The Test Case and Law Reform in the Juvenile Justice System

by Peter R. Kolker

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Many reform-minded attorneys practicing in juvenile courts have sought to promote change in the juvenile justice system by combining the three essential ingredients needed to formulate a test case: determination, legal reasoning and *In re Gault*.[1] Too often, however, counsel have discovered that the conventional test case has become a less effective tool for reform as the juvenile courts have learned to live with the invasion of attorneys and due process standards which the Supreme Court's 1967 *Gault* decision produced. Juvenile courts have jealously guarded their prerogative to mete out justice unimpeded by procedural technicalities and have surrendered this control only with the greatest reluctance. Some courts have stymied test case efforts either by intentionally blocking litigation or by undermining the effect of appellate decisions.

This article explores the reaction of the juvenile justice system in the District of Columbia to efforts at procedural reform on three frontiers: (1) establishing minimum standards for the treatment accorded to pretrial detainees; (2) defining specific criteria governing the pretrial release of juveniles charged with delinquency; and (3) winning the right to probable cause hearings for juveniles charged with serious crimes. In each of these areas, experience has shown that attempts to bring change may be frustrated unless the lawyers involved carefully choose the techniques appropri-

ate to the situation. For instance, the traditional test case has proved to be a less effective tool for improving pretrial detention conditions than for compelling a demonstration of probable cause for continued detention. In part, this is because the former problem is primarily one of resources and is thus most appropriately handled in the legislative domain, while the latter is a procedural question more easily solved by judicial rule-making. In part, too, the effectiveness of test case litigation is inversely proportional to the ability of the juvenile justice system to resist change. Like most institutions, the Juvenile Court changes only when the pressure brought to bear upon it exceeds its capacity to resist, and its tactical and strategic weapons–mootness, the favorable disposition of a particular case to avoid general change, miserly application of ordered reforms–are more effective defenses against change in some areas than in others.

This article discusses the barriers to mounting successful test cases, as well as some ancillary efforts which might increase the chances of success. It concludes with an assessment of the most effective methods for achieving future improvements in each of these three target areas and a projection of the prospects for success.

The Juvenile Justice System in the District of Columbia

To the victim of crime, the police officer, the practicing attorney, the judge, the correctional personnel and–most of all–the juvenile respondent, the most appropriate one-word characterization of the juvenile justice system in the District of Columbia has been "delay."[2] Washington is one of the minority of jurisdictions in which juveniles charged with delinquent acts are entitled to a jury trial,[3] and a detained youth who invokes his right may find that his case takes six months or longer to reach trial.[4] If he is released, his case might not come to court for more than a year. Even non-jury trials for detained youths have, at times, been backlogged for three months or more. Whether these inordinate delays are the product of poor court management,[5] lack of judicial and supporting manpower, increased court referrals[6] or a combination of these ingredients is problematic. Suffice it to say that the number of delinquency referrals to the juvenile courts has risen 42% in the last seven years, while the number of judges who hear the 6,120 annual delinquency cases remains constant at three. Administration in the Court has advanced no more rapidly.

The resulting backlog has led the Court to adopt an attenuated approach to juvenile justice which gives short shrift to the needs or rights of the youths involved. In particular,

the pretrial phase of juvenile justice has suffered, and so the need to expand and buttress the rights of juveniles awaiting trial has become pronounced. Principally for this reason, but also because the juvenile justice system differs from the adult criminal justice system more with respect to the pretrial and post-adjudicative stages than to the trial itself, the efforts of defense attorneys in recent years have concentrated on the early stages of the proceedings. The future will likely witness an increase in litigation concerning post-adjudicative treatment.

Attorneys are not strangers to Washington's Juvenile Court; but neither are they welcomed with opened arms. The right to counsel for all juveniles charged with delinquency has been established fact since 1956.[7] Yet, since attorneys representing juveniles tend to request their clients' full measure of legal rights, the Court has sometimes perceived the attorney as a champion of delay rather than an officer of justice. Today, relatively few youths waive their right to counsel. Simultaneously—and probably consequently—the number of backlogged jury trial cases has risen sharply.[8] One can hardly blame the Juvenile Court for looking upon the aggressive attorney as something less than a friend of expediency. In particular, the attorney who speaks of "law reform" in Court is likely to receive a cool welcome; his requests are viewed as new burdens on a Court already crushed by its own backlog. To avoid having to take on additional tasks, the Court has developed a series of defensive weapons to deflect test cases. What follows is an example of the Court's ability to preclude reform by the use of two popular devices: first, ignoring the requested change until action cannot be avoided; and second, granting sufficient relief to prevent appellate review.

Blocking Reform through Mootness: The Case of G.W.

Since delay is such a pervasive factor in Washington's juvenile justice system, the place where an incarcerated youth is detained while awaiting trial is of considerable importance. Until 1968, the District of Columbia provided but one facility for the secure-custody detention of juveniles charged with delinquency. This facility, known as the Receiving Home, was constructed in 1948 and expanded in 1957 to hold a capacity of 90.[9] However, increased referrals, the backlog of cases and the practice of frequent preventive detention have, at times, resulted in a daily population at the Receiving Home in excess of 160.[10] Consequently, in 1968 the Department of Public Welfare, which administers juvenile custody facilities, was forced to press into service a maximum-security building located on the grounds of its long-term commitment facilities for juveniles. This structure, known as the Receiving Home Annex, was originally designed to house those youths who had been adjudicated delinquent and had posed a flight problem while at the treatment facility. It consists of two identical sections, each of which houses 25 youths in single-bed cells 8 feet by 6 feet. Each cell is furnished with a metal cot, an open toilet facing the cot and a washbasin. No other furniture is permitted in the room, which is secured by a locked steel door and barred windows.

It was to this facility that G.W., a 14-year-old youth charged with robbing a wrist watch by force and violence from a 12-year-old complainant, was remanded. Although G.W.'s mother had been present in Court and was willing to accept custody of law at the detention hearing (where the judge determines pretrial status), the Court concluded that the danger G.W. posed to the community warranted his pretrial detention. Since the respondent denied his participation in the offense and sought a jury trial, a lengthy period of pretrial custody was in prospect.[11] It seemed clear to counsel that a pretrial wait of several months at the Receiving Home Annex was not likely to serve the best interests of the youth.[12]

The District of Columbia's Juvenile Court Act requires the Court to furnish a juvenile who is not allowed to return home with the "custody, care, and discipline as nearly as possible equivalent to that which should have been given him by his parents."[13] As interpreted, this mandate applies equally to pretrial detention and post-adjudicatory disposition.[14] Measured against the statutory standard, it appeared that the treatment being accorded G.W. and others like him fell short of the requirements. Accordingly, a motion was filed in the Juvenile Court requesting review of the facilities by the Court to determine whether they met the statutory standard.

The Juvenile Court declined to adjudicate the merits of the motion, neither granting nor denying it, but simply not hearing it. An automatic delay of two weeks is built into any request for action—one week for the opponent to respond and a minimum of one week for the date of the hearing to be set. Here, seven weeks elapsed without any action from Corporation Counsel (the representative of the District) or the Court, notwithstanding repeated informal prodding. To force review, a petition for writ of habeas corpus was filed in the District of Maryland, the district of incarceration.[15] Reluctant to review the merits of a claim arising in Washington and relating entirely to an institution administered by the District of Columbia, the Maryland District Court informally requested the Juvenile Court in Washington to set the matter down for prompt hearing so that this local concern could be settled in the jurisdiction with primary interest.

The initial motion was heard some eight weeks after it had been filed in Juvenile Court. Representatives of the three Washington newspapers had been notified and were present at the hearing. Aroused by testimony and photographs offered by G.W. to show that he was not receiving adequate pretrial care, two of the newspapers published pictures of the detention facilities and an account of the proceeding on the front page of their city news sections. The stories described to the public the circumstances in which juveniles legally presumed innocent of any wrong-

doing were detained. The fact that G.W.'s detention at this facility had already spanned nearly the entire summer was poignantly clear.

Having ignored G.W.'s claim until forced to act, the Juvenile Court then denied G.W. relief. In addition, it accelerated his trial to ensure that the transcript of proceedings on the pretrial motion could not be prepared before the trial was heard[16]—a move which, in all likelihood, would preclude an appeal. At his trial, G.W. was convicted of the charged offenses, some four and one-half months after they had occurred. He was then sentenced to probation, the "danger" he posed to the public having vanished with the presumption of his innocence. The effect of this disposition was to render moot an appeal on the issue of standards for pretrial detention facilities. Perhaps a class action brought on behalf of those incarcerated could have preserved the issue for appellate review even though one representative had obtained his release.[17]

The establishment of standards governing pretrial detention is a problem of great moment to detained juveniles, who have, after all, been promised "custody, care, and discipline" during that detention.[18] What the above case demonstrates is the facility with which the courts can and do duck the issues. Always chary of telling the jailer how to run his business, the courts generally defer improvement of custodial facilities to the legislature. The weapons possessed by the courts—the ability to ignore pressing issues for a substantial period of time, the hesitancy of one court to force the hand of another court and the capacity to render moot a test case—make it comparatively easy for the courts to abdicate their responsibilities in this area. While appeals to legislatures for the resources necessary to improve correctional facilities are notoriously ineffective,[19] they are still likely to bear more fruit than litigation unless there is a concerted assault on the conscience of the juvenile courts to regulate the facilities of which they make use.

In the meantime, G.W.'s case does point to another route for achieving at least some of what the judicial process cannot or will not. The prominent publicity which the case engendered in local newspapers apparently embarrassed the Department of Public Welfare sufficiently to produce meetings with defense attorneys, improvements in the educational program for pretrial detainees and additional privileges for residents of the Receiving Home Annex. And nearly a year later, the Department implemented greatly improved programs to mitigate the effects of prolonged pretrial detention. It seems likely that the glare of publicity did more to prompt these changes than did the test case litigation itself. The value of this type of publicity to complement litigation is thus apparent.[20]

Standards for Pretrial Release: Victory for the Client, Defeat for the Cause

A vexing problem for the attorney undertaking test case litigation is the conflict between the interests of his client and those of his cause. Of course, in all test cases the interests of the client and the cause must be parallel for some portion of the case. Frequently, however, a development in the case requires counsel to press for action that will benefit his client but will preclude appellate review. Likewise, as mentioned above, the court will occasionally grant the full relief requested by the client so as to destroy the test case. In this way, the courts are able to thwart law reform efforts for substantial periods of time. Illustrative of this problem is the case of E.R., which sought to raise to appellate review the constitutionality of standards governing preventive detention in the Juvenile Court.

As in most jurisdictions, pretrial detention of juveniles in the District of Columbia is based on criteria different from those applied to adult criminal defendants.[21] Unlike adults, for whom bail must be fixed in every non-capital case,[22] juveniles in Washington are either released with non-financial conditions or detained absolutely.[23] The detention may be based on factors that apply to adults—e.g., risk of flight—or may be ordered because the "welfare of the child" or the "protection of the public" is thought to require it.[24] Of course, a substantial number of youths arrested are released by the police or the social worker within 24 hours of arrest without having to appear in Court. Yet roughly half of those who do appear in Court for the detention hearing are remanded to custody. In a few of the cases, the lack of parental care or supervision is the primary reason for detention; but in most, the youths are detained for the "protection of the public." No standards are contained in the statutes to explicate this phrase, and no local court has ever determined what the proper criteria are. The result is that each presiding judge has his own unarticulated and untested standards for determining who would be a danger to the public if released.[25] In essence, the Juvenile Court is allowed to practice what is prohibited in adult courts: preventive detention.

The most obvious way to mount the attack on preventive detention is to seek appellate review of the constitutionality of pretrial detention standards in current use. The question of pretrial standards is more easily resolved in a judicial rather than a legislative forum, since procedural rights as opposed to resources are at issue. Moreover, the trend of legislative developments clearly indicates that Congress' intention is not to broaden the right to bail but to restrict it.[26]

Having settled on judicial review as the desired goal, two tasks remain: selecting the proper test case and maneuvering it into position so that the reviewing court can decide the issue. To ensure the greatest possible identity of interests between the respondent and the cause, the following

criteria can be used in the selection of the test case: (1) the youth bringing the action should have excellent pretrial release credentials under adult standards;[27] (2) he should have a home available to him and a parent who has demonstrated interest in exercising parental control;[28] (3) he should be charged with a serious crime which would not be ignored by the prosecutor or court; and (4) strong evidence of the youth's guilt should be available to the court and prosecutor in order to bring the detention or release decision into sharp focus.

All of the above criteria appeared to have been met in the case of E.R. The respondent was a 17-year-old youth who had never previously been in trouble. He was a long-time resident of the jurisdiction and was living at home with his mother and father, both of whom were steadily employed. E.R. was an eleventh-grade student at a local high school, where he had good attendance records. He had also had a job and had demonstrated his reliability to his employer's satisfaction. These factors showed that his community ties were excellent and demonstrated the type of stability that would have made him a good candidate for recognizance release had he been one year older. E.R. was charged with armed bank robbery arising out of a spectacular, if clumsily executed, holdup. The strenth of the prosecutor's evidence was manifest, since the arrest was made moments after the robbery—following a high-speed chase. Shotguns and marked money from the bank were found in the car at the time of the arrest.

In keeping with uniform Juvenile Court policy, E.R. was ordered detained without bond pending trial[29] because a gun was involved in the charge. A motion requesting reconsideration by the Juvenile Court of the pretrial release question was neither granted nor denied; it was not acted upon. The case thus appeared to be in the correct posture for appeal.[30]

After ten days had elapsed without judicial action on the pending motion, an appeal was filed with the District of Columbia Court of Appeals,[31] and, as required by local rules,[32] the Juvenile Court was notified of that action. Since the issue raised in the appellate proceedings indicated the far-reaching importance of this case, it is safe to assume that the Juvenile Court was fully aware of the pending action. While the appeal of the pretrial release motion was pending, the Court held a probable cause hearing and took this opportunity to release the respondent. It did so in spite of the facts that it explicitly ruled that probable cause had been amply shown and that no factors militating for pretrial release had come to its attention since the initial decision to detain.

What E.R.'s case demonstrates is the need for defense counsel of great persistence. Since the abolition of preventive detention of juveniles is not likely to be achieved through legislation in the foreseeable future, litigation is the only avenue of reform. To make a dent in the Juvenile Court, reform-minded attorneys will have to consider treating many more routine cases as candidates for appellate review. Only then will the appellate courts ultimately be given the opportunity to endorse or veto present pretrial detention practice.

Right to Probable Cause Hearing: A Successful Test Case and Its Limitations

One of the most obvious injustices to face juveniles in the District of Columbia has been the practice of detaining youths (sometimes for weeks or even months) prior to trial solely on the basis of an unsworn police complaint. There is clearly a great risk of imprisoning an innocent youth on a baseless charge, unless a prompt evidentiary hearing is held to determine whether there is probable cause to believe that a crime has been committed and that the youth arrested has committed it. Although the Juvenile Court's authority to hold such hearings on a discretionary basis had been established by 1967,[33] the Court has balked at such requests in all but the most unusual cases. Unwilling to saddle itself with additional tasks, the Court has taken the view that these hearings are neither required nor desirable as long as the police complaint accompanying the arrest describes a *prima facie* case. This approach hardly serves the youth's best interests, and it sets the stage for test case litigation to eliminate the injustice.

As E.R.'s case amply demonstrates, the Juvenile Court is all too willing to moot a test case and thus maintain the status quo. To avoid such tactics and successfully preserve a case for appeal, potential test cases had to meet three criteria: (1) the crime charged had to be sufficiently serious to assure prosecution; (2) the youth had to assert his innocence; and (3) the juvenile respondent had to have a history of prior involvement with the Court which suggested the likelihood of pretrial detention based on then prevailing criteria. In addition, the juvenile's parents had to be willing to accept custody of the youth. Otherwise, legal victory would have resulted in a social setback: the child would have been set free by the Court but would have had no home to go to.

Three test cases which met these standards were initiated simultaneously in order to ensure the vitality of the issue for an appellate review. Each of the three clients selected was advised of the proposed litigation, and each acquiesced in the recommendation of counsel. Two of the three youths were charged with burglary in the second degree; the other was charged with violating the Harrison Narcotics Act. Each requested a prompt preliminary hearing when he first appeared in Court at his detention hearing. All three requests were denied, and petitions for writs of habeas corpus were immediately filed in the United States District Court.

Prior to hearings on the petitions, two of the three cases changed posture. In one instance, the youth pleaded guilty to another pending delinquency petition. The Court then closed out the remaining complaints, thus rendering moot that youth's habeas corpus petition. In the second case, a death in the family prompted the juvenile authorities to release the youth from custody. Remaining, then, was one of the three original petitions, that of a 14-year-old (R.C.) who had had several prior involvements with the Court. R.C. was detained solely on the strength of the unsworn police complaint, which was itself double hearsay.

At his initial hearing (arraignment) in the Juvenile Court, R.C. entered a denial to the charges, requested a jury trial and again demanded a prompt evidentiary review by the

Juvenile Court to determine probable cause. Since the hearing on the petition for writ of habeas corpus had not been held by the time of the initial hearing, the Juvenile Court proceeded with R.C.'s case in normal fashion: he was remanded to custody to await a jury trial, although no date for trial had been fixed by the Court.

To preclude mootness in the habeas action, a stay of proceedings in the Juvenile Court was requested pending the disposition of the habeas corpus petition.[34] Subsequently, a hearing on the petition was held and the writ was granted.[35] The District Court based its grant on the Fourth Amendment, holding:

"No person can be lawfully held in penal custody by the State without a prompt judicial determination of probable cause. The Fourth Amendment so provides and this constitutional mandate applies to juveniles as well as to adults. Such is the teaching of *Gault* and the teaching of *Kent.*"[36]

The District Court held that the Fourth Amendment made the right to a probable cause hearing "crystal clear," and R.C. was shortly released from custody. Upon consultation with the Juvenile Court,[37] the Corporation Counsel sought an expedited appeal. On appeal in *Cooley v. Stone,*[38] the ruling of the District Court was affirmed, and the right to preliminary hearings for detained juveniles was established.

Overnight, the Juvenile Court for the District of Columbia, already hopelessly backlogged, faced the additional burden of 2,000 to 3,000 evidentiary probable cause hearings.[39] The Court's reaction was not enthusiastic. Some thought that this was understandable because, in their view, the court had been "doing justice" in a gross way by detaining youths whose need for supervision could be inferred from the very fact that they had been arrested—regardless of the merits of the police complaints. Others were repelled at the prospect of adding a fourth pretrial proceeding to the detention, initial and motions hearings that could be expected in most cases going to trial.

The exact impact of the *Cooley* decision was not clear at first. Were preliminary hearings required whenever requested, or was detention of the youth a prerequisite? How much time could elapse before the hearing was held? What differences, if any, were relevant between juvenile and adult preliminary hearings?

The Juvenile Court took advantage of this confusion by giving the ruling the most restrictive reading possible. Since the petitioner had been detained pending trial, the Court of Appeals' decision was framed with reference to detention cases, and the Juvenile Court promptly let it be known that it would apply *Cooley* only in such cases. True, there was some sense to this position, for abridgment of liberty is at its greatest when penal custody is in prospect. Still, defendants are entitled to preliminary hearings regardless of their pretrial status.[40] Nor can it be denied that a juvenile released pending trial suffers a considerable restriction of liberty. He is foreclosed from military service or Job Corps placement until the pending charges are settled. In addition, he lives under the shadow of the accusation—sometimes for a year or more. Such deprivations could clearly be regarded as substantial enough to bring *Cooley* into play. But any temptation the Court felt to give *Cooley* the more generous interpretation suggested by its reasoning was outweighed by the urge to restrict the decision's impact on an overburdened court system. The limitation thus imposed on *Cooley* has apparently been endorsed by the intermediate-level District of Columbia Court of Appeals.[41]

A second essential element of *Cooley* which was left ambiguous and hence easily circumvented by the Juvenile Court was the requirement of promptness. Under *Cooley,* the time during which a juvenile is held without a judicial determination of probable cause must be kept to a minimum. Of course, this poses a significant dilemma for a court characterized throughout by delay. But since the *Cooley* decision did not fix the number of days within which the probable cause hearing must be held (it only specified that probable cause must be determined by the time of the initial hearing),[42] the Juvenile Court has managed to blunt substantially the benefits of the opinion by holding preliminary hearings as much as six weeks after the arrest. By comparison, the U.S. Magistrate's Act requires that the analogous hearing for adult felony defendants be held within 10 days after arrest.[43] Consequently, lengthy detention of juveniles without any determination of probable cause is still common.

Clearly, with regard to both the promptness and the availability of probable cause hearings, the Juvenile Court has given the *Cooley* decision the most restrictive interpretation possible and thus limited the impact of the test case.

Conclusion

While test cases are indispensable to an attorney who wants to improve the quality of justice dispensed to juveniles, we must recognize that the Juvenile Court—no less than any other entrenched institution—will resist change to its full capacity. And as the three cases set forth above amply demonstrate, the Court has both the will and the way to resist incursions on its established procedures. To be successful, any litigator needs to have a comprehensive picture of his adversary, whether it be General Motors, the driver of a colliding vehicle or the juvenile justice system. Cases must be planned with reference not only to legal arguments but also to the anticipated moves of the opponent. In the case of Juvenile Court test litigation, this means that clients should meet the social and legal criteria necessary to ensure preservation of the case for review by the appellate court.

But test case litigation is only one tool to promote change, since only some of the multitude of sins of the juvenile justice system are amenable to change through the

courts. Procedural reforms are much more likely to be enacted by the courts than by the legislatures, at least in the present political climate. Reforms that require money, however, are likely to fall on deaf judicial ears. The courts simply cannot command the resources required to achieve the changes sought, and few will attempt to compel improvements in correctional institutions if they have no funds to implement their edicts.

Appeals to the legislatures can be aided by the litigating attorney. Not only can he lobby directly if he has access to legislators, but he can also bring to public attention the existence of conditions which require change and which embarrass the institutions responsible for these conditions. Enlisting the aid of the press to cover a court proceeding (provided that it does not jeopardize a client's right to a fair trial) is a tactic which should be practiced in conjunction with many test cases. As the case of G.W. shows, this approach by itself may bring success where legal devices have failed.

The last ten years have brought dramatic changes in the juvenile justice system. However, if lawyers continue to rely on the traditional test case as the major vehicle of reform, the pace of such change is likely to slow considerably. As the cases described in this article show, the courts have learned to respond to threats of change with all the many resources at their command, and in large part, their response has been successful. As long as reform-minded lawyers continue to play the game wholly by their adversaries' rules, no different outcome can be expected. Substantial changes can only be expected if attorneys push hard for change at every limit and employ such extra weapons as press coverage and legislative pressure.

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

2. On July 29, 1970, Congress enacted the District of Columbia Court Reform and Criminal Procedure Act of 1970, P.L. 91-358, one part of which provides for the absorption of the Juvenile Court into the Family Division of a new Superior Court. To implement this change, the Juvenile Court has been placed under the control of the Court of General Sessions, which will ultimately become the Superior Court. This re-organization has more than doubled the number of judges available to hear juvenile cases. Moveover, in an effort to dissipate the staggering backlog, court procedures have been streamlined and court personnel increased. These are signs of hope that were absent when the test case litigation described in this article were undertaken in 1969. *See* unpublished order of Chief Judge Harold Greene, District of Columbia Court of General Sessions, August 18, 1970.

3. 16 D.C. Code § 2307.

4. Committee on the Administration of Justice in the District of Columbia, *A Study of the Juvenile Court for the District of Columbia* 30 (1969).

5. *Report of the President's Commission on Crime in the District of Columbia* 677-680; 728-731 (1966) (hereinafter referred to as "D.C. Crime Commission Report"). *See also* Committee on the Administration of Justice in the District of Columbia, *A Study of the Juvenile Court of the District of Columbia* 40, 115 (1969).

6. *1969 Annual Report of the D.C. Juvenile Court* 39 (Table 4) (1969).

7. Shioutakon v. District of Columbia, 236 F. 2d 666 (D.C. Cir. 1956). It is worth pointing out, however, that prior to *Gault,* the right was scarcely taken advantage of. Eighty-five to ninety per cent of the juveniles entitled to counsel were waiving assistance according to the D.C. Crime Commission's Report at 682. Now the statistics are just the opposite.

8. As of the end of the fiscal year 1969, some 290 cases were awaiting jury trial, an increase in the backlog of more than 800 per cent since 1966. By comparison, the Court tried 28 jury cases in fiscal 1969, according to the *1969 Annual Report of the D.C. Juvenile Court, supra* at 9, 17.

9. For a description of the Receiving Home facility and program, *see* D.C. Crime Commission's Report at 642.

10. In July, 1970, the Department of Public Welfare took administrative steps to limit the Receiving Home's population to 105. The excess population is housed at the commitment facilities in quarters separate from the general commitment population's.

11. *See A Study of the Juvenile Court for the District of Columbia, supra* at 40, for a description of pretrial delay. Based on surveys of 1969 detention cases, the report concludes that seven months' delay for a jury trial in a detention case is not uncommon. Due to administrative changes in 1970, however, the pretrial delay appears to be diminishing.

12. Not only was the physical setting of the Receiving Home Annex likely to cause G.W. serious discomfort, but the fact that he was detained at the commitment facility 25 miles from the city made it more difficult for him to receive family visitors. In addition, in 1969, the facility's program consisted of 10-12 hours per day of confinement in a locked room, most of the balance being spent in a recreation room in front of the television set. Exercise in an asphalt yard was permitted for an hour or two per day, and once a week, swimming was allowed. During the summer months, no education program was offered at the facility; during the school year, education consisted of remedial work for two and a half hours per day. The public schools of the District do not recognize this work as fulfilling school requirements, and no credit is given for it. The facility had no programs in psychiatric therapy, job training or social counseling.

13. 16 D.C. Code § 2316.

14. The right to petition the courts for improved juvenile treatment facilities under 16 D.C. Code § 2316 was firmly established by Creek v. Stone, 379 F. 2d 125 (D.C. Cir. 1967), and In re Elmore, 382 F. 2d 125 (D.C. Cir. 1967). This line of cases has made the District of Columbia undoubtedly more progressive than other jurisdictions in this area, although cases relating to juvenile treatment facilities are pending in several states.

15. Although the traditional reading of 28 U.S.C. § 2241 requires a habeas petitioner to bring his action in the district in which he is incarcerated, Ahrens v. Clark, 335 U.S. 188 (1948), the trend of more recent decisions favors applying a forum-of-convenience analysis to determine where the action should be filed. *See* Word v. North Carolina, 406 F. 2d 353 (4th Cir.) (1969). The District Court for the District of Columbia preferred to rely on the traditional *Ahrens v. Clark* approach and declined jurisdiction in G.W.'s case. The Maryland District Court, being bound by the *Word* decision, was inclined to send the case back to Washington as the forum with most interest in the outcome.

16. In the Juvenile Court, unlike criminal courts, the court reporters are salaried by the Court and are not permitted to receive compensation for transcripts. There is, therefore, little inducement for a court reporter to prepare transcripts quickly; in fact, the Court instructs reporters as to which requests for transcripts should be honored and in what order.

17. *See* Fed. R. Civ. P., R. 23(b) (2); Singleton v. Board of Commissioners, 356 F. 2d 771 (5th Cir. 1966); Washington v. Lee, 263 F. Supp. 327 (M.D. Ala. 1966).

18. Creek v. Stone, 379 F. 2d 106 (D.C. Cir. 1967).

19. *Cf.* Chief Justice Warren E. Burger, *No Man is an Island,* 56 A.B.A.J. 325 (April, 1970).

20. As in most jurisdictions, unauthorized disclosure of information pertaining to a juvenile under the Court's jurisdiction is a misdemeanor. 11 D.C. Code § 1586. Also, the American Bar Association's *Standards Relating to Fair Trial & Free Press,* § 1.1 (1969) prohibits pretrial disclosure of information that might prejudice a client's case. Neither provision precludes pretrial publicity that relates to the institution rather than the individual, however.

21. For a comprehensive discussion of pretrial detention practices relating to juveniles, *see* S.H. Mora, *Juvenile Detention: A Constitutional Problem Affecting Local Government,* 1 Urban Lawyer 189 (Summer, 1969).

22. 18 U.S.C. § 3146.

23. Fulwood v. Stone, 394 F. 2d 106 (D.C. Cir. 1967), holds that money bail should not be set for juveniles since the D.C. Code provides an "adequate substitute" for the adult money bail system through its expressed preference for recognizance release. The Juvenile Court either releases or detains a juvenile, but it does not, with a few rare exceptions, condition release on the posting of a cash bond.

24. 16 D.C. Code § § 2306, 2308.

25. *Cf.* Statement of Prof. Alan M. Dershowitz, *Hearings Before the Senate Subcommittee on the Judiciary,* 90th Cong. 1st Sess. at 172-9 (1969).

26. *See* P.L. 91-358 (July 29, 1970), providing for preventive detention of adult criminal defendants in Washington on grounds of future dangerousness, 84 Stat. 644.

27. The Bail Reform Act of 1966 lists the following as factors to be considered by the judicial officer fixing pretrial release conditions: the nature of the offense charged, the weight of the evidence against the accused, the accused's family ties, employment, financial resources, character and mental condition, the length of residence in the community, his record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings. 18 U.S.C. § 3146(b).

28. Although a youth can object to pretrial detention from a penal setting such as the D.C. Receiving Home, an objection to preventive detention is much more appealing when voiced by a respondent with a roof over his head and a parent at the door. Appellate courts, no less than trial courts, are loath to open the locked door of a detention center if the youth released will have to spend the night on the street.

29. *See* note 23, *supra.*

30. *Fulwood v. Stone, supra,* prescribes the procedure to be followed by a juvenile seeking review of his pretrial release status. It holds that habeas corpus is not the appropriate method of review until the District of Columbia Court of Appeals (the intermediate appellate court) has had the opportunity to consider the Juvenile Court's ruling.

31. For purpose of appeal, the failure of the Juvenile Court to act on the review motion was treated as a denial of the motion, since the result was the same.

32. D.C.C.A. (Civ.), R. 18.

33. Rice v. District of Columbia, 385 F. 2d 967 (D.C. Cir. 1967). *Cf.* In re Judge Ketcham, unpublished opinion No. 2773, District of Columbia Court of Appeals, July 9, 1964, granting writ of prohibition to prevent a probable cause hearing.

34. 28 U.S.C. § 2251. Note that no stay of proceedings was requested in E.R.'s case, with the result that the Court was able to avoid appellate review. The reason is that 28 U.S.C. § 2251 only allows a stay when a habeas action is pending in a District Court, while E.R. sought review of a motion in the D.C. Court of Appeals.

35. United States District Court for the District of Columbia, Habeas Corpus No. 98-69.

36. Unpublished opinion of Judge Gerhard A. Gessell, United States District for the District of Columbia, Habeas Corpus No. 98-69, decided May 27, 1969, quoted in Cooley v. Stone, 414 F. 2d 1213 (D.C. Cir. 1969).

37. 11 D.C. Code § 1583(a) defines the role of Corporation Counsel in juvenile proceedings. He is to "assist" the Court upon "request," a role perhaps analogous to that of general counsel to a corporation. *Cf.* Rice v. District of Columbia, 385 F. 2d 976 (D.C. Cir. 1967).

38. Cooley v. Stone, *supra.*

39. Approximately 49 per cent of the 6,100 delinquency cases are estimated to result in some pretrial detention.

40. F.R. Crim. P., R. 5; Magistrate's Act, 18 U.S.C. § 3060(b).

41. In Re Taylor, ___A. 2d ___ (slip op. No. 4979, decided March 31, 1970).

42. Cooley v. Stone, *supra* at 1214.

43. 18 U.S.C. § 3060(b).