Court, 6-3, Says Jury Trial Is Not Required for Youths

Opinion by Blackmun Warns of an End to the 'Intimate, Protective Proceeding' Sought Under the Juvenile System

By JOHN HERBERS JUN 22 1971
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WASHINGTON, June 21—The Supreme Court ruled 6 to 3 today that juveniles do not have a constitutional right to a trial by jury.

Justice Harry A. Blackmun said in the majority opinion that although the juvenile system of justice may have fallen far short of perfection the requirement of a jury trial could "put an end to what has been the idealistic prospect of an intimate, informal protective proceeding."

The decision nevertheless went against a 23-year trend in which the Court in a succession of cases had extended Bill of Rights protections to juvenile proceedings.

Justice William O. Douglas said in the dissenting opinion that because many law enforcement officials had treated juveniles as criminals, and not as delinquents, they were entitled to the same procedural protections as adults.

Joining Justice Blackmun in the majority were Chief Justice Warren E. Burger and Justices John M. Harlan, Potter Stewart and Byron R. White and, to a partial extent William J. Brennen Jr. Voting with Mr. Douglas in dissent were Justices Hugo L. Black and Thurgood Marshall.

The ruling upholds laws existing in most states. Twenty-nine states and the District of Columbia have laws barring jury trials in youth courts, which provide for proceedings before a judge in closed hearings. In five other states there are no jury trials by virtue of court rulings. In the remaining states trials for youths are allowed under certain circumstances.

The judgment was based on cases from Pennsylvania and North Carolina in which teenagers adjuged to be delinquent petitioned for jury trial.

In 1968, Joseph McKeiver of Philadelphia, then 15 years old, was charged with robbery, larceny and receiving stolen goods after he participated, with 20 or 30 other boys in pursuing a teen-ager and taking 25 cents from him. He was adjudged a juvenile and placed on probation.

In 1969, Edward Terry, then 15, also of Philadelphia, was accused of assaulting a policeman with his fists. He was committed to a youth center after it was learned he also had assaulted a teacher.

In the North Carolina case, Barbara Burrus and 45 other black minors, ranging from 11 to 15 years old, were charged with impeding traffic and, foun dto be delinquent after a demonstration against a school consolidation in Hyde County.

In the majority decision, Justice Blackmun summarized the

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long list of rulings that had extended more and more constitutional guarantees to accused youths. He said that the "fond and idealistic hopes" of juvenile court proponents of three generations ago had not been realized.

"Too often the juvenile court judge falls far short of that stalwart protective and communicating figure the system envisaged," he wrote. "The community's unwillingness to provide people and facilities and to be concerned, the inefficiency of time devoted, the scarcity of professional help, the inadequacy of dispositional alternatives and our general lack of knowledge all contribute to dissatisfaction with the experiment."

But he said that despite these disappointments and failures "there is a possibility, at least, that the jury trial, if required as a matter of constitutional precept, will remake the juvenile proceeding into a fully adversary process and will put an effective end to what has been the idealistic prospect of an intimate, informal protective proceeding."

He said it would bring "the traditional delay, the formality and clamor of the adversary system and, possibly, the public trial."

"If the formalities of the criminal adjudicative process are to be superimposed upon the juvenile court system, there is little need for its separate existence," he said. "Perhaps that ultimate disillusionment will come one day, but for the moment we are disclined to give impetus to it."

Adult Protection Asked

Justice Douglas wrote on the other hand that, "Where a state uses its juvenile court proceedings to prosecute a juvenile for a criminal act and to order 'confinement' until the child reaches 21 years of age or where the child at the threshold of the proceedings faces that prospect, then he is entitled to the same procedural protection as an adult."

Justice Brennan concurred in the Pennsylvania cases in the conclusions of the majority but joined the dissent in the North Carolina cases because the prosecutions in that case were carried out in secret.

In other decisions today the Court did the following:

¶Refused to strike down a Georgia law that requires that an independent candidate for political office, in order for his name to appear on the ballot, must present a petition signed by 5 per cent of the voters. Justice Stewart wrote that although the Court had invalidated a similar Ohio law in 1968, Georgia's law does not violate the Constitution because, unlike the Ohio law, it provides for write-in votes and does not fix an unreasonably early filing deadline.

¶Reversed the murder conviction of Edward H. Coolidge Jr. in the 1964 death of a 14-year-old Manchester, N. H., girl, Pamela Mason, on ground that the State Atorney General rather than a neutral judge had ordered the search of Coolidge's car. Mr. Stewart said in the majority decison that "the right of personal security against arbitrary intrusions by official power" must be protected even in "times of unrest."

¶Held, 6 to 3, that a private citizen illegally arrested by Federal agents can sue the agents for damages.

The ruling grew out of the complaint of a Brooklyn man, Webster Bivens, who charged that six agents of the Federal Bureau of Narcotics had entered his apartment, without warrant, arrested him on a narcotics charge, booked him at the Federal Court House in Brooklyn and subjected him to a "visual strip search," all without probable cause.

Supreme Court's Actions

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WASHINGTON, June 21—The Supreme Court took the following actions today:

JUVENILE JUSTICE

Held, 6 to 3, that juveniles do not have a constitutional right to trial by jury (No. 322, McKeiver et al. v. Pennsylvania). Douglas, Black and Marshall dissenting.

WIRETAPPING

Agreed to decide whether the Government may tap, without prior court approval, the telephones of people suspected of domestic subversion. (No. 1687, United States v. United States District Court for Eastern Michigan.)

ILLEGAL ARREST

Held, 6 to 3, that a private citizen illegally arrested by Federal agents can sue the agents for damages. (No. 301, Bivens v. six unknown agents of Federal Bureau of Narcotics). Burger, Black and Blackman dissenting.

ELECTIONS

Refused to strike down a Georgia law providing that independent candidates must present a petition signed by 5 per cent of the voters to get on the ballot. (No. 5714, Jenness et al. v. Fortson, Secretary of the State of Georgia.)

PERJURY

Let stand the perjury conviction of Martin Sweig, who was administrative assistant to former House Speaker John W. McCormack. (No. 1702, Sweig v. United States.)

SEARCH AND SEIZURE

Set aside the conviction of Edward H. Coolidge Jr. in the 1964 murder of Pamela Mason, 14-year-old Manchester, N. H., girl, holding that the warrant against Coolidge constituted unreasonable search and seizure and had not been issued by a neutral magistrate. (No. 323, Coolidge v. New Hampshire.