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# Constitutional Law--Due Process in Juvenile Court Proceeding

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ficers."[30] It appears then that the West Virginia court would be in harmony with the *Camara* holding in interpreting the state constitution when appeal is made to the state constitutional right.

The *Camara* decision fits the pattern of recent Supreme Court cases which have expanded individual rights. The effect of the warrant requirement on administrative inspections is yet to be observed. That it would lead to wholesale refusals to admit inspectors without warrants into homes is doubtful. Such refusals have been few in the past and are not likely to increase as the inspections are beneficial to the occupant and are generally accepted as useful. The issuance of warrants under a different set of rules for probable cause should not weaken the probable cause requirement as applied in criminal cases. Competent magistrates should have no difficulty distinguishing between the administrative and criminal cases and applying the proper probable cause test. *Camara* has underscored and strengthened the citizen's right to be free from unreasonable or arbitrary searches.

*John Reed Homburg*

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**Constitutional Law—Due Process in Juvenile Court Proceeding**

Petitioner, a 15-year old boy, was committed to a state industrial school after he allegedly made a lewd telephone call to a female neighbor. He was adjudicated delinquent in an unusually informal juvenile court proceeding, with no sworn testimony, the complainant not being present, and without notification to either the petitioner or his parents of the right to be represented by counsel. Gerald Gault was committed to the industrial school for the period of his minority, unless sooner released, under code provisions of the state of Arizona.[1] The boy's parents petitioned for a writ of habeas corpus in the county superior court, alleging that the procedure used in the juvenile proceeding violated the petitioner's constitutional rights. The county court dismissed the petition and

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[30] State v. Andrews, 91 W. Va. 720, 727, 114 S.E. 257, 260 (1922).

[1] ARIZ. REV. STATS. § 8-201-6 (1956). In contrast, an adult, convicted in the criminal court for the same offense, would have been subject to a fine of $5.00 to $50.00 or imprisonment in jail for not more than two months. ARIZ. REV. STATS. § 13-377 (1956).

the Arizona Supreme Court affirmed. The United States Supreme Court granted an appeal. *Held,* reversed and remanded. In a lengthy opinion by Mr. Justice Fortas the Supreme Court reasoned that the age of the defendant does not preclude his right to constitutional privileges in an accusatorial proceeding. *In re Gault,* 387 U.S. 1 (1967).

This case is being heralded as a landmark decision. It attacks the basic concept of the existing juvenile court procedures and is in harmony with the present dominant trend refining due process rights in accusatorial proceedings. Herein the Supreme Court accords accused juveniles the same basic constitutional rights as accused adults in criminal proceedings.

Juvenile courts and juvenile court laws grew from abhorrence of an earlier day's court procedure when children were treated as adults, and a child of tender years could be marred for life by criminal conviction and imprisonment with hardened criminals. Men of good will accomplished reform by replacing notions of punishment with concepts of care and rehabilitation.[2] The philosophy of juvenile court acts was to allow the state to offer assistance and training for the juvenile when there was some demonstrated need and justification for it. State intervention in a child's life was to avoid the stigma of criminal guilt.[3] The procedure in a juvenile case was to be informal, civil and not criminal in nature, and, therefore, the specific criminal safeguards were not applied.[4] This idea was upheld on the theory that the state was acting as *parens patriae* for the child's protection, as in a guardianship situation, and was not accusing the child of crime with view to punishment.[5] The reformers, by substituting the old equity concept of *parens patriae* (the state owes a duty of protection to children that it does not owe to adults) for adult criminal procedure, established for the young offender a unique form of justice. This policy was carried out by conglomerating environment, psychology and medicine, then, superimposing the product of the conglomeration on to

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[2] Mack, *The Juvenile Court,* 23 HARVARD L. REV. 104 (1909).

[3] Bloch & Flynn, DELINQUENCY, *The Juvenile Offender in America Today,* 305-307 (1956).

[4] Cinque v. Boyd, 99 Conn. 70, 121 A. 678 (1923). *In re* Holmes, 379 Pa. 599, 605, 109 A.2d 523, 525, (1954), a more recent case, stated, "Juvenile courts are not criminal courts. The *constitutional rights granted to persons accused of crime are not applicable to children* brought before them." (emphasis added).

[5] Paulsen, *Fairness to the Juvenile Offender,* 41 MINN. L. REV., 547, 549 (1957).

the law with the final result being "justice."[6] This dogmatic approach did not go uncriticized. The basic fallacy with this philosophy, as the critics saw it, was the possibility of the removal of the child from his home and the deprivation of his liberty by what appeared to be an arbitrary and discretionary function. Many writers were caustic, noting that the courts accorded to known criminals and enemy aliens the very constitutional rights that were being denied to children being sent to reformatories.[7] As juvenile courts became more crowded and the margin for error became greater, and as the constitutional rights of due process for adults criminally accused became more clearly refined by the Supreme Court, critical comment became more widespread and more pointed.[8]

Observers of the Court in recent years could well have predicted the decision in *Gault*. This trend of due process holdings reached a crescendo in the 1960's with three familiar criminal procedure cases, *Gideon v. Wainwright*,[9] *Escobedo v. Illinois*,[10] and *Miranda v. Arizona*.[11] The soundings for *Gault* were heard in *Kent v. United States*[12] (where the issue was limited to applicability of due process guarantees in a waiver of jurisdiction hearing in a juvenile court to the criminal court) which held that the child must be given proper notice of such hearing and advised of his right to be represented by counsel. Justice Fortas observed that the child in juvenile court had possibly obtained the worst, rather than the best, of both worlds of so-called rehabilitation and informality of procedure.[13] Commenting on the right to counsel the Court in *Kent* noted that it was not mere formality or a "grudging

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[6] Paulsen, *Kent v. United States: The Constitutional Context of Juvenile Cases*, 1966 S. Ct. Rev. 167, 170-73.

[7] Onley, *Juvenile Courts—Abolish Them*, 13 Cal. State B.J. 1, 2 (1938).

[8] Paulsen, *supra* note 6, at 174. *E.g.*, "Why should the fundamental law hamstring the state in its attempt to do good?"

[9] 372 U.S. 335 (1963). The Court held that a criminal conviction without the assistance of counsel was violative of the Fourteenth Amendment and was a denial of due process.

[10] 378 U.S. 478 (1964). The Court held that police interrogation of accused while refusing to allow accused the assistance of counsel was violative of due process and thereby renders inadmissible in a criminal trial any incriminating statement elicited by the police during the interrogation.

[11] 384 U.S. 436 (1966). The Court held that the failure to warn the accused of his right to remain silent was violative of accused's privilege against self-incrimination, and that an individual has the "right to remain silent unless he chooses to speak in the unfettered exercise of his own free will."

[12] 383 U.S. 541 (1966).

[13] *Id.* at 561.

gesture to a ritualistic requirement" but that it was the "essence of justice."[14] This was the foundation for the far-reaching decision in *Gault.*

In applying the due process guarantees to juvenile court proceedings, the Supreme Court has radically changed the present concept and procedure of the juvenile court. The Court has held: (1) the juvenile court must ensure that the alleged delinquent is given timely notice (to the child and his parent) of the "charges" against him; (2) that he has the right to counsel in any case in which a commitment could be made; (3) the child must also have the right to cross examine the complainant and any other witnesses called against him; and (4) the revelant authorities must ensure that the child is given adequate cautioning against self-incrimination. The Court raised other important questions discussion of which space does not here permit.[15]

Juvenile court procedure in West Virginia is set forth in chapter 49, article 5 of the West Virginia Code. The code provides that a defendant shall be duly summoned into court and shall appear and answer on the return day of the summons or if the summons is served less than one day prior to the return day, then he shall appear on the following day.[16]A juvenile may be brought before the court either by petition of a reputable person or by certification of another court when it is ascertained that the person is under eighteen years of age.[17] Upon the filing of the petition the juvenile judge shall set a time for the hearing.[18] In West Virginia a juvenile would have at least twenty-four hours' notice. The juvenile court may, upon request of the child or the person named in the petition, appoint counsel to represent the child.[19] However, the West Virginia Supreme Court of Appeals has held that where no request is made for counsel the failure of the court to appoint counsel does not render the proceedings void.[20] The law for juveniles in West Vir-

[14] *Id.*

[15] The Court discussed, without deciding, the issues of double jeopardy, speedy and public trial, trial by jury, and the rules of evidence. For a short discussion of these issues, *see* Lefstein, *In re Gault, Juvenile Courts and Lawyers,* 53 A.B.A.J. 811, 813 (Sept. 1967). *See also, Double Jeopardy and Waiver in Juvenile Delinquency Proceedings,* 23 FED. PROB. 43 (Dec. 1959).

[16] W. VA. CODE ch. 49, art. 5, § 9 (Michie 1966).

[17] W. VA. CODE ch. 49, art. 5, § 7 (Michie 1966). The petition shall be verified by oath, shall name the parent or guardian and shall give his address if known.

[18] *Id.*

[19] W. VA. CODE ch. 49, art. 5, § 13 (Michie 1966).

[20] State v. Mills, 144 W. Va. 257, 107 S.E.2d 772 (1959).

ginia has been to "protect and reclaim" by allowing a great deal of discretion with the juvenile court judge.[21] It would appear that West Virginia procedure is anomalous to the holdings in *Gault.*

The guidelines for future juvenile proceedings in West Virginia must be revised to conform with the rulings in *Gault.* This can be accomplished either by the Legislature, as part of a comprehensive statutory overhaul, or by the Supreme Court of Appeals on a case by case basis. Regardless of the method of revision, it is clear that accused juveniles in juvenile court proceedings now have the right to counsel, the right of cross-examination, protection against self-incrimination, and timely notice of "charges" against them. *Gault* requires "due process of law" in juvenile court proceedings.

*John Hampton Tinney*

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**Constitutional Law—Who May Constitutionally Issue A Warrant?**

*P,* arrested on a warrant issued by a lieutenant of police, was charged with disorderly conduct and resisting arrest. The city charter authorized captains and lieutenants of police, in the absence of the chief of police, to issue warrants for offenses in violation of ordinances of the city. *P* claims that the ordinance constitutes an unconstitutional delegation of judicial authority in contravention of the separation of powers provision of the state constitution.[1] The lower court upheld the constitutionality of the ordinance and the validity of the warrants. *Held,* affirmed. The court held in a 3-2 decision that, at the lower levels of government, there must necessarily be an overlapping of functions in responsible officials and that issuance of a warrant is the type of an act which does not require or involve the exercise of supreme judicial power within the meaning of that term as used in the constitution. *State ex rel. Sahley v. Thompson,* 151 S.E.2d 870 (W. Va. 1966).

The factual situation of this case presents succinctly a basic constitutional issue which the courts of this country have had to resolve in the past and most certainly will be confronted with in the future.

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[21] 50 OPS. W. VA. ATT'Y GEN. 257 (1963).

[1] "The legislative, executive and judicial departments shall be separate and distinct, so that neither shall exercise the powers properly belonging to either of the others; nor shall any person exercise the powers of more than one of them at the same time . . . ." W. VA. CONST. art. V, § 1.