

## **USA (Colorado): The arrest and pre-trial detention of Raoul W.**

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### **Background**

Ten-year-old Raoul W.<sup>1</sup> was arrested from his home in Evergreen, near Denver, on 30 August 1999. The police came to the family's house at around 10pm at night in order to carry out the arrest.<sup>2</sup> Raoul was in bed at the time the police came to the house. He was taken away in handcuffs.

The basis of the arrest was an allegation made by a neighbour, on or around 25 May 1999, that she had seen Raoul engaged in "predatory" sexual behaviour against his five-year-old sister, namely by improperly touching her when the two were playing in the garden. The local authorities have stated that they carried out their own investigations into the allegation before authorizing the arrest.

Raoul, who is now 11, was charged with "aggravated incest", and held for the next seven weeks in the Mount View Youth Services Center, a juvenile detention centre in Denver for 10 to 17-year-olds. He has been taken to court several times, in handcuffs, and on at least one occasion he has been made to wear leg shackles. Raoul is variously described as "slight" and "small for his age".

At the most recent juvenile court hearing on 19 October 1999, a Jefferson County Juvenile Magistrate ruled that there was enough evidence for Raoul to face trial and set an arraignment date of 8 November, when a plea will be entered and a trial date set. She also ordered that the young boy be immediately released from Mount View and placed in foster care, pending the availability of a bed in the Colorado Christian Home, a state-licensed private residential child care facility.

Raoul has dual Swiss/US nationality and his case has generated much concern and media attention both within the USA and abroad, especially in Switzerland and some other European countries. Some time after the arrest Raoul's parents and other three children left for Switzerland. They have reportedly stated that they did this because they feared that their other three children might be taken from them by the local authorities.

Raoul's case raises some serious concerns under international standards. Amnesty International is urging the Colorado authorities to take note of these concerns and examine the ways in which they respond to children charged with or convicted of criminal offences.

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<sup>1</sup> Raoul's family name has been withheld to protect his and his family's privacy.

<sup>2</sup> A Jefferson County Sheriff's Office spokesperson has told Amnesty International that the reason that the arrest was carried out at this time was that the officers had tried several times earlier in the day to carry out the arrest, but that they had been unable to.

### International standards relating to children in conflict with the law<sup>3</sup>

The fundamental principles underlying international standards relating to children who come into conflict with the law include the following:

- the promotion of the well-being of the child;
- the “best interests” of the child should be officials’ primary consideration;
- as with adults, a presumption of innocence applies;
- a proportionate reaction by the authorities to the nature of the offender as well as to the offence;
- incarceration pending trial should be used as a last resort and for the shortest possible time.

### III-treatment: The use of handcuffs and shackles

“No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment”. Article 37(a) UN Convention on the Rights of the Child<sup>4</sup>

“Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age.” Article 37(c), UN Convention on the Rights of the Child

Raoul was made to wear handcuffs on arrest and when being transported between the detention facility and the court for the several hearings that occurred between his arrest and 19 October. On 31 August, when he appeared in court with other juveniles arrested the previous day, Raoul was made to wear leg shackles along with the rest of the group (whose identities, ages, and alleged offences are unknown to Amnesty International).

According to the Jefferson County Sheriff’s Office this is standard procedure. Any time someone is taken into custody, “irrespective of gender or age” they are handcuffed “for the officers’ safety as well as the safety of the individual concerned”. The same applies when the person is transferred between the detention facility and court. Leg shackles are used on children when more than one are brought to court, at which time the children are shackled together. It is not clear if shackles were used on subsequent court hearings, although they were not used on 19 October.

International standards prohibit chains or leg-irons, even for adults.<sup>5</sup> However, it is common practice in the USA for prisoners and detainees to be shackled during transportation, with handcuffs attached to metal waist chains and, in many cases, the legs or ankles chained together, as occurred to Raoul. Regardless of the issues surrounding the use of such restraints against adults, officials are under a different duty of care when dealing with children suspected of or charged with offences, taking fully into account their age and making the child’s “best interests” their prime consideration.

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<sup>3</sup> Amnesty International has ongoing concerns about the treatment of children in the US justice system. In November 1998, it published *Betraying the Young: Human Rights Violations against Children in the US Justice System* (AMR 51/57/98).

<sup>4</sup> The USA has signed but not ratified the CRC. Having signed it it has bound itself not to do anything which would defeat the treaty’s object and purpose, pending a decision on whether to ratify it. Given the almost universal ratification of the CRC and the fact that the USA is a signatory, Amnesty International takes the view that the Convention provides a proper basis for the examination of the laws, policies and practices of US authorities.

<sup>5</sup> Rule 33 of the UN Standard Minimum Rules for the Treatment of Prisoners stipulate that: “Instruments of restraint, such as handcuffs, chains, irons and strait-jackets, shall never be applied as a punishment. Furthermore, chains or irons shall not be used as restraints.”

Amnesty International can see no reason to suggest that Raoul was either a threat to himself or the officers involved in the arrest which would justify the use of handcuffs. Likewise it can see no justification for the subsequent use of handcuffs or shackles against a child of his age and size. The organization has concluded that their use against him amounted to ill-treatment, in violation of international standards, including article 37a of the Convention on the Rights of the Child (above).

The organization further believes that the Jefferson County Sheriff's Office's policy of using handcuffs or shackles without taking any account of the individual's age, size or other circumstances, contravenes international standards relating to children.

By the time of the hearing on 19 October, there was a great deal of local media attention focussed on Raoul's plight, prompted by foreign, particularly Swiss, media and public concern about the case. At the hearing, unlike previous occasions, Raoul was wearing no restraints and was wearing civilian clothes (he had previously appeared in court in detention centre uniform<sup>6</sup>). This would appear to further demonstrate that there was never any need for him to be handcuffed or shackled at any time.

### **The length of pre-trial detention**

*"Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time."* Rule 13.1 United Nations Standard Minimum Rules for the Administration of Juvenile Justice

*"Detention before trial shall be avoided to the extent possible and limited to exceptional circumstances. Therefore, all efforts shall be made to apply alternative measures. When preventive detention is nevertheless used, juvenile courts and investigative bodies shall give the highest priority to the most expeditious processing of such cases to ensure the shortest possible duration of detention."* Rule 17, United Nations Rules for the Protection of Juveniles deprived of their Liberty

The authorities have blamed lack of cooperation by Raoul's parents, and the fact that they left the country, for the delay in finding the boy an alternative to Mount View detention centre. They have stated that because of difficulties in obtaining the required legal and identification documents relating to Raoul, they could not put him into foster care sooner. In a news release issued on 20 October, the District Attorney's Office stated: *"In the vast majority of cases where a juvenile is accused of criminal behaviour, the juvenile is quickly placed either back in his own home with a safety plan in place, in foster care, a group home or other therapeutic setting. However, any of these alternative placements require the cooperation of the parents. It takes much longer and is very difficult to place a child without parental cooperation and involvement."*

The news release continues: *"All cases of suspected sexual abuse of children are screened by our specialized Crimes Against Children Unit, so that attorneys with extensive training and experience in this area determine whether charges are appropriate. Normal childhood behavior is distinguishable from criminal sexual behaviour requiring intervention. A court, independent of the prosecutor's office, will dismiss cases that do not fit the legal definition of criminal sexual behaviour."*

Finally, the authorities state: *"In some cases the parents take responsibility to quickly seek appropriate treatment for the children and ensure their safety. Most of these cases never reach juvenile court. Sometimes, however, parents are unwilling to address the inappropriate sexual behavior of their child. In these cases, the court's involvement becomes necessary to ensure the protection of children vulnerable to victimization. Intervention in these situations generally cannot be accomplished without the filing of criminal charges."*

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<sup>6</sup> The United Nations Rules for the Protection of Juveniles Deprived of their Liberty states: "To the extent possible juveniles should have the right to use their own clothing... Juveniles removed from or leaving a facility for any purpose should be allowed to wear their own clothing."

Amnesty International cannot comment on the claim that Raoul's parents were uncooperative, or on the reasons why they left for Switzerland. What is certain, however, is that all efforts must be made to ensure that the child does not become the victim either of such circumstances or of official inertia or bureaucracy. Under international standards, the onus is on the arresting authorities to take all possible steps to find alternatives to pre-trial incarceration as soon as possible. They must demonstrate that there are exceptional circumstances in order to justify continued detention. That onus should weigh more heavily on officialdom in the case of younger children, and those who have any special circumstances or needs which make them particularly vulnerable.

Amnesty International acknowledges official statements that this case was unusual in that the parents left the country. However, it believes that seven weeks in a juvenile detention centre before a court determined that he should stand trial was an inappropriate response given his age and the nature of the allegations against him. Whatever the situation with his family, the onus is on the authorities to demonstrate that it was in Raoul's "best interests" for him to be kept in a detention centre and that there were no alternatives that could have been found earlier.

The order on 19 October by the Jefferson County Juvenile Magistrate that Raoul should be *immediately* released from Mount View, indicates that she too had reached the conclusion that holding him in the juvenile detention facility was not the right way to treat the boy. Whether the delay in reaching this outcome was the result of bureaucracy, lack of availability of alternatives, or inertia on the part of the authorities, Raoul's seven-week detention in Mount View appears to have violated international standards.

In an unfortunate turn of events, on 26 October the authorities revealed that the tape recorder used to record the 19 October hearing had not functioned properly, and the hearing was going to have to be repeated. At the time of writing no date had been set for the rehearing.

