Justices Grapple With Juvenile Case

Youth Court Attacked for Transferring Rape Suspect, 16, for Trial as Adult

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The Supreme Court grappled yesterday with a problem that has perplexed the courts of Washington and juvenile courts across the country: What are the rights of older youths who commit crimes that outrage a community?

For two hours the Justices heard heated arguments in the first juvenile court case in Supreme Court history, the case of Morris A. Kent Jr. of Washington.

Under attack was the way Juvenile Court in 1961 decided to transfer Kent, then a 16-year-old rape suspect, from its own protective custody to an adult criminal court, where he wound up with a 30 to 90-year jail sentence.

Several Justices appeared deeply disturbed by Juvenile Court's apparently unlimited power to make the fateful transfer decision from evidence that the youth and his lawyer had no right to see or dispute.

But the Justices also seemed disturbed over what to do with the Kent case itself, which turned out to have a confused factual record that could frustrate a clean-cut solution.

Kent's crime rampage—numerous housebreakings, robberies and sex attacks in the Dupont Circle area—carried legal and political overtones that continued to haunt the case yesterday. His arrest touched off cries that juveniles were "coddled" and it renewed demands to treat all 16-year-olds, not just those whom Juvenile Court surrendered, as adults.

The case also has produced intensified efforts to improve the psychiatric services available to Juvenile Court and to open up some of its processes to scrutiny. A group of leading Washington lawyers and law professors filed a brief as friend of the Court calling for new national standards for youth court proceedings.

Attorneys Myron G. Ehrlich and Richard Arens told the justices that Juvenile Court had used "secret evidence" to waive jurisdiction over Kent in the face of uncontradicted claims that he was mentally disturbed.

The jury found Kent mentally responsible for breaking into and robbing the apartments of three women but not guilty by reason of insanity of raping two of them.

The court-appointed lawyers insisted that the right to counsel, a right held applicable to juveniles in the District of Columbia, embraces the right to see and dispute any evidence the juvenile judge has to indicate that he should be treated as an adult. They said a full hearing on the waiver issue was indispensable to the pre-waiver full investigation that the law requires.

When Justice Department Attorney Theodore G. Golinsky sought to defend the procedures, he was peppered with questions from the bench.

Why is counsel not allowed to see juvenile social records containing the youth's history? Because, Golinsky said, much of the information is "hearsay" from social worker sources that need protection.

"Juvenile Court acts on hearsay but gives no chance to rebut the hearsay?" asked Chief Justice Earl Warren. Golsinky said counsel usually sees the records eventually because trial judges in District Court turn them over on request.

But that's too late to challenge the waiver, said Justices Bryon R. White and William J. Brennan Jr. The adult judge can always agree to sit as a juvenile magistrate under District law, said Golinsky, "and that has happened." The special power has been invoked only once in local history.

Justice Abe Fortas asked whether it was "legally proper" for Juvenile Court to give up on a mentally disturbed youth solely because of the inadequacies of its own treatment facilities. Yes, Golinsky said, drafters of a proposed model juvenile law had concluded that the court's ability to treat the youngster is a valid criterion.

The Chief Justice wanted to know about the sentence. "Was everybody in this case determined that he be sent away for the rest of his natural life?" he asked. "Is that why he got 90 years?"

Golinsky suggested that the sentence is subject to correction under Federal law if Kentever recovers his sanity and is discharged from St. Elizabeths Hospital.

Showing no satisfaction with this answer, Warren asked what a lawyer should do for a juvenile client who faces waiver. "He can do what Mr. Arens did, supply information to the juvenile judge," Golinsky said.

But Arens filed two motions that Juvenile Court never answered. "Is that giving a man the right to counsel if we say he can make motions but the judge doesn't have to decide them?"

The justices then turned to Arens. Was it correct, Justice John M. Harlan asked, that Arens had failed to "press" his request to see Juvenile Judge Orm W. Ketcham? Arens said he had been "left with the impression that I would be wasting my time."

White asked, "Did anyone never tell you that you couldn't see the social records?" Arens said he was sure someone had.

Brennan asked if Arens full-hearing demand could be satisfied at the District Court level, since the judge there can convene a juvenile session. Arens said he would be duty bound to attack Juvenile Court's own waiver procedures. "You leave me cold with that argument," Brennan said.

Since Kent is now 21 years old, Brennan asked, would it be proper for the Supreme Court to order a waiver hearing and let the conviction stand if the waiver were upheld?

"That would be constitutionally permissible," Arens said.