IV. Adjudication

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The factfinding or adjudicatory phase of juvenile law involves the critical determination of whether a juvenile is a delinquent or an incorrigible "as a result of alleged misconduct on his part."[1] Since *In re Gault*,[2] much attention has focused on this stage of juvenile proceedings. Once considered noncriminal in nature, adjudication now resembles the criminal trial in many respects. Remnants of the pre-*Gault* "civil" label remain, however, and throughout the proceedings difficulties caused by this civil-criminal mixture are apparent.

This examination of juvenile adjucations will include discussion of the petition and the role of discovery in the juvenile court, the rights of the juvenile, and the procedure of the contested and uncontested hearings.

A. Prehearing Procedure

As was seen in the preceding sections of this study,[3] many juvenile cases are disposed of without the filing of a delinquency petition, through informal police or juvenile authority actions or by "adjustments."[4] Even after the filing of a petition, which is the juvenile

1. *In re* Gault, 387 U.S. 1, 13 (1967). A delinquent child is a child adjudged to have committed: (1) an act which if committed by an adult would be a public offense; or, (2) an act that would constitute a public offense which could only be committed by a child or by a minor. Ariz. Rev. Stat. Ann. §§ 8-201(8)-(9) (1974).
An incorrigible child is one who refuses to obey the reasonable and proper orders or directions of his parent and who is beyond the control of such person, or an habitual truant, or a runaway, or a child "who habitually so deports himself as to injure or endanger the morals or health of himself or others." *Id.* § 8-201(12). While the two categories involve different types of misconduct, the same disposition may be given to both categories. *Id.* § 8-241(A)(2). These are the only classifications possible as a result of adjudication.

2. 387 U.S. 1 (1967).

3. *See generally* section I, "Intake," *supra*, at 239; section II, "Detention," *supra*, at 264.

4. *See* Ariz. R.P. Juv. Ct. 2; section I, "Intake," *supra*, at 240-41.

court counterpart of the information or indictment, a child may avoid a contested adjudication hearing through plea bargaining or through admission of the allegations contained in the petition.[5]

1. *The Petition*

The filing of the petition starts the adjudication machinery. In one sense the petition resembles the criminal information, since it originates with the county attorney rather than with a grand jury.[6] It is like an indictment, however, in that no adversary hearing on the issue of probable cause is held.[7]

a. *Notice.* The petition is one of the instruments through which notice of the allegations are conveyed to the juvenile and his parents. The due process requirement of notice, as enunciated in *Gault*, has two prongs: there must be actual notice of the allegations in advance of the hearing, and notice must be in a form that sets forth the allegations with particularity.[8] The test for satisfying each element is whether the notice provided has been sufficient to enable the minor to prepare a defense.

Actual notice of the allegations comes in the form of the "citation," an equivalent of the criminal or civil summons, which is served with a copy of the petition. Service is governed by rule 5 of the *Arizona Rules of Procedure for the Juvenile Court* [*Juvenile Rules*].[9]

5. Central to this decision is the amount of knowledge that the child and his attorney have about the case against the child. *See* text accompanying notes 106-17 *infra*. Adjustment, as discussed in section I, "Intake," *supra*, at 240-41, occurs before the filing of the petition. *See* ARIZ. R.P. JUV. CT. 2. Once the petition is filed, the child might admit all of the allegations in the petition or perhaps make a successful bargain with the county attorney and only admit to some of the allegations.

6. ARIZ. REV. STAT. ANN. § 8-233(A) (1974).

7. In Maricopa County, an arraignment or "advisory hearing" is held. *See* section II, "Detention," *supra*, at 277-79.

8. Notice, to comply with due process requirements, must be given sufficiently in advance of scheduled court proceedings so that reasonable opportunity to prepare will be afforded, and it must "set forth the alleged misconduct with particularity." . . . Due process of law requires notice of the sort we have described—that is, notice which would be deemed constitutionally adequate in a civil or criminal proceeding.

387 U.S. at 33. It will be assumed in this discussion that any due process right or requirement applies equally to incorrigibles and delinquents. There is no rational reason to differentiate between the two, for both involve factual determinations. The question has been aptly put as follows: "[W]e do not see how we can give some children less rights than others. Would this not be the case of saying that you have more rights when it is alleged that you have perpetrated more of a wrong?" *In re* E., 68 Misc. 2d 487, 490, 327 N.Y.S.2d 84, 87 (Suffolk County Fam. Ct. 1971). *Contra*, *In re* Henderson, 199 N.W.2d 111, 121 (Iowa 1972) (holding that a distinction exists between the two regarding burden of proof).

9. The citation must contain the name and address of the person to whom the citation is directed, the time, date and place of the hearing, and the name of the child involved. ARIZ. R.P. JUV. CT. 5(d). Alaska requires that the citation be served in the manner of a civil process. RLR v. State, 487 P.2d 27, 40-41 (Alas. 1971); *cf.* ARIZ. R. CRIM. P. 3.4 (criminal and civil service are similar).

Some model acts would require the summons to state the child's right to counsel. *See* UNITED STATES CHILDREN'S BUREAU, LEGISLATIVE GUIDE FOR DRAFTING FAMILY AND JUVENILE COURT ACTS § 15(b) (1969) [hereinafter cited as LEGISLATIVE GUIDE].

The rule does not specify a time limit for service of the citation,[10] thus necessitating a case-by-case determination of the adequacy of notice. An adequate period of time will be somewhat longer than that needed to ensure effective assistance of counsel,[11] although some juvenile courts have merged the two concepts.[12] The standards are not really similar since adequacy of notice is measured by the amount of time allowed to prepare a case, while effective assistance of counsel is measured by counsel's performance at the trial.[13] Continuances should be freely granted whenever the child raises a nonfrivolous argument that notice has been inadequate.[14]

The problem of ensuring adequate notice can be solved through proper scheduling by the juvenile court administrator. An adequate time to prepare would be given if a hearing date were set for every juvenile at the time the petition is filed. Notice would then be given

10. Some of the model acts do. *See* LEGISLATIVE GUIDE, *supra* note 9, at § 16 (a) (24 hours); NATIONAL COUNCIL ON CRIME AND DELINQUENCY, MODEL RULES FOR JUVENILE COURT, rule 20 (1969) [hereinafter cited as MODEL RULES] (48 hours); NATIONAL COUNCIL ON CRIME AND DELINQUENCY, STANDARD JUVENILE COURT ACT § 14 (1959) [hereinafter cited as STANDARD JUVENILE COURT ACT] (48 hours); UNIFORM JUVENILE COURT ACT § 23(a) (adopted in North Dakota, *see* N.D. CENT. CODE § 27-20-21 (Supp. 1973)) (24 hours). *See also* SUGGESTED GUIDELINES FOR PROCEDURE IN THE PIMA COUNTY [ARIZ.] JUVENILE COURT § 16 (1969) [hereinafter cited as SUGGESTED GUIDELINES] (48 hours).

The recommendations for short notice periods are probably due to a desire that the child receive a speedy hearing. Periods as short as 1 or 2 days, however, have been held to provide insufficient time for the preparations of a defense. In *Gault*, over 24 hours was held insufficient, although the holding may have been due to a lack of specificity in the notice actually given. 387 U.S. at 31-34; *see* State v. Hamilton Circuit Court, 249 Ind. 333, 232 N.E.2d 356 (1968) (holding 24 hours to be insufficient); Popkin, Lippert, & Keiter, *Another Look at the Role of Due Process in Juvenile Court*, 6 FAMILY L.Q. 233, 257-58 (1972). Texas has adopted a more realistic standard of 10 days notice. TEX. FAM. CODE § 51.10(h) (1973). *See also* ILL. ANN. STAT. ch. 37, § 704-3(5) (Smith-Hurd 1972) (3 days); MINN. R.P. JUV. CT. 4-4 (3 days). Even with such express standards, the question remains whether the notice given had adequate specificity. *See* NATIONAL COUNCIL ON CRIME AND DELINQUENCY, PROCEDURE AND EVIDENCE IN THE JUVENILE COURT 10-11 (1962) [hereinafter cited as PROCEDURE AND EVIDENCE].

Some hearings require no preparation on the part of the child or his attorney—for example, the advisory hearing in Maricopa County, at which the child is advised of his rights. It is reasonable to draw a distinction between the notice needed for such a hearing and the notice needed for an adjudicatory hearing, which requires preparation. While this distinction has not been drawn in the literature and model acts, it is recognized in the new Texas code. TEX. FAM. CODE § 51.10(h) (1973).

11. Such a time period could be quite short. In Chambers v. Maroney, 399 U.S. 42 (1970), the United States Supreme Court affirmed a conviction of a defendant whose counsel had been appointed only minutes before the trial, since it was determined that such tardy appointment was harmless error. The standard in Arizona for determining whether effective assistance of counsel has been rendered is whether counsel was so incompetent as to have made the trial a farce or a mockery. State v. Brookshire, 107 Ariz. 21, 480 P.2d 985 (1971).

12. *See* White v. State, 457 P.2d 650, 652 (Alas. 1969); *In re* Wilson, 438 Pa. 425, 428-29, 264 A.2d 614, 617 (1970).

13. The two standards can be identical, however; if counsel informs the court that he is totally unprepared because of insufficient notice, the child would have ineffective assistance of counsel were the hearing allowed to continue. *In re* Orcutt, 173 N.W.2d 66, 71 (Iowa 1969). Note also that *Gault* merged the two concepts. *See* note 8 *supra*; *In re* T., 29 App. Div. 2d 980, 289 N.Y.S.2d 790 (1968); *cf.* Doe v. State, 487 P.2d 47 (Alas. 1971).

14. *Cf.* ARIZ. R.P. JUV. CT. 4(b); LEGISLATIVE GUIDE, *supra* note 9, at § 17(a).

when the citation is received, and necessary adjustments in the hearing date could be made at the child's request.[15] A similar procedure is followed in Maricopa and Pima counties. In Maricopa County, scheduling is worked out and explained to every child at the time of the advisory hearing, held the day after the petition is filed. In Pima County, a hearing is scheduled immediately after a petition is filed. In Cochise County, and in Pima County until a recent change, the hearing is scheduled after the filing of the petition, at the discretion of the probation officer. Since the child has no way of knowing if the probation officer will set a hearing, it is possible with this system to have cases in which a juvenile is not notified of the hearing in time to prepare adequately.[16]

The second prong of the *Gault* notice requirement—that the charges be set forth with particularity[17]—is governed in Arizona by rule 4(a)(1).[18] The rule requires a plain and concise statement of the facts and a statement of the law or standard which the minor is alleged to have violated. This is very similar to the Arizona criminal rule,[19] suggesting that the adult standard for testing the sufficiency

15. *See* MODEL RULES, *supra* note 10, rule 19, Comment.

16. Service is very much dependent on the efficiency of the process server. Pima County now has a full time process server, and service of process appears to be handled quite efficiently. At one hearing, in Cochise County, the child appeared without counsel, and, after lengthy questioning by the judge, it was explained that notice of the Monday hearing had been delivered only the previous Friday. A probation officer stated later that the sheriff had been given the citation over a week before the hearing. The attorney who handles juvenile matters for the county, however, claims that such instances are rare. Interview with Dushan Vlahovich, Prosecuting Attorney, Cochise County Juvenile Court, in Bisbee, Ariz., Mar. 15, 1974.

17. *In re* Gault, 387 U.S. 1, 33 (1967).

18. ARIZ. R.P. JUV. CT. 4(a) provides:

> (a) Initiation of court action shall be by a petition in writing, under oath, captioned: "In the Matter of ——— a person under the age of 18 years," and may be upon information and belief. It shall set forth plainly:
> (1) The facts, in concise language with reasonable particularity as to the time, place and manner of the alleged acts of the child and the law or standard of conduct allegedly violated by such acts, which bring the child within the jurisdiction of the court.
> (2) The name, age, sex and residence address, if any, of the child involved in the petition.
> (3) The names and residence addresses, if known, of the parents, guardian or custodian of the child, or of the child's spouse, if any.
> (4) If the child is in custody, the place of his detention and the date and time he was taken into custody.

The rule is almost identical to MODEL RULE 6, *supra* note 10. *See also* PROCEDURE AND EVIDENCE, *supra* note 10, at 11-15; STANDARD JUVENILE COURT ACT, *supra* note 10, § 12(3); UNIFORM JUVENILE COURT ACT § 21(1).

19. ARIZ. R. CRIM. P. 13.2, Form I, Form XIII, Form XIV. The criminal rule requires that the facts be "sufficiently definite to inform the defendant of the offense charged," while the juvenile rule requires "reasonable particularity as to the time, place and manner of the alleged acts." Both reach the same result, however, since a statement of the time, place and manner of the alleged acts sufficient to inform the child of the offense charged would probably be construed as reasonable particularity. For example, if the crime alleged were assault, "time" and "manner" would be required under both standards, whereas "place" would be unnecessary to inform the child of the offense. If burglary were charged, however, "place" and "time" would

of notice should be used in juvenile court.[20]

The petition is not the only possible source of adequate notice. As in criminal proceedings, notice might be gained by filing a motion for a bill of particulars[21] or through discovery procedures.[22] As long as either is available, it is not necessary to question whether the petition, alone, is adequate to give notice.[23] In fact, the thrust of pleading reform has been to permit less specificity in the written pleadings as a concomitant of more liberal discovery.[24] If the juvenile petition must meet the same standard of sufficiency as the criminal indictment, either the bill of particulars or discovery should be available to insure adequate notice in juvenile court.[25]

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be needed, but not "manner." *See* ARIZ. R. CRIM. P. Form I. The civil rule is very similar. *See* ARIZ. R. CIV. P. 8(a).

20. *Cf.* State v. Suarez, 106 Ariz. 62, 470 P.2d 675 (1970); State v. Maxwell, 103 Ariz. 478, 445 P.2d 837 (1968); State v. Andrus, 17 Ariz. App. 70, 495 P.2d 510 (1972).

Other cases regarding the sufficiency of the juvenile petition include: *In re* Coward, 254 A.2d 730, 732 (D.C. App. 1969) (sufficiently explicit to defend intelligently); *In re* Wylie, 231 A.2d 81, 82-83 (D.C. App. 1967) (each crime separately stated). General allegations are insufficient. *Compare In re* L., 64 Misc. 2d 360, 314 N.Y.S.2d 708 (Schuyler County Fam. Ct. 1970), *with* Johnson v. State, 401 S.W. 2d 298 (Tex. Civ. App. 1966). *See also* State *ex rel.* D.V. v. Cook, 495 S.W.2d 127 (Mo. App. 1973); *In re* R., 73 Misc. 2d 390, 341 N.Y.S.2d 998 (Kings County Fam. Ct. 1973); Villarreal v. State, 495 S.W.2d 28 (Tex. Civ. App. 1973); Berkley v. State, 473 S.W.2d 346 (Tex. Civ. App. 1971). For cases holding that a criminal standard is to be used, see *e.g.*, *In re* Hitzemann, 281 Minn. 275, 161 N.W.2d 542 (1968); *In re* R., 73 Misc. 2d 390, 341 N.Y.S.2d 998 (Kings County Fam. Ct. 1973); *In re* F., 68 Misc. 2d 718, 328 N.Y.S.2d 99 (Schenectady County Fam. Ct. 1972); *In re* Walsh, 59 Misc. 2d 917, 300 N.Y.S.2d 859 (Dutchess County Fam. Ct. 1969). *See also* George, *Gault: Notice and Fair Hearing*, in GAULT: WHAT NOW FOR THE JUVENILE COURT? 71 (V. Nordan ed. 1968); SUGGESTED GUIDELINES, *supra* note 10, rule 9(c).

Objection to lack of sufficiency to state a crime cannot be waived, while objection to insufficient particularity of notice must be timely raised. State v. Sluder, 1 Ore. App. 457, 463 P.2d 594 (1970); *see In re* Richard, 75 Wash. 2d 208, 449 P.2d 809 (1969).

21. State v. Maxwell, 103 Ariz. 478, 480, 445 P.2d 837, 839 (1968). Under the new Arizona criminal rules there is no bill of particulars.

22. *See* text accompanying notes 62-105 *infra*.

23. *See* 2A J. MOORE, FEDERAL PRACTICE ¶ 8.02, at 1612 n.6 (2d ed. 1974). Discovery and the bill of particulars bear only on the contents of the notice. Thus, if a child who seeks a continuance had a chance to obtain a bill of particulars or discovery, he might not get the added time. If, however, the notice was not timely, so that there was no chance to use discovery or a bill of particulars, then the petition will be examined alone to determine if notice was adequate.

24. *See* 8 J. MOORE, *supra* note 23, ¶ 7.06(1). The same result follows in criminal court. As the specificity of the complaint decreases, the importance of the bill of particulars increases. *See* State v. Cutshaw, 7 Ariz. App. 210, 215, 437 P.2d 962, 967 (1968).

25. As to discovery, see text accompanying notes 62-105 *infra*. The bill of particulars is available in juvenile proceedings in some jurisdictions. *See In re* Hitzemann, 281 Minn. 275, 161 N.W.2d 542 (1968); *In re* A.R., 57 N.J. 71, 269 A.2d 529 (1970); *In re* B., 52 Misc. 2d 400, 275 N.Y.S.2d 997 (Kings County Fam. Ct. 1966); *In re* Three Minor Children, 289 A.2d 434 (R.I. 1972); D.C.R.P. JUV. CT. 7(f); SUGGESTED GUIDELINES, *supra* note 10, rule 11.

If the bill is necessary to ensure adequate notice, it may be constitutionally required. *In re* L., 66 Misc. 2d 142, 320 N.Y.S.2d 570 (Kings County Fam. Ct. 1971). It may not be used for discovery of evidentiary material, however. *In re* C., 66 Misc. 2d 761, 322 N.Y.S.2d 203 (Bronx County Fam. Ct. 1971).

The bill of particulars has remained in criminal practice largely because of an

Members of the public defender's offices in Pima and Maricopa counties stated that most petitions give adequate notice.[26] Inspection of court files in both juvenile and criminal cases in Pima County revealed that petitions are drawn in a manner identical to criminal indictments. Since discovery procedures are lacking in the juvenile court,[27] the bill of particulars is the only remedy for those few petitions that are inadequate. Even for these petitions the bill of particulars is little used, however, mainly because the public defender does not have enough time to file a motion for the bill.[28]

b. *Variance and Amendment.* Whenever the facts shown at the hearing do not conform exactly with the allegations in the petition, a question of variance occurs. The importance of the variance objection increases in direct proportion to the degree of specificity required in the petition. For this reason, the doctrine is of less importance in a notice pleading jurisdiction like Arizona. In the most common variance situation, where the misconduct proved is that alleged, but the facts proved are slightly different than those alleged,[29] it is probably sufficient if the "proof agrees with the allegation in its substance and generic character without precise conformity in every particular."[30] The appropriate remedy for a variance of a greater degree is amendment and a continuance to allow time for preparation to meet the new facts.[31] Nevertheless, even in notice

absence of discovery; discovery would eliminate its need. *See* 8 J. MOORE, *supra* note 23, at ¶ 7.06(1); *cf.* United States v. Smith, 16 F.R.D. 372 (W.D. Mo. 1954); State v. Benham, 58 Ariz. 129, 134-35, 136, 118 P.2d 91, 93, 94 (1941); Ariz. R. Crim. P. 116(A) (abrogated 1973). The bill of particulars is important for variance objections since in Arizona it historically has been a part of the indictment and, therefore, could cure a defective indictment. State v. Miller, 100 Ariz. 288, 297, 413 P.2d 757, 764 (1966). The importance of the bill increases when rules of evidence are relaxed and discovery is absent. State v. Cutshaw, 7 Ariz. App. 210, 215, 437 P.2d 962, 967 (1968).

26. Interview with Richard A. Rice, Deputy Public Defender, Maricopa County, in Phoenix, Jan. 11, 1974; interview with Karen Zizmor, Ass't Public Defender, Pima County Juvenile Court Center, in Tucson, Jan. 2, 1974. Mr. Rice stated that there is a tendency to allege obstruction of a police officer merely by using the statutory language, without giving the name of the officers. This is true, however, of indictments and informations in criminal court. There would seem to be nothing objectionable about this if some sort of discovery or bill of particulars were available. If no discovery were available, however, such an allegation would omit information helpful in preparing a defense.

27. *See* text & notes 63-64 *infra.*

28. Interview with Richard Rice, *supra* note 26; interview with Karen Zizmor, *supra* note 26.

29. For example, in *In re* Maricopa County Juvenile Court Action No. J-71808 (Juv. Ct. Nov. 15, 1973), a variance objection was made because the proof showed that the car was stolen from Adams Street, and not Pope Street. The motion for a verdict of acquittal based on this variance failed.

30. *In re* Hitzemann, 281 Minn. 275, 280, 161 N.W.2d 542, 545 (1968) (adopting a liberal criminal standard). *See also In re* Coward, 254 A.2d 730 (D.C. App. 1969); CAL. WELF. & INST'NS CODE § 678 (West 1972) (adopting similar civil standards).

31. ARIZ. R.P. JUV. CT. 4(b); *see* Doe v. State, 487 P.2d 47 (Alas. 1971). A dismissal under such circumstances would only prolong the proceedings since a new petition would be filed.

pleading jurisdictions, the finding of delinquency may not be based on misconduct other than that set forth in the petition; to do otherwise would violate the requirements of notice and opportunity to prepare a defense.[32]

A problem related to variance is that of amending the petition. A petition is amended either to join a new allegation[33] or to correct mistakes that become apparent in the petition.[34] Pretrial correction of mistakes of fact by amendment is allowed in both civil and criminal courts.[35] A different problem is presented when the state attempts to amend the petition at the close of its case on grounds that the proof adduced supports misconduct different from that alleged in the petition. If the judge were to allow an amendment to allege the misconduct already proved without allowing time to meet the new allegations,[36] there would be a clear violation of the juvenile's due process right to notice. This should not happen in Arizona, since rule 4(b) requires that time be given to allow the child to meet new allegations in an amended petition. Thus, in Arizona, a juvenile has the right to a continuance when an amendment is made during a hearing.[37] In granting such continuances consideration should be

32. *In re* J., 26 Cal. App. 3d 768, 103 Cal. Rptr. 21 (Ct. App. 1972); People v. C.D.G., 505 P.2d 979, 981 (Colo. App. 1972); Allen v. Ladson, 119 Ga. App. 44, 165 S.E.2d 881 (1969); *In re* Hampton, 257 So. 2d 459 (La. App. 1972); *In re* Glassberg, 230 La. 396, 88 So. 2d 708 (1956). *But see In re* Harrell, 254 La. 963, 229 So. 2d 63 (1969) (placing emphasis on the facts adduced, not the crime alleged).

Adjudication is allowed if the crime proved is a lesser included offense. *In re* O., 31 N.Y.2d 730, 338 N.Y.S.2d 105, 290 N.E.2d 145 (1972); *In re* Taylor, 62 Misc. 2d 529, 533, 309 N.Y.S.2d 368, 373 (Dutchess County Fam. Ct. 1970); *cf.* ARIZ. R. CRIM. P. 23.3.

33. See text accompanying notes 38-46 *infra*.

34. Inspection of records also revealed that a significant percentage of offenses had been added by amendment. Therefore, only those offenses contained in the original petition were alleged under oath. See note 36 *infra*.

35. ARIZ. R. CIV. P. 61; ARIZ. R. CRIM. P. 13.5(b). In criminal cases, an amendment cannot change the nature of the offense charged, State v. Butler, 9 Ariz. App. 162, 165, 450 P.2d 128, 131 (1969), and cannot cure a fatally defective information. State v. Betts, 5 Ariz. App. 256, 258, 425 P.2d 444, 446 (1967). *But cf. In re* Rome, 251 So. 2d 435, 437 (La. App. 1971) (holding that, unlike the criminal information, an amended petition cures a defective original). *See generally* 4 R. ANDERSON, WHARTON'S CRIMINAL LAW AND PROCEDURE § 1876 (1957).

36. Amendment is possible even after the state rests. *In re* Juvenile Action No. J-75755, — Ariz. —, 523 P.2d 1304 (1974); *see* W. STAPLETON AND L. TEITLEBAUM, IN DEFENSE OF YOUTH 129 (1972). Objection must be made at the time of the amendment. *In re* R., 12 Cal. App. 3d 80, 85, 90 Cal. Rptr. 530, 532 (Ct. App. 1970). One court has held that if the original petition was verified, the amendment must be also. People v. Hill, 133 Ill. App. 2d 47, 272 N.E.2d 840 (1971). The Arizona rule does not seem to require reverification for amendments. *See* ARIZ. R.P. JUV. CT. 4(b). Inspection of files in Pima County showed that amended petitions were not reverified.

37. *In re* Juvenile Action No. J-75755, — Ariz. —, 523 P.2d 1304 (1974). *See also* W. STAPLETON AND L. TEITLEBAUM, *supra* note 36, at 150 n.8. In other states, however, surprise is generally required. *See In re* Jones, 279 N.C. 616, 184 S.E.2d 267 (1971); Carrillo v. State, 480 S.W.2d 612 (Tex. 1972); State v. Santana, 444 S.W.2d 614, 622 (Tex. 1969), *rev'd on other grounds*, 397 U.S. 596 (1970); Villarreal v. State, 495 S.W. 2d 28 (Tex. Civ. App. 1973). The appropriate length of the continuance is determined case by case. *Cf.* Doe v. State, 487 P.2d 47, 57 (Alas. 1971).

Whether an amendment is to be granted, in the absence of a court rule, is always determined by a civil standard. *See In re* J., 26 Cal. App. 3d 768, 103 Cal. Rptr. 21

given to whether the child may have been misled to his prejudice by maintaining his defense, thus warranting an entirely new hearing. Cross-examination is frequently conducted to elicit testimony consistent with the assumed defense. Thus, cross-examination based on the original charge may prove unhelpful or even damaging in defending against the amended charge. This would impair not only the right to cross-examination, but also the ability to plea bargain intelligently. The minor may also have made disclosures to support a defense to the first charge, for example an alibi, that will prove damaging on the second charge.

c. *Joinder and Severance.* Procedural problems regarding the petition involve the joinder of several allegations in one petition and the severance of these allegations for the hearing. The *Juvenile Rules* make no mention of what violations may or may not be heard together. As a result, this study found that all three counties surveyed allow the joinder of all violations pending against the child in one petition and take evidence regarding all allegations at a single hearing. Such joinder may be objectionable if the juvenile wishes to testify on one but not the other of two joined violations which are different in time, place, and evidence. Silence on one allegation could have a prejudicial effect if testimony were given on the other.[38] Additionally, such liberal joinder goes beyond the recognized exceptions to the longstanding rule against introduction of other unrelated crimes as substantive evidence of guilt.[39] While both arguments take on much greater weight in criminal court because of the presence of a jury, the absence of a jury in criminal court has never resulted in a suggestion that joinder rules be totally abolished.[40] On

(Ct. App. 1972); *In re* B., 17 Cal. App. 3d 530, 95 Cal. Rptr. 116 (Ct. App. 1971); *In re* R., 12 Cal. App. 3d 80, 90 Cal. Rptr. 530 (Ct. App. 1970); CAL. WELF. & INST'NS CODE § 678 (West 1972); PROCEDURE AND EVIDENCE, *supra* note 10, at 15; SUGGESTED GUIDELINES, *supra* note 10, rule 10.

In practice, rule 4(b) effectively stops instant amendments. Time is always given to meet new allegations. Interview with the Hon. Anthony Deddens, Juvenile Court Judge, Cochise County, in Bisbee, Ariz., Jan. 28, 1974; interview with Richard Rice, *supra* note 26; interview with Karen Zizmor, *supra* note 26.

38. *Cf.* Cross v. United States, 335 F.2d 987, 989 (D.C. Cir. 1964); AMERICAN BAR ASSOCIATION PROJECT ON MINIMUM STANDARDS FOR CRIMINAL JUSTICE, STANDARDS RELATING TO JOINDER AND SEVERANCE 31 (Approved Draft 1968) [hereinafter cited as ABA, JOINDER AND SEVERANCE STANDARDS]. *See generally* Note, *Joint and Single Trials Under Rules 8 and 14 of the Federal Rules of Criminal Procedure*, 74 YALE L.J. 553 (1965).

39. These include admission to show a plan, to complete the story of the crime, to prove motive, identity, or intent, and to rebut mistake. *See* C. MCCORMICK, LAW OF EVIDENCE § 190 (2d ed. E. Cleary ed. 1972); 1 J. WIGMORE, EVIDENCE §§ 55, 57 (4th ed. 1940); "Admissibility of Other Crimes: The 'Common Plan or Scheme' Exception," 15 ARIZ. L. REV. 593, 779 (1973).

40. The joinder rule in criminal court makes no mention of juries. ARIZ. R. CRIM. P. 13.

The National Council on Crime and Delinquency has suggested as a policy matter that the number of allegations in a petition be kept to a minimum, since disposition gen-

the other hand, disposition in juvenile court generally depends more on the type of misconduct than on the number of allegations in the petition.[41] It also may be advantageous to the minor to have all of the allegations resolved at one time, and advantageous to the court to be able to impose a disposition after all allegations have been adjudicated.

The New York family court has dealt with the question of joinder and has concluded that the standard used in its criminal court should apply—no charge should be joined with another unless they involve a common question of law or fact.[42] On the other hand, at least one court has held that, in the absence of a juvenile court rule, there can be no regulation of joinder in juvenile court, regardless of what the civil or criminal rules require.[43]

The *Arizona Rules of Criminal Procedure* allow joinder of charges only if the offenses are of the same character, are connected in their commission, or are connected by a common plan.[44] The criminal rules grant a corresponding right to sever the trial of any offenses joined solely because of similar character.[45] This framework of liberal joinder and liberal severance has immediate application to the juvenile court situation. The quasi-criminal, quasi-civil nature of the juvenile court suggests a compromise between the two standards. The free joinder that now obtains in the juvenile court should remain because of the advantage of imposing disposition after all allegations are heard. But if the child feels that joinder of certain violations other than those related by commission or scheme would be prejudicial, he should be allowed to have separate hearings.[46]

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erally depends on the type of misconduct and not on the number of incidents. NATIONAL COUNCIL ON CRIME AND DELINQUENCY, STANDARDS FOR JUVENILE AND FAMILY COURTS 64 (1966) [hereinafter cited as COURT STANDARDS].

41. COURT STANDARDS, *supra* note 40, at 65; Interview with Greg Jernigan, Ass't County Attorney, Pima County, in Tucson, Jan. 2, 1974; interview with Palmer Schumacher, Ass't County Attorney, Juvenile Division, Maricopa County, in Phoenix, Jan. 11, 1974; interview with the Hon. Gerald Strick, Juvenile Judge, Maricopa County, in Phoenix, Nov. 23, 1974.

42. *In re* S., 70 Misc. 2d 320, 323, 333 N.Y.S.2d 466, 470 (Kings County Fam. Ct. 1972); *In re* G., 68 Misc. 2d 1043, 1045-46, 328 N.Y.S.2d 777, 780 (N.Y. County Fam. Ct. 1972).

43. *In re* Tyler, 262 So. 2d 815, 818 (La. App. 1972). Such a result would not follow if the juvenile court rules had a general provision stating that the rules of civil procedure apply in the absence of an applicable juvenile court rule. *See* TEX. FAM. CODE § 51.17 (1973); SUGGESTED GUIDELINES, *supra* note 10, rule 20(7).

In Arizona, each county may adopt local rules. ARIZ. R.P. JUV. CT. 23. It would be desirable for each county to adopt as a local rule that the rules of civil procedure apply when there is no applicable juvenile rule. However, since the juvenile court is a mixture of the civil and criminal courts, the juvenile court judge should be given the discretion to use a rule of criminal procedure if it more clearly fits the situation.

44. *Compare* ARIZ. R. CRIM. P. 13.3(a), *with* Ariz. R. Crim. P. 128(a) (abrogated 1973) (joinder not allowed for similar offenses).

45. ARIZ. R. CRIM. P. 13.4(b).

46. Disposition could be postponed until after all factfinding hearings.

d. *Other Requirements.* As is the case with the civil[47] and criminal complaint,[48] the juvenile petition may be filed upon information and belief.[49] The model acts also allow this,[50] but usually require that the petition be verified.[51] Arizona is similar, requiring an oath by the filing party.[52] There have been few judicial determinations of the validity of this device in juvenile court, however.[53]

The *Juvenile Rules* also require that the petition include a statement of custody.[54] Intended to inform the minor's parents of the place of detention, the statement does not appear to be mandated

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A related problem is the joinder of "defendants" in one hearing. Since Bruton v. United States, 391 U.S. 123 (1968), was decided upon the constitutional right to cross-examination (extended to juveniles by *Gault*), it is clear that if the state plans to offer a confession against one of the children, the other child has a right to a severance. *In re* Allen, 10 Ohio App. 2d 120, 226 N.E.2d 135 (1967). By analogy to civil and criminal proceedings, joinder of children should otherwise be allowed if there is a charge factually common to all. *Cf.* ARIZ. R. CIV. P. 20(a); ARIZ. R. CRIM. P. 13.3(b).

47. *See* 2A J. MOORE, *supra* note 23, ¶ 8.13, at 1711.

48. ARIZ. R. CRIM. P. Form I; State v. Currier, 86 Ariz. 394, 347 P.2d 29 (1959); Turley v. State, 48 Ariz. 61, 59 P.2d 312 (1936).

49. ARIZ. R.P. JUV. CT. 4(a).

50. As some check on this practice, the LEGISLATIVE GUIDE, *supra* note 9, § 14(e)(5), and the COURT STANDARDS, *supra* note 40, at 64, require that all facts not within the personal knowledge of the petitioner be stated as such.

51. *See* CAL. WELF. & INST'NS CODE § 656 (West 1972); COLO. REV. STAT. ANN. § 22-3-2 (Cum. Supp. 1971); COURT STANDARDS, *supra* note 40, at 64; LEGISLATIVE GUIDE, *supra* note 9, § 14(d); MODEL RULES, *supra* note 10, rule 6; STANDARD JUVENILE COURT ACT, *supra* note 10, rule 12(3); SUGGESTED GUIDELINES, *supra* note 10, rule 9. Verification is another carryover from civil practice, perhaps as a trade-off for allowing the petition to be filed upon information and belief. *Cf. In re* Jones, 46 Ill. 2d 500, 263 N.E.2d 863 (1970). Verification has also been cited as justification for not requiring a probable cause hearing. M.A.P. v. Ryan, 285 A.2d 310 (D.C. App. 1971). Such a result seems untenable if one is verifying only his information and belief, as in Arizona, and not that there is probable cause.

A failure to verify is not jurisdictional, *In re* D., 3 Cal. App. 3d 567, 83 Cal. Rptr. 544 (Ct. App. 1970). *But see In re* Rosenbarger, 127 Ind. App. 497, 153 N.E.2d 619 (1957) (an absence of any signature is jurisdictional). The objection is waived if it is not raised prior to the hearing. *In re* Straser, 84 Cal. App. 2d 746, 751, 191 P.2d 791, 794 (Ct. App. 1948); *In re* Turner, 94 Kan. 115, 145 P. 871 (1915); Hays v. Old, 385 S.W.2d 464 (Tex. Civ. App. 1964).

Verification is an oath that the signer has been sworn, has read the petition, and knows that the facts therein are true to the best of his knowledge, information, and belief. *See* 2A J. MOORE, *supra* note 23, ¶ 11.04, at 2108.

52. ARIZ. R.P. JUV. CT. 4(a).

53. Only two reported cases have rejected the filing of a juvenile petition upon information and belief, on the grounds that such a device violates due process and because it was not allowed in the criminal court in that state. *In re* E., 68 Misc. 2d 487, 327 N.Y.S.2d 84 (Suffolk County Fam. Ct. 1971); *In re* Walsh, 59 Misc. 2d 917, 300 N.Y.S. 2d 859 (Dutchess County Fam. Ct. 1969). *See also In re* White, 70 Misc. 2d 541, 545-46, 334 N.Y.S.2d 476, 482 (Nassau County Fam. Ct. 1972) (upholding the device only because of the presence of discovery). *Contra, In re* Howe, 70 Misc. 2d 144, 332 N.Y.S.2d 529 (Dutchess County Fam. Ct. 1972); *In re* Anonymous, 37 Misc. 2d 827, 238 N.Y.S.2d 792 (Nassau County Fam. Ct. 1962). The New York cases have immediate application to Arizona only as a matter of due process, since it has been the long-standing practice in Arizona to allow criminal complaints to be filed on the basis of the complainant's personal knowledge or his information and belief. *See* State v. Currier, 86 Ariz. 394, 347 P.2d 29 (1959); Turley v. State, 48 Ariz. 61, 59 P.2d 312 (1936). This seems to be the general rule in juvenile courts. *See In re* Jones, 46 Ill. 2d 500, 502, 263 N.E.2d 863, 865 (1970); *cf.* State v. Cook, 99 R.I. 710, 713, 210 A.2d 577, 580 (1965).

54. ARIZ. R.P. JUV. CT. 4(a). *See also* LEGISLATIVE GUIDE, *supra* note 9, § 14(e)(4); UNIFORM JUVENILE COURT ACT § 21(4).

by due process.[55] Since it does preserve a record of the place of detention, it may help to assure compliance with the Arizona constitutional requirement that a juvenile not be held with adult prisoners.[56]

The model acts and rules, as well as legislation and cases in some states, have suggested several other requirements for delinquency petitions.[57] A number would require that the petition contain an allegation that the child is in need of treatment or rehabilitation;[58] for if the need for the special programs available through the juvenile court does not exist, the exercise of juvenile court jurisdiction would seem to have no rationale.[59] Under such a standard, the court would have to make three inquiries: whether the juvenile committed the acts alleged, whether he is in need of treatment, and if so, what disposition is appropriate. The juvenile's petition would be dismissed if he did not need rehabilitation.

Under this standard a child could commit a "delinquent" act and under certain circumstances not be adjudged a delinquent. The law in Arizona is not in accord with this standard, for the mere fact that the child did a delinquent act implies that he is in need of some sort of treatment.[60] In effect, the Arizona law makes the presumption of the need for treatment irrebuttable, while the alternative standard allows consideration of contrary evidence. The Arizona concept is identical to the philosophy of the criminal court that every person who is found guilty is presumed to need punishment or rehabilitation. The two standards do meet, however, for under Arizona juvenile or criminal law a disposition or sentence can be suspended if the minor or adult is not in need of rehabilitation, punishment, or deterrence.[61]

2. *Discovery*

Liberal discovery rules have been available in civil litigation for

55. This was stated in a planning draft of the American Bar Association's standards on juvenile courts. It was suggested that the statement of custody might inform the judge that it was not considered safe to release the child from detention, and, therefore, might be prejudicial. AMERICAN BAR ASSOCIATION PROJECT ON MINIMUM STANDARDS FOR CRIMINAL JUSTICE, STANDARDS RELATING TO JUVENILE COURTS (Planning Draft 1973) [hereinafter cited as ABA, JUVENILE COURT STANDARDS].

56. ARIZ. CONST. art. 22, § 16; *see* Anonymous Juvenile v. Collins, 21 Ariz. App. 140, 517 P.2d 98 (1973).

57. Some require a statement of the right to counsel. *See* note 10 *supra.*

58. N.Y. FAMILY CT. ACT §§ 731, 732 (McKinney's 1963); LEGISLATIVE GUIDE, *supra* note 9, § 14(e)(1); UNIFORM JUVENILE COURT ACT § 21(1); *see In re* Ronny, 40 Misc. 2d 194, 242 N.Y.S.2d 844 (Queens County Fam. Ct. 1963). *See also* S. FOX, MODERN JUVENILE JUSTICE 340-41 (1972).

59. Taking jurisdiction merely for the purpose of retribution is alien to the juvenile court concept. *See* UNIFORM JUVENILE COURT ACT § 29, Comment. *See also* section VII, "Corrections," *infra*, at 409-10.

60. *Compare* ARIZ. REV. STAT. ANN. § 8-201(9) (1974), *with* UNIFORM JUVENILE COURT ACT §§ 2(3)-(4).

61. Additionally, in Pima County, until recently, there was a practice of indefinitely continuing disposition in some cases. *See* section VI, "Probation," *infra*, at 373.

many years. Through depositions, interrogations, examinations, requests for admission, and inspections, civil discovery has provided the opportunity for broad inquiry into the opponent's case, thereby facilitating the identification and isolation of issues, the avoidance of surprise, and a more efficient and speedy disposition of cases.[62] Despite the past emphasis on the "civil" nature of juvenile courts, however, civil discovery rules have not generally been held applicable to juvenile court proceedings.[63]

Arizona has recently adopted new discovery rules for criminal proceedings which are unique in their broad scope,[64] but they are not immediately applicable to the juvenile court. As a result, many Arizona juvenile proceedings have the discovery advantages of neither the criminal nor the civil rules.[65]

A brief comparison of civil and criminal discovery for defendants in Arizona is helpful in determining which rules should apply in juvenile court. Under both civil and criminal discovery any statement made by the defendant to the opposing side is discoverable,[66] and both systems allow discovery of the names of opposing witnesses, documents, papers, photographs, and tangible evidence.[67] The statements of all opposing witnesses are available to the criminal defendant; the civil litigant may obtain only statements of experts.[68] Criminal discovery is largely mandatory and extrajudicial, while civil discovery is by request and sometimes requires a court order.[69]

The Arizona criminal rules have adopted the "reciprocal dis-

62. FED. R. CIV. P. 26-37; ARIZ. R. CIV. P. 26-37; *see* Cornet Stores v. Superior Court, 108 Ariz. 84, 86, 492 P.2d 1191, 1193 (1972).

63. *See* Joe Z. v. Superior Court, 3 Cal. 3d 797, 91 Cal. Rptr. 594, 478 P.2d 26 (1970); People *ex rel.* Hanrahan v. Felt, 48 Ill. 2d 171, 269 N.E.2d 1 (1971); *In re* R., 60 Misc. 2d 355, 303 N.Y.S.2d 406 (N.Y. County Fam. Ct. 1969). A search of jurisdictions and model acts has disclosed only two sets of juvenile discovery rules. *See* D.C.R.P. JUV. CT. 15, 16 (essentially identical to FED. R. CRIM. P. 15, 16); MARICOPA COUNTY [ARIZ.] LOCAL R.R. JUV. CT. 1.1-1.7. The American Bar Association minimum standards project for juvenile courts, ABA, JUVENILE COURT STANDARDS, *supra* note 55, has recommended adoption of the AMERICAN BAR ASSOCIATION PROJECT ON MINIMUM STANDARDS FOR CRIMINAL JUSTICE, STANDARDS RELATING TO DISCOVERY AND PROCEDURE BEFORE TRIAL (Approved Draft 1968) [hereinafter cited as ABA, DISCOVERY STANDARDS].

Juvenile court statutes that provide for use of civil rules where there is no applicable juvenile rule might allow civil discovery. *See* TEX. FAM. CODE § 51.17 (1973). Section 51.14(a)(2), *id.*, opens the file of the prosecutor to the child, in effect giving the defense full discovery.

64. *See* ARIZ. R. CRIM. P. 15; Note, *Arizona's New Rules of Criminal Procedure: A Proving Ground for the Speedy Administration of Justice*, 16 ARIZ. L. REV. 167, 180-92 (1974). *See also* ABA, DISCOVERY STANDARDS, *supra* note 63.

65. See text & notes 99-105 *infra*, for a discussion of the discovery rules recently adopted in Maricopa County.

66. ARIZ. R. CIV. P. 26(b)(1); ARIZ. R. CRIM. P. 15.1(a)(2). The criminal rule is constitutionally based. *See* Brady v. Maryland, 373 U.S. 83 (1963).

67. ARIZ. R. CIV. P. 34(a); ARIZ. R. CRIM. P. 15.1(a)(4).

68. ARIZ. R. CIV. P. 26(b)(4); ARIZ. R. CRIM. P. 15.1(a)(1).

69. *See, e.g.*, ARIZ. R. CIV. P. 35(a).

covery" concept recommended by the American Bar Association[70] for disclosure by the defendant.[71] This includes, on demand, such physical evidence as lineups, voiceprints, and fingerprints. The defendant also must file notice of affirmative defenses and must provide a witness list and a copy of the witness statements, a list of experts to be called and their reports, and tangible evidence.[72]

The Arizona *Juvenile Rules,* on the other hand, have no standardized provisions for discovery beyond the disclosure of the social study, the juvenile counterpart of the presentence report.[73] The absence of mandatory discovery rules has left the determination of allowable limits completely in the hands of the individual juvenile court judges, giving rise to differences among the counties. In Cochise County, the child is given full access to the file of the county attorney, resulting, in effect, in full discovery.[74] In Pima County, discovery is discretionary and limited to the police report and witness lists.[75] A similar situation existed in Maricopa County, although rules granting broader rights have now been formulated.[76]

Although only one jurisdiction in the United States has developed formal discovery rules for the juvenile court,[77] a few courts have extended certain discovery rights to juveniles, and at least one court has developed local rules governing discovery.[78] These include statements made by the juvenile,[79] whether property was seized and, if so,

70. ABA, DISCOVERY STANDARDS, *supra* note 63, § 3. *See also* Wardius v. Oregon, 412 U.S. 470 (1973).

71. ARIZ. R. CRIM. P. 15.2.

72. It is still unsettled whether the prosecution must disclose rebuttal witnesses if the defense discloses affirmative defenses. *See* Note, *supra* note 64, at 187-89.

73. ARIZ. R.P. JUV. CT. 9 requires such disclosure before the dispositional hearing, unless it would be psychologically damaging to any of the parties or destructive of the relationships between members of the family. *Cf.* ARIZ. R. CRIM. P. 26.6(c); Kent v. United States, 383 U.S. 541 (1966).

74. Interview with Dushan Vlahovich, Prosecuting Attorney, Cochise County Juvenile Court, in Bisbee, Ariz., Jan. 28, 1974. The rationale for such liberal discovery is that the county does not have funds to pay appointed counsel for extended litigation over discovery. Interview with the Hon. Anthony Deddens, *supra* note 37. The benefits of discovery are tempered somewhat, however, since the project observed that most children in Cochise County do not have counsel.

75. Interview with Karen Zizmor, *supra* note 26. The report is given only through the discretion of the county attorney and may be stopped, as was done for a period of time in Pima County because of a personality conflict. *Id.* It also is possible to obtain witness lists, but again the practice is discretionary. *Id.*

76. *See* text accompanying notes 99-105 *infra.* Interview with Richard Rice, *supra,* note 26; interview with the Hon. Gerald Strick, *supra* note 41. Until early 1974 there was a total absence of discovery in Maricopa County. Mr. Rice related an incident in which the complaining witness came to trial, took one look at the child, and announced that she had never seen him before. The juvenile had had no way to contact the witness beforehand, due to the lack of discovery. As a consequence, an innocent child had been in detention for 2 months. In early 1974, the county attorney started to release police reports before the hearing, and it is now possible to obtain a witness list from this report.

77. *See* D.C.R.P. JUV. CT. 15, 16.

78. MARICOPA COUNTY [ARIZ.] LOCAL R.P. JUV. CT. 1.1-1.7.

79. Joe Z. v. Superior Court, 3 Cal. 3d 797, 91 Cal. Rptr. 594, 478 P.2d 26 (1970);

whether it will be used as evidence,[80] autospy reports,[81] grand jury minutes of adult co-defendants,[82] photos and diagrams,[83] the written or recorded statements of witnesses,[84] and, in general, any evidence favorable to the child.[85] Whether the state must disclose the information automatically is still an open question.[86]

While there is no constitutional right to general discovery in any court,[87] certain specific discovery procedures for juveniles seem to be required. When discovery of specific items is granted an adult on the basis of due process, as in the case of exculpatory material,[88] this right should also extend to the juvenile.[89] Such a conclusion is based on the applicability of due process "fundamental fairness" to juvenile court.[90] In addition, when the pleading system of the court is so structured that notice of the charges and information sufficient to enable the child to prepare for the hearing is obtainable only through discovery, such discovery should be available.[91]

In general, juvenile discovery, where allowed, has been granted for policy reasons:

> [T]he need for expeditious and informal adjudications in juvenile court . . . belies the wisdom or necessity of any indiscriminate

In re R., 60 Misc. 2d 355, 303 N.Y.S.2d 406 (N.Y. County Fam. Ct. 1969); *In re* P., 60 Misc. 2d 697, 303 N.Y.S.2d 827 (N.Y. County Fam. Ct. 1969).

80. *In re* R., 60 Misc. 2d 355, 303 N.Y.S.2d 406 (N.Y County Fam. Ct. 1969).

81. *In re* P., 60 Misc. 2d 697, 303 N.Y.S.2d 827 (N.Y. County Fam. Ct. 1969); *In re* R., 60 Misc. 2d 697, 303 N.Y.S.2d 827 (N.Y. County Fam. Ct. 1969).

82. *In re* M., 60 Misc. 2d 699, 303 N.Y.S.2d 744 (Bronx County Fam Ct. 1969).

83. *In re* R., 60 Misc. 2d 355, 303 N.Y.S.2d 406 (N.Y. County Fam. Ct. 1969).

84. *Id. Contra, In re* P., 60 Misc. 2d 697, 303 N.Y.S.2d 827 (N.Y. County Fam. Ct. 1969).

85. *See* District v. Jackson, 261 A.2d 511 (D.C. App. 1970) (decided prior to enactment of discovery rules, allowing discovery of *Brady* materials although disallowing discovery in general); *In re* W., 62 Misc. 2d 585, 309 N.Y.S.2d 280 (Westchester County Fam. Ct. 1970) (disallowing discovery in general). *But see In re* B., 52 Misc. 2d 400, 275 N.Y.S.2d 997 (Kings County Fam. Ct. 1966) (allowing broad civil discovery in neglect cases).

See also Boches, *Juvenile Justice in California: A Re-Evaluation*, 19 HASTINGS L.J. 47, 86-87 (1967) (calling for specific provisions at least as broad as allowed in criminal court); Comment, *Discovery Rights in Juvenile Proceedings*, 7 U. SAN FRANCISCO L. REV. 333 (1973).

86. *Compare In re* R., 60 Misc. 2d 355, 303 N.Y.S.2d 406 (N.Y. County Fam. Ct. 1969), *with In re* C., 66 Misc. 2d 761, 322 N.Y.S.2d 203 (Bronx County Fam. Ct. 1971).

87. *See* Cicenia v. LaGay, 357 U.S. 504 (1958). *But see In re* S.M.W., 485 S.W.2d 158, 163 (Mo. 1972) (holding that the right of discovery assumes a constitutional dimension when material to be discovered is helpful in cross-examination at the hearing).

88. *See* Brady v. Maryland, 373 U.S. 83, 87 (1962).

89. *See* District v. Jackson, 261 A.2d 511 (D.C. App. 1970). Other rights that might be extended are advance notice of witnesses and their statements, *cf.* Palermo v. United States, 360 U.S. 343, 361-66 (1959); Jencks v. United States, 353 U.S. 657, 668 (1957); ABA, DISCOVERY STANDARDS, *supra* note 63, at 56, and statements of other children who will be tried at the same hearing. *Cf.* Bruton v. United States, 391 U.S. 123 (1968).

90. *See* McKeiver v. Pennsylvania, 403 U.S. 528 (1971); *In re* Gault, 387 U.S. 1 (1967).

91. *See* text accompanying notes 21-25 *supra.*

> application of civil discovery procedures. . . . [However,] the quasi-criminal character of delinquency proceedings does lead us to conclude that the juvenile courts should have the same degree of discretion as a court in an ordinary criminal case to permit, upon a proper showing, discovery between the parties. Authority for such discovery derives not from statute but from the inherent power of every court to develop rules of procedure aimed at facilitating the administration of criminal justice and promoting the orderly ascertainment of the truth.[92]

Several advantages would flow from increased use of juvenile discovery. The child and his counsel would be better able to prepare for the hearing[93] and for plea bargaining,[94] to raise motions to suppress evidence, and to prepare rebuttal evidence. The court system itself would also benefit. The need for probable cause hearings might be less; delays caused by late filing of prehearing motions and the need for continuances due to surprise and motions to suppress could be minimized; issues at hearing would be narrowed; and a savings in court costs could be effected by avoiding duplication of investigation by the county attorney and public defender.[95] On the negative side, there are lingering doubts as to the constitutionality of some defense disclosure,[96] and if discovery resulted in increased paperwork and motions, there would be new costs and a new burden on the court.[97] Both costs and burden could be minimized by requiring automatic discovery, thereby avoiding additional documents and pleadings. The other objections usually voiced against adult discovery—intimidation of witnesses, fabrication of testimony, and protection of the integrity of law enforcement—have been found to be unpersuasive even in adult court.[98]

Maricopa County has recently adopted local rules governing discovery in the juvenile court, which apply to transfer and probation

92. Joe Z. v. Superior Court, 3 Cal. 3d 797, 801-02, 478 P.2d 26, 28, 91 Cal. Rptr. 594, 596 (1970). *See* People *ex rel.* Hanrahan v. Felt, 48 Ill. 2d 171, 175, 269 N.E. 2d 1, 4 (1971) (discovery allowed might be more than criminal, but less than civil); *In re* R., 60 Misc. 2d 355, 303 N.Y.S.2d 406 (N.Y. County Fam. Ct. 1969) (discovery to extent appropriate).

93. The Supreme Court has stated that the right to counsel in juvenile court was needed, *inter alia*, to "make skilled inquiry into the facts." *In re* Gault, 387 U.S. 1, 36 (1967). A complete lack of discovery, coupled with an inadequate statement of facts in the petition, would make a mockery of this statement. It is doubtful whether a lack of discovery would, alone, preclude preparation to an extent that there would be ineffective assistance of counsel. *See* White v. State, 457 P.2d 650 (Alas. 1969).

94. *See* text accompanying notes 106-17 *infra*.

95. ARIZONA STATE BAR COMMITTEE ON CRIMINAL LAW, ARIZONA PROPOSED RULES OF CRIMINAL PROCEDURE 66-67 (1972) [hereinafter cited as ARIZONA PROPOSED RULES].

96. *See* Note, *supra* note 64, at 185-92.

97. *See* ARIZONA PROPOSED RULES, *supra* note 95, at 67; Note, *supra* note 64, at 181.

98. Note, *supra* note 64, at 181-82.

revocation hearings as well as adjudication hearings.[99] The rules parallel the discovery provisions of the *Arizona Rules of Criminal Procedure*;[100] being identical as to general standards,[101] excision and protective orders,[102] and sanctions.[103] Defense disclosure is also substantially identical, with notice of defenses required not less than 3 days prior to the adjudication hearing.[104] A significant difference obtains in disclosure by the state, however. While the rule provides for discovery of witness lists, statements, experts' reports, and mitigating evidence, it fails to require disclosure of the presence of an informant, whether there had been any electronic surveillance, or whether a search warrant had been executed in connection with the case.[105] Such material would presumably be discoverable only upon court order.

The adoption of local discovery rules in Maricopa County is commendable. Ideally, however, the state *Juvenile Rules* should be amended to include discovery, thereby ensuring uniformity among the counties.

3. *Plea Bargaining*

Plea bargaining in criminal court[106] is a recognized part of the Arizona criminal process.[107] Until recently, however, this was not true in juvenile court.[108] Plea bargaining in some form is now a significant factor in inducing juveniles to admit allegations in all three of the counties surveyed. The actual form and manner of the bargaining differed from county to county, however.

The most subtle form of bargaining occurs in Cochise County. Before the filing of the petition, if the child is willing to admit the allegations to the probation staff he will be put on an informal proba-

99. MARICOPA COUNTY [ARIZ.] LOCAL R.P. JUV. CT. 1.1-1.7.
100. ARIZ. R. CRIM. P. 15.
101. MARICOPA COUNTY [ARIZ.] LOCAL R.P. JUV. CT. 1.3.
102. *Id.* 1.4.
103. *Id.* 1.6.
104. *Id.* 1.2. When taking physical evidence from the child, care should be exercised to insure that fingerprints are not sent to the Federal Bureau of Investigation. Although the child's records are not confidential, see text accompanying notes 170-75 *infra*, placement of the prints in a national depository would go far beyond the legislative intent, see text accompanying notes 170-72 *infra*, of public exposure for the juvenile. *See* TEX. FAM. CODE § 51.15 (1973).
105. MARICOPA COUNTY [ARIZ.] LOCAL R.P. JUV. CT. 1.1.
106. *See* ARIZ. R. CRIM. P. 17.4.
107. *See, e.g.*, State v. Carpenter, 105 Ariz. 504, 467 P.2d 749 (1970); State v. Jennings, 104 Ariz. 6, 448 P.2d 62 (1968), *modified on rehearing*, 104 Ariz. 159, 449 P.2d 938 (1969).
108. Significantly, a search of legal periodicals reveals that no mention of plea bargaining in the juvenile court was made in the literature until 1968. *See* Platt, Schechter, & Tiffany, *In Defense of Youth: A Case Study of the Public Defender in Juvenile Court*, 43 IND. L.J. 619, 631-33 (1968). For an excellent discussion of plea bargaining in the juvenile court, see W. STAPLETON & L. TEITLEBAUM, *supra* note 36, at 115-38.

tion and a petition will not be filed.[109] A juvenile who is not willing to admit to the allegations will not be placed on the informal probation. Another form of bargaining that occurs in Cochise County is the consent decree. If the child admits the allegations, he can be placed in a program without undergoing an adjudication of delinquency or incorrigibility if he consents. This form of disposition has been used in some states with varied success.[110] All bargaining takes place before the filing of a petition, since the juvenile judge will not allow plea bargaining after the filing.[111]

Plea bargaining in Pima and Maricopa counties occurs between the county attorney and the public defender, and not between the probation officer and child. In Maricopa County, a typical bargain will result in the juvenile admitting to an allegation of incorrigibility rather than delinquency in return for a recommendation of probation by the county attorney.[112] Plea bargaining in Pima County differs in that the minor will admit the allegations if the proposed disposition as recommended by the probation officer is satisfactory.[113] Since the recommendation of the probation officer carries greater weight than that of the county attorney, the child in Pima County can usually be assured that he will receive the agreed-upon disposition. This is not the case in Maricopa County, since the disposition recommended by the probation officer is not disclosed until after the adjudication hearing.[114] The near certainty of disposition in Pima County had a remarkable effect on the number of contested adjudication hearings. In the last 3 months of 1973 this study observed that there was not a single contested hearing. Such an extreme rate was not observed in Maricopa and Cochise counties; the rate of contested hearings being substantial.[115]

109. Interview with Donald T. Orr, Chief Juvenile Probation Officer, Cochise County, in Bisbee, Ariz., Jan. 21, 1974.

110. *See* Gough, *Consent Decrees and Informal Service in the Juvenile Court: Excursions Toward Balance*, 19 U. KAN. L. REV. 733 (1971); Comment, *The Consent Decree and New York Family Court Procedure in "JD" and "PINS" Cases*, 23 SYRACUSE L. REV. 1211 (1972).

111. Interview with the Hon. Anthony Deddens, *supra* note 37.

112. Interview with Richard Rice, *supra* note 26; interview with Palmer Schumacher, *supra* note 41.

113. Interview with Greg Jernigan, *supra* note 41; interview with Karen Zizmor, *supra* note 26.

114. Interview with Palmer Schumacher, *supra* note 41; interview with the Hon. Gerald Strick, *supra* note 41. As in Pima and Cochise counties, there is rarely a significant difference between the disposition recommended and that actually given, *e.g.*, commitment to the Department of Corrections when probation was recommended.

115. Maricopa County had a 33 percent contested hearing rate for filed petitions, while Cochise County had a 50 percent contested hearing rate for filed petitions. Maricopa County Juvenile Court Statistics for 1973. The Cochise County rate, however, is not comparable to the Maricopa County rate. In Cochise County, a petition is not filed *unless* the child has refused to admit his guilt to the probation staff. Additionally, informal dispositions are made before petitions are filed. *See* section I, "Intake," *supra*,

Unlike the practice in criminal court,[116] the juvenile court judge is not bound by any agreement that may be made, and a child may not withdraw an admission if he does not get the agreed-upon disposition.[117] This has not hampered the use of plea bargaining, however. The low rate of contested hearings in Pima County and the use of plea bargaining in the other counties shows a willingness on the part of counsel and the juvenile to take whatever risks there might be in plea bargaining in hopes of getting probation. The rates also suggest that some juveniles are admitting to untrue allegations merely because it is expedient to do so if probation is likely.

A reevaluation of the plea bargaining system in juvenile court is in order. While it provides a beneficial function by unclogging the court calendar, it may also have an undersirable impact upon the impressionable mind of the youth. Allowing a delinquent child to admit to incorrigibility or to otherwise compromise the petition might instill an idea in the child's mind that he always can make a deal if he is caught. Thus, plea bargaining could encourage delinquents. It is, therefore, imperative for counsel, or the probation officer if there is no counsel, to ensure that a child who honestly believes in his innocence is given his day in court.

B. THE ADJUDICATION HEARING

If the petition is not dismissed, an adjudication hearing must follow. The hearing may be uncontested, in which case the court sometimes hears evidence to corroborate the admissions of the juvenile,[118] and then proceeds to disposition. If it is contested, it is conducted like a nonjury criminal action.[119]

The physical structure of the hearing rooms in Maricopa County is very similar to the typical layout found in a criminal court, but, because of the absence of a jury box, it is on a slightly smaller scale. The close proximity of the participants sets the stage for the informal atmosphere. New facilities are being built for the Maricopa County Juvenile

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at 250-51; section VI, "Probation," *infra*, at 374. The true rate for Cochise County, therefore, is lower than 50 percent.

116. *See* ARIZ. R. CRIM. P. 17.4; Note, *supra* note 64, at 200.

117. Interview with the Hon. Gerald Strick, *supra* note 41; *accord*, State *ex rel.* Juvenile Dep't v. Welch, 501 P.2d 991 (Ore. App. 1972), *modified on rehearing*, 507 P.2d 401 (1973); *In re* M.G.S., 267 Cal. App. 2d 329, 72 Cal. Rptr. 808 (Ct. App. 1968). *But cf.* ARIZ. R. CRIM. P. 17.4(e).

118. ARIZ. R.P. JUV. CT. 7. Hearing such evidence is not common, however.

119. This was observed in practice by project members. See ARIZ. R.P. JUV. CT. 7, however, which states that the conduct of the hearing should be similar to a nonjury civil action. The only difference between nonjury civil and criminal cases is the few rules of evidence peculiar to the criminal trial which are present even when a jury is not hearing the evidence—for example, suppression of illegally seized evidence and corroboration of accomplice testimony.

Court. The new hearing rooms will be constructed so that the parties will sit around a round table, with the judge slightly elevated. Cochise County, however, has no special hearing room for juvenile cases, and all hearings are held in the criminal courtroom. The facilities in Pima County are more modern than in Cochise or Maricopa counties. Everyone sits at one long table that faces the judge's bench, and witnesses sit on a chair that is directly in front of the table. In addition, Judge John Collins of Pima County, unlike other juvenile judges, does not wear a black robe while on the bench.

The adjudication hearing is started in much the same manner as a criminal trial, with both sides announcing that they are ready to proceed. It is at this point that the informality of the proceedings becomes apparent. Both sides object less frequently than would be expected in a criminal trial, and questioning proceeds in a conversational manner. Closing arguments are less emotional, and consume less time. The judgment of the court is usually announced immediately after the close of the case, and disposition is then set for a later date. In Cochise County, however, the disposition hearing is usually held immediately after a finding of delinquency or incorrigibility, by request of the parties.[120]

The actual amount of informality varied from case to case, however, depending upon the seriousness of the allegation against the minor, and whether a court reporter was present. For example, at a transfer hearing where the allegation was first degree murder and a reporter was present, the atmosphere was very formal. The presence of retained counsel rather than the public defender also seemed to increase the formality of the proceeding. In Pima and Maricopa counties, a reporter was always available if the parties requested that the hearing be transcribed. In Cochise County, the court kept a tape recording of the hearings for later transcription if the parties desired.

1. *The Right to Counsel*

The right to be represented by counsel is crucial for both adults and juveniles. "The assistance of counsel is often a requisite to the very existence of a fair trial,"[121] and, indeed, without counsel a trial may never be held if a defendant, lacking skill in the law, succumbs to the pressure to plead guilty.[122] The right to counsel at adjudica-

120. Interview with the Hon. Anthony Deddens, *supra* note 37.
121. Argersinger v. Hamlin, 407 U.S. 25, 31 (1972).
122. Powell v. Alabama, 287 U.S. 45, 68-69 (1933); *see* Canon & Kolsom, *Rural Compliance With Gault: Kentucky, A Case Study*, 10 J. FAMILY L. 300, 314 (1970).

tion hearings was recognized in *Gault*;[123] by statute, the right now applies at all Arizona juvenile proceedings.[124]

The right to counsel must be explained to the child and his parents at every court appearance.[125] The rule works well, however, only when the juvenile has a court appearance prior to this adjudication hearing. Delaying explanation of the right to counsel until a contested hearing would be too late. The presence of counsel may have a bearing on a juvenile's decision whether to admit the allegations, and thus on whether or not there will be a hearing. In Cochise County, the probation staff has a policy of avoiding court proceedings[126] and generally does not explain to the minor his right to counsel.[127] However, it was observed that, should a juvenile reach the adjudication hearing in Cochise County, the juvenile judge does explain the right to counsel, the right to cross-examination, and the right to compulsory service of process, all in great detail. In Pima County, the right to counsel is not explained to the child unless he wishes to contest the petition.[128] In Maricopa County, unlike Pima and Cochise counties, every child receives an advisory hearing at which his right to counsel is explained.[129] If the right to counsel is to be effectively implemented, it must be uniformly explained well before the adjudicatory hearing; the *Juvenile Rules* should be amended to reflect this need.

2. *The Uncontested Hearing*

Since bypassing the contested hearing waives rights guaranteed by *Gault*,[130] it is important to examine the procedure involved in

123. 387 U.S. at 34-42.

124. ARIZ REV. STAT. ANN. § 8-225(A) (1974).

125. ARIZ. R.P. JUV. CT. 6(b). *See* section II, "Detention," *supra*, at 279.

A waiver of the right to counsel requires that the court find that the waiver is "knowingly, intelligently and voluntarily given in view of [the juvenile's] age, education, [and] apparent maturity," and must be made in the presence of his parents. ARIZ. R.P. JUV. CT. 6(c). Texas provides for a nonwaivable right to counsel, TEX. FAM. CODE §§ 51.09-51.10 (1973), as does the LEGISLATIVE GUIDE, *supra* note 9, § 25. *Contra*, People v. Richardson, 43 Ill. 2d 318, 253 N.E.2d 420 (1969); Commonwealth v. Moore, 400 Pa. 86, 270 A.2d 200 (1970). On waiver of counsel at a plea acceptance, see *In re* S., 29 N.Y.2d 206, 275 N.E.2d 577, 325 N.Y.S.2d 921 (1971) (waiver must be intelligently given). A plea taken when there is no waiver is invalid. *In re* Butterfield, 253 Cal. App. 2d 794, 61 Cal. Rptr. 874 (Ct. App. 1967); *see In re* W., 29 App. Div. 2d 873, 288 N.Y.S.2d 380 (1968).

126. Interview with Donald T. Orr, *supra* note 109.

In Maricopa County, the child, whether detained or not, learns of his rights at the advisory hearing. *See* section II, "Detention," *supra*, at 277-79. In Pima and Cochise counties no such hearing is held for children not in detention. Thus, a child might never learn of his rights.

127. This tendency, observed by participants in this project, is discussed elsewhere. *See* section I, "Intake," *supra*, at 262 n.136.

128. Interview with Karen Zizmor, *supra* note 26.

129. *See* note 126 *supra*.

130. These include the right to cross-examination, confrontation, and counsel. 387 U.S. at 34-57.

such a waiver. In *Boykin v. Alabama*,[131] the United States Supreme Court concluded that before a guilty plea is acccepted an accused must have "a full understanding of what the plea connotes and of its consequence."[132] In Arizona, however, the *Juvenile Rules* require only that the child be advised of the privilege against self-incrimination, the right to compulsory service of process to obtain favorable witnesses, and the right to a contested hearing.[133]

Since *Boykin* was based on the due process clause, which clearly applies to juveniles,[134] a similar standard should apply in juvenile court.[135] Indeed, admissions should be monitored even more closely than guilty pleas in adult court, on the theory that minors find it harder to fully comprehend the importance of an admission due to their reduced age, education, and maturity.[136] Before accepting a "guilty plea," the judge should address the child personally[137] and make sure the juvenile understands the nature of the charges, the possible disposition, the constitutional rights he foregoes by admitting the charges, and his right to deny the charges. In addition, the court should be satisfied that the juvenile wishes to waive these rights, that the admission is voluntary, and that there is a factual basis for the admission.[138]

The observed practice of Arizona juvenile court judges in taking admissions varied. In Pima County, the juvenile judge spent 15-20 minutes personally addressing the child. The judges in Maricopa County spent only about 5 minutes, but covered all of the essential *Boykin* points, including determination of a factual basis. In Cochise County, however, after advising the parents of the child that he had a right to counsel, a right to remain silent, a right to a hearing, and a right to call witnesses in his behalf, the judge merely asked the parents if they felt that this was the "right thing" to do.

131. 395 U.S. 238 (1969).

132. *Id.* at 244; *see* State v. Darling, 109 Ariz. 148, 151, 506 P.2d 1042, 1045 (1973). This standard is now embodied in the new criminal rules. ARIZ. R. CRIM. P. 17.2, 17.3. *See* Note, *supra* note 65, at 198-99.

133. ARIZ. R.P. JUV. CT. 6(d). The rule establishes no standards for waiver of these rights.

134. *In re* Gault, 387 U.S. 1 (1967).

135. Two states, in fact, have so held. *In re* M., 11 Cal. App. 3d 741, 96 Cal. Rptr. 887 (Ct. App. 1970); State *ex rel.* Juvenile Dep't v. Welch, 501 P.2d 991 (Ore. App. 1972), *modified on rehearing*, 507 P.2d 401 (1973). *See also In re* Juvenile Action No. J-72804, 18 Ariz. App. 560, 564-65, 504 P.2d 501, 505-06 (1972) (leaving open the question whether *Boykin* applies to an adjudicatory hearing).

136. Boches, *Juvenile Justice in California: A Re-Evaluation*, 19 HASTINGS L.J. 47, 87 (1967).

137. *See In re* M.G.S., 267 Cal. App. 2d 329, 338-39, 72 Cal. Rptr. 808, 813 (Ct. App. 1968).

138. *Cf.* ARIZ. R. CRIM. P. 17.2, 17.3. *See also* TEX. FAM. CODE § 51.09 (1973) (requiring a written, voluntary, personal waiver in the presence of counsel, after explanation of the rights waived and the possible consequences of waiver); Note, *supra* note 64, at 199.

Referees, who handle most uncontested hearings in all three counties, also have the authority to accept admissions.[139] Here again, observed practices varied from referee to referee, some tending to be more complete than others.[140] This underscores the necessity for a uniform rule of practice regarding the taking of admissions.

Full implementation of *Boykin* in juvenile courts would have several positive effects. Determination of a factual basis may compensate somewhat for a lack of counsel. For example, in an uncontested hearing in Tucson, the referee asked the minor if he were admitting to the allegations because they were true. The minor's answer suggested that he thought he was admitting to doing the act in self-defense, at which point the referee suggested that a contested hearing be held and that counsel be appointed. The questioning must not be mechanical, however. In one instance in Phoenix, a referee asked if the child were admitting because the allegation was true. The child's answer suggested that he had a defense of duress, but the referee, who was a Phoenix attorney, ignored the answer and adjudicated the child delinquent.

As in criminal court, once the admission is received the rights to cross-examination, confrontation, and a speedy hearing are lost. The increased formality occasioned by *Boykin* procedures is overshadowed by the benefit of ensuring that the child is waiving these fundamental rights with the same understanding as his adult counterpart.

3. *The Right to a "Speedier" Hearing*

The right to a speedy trial is guaranteed by the United States Constitution[141] and is enforceable against the states.[142] Not only does it decrease the danger of loss of evidence through long delay, but it also minimizes the length of pretrial detention, with its destructive effect on human character.[143] The same considerations apply in juvenile proceedings—perhaps even more forcefully, given the law's

139. ARIZ. REV. STAT. ANN. § 8-231 (1974). On the concept of using referees, see Gough, *Referees in California's Juvenile Courts: A Study in Sub-Judicial Adjudication*, 19 HASTINGS L.J. 3 (1967).

140. Some referees were very complete, while others tended to minimize the questioning. One referee in Phoenix merely asked the child's attorney if there were "grounds to believe that the charges are true," and then proceeded to adjudication. Often questioning lasted less than a minute.

141. U.S. CONST. amend. VI.

142. Klopfer v. North Carolina, 386 U.S. 213 (1967). The right cannot be expressed in a set number of days; rather, prejudice to the defendant occasioned by the delay must be balanced against the exigencies of the situation. Barker v. Wingo, 407 U.S. 514 (1972).

143. Moore v. Arizona, 414 U.S. 25, 27-28 (1973); Barker v. Wingo, 407 U.S. 514, 520 (1972). If violated the only remedy is dismissal. Strunk v. United States, 412 U.S. 434, 440 (1973).

assumption that youthful minds are more malleable than adults.[144] Courts considering the question have uniformly held that the right to a speedy hearing is applicable in juvenile proceedings.[145]

Time is of the essence in juvenile proceedings.[146] If the effect of the child's acts are not felt until many months after the incident, association between punishment and act may be attenuated, damaging chances for rehabilitation.[147] The problem is even more acute for minors who are detained to await their hearings; not only are they missing school,[148] but they are also exposed to the corrupting environment of the detention center.[149] To the extent that it avoided these problems, the pre-*Gault* practice of holding a hearing soon after the petition was filed was admirable. In the post-*Gault* purging of procedural defects, the juvenile justice system generally gives minors the same speedy hearing rights as adults, without taking into account the special needs of and burdens on young defendants. For this reason, it has been suggested that juveniles should have a right not merely to a speedy hearing, but to a *speedier* hearing than an adult receives.[150] Such a right has been recognized in Texas, where a child in detention must be tried within 10 days after the petition is filed.[151]

In Arizona, an adult criminal defendant in custody must be tried within 90 days of his initial appearance or 60 days of his arraignment, whichever is sooner.[152] In Maricopa County, adjudication hearings for children, whether or not in detention, are set for 2

144. On the corrosive effect of prehearing detention, *see* section II, "Detention," *supra*, at 285-87. On the benefits of speedy trials in general, *see* Note, *supra* note 64, at 168-71.

145. *See* Piland v. Juvenile Court, 85 Nev. 489, 457 P.2d 523 (1969); State v. Henry, 78 N.M. 573, 434 P.2d 692 (1967); *cf.* Cooley v. Stone, 414 F.2d 1213 (D.C. Cir. 1969); *In re* White, 61 Misc. 2d 662, 306 N.Y.S.2d 329 (Dutchess County Fam. Ct. 1969).

Upholding convictions by relying on a lack of observable prejudice resulting from the delay, *State v. Henry*, *supra*; *In re White*, *supra*, is no longer good law, since prejudice may be manifested in subtle ways. *See* Moore v. Arizona, 414 U.S. 25 (1973); Strunk v. United States, 412 U.S. 439 (1973).

146. *See* ARIZ. R.P. JUV. CT. 24(c).

147. *See* section II, "Detention," *supra*, at 285-87.

148. Some schooling is given in Maricopa County, but it is up to the child to attend. The other counties should give instruction by law, but do not. *See* section II, "Detention," *supra*, at 286-87.

149. *Id.* at 285-87; Forer, *A Children and Youth Court: A Modest Proposal*, 4 COLUM. HUMAN RIGHTS L. REV. 337 (1972).

150. See Forer, *supra* note 149, at 343-44, 361-62, suggesting limits of 10 days for children in detention, 60 days for all others; *see* LEGISLATIVE GUIDE, *supra* note 9, § 17 (a) (10 days if in custody).

151. TEX. FAM. CODE § 53.05(b)(1) (1973). No time limit for adult defendants is specified in Texas. TEXAS CODE CRIM. PRO. art. 1.05 (1966). *See* SUGGESTED GUIDELINES, *supra* note 10, rule 12; UNIFORM JUVENILE COURT ACT § 12(a).

152. ARIZ. R. CRIM. P. 8.2(b). If this period passes, the defendant must be released, and if a trial does not begin within the next 30 days, the case must be dismissed with prejudice. *See* Note, *supra* note 64, at 170.

months after arrest.[153] In Cochise County, children in detention must wait 30 to 45 days, and 2 months if they are not detained.[154] Under former practice, Pima County hearings were supposed to be scheduled within 30 days, but this standard was generally ignored if the child was not in detention.[155] An investigation of the Pima County Juvenile Court Center in early 1974 revealed that some petitions had remained unadjusted and not scheduled for a hearing for as long as 6 months.[156] Under the new Pima County local rules a hearing must be held within 15 days if the juvenile is in detention, or within 30 days if he is not in detention.[157] This is far more desirable than the long periods found in Maricopa and Cochise counties for it assures a swift determination and disposition, without being so short as to prohibit adequate preparation for the hearing. Although judged by adult standards the children in Maricopa and Cochise counties are not generally deprived of a speedy hearing, they are clearly not receiving a "speedier" hearing.[158]

4. *The Right to Public Scrutiny*

Justice Brennan, concurring in *McKeiver v. Pennsylvania*,[159] contended that juveniles like adults have the right to protect themselves against possible oppression by "exposing improper judicial behavior to public view, and obtaining . . . executive redress through the medium

153. Interview with Richard Rice, *supra* note 26 (and by observation).
154. Interview with Dushan Vlahovich, *supra* note 74.
155. Interview with Mary Wilson, Calendar Clerk, Pima County Juvenile Court Center, in Tucson, Feb. 26, 1974.
156. *See* Report to the Hon. Jack D.H. Hays, Chief Justice, Supreme Court of Arizona, by the Hon. Ben C. Birdsall, Presiding Judge, Pima County Superior Court, on the Investigation of the Pima County Juvenile Court Center, Feb. 5, 1974 [hereinafter cited as Birdsall Report]. This report is set out in App. A, *infra*, at 415-31.
This period was used as a type of informal probation. See note 61 *supra*.
157. PIMA COUNTY [ARIZ.] LOCAL R.P. JUV. CT. 5. It is too soon to tell if the rule will be followed generally, but indications are that it will be. Interview with Karen Zizmor, Ass't Public Defender, Pima County Juvenile Court Center, in Tucson, Mar. 22, 1974.
158. The right to a speedy trial would apply only from the time of detention or the filing of the petition. *Cf.* United States v. Marion, 404 U.S. 307 (1971); State v. Mendoza, 109 Ariz. 445, 511 P.2d 527 (1973) (date of filing complaint or date of indictment). In Pima County, there is a 30-day limit between filing of a complaint and filing of a petition. PIMA COUNTY [ARIZ.] LOCAL R.P. JUV. CT. 4. The only remedy for delay prior to detention or filing is the procedural defense of the statute of limitations. There may be reasons for suspending the limitation period once a juvenile charge is filed. *See* CAL. WELF. & INST'NS CODE § 605 (West 1972) (tolling the statute of limitations while a juvenile case is litigated). The rationale behind such a provision is a theory of exclusive jurisdiction, for the adult court is holding its rights in abeyance while the juvenile court acts. *See* ARIZ. CONST. art. 6, § 15; section III, "Jurisdiction and Waiver," *supra*, at 296 n.16. Upon release from the juvenile court, the double jeopardy issue and not the statute of limitations, becomes important. See *Id.* There is however, no reason not to allow the statute of limitations as a defense to the juvenile charge in the juvenile court. The child has the same interests in this regard as would an adult. *In re* B.H., 112 N.J. Super. 1, 270 A.2d 72 (Juv. & Dom. Rel. Ct. 1970).
159. 403 U.S. 528, 553 (1971) (Brennan, J., concurring in part).

of public indignation."[160] This protection could be achieved, Brennan concluded, through either a public trial or a jury trial.

a. *Public Trials.*[161] As originally conceived, juvenile court proceedings were to be conducted under a shroud of privacy "to hide youthful errors from the full gaze of the public and bury them in the graveyard of the forgotten past."[162] The privacy was achieved by statutes that banned publication of the juvenile's names, and barred the public from inspecting court records, a practice condoned in *Gault.*[163] *Gault* did not, however, reach the alternate question of what happens if the child does not want such anonymity. Today, courts and legislatures are asking whether the state may close juvenile proceedings, and whether the juvenile may override the state's wishes by demanding an open hearing if the state wishes it closed, or a closed hearing if the state wishes it open.

The right to a public trial—that is, the right to demand an open trial and inspection of records if the state wishes it closed—is guaranteed to adults in both state and federal court.[164] Some courts have read *Gault* to hold that a public hearing is not available as of right to juveniles.[165] Commentators[166] and one court[167] have disagreed, and this seems the better reasoned position. The juvenile should, as Justice Brennan has noted, have the right to focus "public attention upon the facts of his trial, exposing improper judicial behavior to public view."[168] Such publicity would have the "virtue of

160. *Id.* at 555.

161. *See generally* NATIONAL COUNCIL ON CRIME AND DELINQUENCY, GUIDE FOR JUVENILE COURT JUDGES ON NEWS MEDIA RELATIONS (1965) [hereinafter cited as NEWS MEDIA GUIDE]; Geis, *Publication of the Names of Juvenile Felons,* 23 MONTANA L. REV. 141 (1962); Geis, *Publicity and Juvenile Court Proceedings,* 30 ROCKY MT. L. REV. 101 (1958); Parker, *Instant Maturation for the Post-Gault "Hood,"* 4 FAMILY L.Q. 113, 128 (1970); Note, *Minnesota Juvenile Court Rules: Brightening One World for Juveniles,* 54 MINN. L. REV. 303, 324 (1969); Comment, *Criminal Offenders in the Juvenile Court: More Brickbats and Another Proposal,* 114 U. PA. L. REV. 1171, 1185-86 (1966).

162. State v. Guerrero, 58 Ariz. 421, 430, 120 P.2d 798, 802 (1942); *see* 6 J. WIGMORE, EVIDENCE ¶ 1835, at 340 (4th ed. 1940).

163. In re Gault, 387 U.S. 1, 25 (1967).

164. U.S. CONST. amend. VI; *In re* Oliver, 333 U.S. 257, 271-72 (1948).

165. Robinson v. State, 227 Ga. 140, 179 S.E.2d 248 (1971); *In re* Burrus, 275 N.C. 517, 169 S.E.2d 879 (1969), *aff'd on other grounds,* 403 U.S. 528 (1971); *accord, In re* Whichard, 8 N.C. App. 154, 174 S.E.2d 281 (1970); *see* Virgin Islands v. Brodhurst, 285 F. Supp. 831 (D.V.I. 1968). North Carolina now has a statute similar to ARIZ. R.P. JUV. CT. 19. Under N.C. GEN. STAT. § 7A-285 (1969), it has been held not to be an abuse of discretion to allow a reporter to attend the hearing. *In re* Potts, 14 N.C. App. 387, 392, 188 S.E.2d 643, 646 (1972).

166. *See* NEWS MEDIA GUIDE, *supra* note 161; Forer, *supra* note 149, at 343, 356; Parker, *supra* note 161, at 119-20; Note, *Juvenile Delinquents: The Police, State Courts, and Individualized Justice,* 79 HARV. L. REV. 775, 794 (1966) [hereinafter cited as Note, *Juvenile Delinquents*]; Note, *The Constitution and Juvenile Delinquents,* 32 MONT. L. REV. 307, 317 (1971).

167. RLR v. State, 487 P.2d 27 (Alas. 1971).

168. McKeiver v. United States, 403 U.S. 528, 555 (1971) (Brennan, J., concurring in part).

improving the community's understanding of juvenile courts; at the same time, the court [would have] the benefit of the observations and comments of an objective outsider."[169]

A companion question is whether a child has a right to privacy —whether he may demand closed hearings and records if the state wishes it open. Until the 1950's, the records of juvenile proceedings in Arizona were kept secret, and the names of juveniles could not be disclosed.[170] This, in effect, gave the juvenile a right to privacy and barred public scrutiny of the juvenile process. The "right" was not vested, however. After a vigorous editorial campaign by the Phoenix newspapers,[171] asserting that Arizona's statute allowing such a right of privacy encouraged delinquency, the Arizona legislature repealed the statute in 1957.[172]

More recently, however, the Supreme Court of Arizona promulgated *Juvenile Rule* 19,[173] which provides that "[i]n any hearing pursuant to these rules, the general public may be excluded and only such persons admitted as have a direct interest in the case."[174] The only difference between this rule and the old statute is that the new rule applies only to attendance at the hearing and not to publication of records or names. The juvenile court does not have the power, therefore, to regulate such publication. The rule seems to strike a balance between the intent of the legislature and the discretion of the court; apparently, the court may decide who may attend the hearing, but no more.[175]

169. Note, *Juvenile Delinquents, supra* note 166, at 794.

170. Ch. 22, § 1, [1957] Ariz. Sess. Laws 20, *repealing* Ch. 80, § 4, [1941] Ariz. Sess. Laws 158 (Ariz. Rev. Stat. Ann. § 8-237 (1956)).

171. *See* NEWS MEDIA GUIDE, *supra* note 161, at 13; Geis, *Publicity and Juvenile Court Proceedings*, 30 ROCKY MT. L. REV. 101, 121 (1958).

172. Ch. 22, § 1, [1957] Ariz. Sess. Laws 20, *repealing* Ch. 80, § 4, [1941] Ariz. Sess. Laws 158 (Ariz. Rev. Stat. Ann. § 8-237 (1956)). For a colorful discussion of the bill, see 1957 JOURNAL OF THE SENATE OF ARIZONA 508-10. Georgia, Texas, and Florida soon followed suit. FLA. STAT. ANN. § 39.09(1)(b) (1974); Ch. 246, § 1, [1957] Ga. Laws 307; Ch. 492, § 2, [1969] Tex. Laws 1598. Texas and Georgia now have reversed their positions. GA. CODE ANN. § 24A-1801 (Supp. 1973); TEX. FAM. CODE § 54.08 (1973). Only one reported case has supported the view that the legislature may require a public trial. *In re* Jones, 46 Ill. 2d 506, 263 N.E.2d 863 (1970).

A different tack was taken in Johnson v. Simpson, 433 S.W.2d 644, 647 (Ky. 1968). Construing an exclusion statute, the court held on equal protection grounds that, once some of the general public was let in, the court could not exclude other portions of the general public.

173. ARIZ. R.P. JUV. CT. 19.

174. The Arizona supreme court may create rules that regulate procedure and overrule statutes. *See* ARIZ. CONST. art. 6, § 5(5); ARIZ. STAT. ANN. § 12-111 (1956); ARIZ. R. CRIM. P. 11.1, Comment.

175. The model acts, after which the rule is patterned, use "shall" instead of "may" when referring to exclusion. *See* STANDARD JUVENILE COURT ACT, *supra* note 9, § 19; UNIFORM JUVENILE COURT ACT § 24(d). *See also* TEX. FAM. CODE § 54.08 (1973) (using language similar to Arizona's). This semantic change switches a presumption. Under the model acts, the hearing is presumed to be closed unless certain conditions are met, while under rule 19 the hearing is presumed to be open unless certain conditions are met.

Juvenile judges in the counties studied generally maintained open courtrooms, rarely invoking their exclusionary power under rule 19. In Cochise County, no one is ever excluded, except in sexual offense cases involving young girls. In Maricopa County also, the courts are open to the public. Pima County Judge John Collins was receptive to having the public attend his hearings and to inspect the court files, but issued a court order to allow inspection of the records by the project members, since the court clerk would not allow inspection of juvenile records without such an order. One Pima County judge[176] had a policy of closing the hearing if the child so requested; other judges, however, would not close a hearing merely upon request.

The action of the legislature in repealing the statutory provision banning publication of records, and the discretion given to the juvenile judge by rule 19, would indicate that a judge would not have to close a hearing merely because the minor requested that it be closed. On the other hand, the legislative intent of having open records and the constitutional mandate of open trials for adults would indicate that it would be an abuse of discretion not to grant a request by the minor for an open hearing, unless circumstances clearly compelled a closed hearing, for example, a case involving a sexual assault on a young child.

This, in general, was what was observed in practice. Maintaining open courtrooms is the first step toward greater community involvement in the juvenile system that can only help to better the juvenile court. A shroud of secrecy around the court and its business may lead to incorrect assumptions by the general public as to the functioning of the court. This was shown to be true when in late 1973 a Tucson newspaper[177] conducted a vigorous editorial campaign condemning the Pima County Juvenile Court Center, making charges[178] that were later shown to be misfounded.[179]

176. The Hon. Alice Truman, Pima County Superior Court Judge, sitting as a temporary juvenile court judge, felt that if the child wished the proceedings to be closed, she would comply. At a hearing attended by project members the child stated, "I don't look at your troubles, why do you look at mine?", whereupon Judge Truman asked the project members to leave. A similar incident in Phoenix reached an opposite resolution.

177. *Tucson Daily Citizen.*

178. The charges included: that juveniles were being detained for long periods of time to the detriment of the security of the center; that policy changes permitting the boys and girls to eat together and to participate in certain recreational activities together had created problems resulting in sexual misbehavior; that narcotics and liquor had been used by juveniles in the detention center; and, that there was a general lack of security. *See, e.g.*, Tucson Daily Citizen, Oct. 2, 1973, at 22, col. 1. The charges grew out of a major disturbance involving both boys and girls on September 24, 1973, and are discussed in the Birdsall Report. App. A, *infra*, at 415-16.

179. *See* App. A, *infra*, at 418-21.

b. *Jury Trials.* The second aspect of the right to public scrutiny arguably is the right to a jury trial. In *McKeiver v. Pennsylvania*,[180] however, the Supreme Court held that a juvenile has no constitutional right to a jury trial under any circumstances. The plurality opinion based this conclusion on a number of arguments, including the belief that jury trials would end the informal nature of juvenile procedings, bringing delays, rigidity, and public trials.[181] The Court also was influenced by the absence of any recommendation of jury trials in the model acts, by its prior decisions that held that a jury is not necessary to every part of the criminal process, and by the great majority of state cases and statutes which had denied juries to juveniles.[182] Finally, the Court noted that juries do not necessarily strengthen the factfinding function.[183]

The entire question of the availability of jury trials in juvenile court is perhaps of academic rather than practical interest; it appears that in those states where jury trials are in fact available for juveniles, the right is seldom exercised.[184] Despite this fact, the fear of an overburdened calendar due to the jury trials seems to be the primary objection expressed by those interviewed.[185] In addition, one juvenile court judge indicated that he felt that the use of juries would work against the best interests of the child.[186] He believed that the biases and sympathies which influence jury determinations would be exaggerated in juvenile proceedings, and that a "Perry Mason Syndrome" would then pervade the juvenile court, giving the child the impression that all that he needed to get off was a good "mouthpiece."

The absence of a jury thus makes the juvenile hearing very similar to nonjury civil or criminal trials. Once the jury is removed the

180. 403 U.S. 528 (1971).

181. The discussion relating to public trials was only part of the reasoning employed in the plurality decision. As such, it is not a holding of the case. *Id.* at 550.

182. *Id.* at 545-50.

183. *Id.* at 547. For extended analysis of *McKeiver*, see Ketcham, *McKeiver v. Pennsylvania: The Last Word on Juvenile Court Adjudications?*, 57 CORNELL L. REV. 561 (1972); Comment, *Juries for Juveniles: A Rehabilitative Tool*, 11 J. FAMILY L. 107 (1971); 85 HARV. L. REV. 113 (1971); 70 MICH. L. REV. 171 (1971); 56 MINN. L. REV. 249 (1971). *But see* RLR v. State, 487 P.2d 27 (Alas. 1971) (rejecting the reasoning later used in *McKeiver*).

The most important ramification of the absence of juries in the juvenile court is a relaxation of the rules of evidence. The phenomenon is not peculiar to the juvenile court, however, for a relaxation also occurs in adult criminal cases tried before a judge without a jury. See text accompanying notes 218-19 *infra*.

184. *See* McKeiver v. Pennsylvania, 403 U.S. 528, 561 (Douglas, J., dissenting); Note, *Juvenile Delinquents*, *supra* note 166, at 793-94.

185. Interview with the Hon. Anthony Deddens, *supra* note 37; interview with Greg Jernigan, *supra* note 41; interview with Palmer Schumacher, *supra* note 41; interview with the Hon. Gerald Strick, *supra* note 41; interview with Robert Yount, referee, Maricopa County Juvenile Court, in Phoenix, Jan. 11, 1974.

186. Interview with the Hon. Gerald Strick, *supra* note 41.

only real differences between civil and criminal trials are the rules of evidence and the burden of proof.

5. *Burden of Proof*

Two issues which are central to the conduct and outcome of the contested hearing are the quantum of proof necessary to adjudicate a child delinquent or incorrigible and the rules of evidence to be followed. Both issues have long remained unsettled in juvenile law. Historically, the "civil" label on juvenile proceedings suggested a "preponderance of the evidence" standard,[187] and the informal nature of the hearing resulted in lax or nonexistent evidentiary standards.[188] Such results are today giving way to more realistic standards.

The burden of proof issue was settled in *In re Winship*,[189] in which the United States Supreme Court held that the facts proving delinquency must be proved beyond a reasonable doubt.[190] The *Winship* standard has been incorporated into the Arizona rules,[191] but its presence in the court rule does not necessarily mean that it is used in the courtroom. Some attorneys interviewed suggested that the standard undergoes a de facto relaxation when the judge has been on the juvenile bench for more than a year. They blame this tendency on the pressure to place the child in the juvenile court program.[192] The pressure occurs when the judge begins to view the adjudication hearing as merely a part of the paternalistic function of the court and not as a device for ascertaining the truth of the allegations. One juvenile judge stated that he has recognized the existence of this pressure and makes a conscious effort to avoid it.[193]

The adjudication hearing is no longer distinguishable from a nonjury adult trial, at least as observed by the project. The pressure to adjudicate a child delinquent or incorrigible merely to place him in the court programs can therefore be avoided by holding all adjudication hearings before a superior court judge whose caseload is not

187. *In re* Winship, 397 U.S. 358, 365 (1970).
188. Note, *Juvenile Delinquents, supra* note 166, at 794-95.
189. 397 U.S. 358 (1970).
190. *Id.* at 368. As in adult court, each element of the crime must be shown beyond a reasonable doubt. *In re* Unsworth, 276 So. 2d 337 (La. App. 1973); *In re* Ogletree, 244 So. 2d 288 (La. App. 1971). While it is true that *Winship* dealt only with delinquents and an overtechnical court could thereby deny the *Winship* holding to those accused of incorrigibility, *see In re* Henderson, 199 N.W.2d 111, 121 (Iowa 1972), the better view is that both delinquency and incorrigibility must be proved beyond a reasonable doubt. *In re* E., 68 Misc. 2d 487, 327 N.Y.S.2d 84 (Suffolk County Fam. Ct. 1971). This is the position taken in ARIZ. R.P. JUV. CT. 17.
191. ARIZ. R.P. JUV. CT. 17(a)(1).
192. Interview with Richard Rice, *supra* note 26; interview with James Sult, Ass't Public Defender, Pima County, in Tucson, Oct. 18, 1973; interview with Karen Zizmor, *supra* note 26.
193. Interview with the Hon. Gerald Strick, *supra* note 41.

limited to juvenile cases. The expertise that comes from continual exposure to the juvenile system is really important only at the disposition stage. The wide range of possible placements available to the court in Arizona make it unlikely that a superior court judge who is unfamiliar with the juvenile court system could give adequate consideration to the best interests of a minor. Therefore, at the disposition hearing, it is very important to have a judge with expertise in the juvenile area. This raises a difficult problem. To ensure that the burden of proof is not compromised at adjudication hearings, it is advisable to rotate judges on a continual basis. On the other hand, to ensure expertise, it also is advisable to have one judge do all dispositions. The desirability of having the same judge hear the case and render disposition, however, makes the two practices incompatible. It is generally felt that the judge who presided at the trial should impose the sentence unless there are compelling reasons in a specific case to do otherwise.[194] This avoids the need for the sentencing judge to familiarize himself with the facts of the case. Additionally, the opportunity to observe the defendant can often provide insights into an appropriate disposition.[195] The same would hold true in the juvenile system. The only way to accommodate both goals and effectuate a compromise would be to place a mandatory limit on the length of time any judge could sit as a juvenile judge.[196]

6. *Rules of Evidence*

One issue that has not been settled by the United States Sureme Court is the question of what rules of evidence apply in juvenile proceedings. The controversy usually centers on the applicability of the hearsay rule, but there are additional points of contention.[197] One is whether to apply civil or criminal evidence law in juvenile court.[198] While a general choice would seem to be within the discre-

194. AMERICAN BAR ASSOCIATION PROJECT ON MINIMUM STANDARDS FOR CRIMINAL JUSTICE, STANDARDS RELATING TO SENTENCING ALTERNATIVES AND PROCEDURES § 5.1, at 232-33 (Approved Draft, 1968).

195. *Id.* at 232.

196. At present, there is supposed to be a rotating assignment of judges to the juvenile court, for one year terms. ARIZ. REV. STAT. ANN. § 8-202(E) (1974). If this were followed the suggested result would be effectuated. In practice, however, judges are reappointed for succeeding terms. Recent examples are Judge John Collins in Pima County and Judges Gerald Strick and Robert Broomfield of Maricopa County. Judge Collins is now in his second year, and Judges Strick and Broomfield are in their third year.

197. *See* S. FOX, *supra* note 58, at 689-90; B. GEORGE, GAULT AND THE JUVENILE COURT REVOLUTION 54-57 (1968); Harpst, *Evidence Problems in Juvenile Delinquency Proceedings*, 11 CLEV.-MAR. L. REV. 486 (1962); Note, *Admission and Use of Evidence in the California Juvenile Courts*, 18 HASTINGS L.J. 668 (1967).

198. Most statutes and model acts that raise the point opt for the civil rules. *See, e.g.*, TEX. FAM. CODE § 54.03(d) (1973); MODEL RULES, *supra* note 10, rule 25; SUGGESTED GUIDELINES, *supra* note 10, rule 20(7).

tion of the legislature, criminal rules that are of constitutional character[199] or that improve the factfinding function of the court, such as the requirements that accomplice testimony and confessions be corroborated,[200] should be adopted. Juveniles should be entitled to the same accuracy in factfinding as obtains in criminal court. It is also possible that new rules, found in neither civil nor criminal court, might be developed for juvenile proceedings. In California, for example, the marital communications privilege is not available in juvenile proceedings, either as to parental testimony or as to the testimony of the juvenile's spouse.[201] Another possibility is the abolition of the rule that failure to make a timely objection to evidence waives the objection if the child is not represented by counsel.[202]

Confessions in Arizona juvenile courts are governed by *Juvenile Rule 18*.[203] The rule effectively makes the holding of *Miranda v. Arizona*[204] applicable to the juvenile court by requiring that the *Miranda* warnings have been given to the child before any out of court statement is offered in evidence.[205] It is important to note that under rule 18 failure to give the proper warnings will not prevent the confession from being admitted in evidence unless an objection is made to its introduction. This obviously places a premium on the presence of counsel and penalizes the minor who is unrepresented. Under rule 18, introduction of a confession obtained in violation of *Miranda* would not be fundamental error, since the language of the

199. This might include all of the exclusionary rules. *See* ARIZ. R.P. JUV. CT. 18; UNIFORM JUVENILE COURT ACT § 27(b); S. FOX, *supra* note 58, at 439; Altman, *Effect of the Miranda Case on Confessions in the Juvenile Court*, 5 AM. CRIM. L.Q. 79 (1967); Comment, *The Applicability of the Fourth Amendment Exclusionary Rule to Juveniles in Delinquency Proceedings*, 4 COLUM. HUMAN RIGHTS L. REV. 417 (1972); Comment, *Juvenile Rights Under the Fourth Amendment*, 11 J. FAMILY L. 753 (1972); Note, *Admissibility of Confessions Obtained In Violation of the Juvenile Code*, 1967 WASH. U.L.Q. 112.

200. *See* Thomas v. United States, 370 F.2d 261 (9th Cir. 1967); *In re* R., 274 Cal. App. 2d 806, 79 Cal. Rptr. 247 (Ct. App. 1969); *In re* B., 30 App. Div. 2d 442, 293 N.Y.S.2d 946 (1968); UNIFORM JUVENILE COURT ACT § 27(b); Note, *Juvenile Delinquents*, *supra* note 166, at 795. *See generally* S. FOX, *supra* note 58, at 689; Margolis, *Corpus Delicti: State of the Disunion*, 2 SUFFOLK L. REV. 44 (1968); Note, *Proof of the Corpus Delicti Aliunde the Defendant's Confession*, 103 U. PA. L. REV. 638 (1955).

201. CAL. EVID. CODE § 986 (West 1966).

202. *See* CAL. WELF. & INST'NS CODE § 701 (West 1972).

203. No extra-judicial statement to a peace officer or court officer by the child shall be admitted into evidence in juvenile court over objection unless the person offering the statement demonstrates to the satisfaction of the court that: The statement was voluntary and before making the statement the child was informed and intelligently comprehended that he need not make a statement, that any statement made might be used in a court proceeding, and that he had a right to consult with counsel prior to making a statement and during the taking of the statement, and that, if he or his parents, guardian or custodian could not afford an attorney, the court would appoint one for him prior to any questioning.

ARIZ. R.P. JUV. CT. 18.

204. 384 U.S. 436 (1966).

205. *See* "Pre-Interrogation Waiver of Constitutional Rights By Juveniles," 14 ARIZ. L. REV. 409, 487 (1972).

rule implies that the objection is waived if not made at the hearing. Such a rule might be less objectionable if all minors were represented by counsel at adjudication hearings; it is unjustifiable when applied to the unrepresented child. While juveniles in Arizona usually are represented by counsel at contested hearings,[206] they are unrepresented often enough[207] to justify an amendment to rule 18 requiring that the unrepresented child be advised of the necessity of raising an objection to avoid waiver under the rule.

While there is no Arizona rule governing admission of evidence seized in violation of a child's fourth amendment rights, it is common practice to entertain motions to suppress such evidence.[208] This is in accord with the weight of authority[209] and clearly is the better practice. The fourth amendment, unlike the fifth and sixth amendments, does not restrict its scope to criminal prosecutions, but speaks in terms of the right of "the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures."[210] Since juveniles are included in the collective term "people," the search and seizure clause has immediate application to the juvenile court.[211] Both the search and seizure clause and the search warrant clause are directed toward police action and not the conduct of the hearing. The mere fact that a juvenile happens to be the object of a search warrant or a search should not remove from the police the obligation to obtain a warrant upon probable cause or to search in a reasonable manner.

The role of the hearsay rule in juvenile court has been the subject of much confusion,[212] and the impact of *Gault* on this question is not entirely clear. The Arizona supreme court had held in *Gault* that hearsay of a kind "which reasonable men are accustomed to rely

206. In Pima and Maricopa counties, the persons interviewed stated that it was extremely rare to have a contested hearing without counsel. Interview with Greg Jernigan, *supra* note 41; interview with the Hon. Gerald Strick, *supra* note 41; interview with Karen Zizmor, *supra* note 26.

207. In Cochise County, it is not uncommon to have a contested hearing without counsel, although in a majority of contested cases counsel is present. Interview with the Hon. Anthony Deddens, *supra* note 37.

208. Interview with the Hon. Anthony Deddens, *supra* note 37; interview with the Hon. Gerald Strick, *supra* note 41; interview with Karen Zizmor, *supra* note 26. The Arizona supreme court has recently held that evidence seized as a result of an illegal arrest must be suppressed. *In re* Juvenile Action No. J-24818-2, 110 Ariz. 98, 102-03, 515 P.2d 600, 604-05 (1973).

209. *See, e.g., In re* Williams, 49 Misc. 2d 154, 267 N.Y.S.2d 91 (1966); State *ex rel.* L.B., 99 N.J. Super. 589, 240 A.2d 709 (Juv. & Dom. Rel. Ct. 1968); S. FOX, *supra* note 58, at 475-87.

210. U.S. CONST. amend. IV.

211. *See In re* M., 16 Cal. App. 3d 96, 93 Cal. Rptr. 679 (Ct. App. 1971).

212. *See* Cannon, *The Hearsay Rule*, 17 JUV. CT. JUDGES J. 25 (1966); Note, 39 NOTRE DAME LAWYER 341 (1964); *cf.* Brown, *The Hearsay Rule in Arizona*, 1 ARIZ. L. REV. 1 (1959).

[upon] in serious affairs" was admissible.[213] The United States Supreme Court, while not explicitly overruling the Arizona Court on this point, expressed dissatisfaction with such a rule.[214] While modern decisions have generally required that the traditional hearsay rule be applied in juvenile court,[215] the rule set forth in *Gault* is consistent with the recent trend toward allowing reliable hearsay into evidence.[216] In any event, a hearing based entirely on hearsay could not stand.[217]

In analyzing the practical application of the rules of evidence, the lack of a jury is quite important. In adult criminal and civil cases that are tried to the court, the rules of evidence are substantially relaxed.[218] It should not come as a surprise, then, that the same is true in juvenile court.[219] Indeed, certain rules of evidence become useless when the case is tried to the court. Rules regarding prejudicial evidence frequently require that the judge hear or examine the evidence before he rules on its admissibility. It is obvious, however, that once the judge is exposed to the evidence any reason for excluding it on the grounds of prejudice has become moot.

The relaxed atmosphere of the hearing should not, however, result in incorrect rulings on objections. Public defenders in Pima County charged that the juvenile court judge would allow almost any sort of hearsay to be admitted.[220] Observation by project members substantiated these charges. This should not be tolerated. Once it is determined that the hearsay rule applies in the juvenile court a single judge should not take it upon himself to enlarge the scope of an exception to the rule. If a judge wishes to hear the hearsay, however, even if it is not to be considered in his ultimate decision, he could adopt

213. *In re* Gault, 99 Ariz. 181, 192, 407 P.2d 760, 768 (1965), *rev'd on other grounds*, 387 U.S. 1 (1967).

214. 387 U.S. at 57 n.98.

215. *In re* D.C., 12 N.C. App. 33, 182 S.E.2d 9 (1971); *In re* Tsesmilles, 24 Ohio App. 2d 153, 265 N.E.2d 308 (1970).

216. MODEL CODE OF EVIDENCE rule 503; UNIFORM RULES OF EVIDENCE rule 63; Weinstein, *Probative Force of Hearsay*, 46 IA. L. REV. 331 (1961).

217. S. FOX, *supra* note 58, at 690 n.4. *See In re* Anonymous, Juvenile Court No. 6358-4, 14 Ariz. App. 466, 484 P.2d 235 (1971) (which suggests that standard evidence law must be followed when juvenile proceedings are comparable to adult proceedings, but that a hearing is not vitiated unless the determination is based entirely on incompetent evidence).

218. *See* Davis, *Hearsay in Nonjury Cases*, 83 HARV. L. REV. 1362 (1970); Note, *Improper Evidence in Nonjury Trials: Basis for Reversal?*, 79 HARV. L. REV. 407 (1965).

219. Boches, *Juvenile Justice in California: A Re-Evaluation*, 19 HASTINGS L.J. 47, 91 (1967). The lack of a jury also bears on the use of impeachment evidence in the juvenile court. See S. FOX, *supra* note 58, at 689 n.3, for cases dealing with impeachment of witnesses in juvenile court. Impeachment is rarely attempted in Arizona juvenile courts. Interview with Greg Jernigan, *supra* note 41; interview with Palmer Schumacher, *supra* note 41. *See also* State *ex rel.* A.H., 115 N.J. Super. 268, 279 A.2d 133 (App. Div. 1971) (disapproving of impeachment).

220. Interview with James Sult, *supra* note 192; interview with Karen Zizmor, *supra* note 26.

the practice used by many federal court judges. All rulings on objections to evidence are reserved until the end of the trial, at which time the judge determines whether there was enough admissible evidence presented to allow a finding of guilty.[221] This same standard, whether there was enough admissible evidence, is used to review the juvenile case on appeal.[222]

C. CONCLUSIONS AND RECOMMENDATIONS

The Arizona juvenile adjudication system has remedied many of the inadequacies exposed in *Gault*. The result has been a hearing on the merits that very closely resembles its adult counterpart. Differences remain, however. While the rights to counsel, confrontation, and cross-examination exist in both the juvenile and criminal court, the right to a jury trial does not extend to juveniles. It is presently undecided whether the juvenile has a right to a public trial, although such a right arguably exists in Arizona. The reduced age, education, and maturity of the juvenile may demand greater rights than those available in criminal court, however. These might include the yet to be resolved issues of whether the juvenile has a right to a private trial or the right to a speedier trial than an adult. Neither right appears to exist in Arizona.

The rights to counsel, cross-examination, and confrontation were found to be frustrated by a lack of procedural standards. Discovery is hampered by the lack of authorizing rules. In one county, it was also found that the probation officers neglected to inform the

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221. Davis, *supra* note 218, at 1365.

222. *In re* Anonymous, Juvenile Court No. 6358-4, 14 Ariz. App. 466, 471, 484 P.2d 235, 240 (1971). The case also held that the rules of evidence applied in juvenile court.

Another issue that bears on the rules of evidence is the applicability of the rule allowing sequestration of witnesses. One case has taken the position that the rule is available as a matter of right, because it enhances the truth finding function of the court. State *ex rel.* W.O., 100 N.J. Super. 358, 363, 242 A.2d 17, 19 (App. Div. 1968); *see In re* Brecheen, 264 So. 2d 779, 782 (La. App. 1972).

On the other hand, it has been held that the rule does not automatically apply to the juvenile court. *In re* Fletcher, 251 Md. 520, 532, 248 A.2d 364, 371 (1968), *cert. denied*, 396 U.S. 852 (1969). Even if the rule is applied, it is possible to go too far. Hopkins v. Youth Court, 227 So. 2d 282 (Miss. 1969) (exclusion of both parents forbidden). The rule is available in Arizona by ARIZ. R.P. JUV. CT. 19, which provides, *inter alia*: "The court may further excuse any party other than the child from any hearing." The only time the study members observed a parent being sequestered was while testimony was being given regarding an event about which the parent was going to testify.

The substantive defenses of insanity and infancy were available in the courts surveyed. Intent, or *mens rea*, is also required in all of the Arizona courts. *See generally* Ellison, *Family Law*, 24 SYRACUSE L. REV. 513, 516-18 (1973); Frey, *Intent in Fact, Insanity and Infancy: Elusory Concepts in the Exercise of Juvenile Court Jurisdiction*, 9 CALIF. WESTERN L. REV. 273 (1973); Popkin & Lippert, *Is There A Constitutional Right to the Insanity Defense in Juvenile Court?*, 10 J. FAMILY L. 421 (1970); 72 W. VA. L. REV. 307 (1972). For cases requiring that intent be shown, see *In re* R., 1 Cal. 3d 855, 83 Cal. Rptr. 671, 464 P.2d 127 (1970); People *ex rel.* M.B., 513 P.2d 230 (Colo. App. 1973); State *ex rel.* A.H., 115 N.J. Super. 268, 279 A.2d 133 (App. Div. 1971).

child that he has a right to counsel, and that they had a policy of avoiding court interference with the disposition of children. In the long run such disregard of procedural rights must have some effect, and vitiate to some extent, the rights guaranteed to the child by *Gault*. *Gault* and *McKeiver* focused on the scope of the juvenile's rights; it is now time for the courts to focus on how these rights are implemented.