, this view was based on an assumption that the treatment offered by the juvenile court was in fact rehabilitative. His current position is set forth in Paulsen, *The Delinquency, Neglect, & Dependency Jurisdiction of the Juvenile Court*, in JUSTICE FOR THE CHILD, *supra* note 4, at 44, 53. Professors Paulsen and Tappan note that retribution has remained an influential factor in juvenile delinquency proceedings. *See id.*; P. TAPPAN, JUVENILE DELINQUENCY 428 (1949).

[47] Text accompanying notes 28-29 *supra*.

[48] TASK FORCE REPORT, 4.

[49] Brief for Appellant at 21, Mattiello v. Connecticut, 395 U.S. 209 (1969).

[50] Telephone conversation with Robert N. Grosby, attorney for Miss Mattiello, Aug. 11, 1969. According to Joseph Harbaugh, Connecticut's Chief Public Defender and co-counsel in *Mattiello*, the number of commitments for violation of § 17-379 has fallen off sharply in recent months. Telephone conversation with Joseph Harbaugh, Aug. 13, 1969.

The Connecticut legislature recently repealed CONN. GEN. STAT. ANN. § 53-219 (1958). TIME, Aug. 8, 1969 at 57.

of immoral conduct" [51] or who is "leading an idle, dissolute, lewd, or immoral life" [52] may be committed as a juvenile delinquent. In Florida, "a child in need of supervision" is one who is "growing up in idleness or crime." [53] A Maine statute authorizes juvenile court jurisdiction over minors "behaving in an incorrigible or indecent and lascivious manner" or "living in circumstances of manifest danger of falling into habits of vice or immorality." [54] In what is perhaps the least helpful of these definitions, New Jersey tautologically defines delinquency as "incorrigibility," "immorality," or "growing up in idleness or delinquency." [55] The national scope of the problem makes even more reprehensible the failure of the Supreme Court to decide this question.[56]

CONCLUSION

Vague delinquency provisions based on subjective determinations of "immorality" and unsupported predictions of future criminal conduct have no legal or practical justification. The due process clause of the fourteenth amendment requires that state statutes provide fair warning of proscribed conduct and fixed guidelines for judicial enforcement. Many delinquency provisions fail to meet this requirement. The dismal prospects for rehabilitation through institutionalization discredit the claimed efficacy of early intervention facilitated by such statutes.[57]

Although the subject of juvenile delinquency admittedly does not lend itself to sharply circumscribed definition, more precise statutes are legislatively possible. Provisions permitting courts to make judgments based on moral or social philosophies should be deleted. The legal definition of delinquency should be based on the commission of definite statutory offenses or on an habitual course of conduct demonstrably harmful to the juvenile or the community.[58] A Minnesota statute represents a reasonable legislative approach.[59] Delinquency is defined as the

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[51] ALA. CODE tit. 13, § 350(3) (1958).

[52] *Id.*

[53] FLA. STAT. ANN. § 39.01(12)(a) (Supp. 1969).

[54] ME. REV. STAT. ANN. tit. 15, § 2552 (1964)

[55] N.J. REV. STAT. § 2A:4-14(f), (g), (i) (1969).

[56] The examples cited represent only the most offensive provisions of state delinquency statutes. Such statutes also define delinquency by reference to violation of penal code provisions, habitual truancy, and other more objectively defined criteria. However, the presence of such "catchall" provisions eliminates the need for the prosecutor to prove violations of more specific provisions. For statutory language similar to that cited in the text, see IND. ANN. STAT. § 9-3204(16) (Supp. 1967); MASS. ANN. LAWS ch. 119, § 52 (1965); MICH. COMP. LAWS ANN. § 712 A.2(a)(3), (5) (1968); NEV. REV. STAT. § 201.090(12), (13) (1967); N.D. CENT. CODE § 27-16-08(1)(c) (1960); R.I. GEN. LAWS ANN. § 14-1-3(G)(3) (1956); WASH. REV. CODE ANN. § 13.04.010(8) (1962); WYO. STAT. ANN. § 14-41(1) (1957).

[57] One authority contends that except where there has been a showing of special appropriateness or an utter absence of alternatives, a child committed for noncriminal behavior should never be sent to an institution for delinquents. Sheridan, *Juveniles Who Commit Noncriminal Acts: Why Treat in a Correctional System?* 31 FED. PROBATION 26-30 (March, 1967).

[58] *See* P. TAPPAN, JUVENILE DELINQUENCY 247 (1949).

[59] MINN. STAT. ANN. § 260.015 (Supp. 1969).

violation of state or federal laws or municipal ordinances, habitual truancy, habitual disobedience resulting in lack of parental control, or habitual deportment in a dangerous or injurious manner. Although the statute is not perfect, the elements which are based upon the commission of definite statutory offenses or habitual courses of conduct provide adequate warning of proscribed conduct and sufficient guidelines for the exercise of the judicial function. If such provisions constituted the basis of delinquency jurisdiction, the potential for judicial abuse, popular uncertainty, and uneven application would be substantially reduced.[60]

The *Gault* decision appeared to mark the beginning of a sensitive response by the Supreme Court to the unrealistic theories underlying juvenile court systems. Unfortunately the Court's action in *Mattiello* has done much to undercut the expectations of meaningful developments in juvenile law fostered by *Gault*. Procedural safeguards will mean little to youthful defendants who must face the uncertainties of the typical delinquency statutes.

[60] For the suggestion that serious consideration be given to the complete elimination of court jurisdiction over conduct illegal only for a child, see TASK FORCE REPORT, 27.