THE JOURNAL OF CRIMINAL LAW, CRIMINOLOGY AND POLICE SCIENCE
Vol. 57, No. 2

Printed in U.S.A.

COLLATERAL ATTACK ON JUVENILE COURT DELINQUENCY DECISIONS

NORMAN M. GARLAND

The author is a practicing attorney in Washington, D. C. He is also a member of the Illinois Bar. Mr. Garland received his J.D. in 1964 from Northwestern University, where he was a member of the Legal Publications (Law Review) Board. He was a Prettyman Fellow at Georgetown University during the academic year 1964–65.—EDITOR.

The well-known and oft-pronounced philosophy of the judicial system applied to juveniles—the juvenile court—is couched in evangelical terms. That the juvenile court's purpose is to provide salvation for tender youths who tend toward crime, for whatever reason, is one of the earliest of these philosophical statements.[1] Thus the earliest thinkers, pondering the justification for treating juvenile criminal offenders differently from adults, concluded that the *parens patriae* doctrine was the legal underpinning of such a system.[2] This doctrine, that the state should offer a shield and guidance for those of tender years in need thereof, also provided the theory necessary to permit the court to treat of other family problems such as custody of children, parental miscare or misconduct, and paternity determinations.[3]

Whatever the technical justification, it is now almost beyond dispute that juveniles should be treated differently from adults in matters relating to their well-being.[4] The real dispute relates to the *degree* of differential treatment that a juvenile should receive, particularly when he is brought before the court for an antisocial act or course of conduct.[5] It is apparent that the goals of a system of juvenile court justice would be thwarted, if not completely deterred, if such a socio-quasi-judicial institution were subjected to all of the stringent common law and constitutional requirements of a traditional legal proceeding.[6] Especially thwarting are those legal rules which serve to protect a criminal-accused in the usual administration of criminal justice.[7]

The conflict between traditional rights of those

[1] See, *e.g.*, Rule v. Geddes, 23 U.S. App. D.C. 31, 48 (1904) (Reform School for Girls described as place where girls may be kept under reasonable restraint during their minority, not as punishment for crime, but for their moral and physical well-being); Commonwealth v. Fisher, 213 Pa. 48, 62 Atl. 198 (1905) (juvenile court act said not to be for punishment of offenders but for the salvation of children).

[2] See, *e.g.*, *Ex parte* Januszeuski, 196 Fed. 123 (S.D. Ohio 1911); Lindsay v. Lindsay, 257 Ill. 328, 100 N.E. 892 (1913); Farnham v. Pierce, 141 Mass. 203, 6 N.E. 830 (1886); Commonwealth v. Fisher, *supra* note 1; *In re* Johnson, 173 Wis. 571, 181 N.W. 741 (1921).

[3] See Ketcham, *The Unfulfilled Promise of the Juvenile Court*, 7 CRIME & DELINQUENCY 97, 97–100 (1961).

[4] The differential treatment of juveniles in courts of law came to this country from England, see Ketcham, *supra* note 3 at 98–99. The mere fact of the acceptance of this concept, coupled with the existence of a separate legal system of justice for the juvenile for nearly three quarters of a century indicates the acceptance of the proposition that juveniles deserve non-adult treatment in our courts.

[5] Implicit in even the most critical attacks upon the juvenile court system is the acceptance of the fundamental concept of treating juveniles differently from adults. The real bone of contention is the degree of differential treatment. Thus critics assail deprivation of particular rights of juveniles, and when too horrified by what they find, advocate abolition of the system because unable to see a satisfactory alternative. For an analysis of specific problems in the juvenile court system with a discussion of criticisms of the system see Paulsen, *Fairness to the Juvenile Offender*, 41 MINN. L. REV. 547 (1957). Professor Paulsen's approach to juvenile court shortcomings is illustrative of the approach here referred to; criticism of the system is objectively stated in specific terms without a blind cry for its abolition. Professor Paulsen states: "This article is an attempt to discover what courts can do to protect the rights of the child more adequately without sacrificing the very real benefits of our courts for children." *Id.* at 550.

[6] It is not suggested that the juvenile court system is inherently unsuited for dispensing justice in a legal or constitutional manner. Rather, it is here recognized that to achieve its goals, a juvenile court must be capable of a flexibility which would be impossible if all of the rules which confine a legal proceeding to a specific form were imposed upon a juvenile court proceeding.

[7] The rules governing a criminal proceeding are more restrictive upon the court than in other proceedings because of the desire to give the individual the greatest possible protection against the forces of the state brought to bear upon him. See Paulsen, *supra* note 5 at 561: "[the privilege against self-incrimination] is tied to the accusatorial scheme of the criminal law. It is an expression of the dignity of the accused although the collective power of the state is ranged against him." Given the juvenile court's concern for the well-being of children, such rules, if applied with the same absoluteness as in a criminal case, could be detrimental to the operation of the juvenile court system.

accused of criminal acts and the philosophy of the juvenile court system has centered about such issues as the right to trial by jury,[8] the assistance of counsel,[9] the privilege against self-incrimination,[10] the right to bail,[11] the protection against double jeopardy,[12] and the application of the strict rules of criminal evidence.[13]

In order to achieve its goals, the juvenile court required some means of overcoming these stringencies. Consequently all proceedings before the juvenile court were termed "civil," rather than "criminal."[14] This made it possible for the juvenile court to go about its business with considerable freedom. Critics have asserted, however, that merely calling juvenile court proceedings "civil" does not make them so; that certain of the traditional procedural requirements are vitally necessary in juvenile court proceedings.[15] The basic issue is a test of "due process of law."[16]

One of the many questions involved in the "due process" issue is the function of collateral attack of a juvenile court commitment upon a finding of delinquency.[17] The traditional method of collaterally questioning a loss of personal liberty is by a writ of habeas corpus. In federal jurisdictions a motion to vacate a sentence, under 28 U.S.C. §2255, is appropriate for that purpose.[18]

Generally, collateral attack of a court's decision via habeas corpus is not limited to criminal cases: such methods of collateral attack may serve in both civil and criminal cases.[19] Consequently, the juvenile court is not saved from collateral review of its decisions by merely pointing out that civil and not criminal rules apply to proceedings before it. However, habeas corpus, or the alternative Section 2255 motion, enables one invoking it to obtain independent judicial inquiry into whether the juvenile court has failed to accord fundamental constitutional rights to a child.[20] Since what is questioned is restriction of individual liberty through incarceration, the inquiring court should not find much difficulty in throwing aside the label for the proceeding which led to the incarceration.[21]

Collateral attack by habeas corpus may force a consideration of the claimed rights of a juvenile offender in a completely different context than

[8] Not all juvenile court acts deny trial by jury; *e.g.*, the Juvenile Court of the District of Columbia must provide a jury when demanded, D.C. CODE, tit. 16, § 2307 (Supp. III 1964). For a survey of cases dealing with the constitutionality of lack of jury trial in the juvenile courts see 67 A.L.R. 1082 (1930).

[9] The question whether the right to counsel exists, or should exist, in the juvenile court has engendered a great deal of comment. See, *e.g.*, Isaacs, *The Role of the Lawyer in Representing Minors in the New York Family Court*, 12 BUFFALO L. REV. 501 (1963); Paulsen, *supra* note 5 at 568–73. The present constitutional status given the right to counsel by the Supreme Court's decision in Gideon v. Wainwright, 372 U.S. 335 (1963) makes this question even more important.

[10] See Antieau, *Constitutional Rights in Juvenile Courts*, 46 CORN. L. Q. 387, 407–08 (1961).

[11] See, *e.g.*, *id.* at 393–94; Paulsen, *supra* note 5 at 532.

[12] See, *e.g.*, Antieau, *supra* note 10 at 395–98; Sheridan, *Double Jeopardy and Waiver in Juvenile Delinquency Proceedings*, 23 FED. PROB., Dec. 1959, p. 43.

[13] See, *e.g.*, Beemsterboer, *The Juvenile Court—Benevolence in Star Chamber*, J. CRIM. L., C. & P.S. 464, 473 (1960) in regard to the exclusion of hearsay, the most controversial of the rules of criminal evidence in the juvenile court setting.

[14] For an excellent discussion of the theory that juvenile court proceedings are not non-criminal in the delinquency area see Antieau, *supra* note 10 at 388–89.

[15] Professor Paulsen, for example, points out that "We cannot take away precious legal protection simply by changing names from 'criminal prosecution' to 'delinquency proceedings.'" Paulsen, *supra* note 5 at 550.

[16] Clearly a child "is entitled to due process of law whether the juvenile court administers civil or criminal justice." *Ibid.* See also Shioutakon v. District of Columbia, 114 A.2d 896, 899 (D.C. Mun. App. 1954) where a motion to vacate a juvenile court commitment was denied on the ground that the movant was afforded due process of law.

[17] Since habeas corpus has long been accepted as a proper form for attacking custody determinations of a juvenile court, that question will not be considered in this paper. Early cases settled the availability of the Writ for that purpose. See, *e.g.*, New York Foundling Hospital v. Gatti, 203 U.S. 429 (1906). Moreover the propriety of habeas corpus to determine custody has even been recognized by statute, see D.C. CODE, tit. 11, § 907 (1961).

[18] 28 U.S.C. § 2255 (1958) [hereinafter referred to in footnotes and text as Section 2255].

[19] The guaranty of the privilege of habeas corpus, U.S. CONST. art. I, § 9, cl. 2, in no way limits the Writ to detentions arising out of "criminal" proceedings. Even if different forms of the Writ exist to achieve purposes other than release from illegal detention, see Fay v. Noia, 372 U.S. 391, 399–400 n.5 (1963), there is no authority for it being available only to inquire into "criminal" detentions. See O'Beirne v. Overholser, 109 U.S. App. D.C. 279, 287 F.2d 137 (1960).

[20] See notes 33–39 *infra* and accompanying text for a discussion of some of the constitutional rights which have been held assertable via habeas corpus.

[21] The prestige of the Writ lends credence to the disposition of a court to cut through labels for detention in inquiring into the legality thereof. Fay v. Noia, *supra* note 19, at 399–400. Thus the Writ has recently been utilized to obtain bail, in traditional fashion, in a juvenile case in the District of Columbia, Trimble v. Stone, 187 F. Supp. 483 (D.D.C. 1960). Habeas corpus has also been used in other "civil" commitment cases: *e.g.*, O'Beirne v. Overholser, *supra* note 19 (confinement in mental institution after acquittal of crime by reason of insanity); Miller v. Overholser, 92 U.S. App. D.C. 110, 206 F.2d 415 (1953) (pre-trial commitment in mental institution as a sexual psychopath).

that of the juvenile court setting, and in consequence it may yield a different result.

The purpose of this paper is to examine the use of collateral attack as a device to obtain review of juvenile court decisions and to determine what role, if any, such attack should play in the juvenile court system. Habeas corpus will be the collateral attack device examined because of its universal applicability and fairly uniform nature.[22] The federal substitute for habeas corpus, a Section 2255 motion, will also be discussed because of the particular problems it presents in the District of Columbia.

Habeas Corpus and Section 2255: General Legal Theory

Habeas corpus, the Great Writ, is one of the basic constitutional privileges accorded citizens of the United States. With roots reaching far into Anglo-American jurisprudence, the Great Writ carries extraordinary prestige.[23] Unlike the many privileges and freedoms later incorporated in the Bill of Rights, the privilege of habeas corpus was given explicit recognition in the original body of the Federal Constitution.[24] Throughout the judicial history of this country, the highest courts have continually reiterated the duty of the judiciary to maintain the privilege unimpaired.[25]

One of the purposes of habeas corpus, and that for which it has most been used in the United States, is to inquire into illegal detention with a view to an order releasing the petitioner.[26] The United States Supreme Court has said of the Writ:

> Although in form the Great Writ is simply a mode of procedure, its history is inextricably intertwined with the growth of personal liberty. For its function has been to provide a prompt and efficacious remedy for whatever society deems to be intolerable restraints. Its root principle is that in a civilized society, government must always be accountable to the judiciary for a man's imprisonment: if the imprisonment cannot be shown to conform with the fundamental requirements of law, the individual is entitled his immediate release.[27]

Although habeas corpus has been used to question detention in federal cases based upon judicial decisions alleged to be without jurisdiction, contrary to due process of law, or excessive of the committing court's authority or discretion, the scope of the Writ at the state level may be narrower.[28] Whether the Supreme Court's holding that the scope of habeas corpus is not limited to questioning the committing court's jurisdiction[29] is applicable, or will be applied to the states as a constitutional mandate is not clear.[30] But even if an area of habeas corpus jurisdiction remains within the primary control of the states, it is apparent that the federal standards for applying federal habeas corpus relief may be invoked in a federal forum where state action impinges upon federally protected individual rights.[31] In other words, even though habeas corpus relief may only be available in a given state when the committing court acts without jurisdiction, a prisoner may ultimately test his detention in a federal court as to the broader areas of violation of due process or abuse of authority. Doubt does exist, however, as to whether the Writ may be used to raise procedural issues, evidentiary questions or other matters traditionally limited to assertion by direct appeal.[32]

Some of the fundamental rights which have been asserted in federal habeas corpus cases are the Fifth Amendment grand jury right,[33] the federal right to trial by jury,[34] the privilege against self-incrimination under the Fifth Amendment,[35] the

[22] The constitutional status of habeas corpus leads to its universal availability in the United States to question alleged violations of federal constitutional safeguards. However, the Writ may not be available uniformly from state to state, each state being able to define habeas corpus as it pleases. See notes 28–32 *infra* and accompanying text.

[23] Fay v. Noia, 372 U.S. 391, 399–400 n.5 (1963).

[24] U.S. Const. art I, § 9, cl. 2.

[25] See Fay v. Noia, *supra* note 23, at 400 and cases cited therein.

[26] *Ibid.*

[27] *Id.* at 401–02.

[28] For the broad scope of habeas corpus, extending to violations of due process, see *id.* at 402–05. For the narrower scope of habeas corpus in state cases see, *e.g.*, Lehman v. Montgomery, 233 Ind. 391, 120 N.E.2d 172 (1954); *Ex parte* Mould, 162 Mich. 1, 126 N.W. 1049 (1910) [both juvenile court cases; both stating narrow scope of habeas corpus].

[29] Fay v. Noia, 372 U.S. 391, 404, 413–14 (1963).

[30] There is no indication that the states may not define their own habeas corpus remedy, and the scope of its availability, in any mannner they choose. The effect of *Fay v. Noia*, however, is to assure that federal constitutional safeguards may be protected by federal habeas corpus as an ultimate measure.

[31] *Fay v. Noia* itself resulted from federal relief being sought after state remedies proved unsatisfactory.

[32] Generally, errors committed during a trial may not be reviewed by collateral attack unless they involve the jurisdiction of the court or a deprivation of constitutional rights amounting to a denial of the essence of a fair trial. Sunal v. Large, 332 U.S. 174 (1947); Smith v. United States, 88 U.S. App. D.C. 80, 187 F.2d 192 (1950), *cert. denied*, 341 U.S. 927 (1951).

[33] *Ex parte* Wilson, 114 U.S. 417 (1885).

[34] Callan v. Wilson, 127 U.S. 540 (1888).

[35] Arndstein v. McCarthy, 254 U.S. 71 (1920).

right against double jeopardy of the Fifth Amendment,[36] the Sixth Amendment, right to counsel,[37] and, under the Fourteenth Amendment, Due Process Clause, freedom from the use of coerced confessions.[38] It is possible that the use of evidence illegally obtained in violation of the Fourth or Fourteenth Amendments could also be asserted as grounds for federal habeas corpus.[39]

Before examining the availability of habeas corpus to attack a juvenile court decision, the federal substitute for habeas corpus, a motion to vacate sentence under 28 U.S.C. § 2255, will be discussed. Such discussion is undertaken because of the confusion engendered by this federal remedy even though the problem only arises in the federal court system, primarily in the District of Columbia.[40]

Congress enacted 28 U.S.C. § 2255 to alleviate administrative problems created by habeas corpus in federal courts. Habeas corpus itself may be brought only in a court of the jurisdiction in which a prisoner is incarcerated.[41] Since a prisoner committed by a federal court may be sent to a prison located anywhere in the United States, the court which hears a habeas corpus petition in federal cases often is not the court which committed the petitioner. In such cases all the records of the case as well as the relevant witnesses and other persons may be located in another jurisdiction, often a great distance from the court hearing the habeas corpus petition. Consequently a federal habeas corpus proceeding may entail a great administrative burden in obtaining the records and persons necessary to complete a full evidentiary hearing. Section 2255 was enacted to ameliorate these burdens. It requires a prisoner to institute a motion to vacate sentence *in the sentencing court.*[42] If the sentencing court is located in a jurisdiction other than that in which the prisoner is incarcerated, then the prisoner need only be transferred to the jurisdiction of the sentencing court, if necessary,[43] for a hearing on his motion.

[36] Morgan v. Devine, 237 U.S. 632 (1915).
[37] Andersen v. Treat, 172 U.S. 24 (1898).
[38] Fay v. Noia, 372 U.S. 391 (1963).
[39] In light of the decision in Mapp v. Ohio, 367 U.S. 643 (1961), use of evidence obtained in violation of the fourth or fourteenth amendments might well be one of those violations of fundamental constitutional safeguards which may be the basis of federal habeas corpus, if not otherwise capable of being raised on appeal.
[40] 28 U.S.C. § 2255 (1958) may be utilized against a "court established by Act of Congress." The prior language of the Section provided for its use against a "Court of the United States," but the language was changed to the present form by Act of May 24, 1949, § 114, 63 Stat. 105. The change was made to effect conformity of language and to make it clear that the Section applies to federal district courts in the territories and possessions. Burke v. United States, 103 N.2d 347, 349 n.5 (D.C. Mun. App. 1954) citing H.R. REP. No. 352, 81st Congress, 1st Sess. (1949), 2 U.S. CODE CONGRESSIONAL SERVICE 1272 (1949).
Although Section 2255, by its terms, thus does not apply to the courts of the District of Columbia, its remedy has been adopted by judicial decision in that jurisdiction, Burke v. United States, *supra.* However the question arises whether Section 2255 would come into play in the juvenile court setting in other federal courts. Since the Section clearly applies to federal courts in the territories, as well as in the several state districts, it is conceivable that a federally constituted juvenile court (similar to that of the District of Columbia) could exist in a territory. However, the territorial courts are generally established by the territory itself. For example, cases involving children in the Commonwealth of Puerto Rico (a territory of the United States) are adjudicated by courts of the Commonwealth in accordance with the domestic laws applicable thereto. LAWS OF PUERTO RICO ANN., tit. 34, ch. 147 (Supp. 1962).
In the territories of the United States, it would be improbable for Section 2255 relief to be adopted by judicial decision as was done in the District of Columbia, although it is possible. Thus juvenile court decisions in a federal territory probably would not engender the same interplay between habeas corpus and Section 2255 as exists in the District of Columbia.
However, federal courts, including those of the territories of the United States, are governed by the federal laws relating to juvenile delinquency cases. 28 U.S.C. §§ 5031-37 (1958). These statutory provisions are much more general in nature than most juvenile court acts and may only be used if the juvenile consents. 28 U.S.C. § 5032 (1958). However, federal courts may, under this statutory scheme, act as a juvenile court. [It should be noted that the District Court for the District of Columbia has another source of power to act as a juvenile court. The Juvenile Court of the District of Columbia may waive jurisdiction over a child between the ages of 16 and 18, when that child is charged with an offense which if committed by a person 18 or over is a felony (or if a child of any age is charged with an offense punishable by death or life imprisonment if committed by a person 18 or over). In such a case the child is ordered held for trial under the regular procedure of the court which would have jurisdiction of the offense if committed by a person 18 or over. Then, "the other court" has the alternative to "exercise the powers conferred upon the Juvenile Court" of the District of Columbia. D.C. CODE, tit. 11, § 1553 (Supp. IV. 1965).] Consequently, it is possible for Section 2255 to be utilized in juvenile cases in the federal court system in jurisdictions other than the District of Columbia.
Since the District of Columbia is the only federal jurisdiction wherein a traditional juvenile court system exists which would be most likely to call into play Section 2255, further discussion of the Section in federal juvenile court cases will be limited to those arising under the juvenile court legislation for the District of Columbia.
[41] United States v. Hayman, 342 U.S. 205, 213 n.15 (1952), citing, Ahrens v. Clark, 335 U.S. 188 (1948).
[42] 28 U.S.C. § 2255 (1958).
[43] The Section provides that a motion thereunder may be entertained and determined "without requiring the production of the prisoner at the hearing." 28 U.S.C. § 2255 (1958). However, the Supreme Court has indi-

Section 2255 is, in terms, a substitute for habeas corpus.[44] A federal prisoner may raise those issues which would be raised by a petition for habeas corpus *only* by a Section 2255 motion, unless relief under Section 2255 would be "inadequate or ineffective."[45] The only major restriction upon Section 2255 relief, other than the grounds for the motion (which are subject to the same restrictions as habeas corpus), is that the prisoner must at the time of the motion be incarcerated under the terms of the sentence which he is attacking.[46]

The major categories, or bases, for Section 2255 relief that have been reflected in the case law, are ineffective assistance of counsel,[47] mental incompetence at the time of trial,[48] and the knowing use of perjured testimony at the trial.[49] These matters, as in the case of habeas corpus, are the ones most usually asserted because they are not ordinarily correctable by normal appeal and thus may be raised by collateral attack.[50]

The constitutionality of Section 2255 has been settled by the United States Supreme Court. In the case of *United States v. Hayman*,[51] the statute was attacked as an unconstitutional suspension of habeas corpus.[52] The Court, in upholding Section 2255, stated that since the relief afforded by the statute is coextensive with that afforded by habeas corpus, the Great Writ could not be said to be suspended.[53] Moreover, the Court pointed out, habeas corpus would be available notwithstanding Section 2255 if relief under it were inadequate or ineffective.[54]

The coextensiveness of relief under Section 2255 with relief under habeas corpus is further indicated by later Supreme Court language in *Sanders v. United States*.[55] In *Sanders* the Court stated that, if the prisoner were subject to any substantial procedural hurdles which would make his remedy under Section 2255 less swift and imperative than federal habeas corpus, the gravest constitutional doubts would be engendered as to Section 2255, as the Court in *Hayman* implicitly recognized.[56]

In the District of Columbia, if a juvenile court decision is to be attacked collaterally, the remedy, in most instances, is by way of a Section 2255 motion.[57] If the detention involved stems from

cated that where the allegations supporting the motion involve matters within the personal knowledge of the prisoner, he must be present at the hearing. Sanders v. United States, 373 U.S. 1, 21 (1963); Machriboda v. United States, 368 U.S. 487, 495-96 (1962).

[44] Actually, Section 2255 is a required alternative to habeas corpus. The statute requires relief to be sought thereunder before habeas corpus will be proper, and in order for habeas corpus to lie, Section 2255 must be ineffective, not merely unsuccessful. United States v. Hayman, 342 U.S. 205 (1952); Barrett v. United States, 285 F.2d 758 (10th Cir. 1960). Thus, in the attack of a confinement resulting from judicial action which is made in a criminal-type proceeding, Section 2255 may be said to be a substitute for habeas corpus. Moreover, it has been recognized that the Section 2255 remedy was intended to be as broad as habeas corpus. United States v. Hayman, *supra* at 217 n.25, quoting from a statement of the Judicial Conference upon the request of the Chairmen of the House and Senate Judiciary Committees.

[45] 28 U.S.C. § 2255 (1958).

[46] 28 U.S.C. § 2255 (1958). See also Heflin v. United States, 358 U.S. 415 (1959).

[47] Ineffective assistance of counsel as a ground for a Section 2255 motion is an outgrowth of the Supreme Court's decision in Johnson v. Zerbst, 304 U.S. 458 (1938), interpreting the sixth amendment. The general agreement that this issue may be raised by a Section 2255 motion is indicated by the number of cases dealing with this allegation in such motions. *E.g.*, Cofield v. United States, 263 F.2d 686 (9th Cir.), *rev'd on other grounds*, 360 U.S. 472 (1959); Mitchell v. United States, 104 U.S. App. D.C. 57, 259 F.2d 787, *cert. denied*, 358 U.S. 850 (1958). See 28 U.S.C.A. § 2255, n.n.287 & 287a (1959 & Supp. 1963) for cases involving ineffective assistance of counsel under Section 2255.

[48] See, *e.g.*, Smith v. United States, 106 U.S. App. D.C. 169, 270 F.2d 921 (1959); Bell v. United States, 269 F.2d 419 (9th Cir. 1959). See 28 U.S.C.A. § 2255, Anno. n. 289-90 (1959) for cases involving mental incompetence at trial as the basis for Section 2255 motions.

[49] See, *e.g.*, Sears v. United States, 265 F.2d 301 (5th Cir. 1959); Dunn v. United States, 259 F.2d 269 (6th Cir.), *cert. denied*, 358 U.S. 847 (1959). See 28 U.S.C.A. § 2255, Anno. n.282 (1959) for cases involving the knowing use of perjured testimony at trial as the basis for Section 2255 motions.

[50] See Smith v. United States, 88 U.S. App. D.C. 80, 85-86, 187 F.2d 192, 197-98 (1950), *cert. denied*, 341 U.S. 927 (1951).

[51] 342 U.S. 205 (1952).

[52] The Court of Appeals for the Ninth Circuit had, *sua sponte*, questioned the validity of Section 2255 and had treated it as a nullity, Hayman v. United States, 187 F.2d 456 (9th Cir. 1951). See United States v. Hayman, 342 U.S. 205, 209-10 (1952).

[53] The basis of the Ninth Circuit's holding in *Hayman* was recognized, by the Supreme Court, as being an unconstitutional "suspension" of habeas corpus. 342 U.S. at 209. Thus the Court's finding that Section 2255 has no "purpose to impinge upon prisoner's rights of collateral attack upon their convictions" and that the Section affords "the same rights [habeas corpus] in another and convenient forum," implicitly asserts the coextensiveness of Section 2255 relief with that of habeas corpus. *Id.* at 219. And such conclusion is supported by the language of the case notwithstanding the Court's assertion that "we do not reach constitutional questions." *Id.* at 223.

[54] *Ibid.*

[55] 373 U.S. 1 (1963).

[56] *Id.* at 14.

[57] Habeas corpus may still be the appropriate remedy in some cases if the commitment cannot be likened to a federal custody under federal sentence. In non-juvenile cases, for example, commitment to a mental institution may properly be questioned by habeas corpus, not a

commitment for an antisocial act or course of conduct, more than likely a Section 2255 motion will be the exclusive remedy available initially,[58] since a petition for habeas corpus cannot be heard if a Section 2255 motion may be invoked.[59] Consequently, the same considerations which argue for or against the use of habeas corpus in a juvenile court system in general are pertinent in examining the use of Section 2255 in the juvenile court system in the District of Columbia.

Is Habeas Corpus A Proper Remedy in the Juvenile Court-Deliquency Setting?

Legal Considerations

A question which one first encounters in examining the propriety of the use of habeas corpus in regard to a juvenile court decision is whether there are legal obstacles in the very foundation of the system which preclude such collateral attack. Apart from considerations of policy which will be discussed later, the question is whether there are technical legal impediments to habeas corpus in attacking juvenile court judgments that do not exist with respect to other legal proceedings.

The novice to the juvenile court system is told that its proceedings are civil in nature, not criminal, even when a criminal act is that which has invoked the court's jurisdiction.[60] However, habeas corpus is not restricted to criminal cases alone.[61] Any detention, even "executive detention,"[62] is subject to inquiry by means of habeas corpus. Consequently, this distinction between juvenile court proceedings and those in other judicial forums should not preclude habeas corpus. On the other hand, it has been suggested that the *type* of detention that results from a juvenile court decision should determine whether habeas corpus would be proper to inquire into a child's detention.

In *White v. Reid*,[63] a juvenile committed by the Juvenile Court of the District of Columbia sought release from the District of Columbia jail. In holding that habeas corpus should be available to obtain the child's release, the court stated that:

> Unless the institution is one whose primary concern is the individual's moral and physical well-being, unless its facilities are intended for and adapted to guidance, care, education and training rather than punishment, unless its supervision is that of a guardian, not that of a prison guard or jailor, it seems clear a commitment to such institution is by reason of conviction of crime and cannot withstand an assault for violation of fundamental Constitutional safeguards.[64]

The result in *White* is to assure a child committed for delinquency that his confinement will not put him in "communication with those convicted of crime."[65] This result obviously comports with the philosophy of the juvenile court that those detained by the court are not to be punished but rather to be protected and guided.

The test enunciated in *White* would seemingly tolerate a "violation of fundamental Constitutional safeguards" of a youth provided he is detailed in a suitable institution. It is the writer's opinion, however, that, if a juvenile court acts unconstitutionally, the court's action should not be insulated from assault merely because the juvenile is in a suitable, or even a happy, confinement. Neither the civil nature of the proceedings nor the characteristics of the institution should bar correction of the deprivation of constitutional rights by a juvenile court.

Generally juvenile courts are endowed with broad jurisdiction.[66] Consequently, lack of jurisdiction over a child charged with a criminal-type act would be less frequent in a juvenile court. Technical grounds for absence of jurisdiction might exist, however, as in other courts. Thus in

Section 2255 motion. See, *e.g.*, O'Beirne v. Overholser, 109 U.S. App. D.C. 279, 287 F.2d 137 (1960): Miller v. Overholser, 92 U.S. App. D.C. 110, 206 F.2d 415 (1953). Even though such cases might be viewed as excluding Section 2255 relief in the juvenile court, upon the argument that no sentence is involved in a juvenile case—even one involving delinquency determinations, the fact of commitment for an antisocial act refuses such a view. See notes 63-65 *infra* and accompanying text.

[58] The issues raised by an attack of a juvenile court delinquency commitment will most likely be the same as those issues which would be raised by a habeas corpus attack of a criminal conviction and sentence, *ie.*, deprivation of fundamental constitutional safeguards. Other questions must, of necessity, be raised by appeal or petition for rehearing.

[59] See text accompanying notes 44-45, *supra*.

[60] See note 14 *supra*.

[61] See note 19 *supra*.

[62] Fay v. Noia, 372 U.S. 391, 403 (1963).

[63] 125 F. Supp. 647 (D.D.C. 1954).

[64] *Id.* at 650.

[65] White v. Reid, 126 F. Supp. 867, 871 (D.D.C. 1954).

[66] See National Council on Crime and Delinquency, Standard Juvenile Court Act § 8 (6th ed. 1959) [hereinafter cited as Standard Juvenile Court Act]. By the terms of the act, jurisdiction extends, *inter alia*, to children (under eighteen years of age) charged with any law violation, neglected children, children who face circumstances injurious to their own or to other's welfare, custody determinations, and adoption proceedings.

Ex Parte Mould,[67] the Michigan Supreme Court held that a juvenile court determination of delinquency was void, and subject to habeas corpus attack, because the proper forum for such determination was the court of the county wherein the child resided rather than the court which made the determination. And in *Juvenile Court v. State ex rel. Humphrey*,[68] the Supreme Court of Tennessee permitted habeas corpus to issue where the juvenile court had exercised authority over a juvenile who could have been charged with first or second degree murder for killing his playmate with a shotgun. The Tennessee court held that, since the juvenile court statute required transfer of such cases to the regular criminal courts, there was no jurisdiction in the juvenile court to treat the boy as a delinquent.[69]

On the other hand, it has been held that, where the juvenile court has jurisdiction over the person and subject matter, habeas corpus will not lie. A decision to this effect is *Lehman v. Montgomery*,[70] in which the Indiana Supreme Court refused habeas corpus to a child's mother who sought her daughter's release from a girls' reform school claiming, *inter alia*, that the child did not have assistance of counsel in the proceeding resulting in detention. The Indiana court stated that a writ of habeas corpus raises only the question of jurisdiction of the court over the person and subject matter and that, since the allegations by the applicant did not demonstrate such lack of jurisdiction, habeas corpus could not lie.[71]

Other state courts, in addition to Indiana's, have defined the scope of habeas corpus in narrow terms.[72] However, it is now clear that federal habeas corpus, which is ultimately available to protect against violation of federal constitutional safeguards, permits broad inquiry.[73] Therefore, the mere fact that a juvenile court has exercised proper jurisdiction in a particular case should be no legal obstacle to inquiry into the propriety of its action by means of habeas corpus.

The jurisdiction of a juvenile court may not only be broad; it may even be "exclusive and original."[74] Taken literally such jurisdiction would preclude other courts from inquiring into the propriety of a juvenile court decision. However, the juvenile court statute itself may exempt habeas corpus proceedings from such exclusiveness (although the exemption may be limited to custody determinations),[75] and, even if habeas corpus were not by the terms of the statute permitted, habeas corpus must necessarily be read into the system to prevent the institution of the juvenile court from being found unconstitutional in that regard.[76] The constitutional guarantee of the privilege of habeas corpus would preclude its "suspension," even though the propriety of an otherwise "exclusive" juvenile court decision would thereby be brought into question.

Generally the statute governing the juvenile court system in a given jurisdiction will provide that any order or decision of the juvenile court may be appealed to the appropriate appellate court for review by a party aggrieved.[77] The existence of such right of appeal would apparently restrict the use of habeas corpus stringently since habeas corpus is not proper unless other available remedies are exhausted.[78] *People v. Areson*[79] illustrates this point well. In *Areson* habeas corpus was sought for the release of a child adjudged a delinquent and committed to a State Industrial School by the New York Children's Court. The New York court denied the petition, which alleged a noncompliance with a statutory requirement of probation investigation and report, on the ground that the irregularity could be corrected on appeal. The court noted that the error did not create a jurisdictional defect, but based its decision primarily upon the existence of the appeal remedy and the concomitant discretion of the reviewing court in the exercise of its general equity jurisdiction which would be the only other basis for its intervention into the case.[80]

[67] 162 Mich. 1, 126 N.W. 1049 (1910).
[68] 139 Tenn. 549, 201 S.W. 771 (1918).
[69] For an excellent discussion of the jurisdictional defect requirement of habeas corpus in juvenile cases see Hickey, *Habeas Corpus and Juvenile Courts*, 15 JUV. CT. JUDGES JOUR., Summer 1964, p. 7, 8–10.
[70] 233 Ind. 391, 120 N.E.2d 172 (1954).
[71] In *Lehman*, it should be noted, remedies other than habeas corpus were available, *i.e.*, the petitioner could have raised the issues alleged on appeal, but sought habeas corpus instead. However, the emphasis of the opinion is the failure to assert jurisdictional defects, not failure to appeal.
[72] See, *e.g.*, *Ex parte* S.H., 1 Utah 2d 186, 264 P.2d 850 (1953); Parker v. Johnson, 307 Ky. 376, 211 S.W.2d 150 (1948) [both involving custody proceedings].
[73] See notes 28–31, *supra* and accompanying text.
[74] Standard Juvenile Court Act *supra* note 66, § 8.
[75] See D.C. CODE, tit. 11, § 907 (1961).
[76] Failure to permit habeas corpus would raise constitutional questions as to a statute having that effect. See text accompanying note 87 *infra*.
[77] Standard Juvenile Court Act, *supra* note 66, § 28.
[78] Sunal v. Large, 332 U.S. 174 (1947); Lazuros v. State, 228 S.W.2d 972 (Tex. Civ. App. 1950). See also Fay v. Noia, 372 U.S. 391 (1963).
[79] 195 Misc. 609, 91 N.Y.S.2d 121 (Sup. Ct. 1949).
[80] *Id.* at 611–12,6 1 N.Y.S.2d at 123–24.

Areson and other cases like it do no more than point out that habeas corpus is not a proper substitute for other adequate remedies. If permitted in such cases, habeas corpus *would* become a device whereby one court could "second-guess" another court in the same case without a showing of a particularized need.[81] However, this limitation on habeas corpus is not the same as an absolute bar to the use of the Writ against other legal proceedings, including those of the juvenile court. This requirement of exhaustion of other remedies is merely an inherent limitation upon the use of the Writ; in other words, habeas corpus may only be used when other remedies are exhausted.

A corollary of the broad right of appeal in juvenile cases is the power of a juvenile court to rehear and modify a decree at any time.[82] This power offers a person who is discontented with a juvenile court decision another remedy which usually does not exist in other fields of law. This power serves to extend the limitation upon the use of habeas corpus in regard to a juvenile court decision, since it extends the time of the continuing jurisdiction of the court. As noted in the *Areson* case, the continuing jurisdiction of the court of the first instance, through the availability of appeal, is the factor which precludes another court from interfering.[83] Continuing jurisdiction, therefore, prevents collateral attack because the opportunity exists for correction of the alleged error by the court allegedly committing the error.

Despite the foregoing considerations, the question arises whether one is precluded from seeking habeas corpus relief from a juvenile court detention at *any* time on the chance that successive applications for rehearing will result in the relief sought. Even if one is required to seek rehearing before invoking habeas to inquire into a juvenile court-ordered detention, it would be unreasonable to bar forever habeas corpus inquiry on the ground that the juvenile court *might sometime* alter its decision. Certainly "grave constitutional doubts" might be engendered by such interference with habeas corpus.[84]

[81] Hickey, *supra* note 69 at 9–10, suggests that the only justifiable basis for permitting habeas corpus to be utilized to attack a juvenile court decision is lack of jurisdiction, unless a particularized need is shown, because otherwise there would be judicial second-guessing as between different courts.

[82] Standard Juvenile Court Act, supra note 66, § 26.

[83] See note 80 *supra*. See also Stoker v. Gowans, 45 Utah 556, 147 Pac. 911 (1915).

[84] Sanders v. United States, 373 U.S. 1, 14 (1963).

Of the possible legal obstacles which have been discussed, the most difficult to overcome are the broad right of appeal and the continuing power of the juvenile court to rehear and modify its decisions. However, even these are not complete roadblocks; rather, they are high hurdles in the path. The existence of other remedies, as previously noted, often necessitates the avoidance of habeas corpus. But, if the goal of habeas corpus is to insure fair judicial treatment, one should not be too upset if he can obtain review to that end without resorting to habeas corpus. For, if the other remedies do not satisfy, the Great Writ will still be available to achieve the desired inquiry when properly invoked.

Policy Considerations

The avowed goal of the juvenile court system is to insure that "each child coming within the jurisdiction of the court shall receive, preferably in his own home, the care, guidance, and control that will conduce to his welfare and the best interests of the state, and that when he is removed from the control of his parents the courts shall secure for him care as nearly as possible equivalent to that which they should have given him".[85] It will be noted that this policy statement gives the welfare of the child priority, at least in written sequence, over the "best interests of the state." This factor, more than any other, argues for an isolationist treatment of the juvenile court system by other judicial courts and other authoritative bodies.

The ultimate aim of juvenile courts should be to cope with the complex problems of juveniles with a minimum of difficulty, drawing upon the social sciences when necessary to effect a solution. Such a court would be more than a court, certainly different from the traditional judicial court, and would require a degree of independence unparalleled in Anglo-American jurisprudence. For such a system to function as planned, a fundamental imperative is the acceptance of the ability of the institution of the juvenile court to achieve its goals in guarding the welfare of the child.

Weighing against the acceptance of the ability of the juvenile court to act in the best interest of a child is the other goal of the juvenile court, namely the protection of the interests of the state. When this factor is added, the juvenile court as an institution must function as would a criminal court when dealing with a child accused of criminal

[85] Standard Juvenile Court Act, *supra* note 68 § 1.

acts, or when the court's decision will deprive the child of liberty as would a criminal proceeding.[86] When viewed from this angle, it is understandable that many are reluctant to yield to the appeal for the independence of the juvenile court. To place the aim of the welfare of the child in prominence to the exclusion of recognition of the interests of the state, so as to accord the juvenile court the measure of independence it claims, would be to disregard reality. On the other hand, the fact that the juvenile court is a watchdog of the state, as well as a protector of its offspring, does not require a disavowal of its ability to achieve its particularized goals. Nor does its quasi-criminal character in delinquency cases require the other extreme: the complete stringencies of protection of the individual in traditional criminal cases.

The relevant question then is where the line can be drawn in relation to the use of such devices as habeas corpus. It would be unrealistic to think that a juvenile court can do no wrong so as to preclude the necessary collateral attack of its decisions. But it would defeat the purposes of the juvenile court to permit every decision to be subjected to wholesale collateral judicial scrutiny.

Conclusion

The legal basis of habeas corpus relief minimally requires that violation of constitutional safeguards by a juvenile court be subject to inquiry and correction through the Writ. The technical applicability of habeas relief in the state courts may vary and may be more narrow than the federal remedy, but ultimately, fundamental constitutional claims must be given a forum via habeas corpus. Thus, there seems little room for argument that the juvenile court system is immune from habeas proceedings attacking its decisions. Nor does the use of habeas corpus appear to be restricted to attacking custody determinations by a juvenile court, such use of the Writ being virtually unquestioned over the years.[87]

The general limitations upon the use of habeas corpus are, however, extended by certain characteristics of the juvenile court system. The broad right to appeal from a juvenile court decision and the continuing power of the juvenile court to alter a decision lessen the necessity for turning to habeas corpus for an inquiry into an allegedly illegal detention. In fact, these attributes of the juvenile court probably *prevent* extensive use of habeas corpus in attacking juvenile court detentions. Since remedies other than habeas corpus are available, one seeking habeas corpus-type relief must turn to those remedies as he would in the traditional legal setting. This factor may explain the dearth of cases in which a delinquency detention is attacked by habeas corpus.[88]

[86] When a juvenile court hears a case in which a child is charged with a criminal act and the court seeks to protect the interests of the state, the court functions to serve the same goals that a criminal court would.

[87] See note 17 *supra*.

[88] Very few cases have been found involving habeas corpus related to a delinquency proceeding, much less which discuss the propriety of habeas corpus in such cases. Among those found other than in the District of Columbia and aside from those involving bail are: Lehman v. Montgomery, 233 Ind. 391, 120 N.E.2d 172 (1954); *Ex parte* Mould, 162 Mich. 1, 126 N.W. 1049 (1910); People v. Areson, 195 Misc. 609, 91 N.Y.S.2d 121 (Sup. Ct. 1949); *In re* Boughton, 263 App. Div. 1049, 33 N.Y.S.2d 740 (1942); Juvenile Court v. State *ex rel.* Humphrey, 139 Tenn. 549, 201 S.W. 771 (1918); Stoker v. Gowans, 45 Utah 556, 147 Pac. 911 (1915); State v. Adams, 145 W. Va. 194, 113 S.E.2d 830 (1960).