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Criminal Procedure - Due Process in Juvenile Delinquency Proceedings

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great concern with the specificity requirement. A third possibility is to develop a new category of limitations exclusively for search in hot pursuit.

The judicial history of the fourth amendment reveals a balancing of the need for effective law enforcement against the right of the people to be free from unreasonable intrusions by the state. To completely deny the right of search in hot pursuit situations would appear to unduly hamper efforts to apprehend escaping felons. This the Court did not do. But while the principle is a desirable one, considerable uncertainties remain to be clarified, some of which have perhaps been indicated in this Note.

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CRIMINAL PROCEDURE—DUE PROCESS IN JUVENILE DELINQUENCY PROCEEDINGS

Gerald Gault, a fifteen year old on juvenile court probation, was arrested pursuant to a neighbor's verbal allegation that she had received an obscene phone call from him. His parents were not informed of his arrest, nor were they notified of an informal hearing held the next day. After spending four days in a detention home, Gault was released. Mrs. Gault then received a note informing her that further hearings concerning her son's "delinquency" were pending. At the second hearing Gault was adjudged a delinquent and committed to the State Industrial School for the duration of his minority. The offended neighbor was not present at either hearing nor were records made of the

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to lawful arrest). The Court said: "The requirement that warrants shall particularly describe the things to be seized . . . prevents the seizure of one thing under a warrant describing another. As to what is to be taken, nothing is left to the discretion of the officer executing the warrant." *Id.* at 196. In Stanford v. Texas, 379 U.S. 476, 486 (1965), the Court, citing *Marron* with approval, held that officers who seized a large quantity of the petitioner's private books and papers under a warrant authorizing the search for written instruments concerning the Communist Party had violated the fourth amendment, because the warrant did not describe, with sufficient particularity, that which was to be seized. A similar holding is found in Marcus v. Search Warrant, 367 U.S. 717, 732 (1961), involving the seizure of obscene publications. *But see* lower federal court cases upholding the seizure of evidence not described in the warrant: Seymour v. United States, 369 F.2d 825 (10th Cir. 1966), *cert. denied*, 368 U.S. 987 (1967); Porter v. United States, 335 F.2d 602 (9th Cir. 1964), *cert. denied*, 379 U.S. 983 (1965); United States v. Myers, 329 F.2d 280 (3d Cir. 1964); United States v. Eisner, 297 F.2d 595 (6th Cir. 1962), *cert. denied*, 369 U.S. 859 (1962); Johnson v. United States, 293 F.2d 539 (D.C. Cir. 1961).

hearings. There was considerable confusion as to what the boy had admitted while in custody and at no stage of the proceedings was he represented by counsel. Neither he nor his parents were informed of his constitutional rights. Because no appeal from a juvenile court ruling is allowed under Arizona law, Gault's parents sought habeas corpus relief which was denied by the Arizona Supreme Court. The United States Supreme Court reversed. *Held*, in any delinquency proceedings which may lead to incarceration, due process demands that the accused be afforded adequate notice of the charges, right to retained or appointed counsel, confrontation and cross-examination of witnesses, and the privilege against self-incrimination. *In re Gault* 387 U.S. 1 (1967).

Due process in juvenile court proceedings has been a much-debated issue. Most courts have relied on the *parens patriae*[1] rationale in dismissing alleged violations of constitutional rights. Under this reasoning juvenile cases have been viewed as civil proceedings aimed at rehabilitation and protection, not criminal proceedings aimed at punishment,[2] and constitutional safeguards applicable to adult criminal proceedings have been denied.

The Court in the instant case, however, made a realistic appraisal of juvenile court proceedings. Looking beyond benevolent motives underlying juvenile court statutes, the Court concluded that the traditional distinction between criminal cases and juvenile proceedings had little basis in fact. Despite the "goodwill and compassion" supposedly found in juvenile court systems, juveniles are often subject to longer confinement than

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1. For an excellent discussion of the *parens patriae* theory, see Cinque v. Boyd, 99 Conn. 70, 121 A. 678 (1923). See also the appendix to Judge Prettyman's opinion in Pee v. United States, 274 F.2d 556, 561 (D.C. Cir. 1959).

2. *In re* Holmes, 379 Pa. 599, 603, 109 A.2d 523, 525 (1954), succinctly stated the position: "Appellants able counsel has urged upon us, as upon the Superior Court many claims of illegality and deprivation of constitutional rights in connection with the proceeding before the Municipal Court. Such claims, however, entirely overlook, in our opinion, the basic concept of a juvenile court. The proceedings in such a court are not in the nature of a criminal trial but constitute merely a civil inquiry or action looking to the treatment, reformation, and rehabilitation of the minor child. Their purpose is not penal but protective, aimed to check juvenile delinquency and to throw around the child, just starting, perhaps, on an evil course and deprived of proper parental care, the strong arm of the state acting as parens patriae. The state is not seeking to punish an offender but to salvage a boy who may be in danger of becoming one, and to safeguard his adolescent life."

adults committing the same offense.[3] That confinement is in an "Industrial School" rather than prison does not mitigate the effect.[4] Similarly, the terms "delinquent" and "criminal" embody no significant factual distinction.[5] If juvenile proceedings and criminal trials are substantially similar in ultimate effect "the youngster has been cheated of his constitutional rights by false labeling."[6] The issue in the instant case was not whether due process requirements apply to juvenile court proceedings,[7] but what specific rights flow from its application. Although the precise methods by which juvenile courts will implement the Court's guidelines remain uncertain, the decision clearly necessitates major revision of the general approach to the treatment of delinquency.[8]

That juvenile courts are powerless to act unless notice of charge has been given has long been recognized.[9] The instant case considers the adequacy of notice. Gault's parents received

3. In the instant case, had Gault been over eighteen, the maximum punishment would have been a fine of five to fifty dollars or imprisonment not to exceed two months. ARIZ. REV. STAT. §§ 8-201-02 (1956). As a juvenile he was subjected to confinement for the duration of his minority—five years.

4. *In re* Gault, 387 U.S. 1, 27 (1967): "The fact of the matter is that, however euphemistic the title, a 'receiving home,' or an 'industrial school' for juveniles is an institution of confinement in which the child is incarcerated for a greater or lesser time. His world becomes 'a building with whitewashed walls, regimented routine and institutional laws.' Instead of mother and father and sisters and brothers and friends and classmates, his world is peopled with guards, custodians, state employees, and 'delinquents' confined with him for anything from waywardness to rape and homicide."

5. In Jones v. Commonwealth, 185 Va. 335, 341-42, 38 S.E.2d 444, 447 (1946), the court said: "The judgment against a youth that he is delinquent is a serious reflection upon his character and habits. The stain against him is not removed merely because the statute says no judgment in this particular proceeding shall be deemed a conviction for crime or so considered. This stigma of conviction will reflect upon him for life. It hurts his self-respect. It may, at some inopportune, unfortunate moment, rear its ugly head to destroy his opportunity for advancement, and blast his ambition to build up a character and reputation entitling him to the esteem and respect of his fellow man."

6. Paulsen, *Fairness to the Juvenile Offender*, 41 MINN. L. REV. 547, 550 (1957).

7. Courts under both federal and state constitutions have held that due process is applicable to proceedings in juvenile court to determine guilt. Matters of W. and S., 19 N.Y.2d 55, 277 N.Y.S.2d 675, 224 N.E.2d 102 (1966); In Interest of Carlo and Stasilowicz, 48 N.J. 224, 225 A.2d 110 (1966). See authorities cited 387 U.S. 1, n.8 (1967).

8. In Louisiana the greatest impact of the instant case will be felt in the rural parishes where procedures in juvenile courts have been more informal than in urban parishes. See generally *The Gault Case: Its Effect on Juvenile Court Practices in the Rural Parishes* (an unpublished student project on file in the LSU Law Library).

9. *In re* People v. Harris, 343 Ill. App. 462, 99 N.E.2d 390 (1951); *In re* Roth, 158 Neb. 789, 64 N.W.2d 799 (1954); Reyna v. State, 206 S.W.2d 651 (Tex. Civ. App. 1947).

only a note written on plain paper advising them of the date of the second hearing. The Court found the notice inadequate notwithstanding the appearance of Gault's parents at the two hearings "without objection."[10] Thus neither the parent's actual knowledge of the charge nor failure to object to lack of adequate notice constituted waiver of the right.[11] *Gault* requires that notice be given sufficiently in advance of the hearing to afford ample time for preparation, and that it be of the type constitutionally adequate in a civil or criminal proceeding.[12] These requirements clearly prohibit the use of vague petitions and general allegations of delinquency.[13]

Few states have required notice of the right to counsel.[14] *Kent v. United States*,[15] held that assistance of counsel was essential to the validity of a transfer of jurisdiction by a juvenile court to a district court. The instant case clearly requires assistance of counsel in all juvenile proceedings where the child is subject to confinement. Mrs. Gault's knowledge that she could have appeared with a lawyer did not constitute a waiver of the right to be so advised. The person must be expressly advised of the right to retain counsel and, if financially unable to do so, to have counsel appointed by the court.[16] Failure to so advise

10. Upon learning from a neighbor that Gault was in custody, Mrs. Gault proceeded to the detention home. She was informed by the superintendent of the detention home that a hearing would be held in juvenile court the following day.

11. The contrary has been true in Louisiana; the child has not been deemed to have been denied due process where his parents appeared voluntarily. *In re* Tilotson, 225 La. 573, 73 So.2d 466 (1954); State v. Neal, 169 La. 441, 125 So. 442 (1929); *In re* State in the Interest of Cook, 145 So.2d 627 (La. App. 4th Cir. 1962).

12. As to constitutional adequacy of notice in criminal proceedings, see Cole v. Arkansas, 333 U.S. 196 (1948); *In re* Oliver, 333 U.S. 257, 273-78 (1948). As to adequacy in a civil context, see, *e.g.*, Armstrong v. Manzo, 380 U.S. 545 (1965); Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950). These cases clearly preclude the possibility of a general allegation of delinquency being deemed adequate.

13. In the Matter of Kenneth Lee Wylie, 231 A.2d 81 (D.C. Cir. 1967), held that a petition charging a juvenile with striking a victim, and demanding that the victim turn over his money, was too indefinite to appraise the juvenile of the charge against him. The court noted that the petition could be interpreted as a charge of robbery, attempted robbery, assault, or all three. In the instant case Gault was charged with "delinquency."

14. In People *ex rel.* Weber v. Fifield, 136 Cal. App. 2d 741, 289 P.2d 303 (1955), the court based its denial of the right to appointed counsel on the *parens patriae* theory. Some courts, however, have held that important rights, such as the right to counsel, cannot be brushed aside merely by a "change of label." See, *e.g.*, Black v. United States, 355 F.2d 104 (D.C. Cir. 1965); Shioutaken v. District of Columbia, 236 F.2d 666 (D.C. Cir. 1956); *In re* Poff, 135 F. Supp. 224 (D.D.C. 1955).

15. 383 U.S. 541 (1966).

16. 387 U.S. 1, 42 (1967).

would render any subsequent incarceration illegal and release of the child would be in order.[17]

Certain language used by the Court could create confusion with respect to waiver of right to counsel. The right to be represented by counsel is clearly the child's right,[18] but the Court intimates that the right may be waived by the parents.[19] Though the possibility of parental waiver is not necessarily inconsistent with the view that the right of representation belongs to the child,[20] clarification of this point by the Court seems desirable.

Arguably, attorneys are not properly trained to function in the juvenile court setting. The mere presence of a lawyer, however, might have a desirable effect on the conduct of the proceedings. It seems certain, moreover, that the bar can continue to adapt to the developing notions of due process.[21]

Under *Gault* the juvenile must also be afforded the rights of confrontation, cross-examination, and the privilege against self-incrimination.[22] The basis of the initial adjudication of delinquency in the instant case was the admissions made by Gault at the two hearings. The Court noted that a skeptical view

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17. In Applications of Johnnie J. Billie and Leroy Jewelryman, 429 P.2d 699 (Ariz. 1967), it was held that where parents and petitioners were not advised of their right to counsel, detention in an industrial school was illegal. The petitioners were ordered released.

18. 387 U.S. 1, 41 (1967): "[T]he child and his parents must be advised of the child's right to be represented by counsel."

19. *Id.*: "Mrs. Gault's knowledge that she could employ counsel is not an 'intentional relinquishment or abandonment' of a fully known right." This clearly seems to indicate that had Mrs. Gault been advised of the right to counsel, an "intentional relinquishment or abandonment" of the right by her would suffice as a waiver.

20. The child's ability to waive his constitutional rights will depend in part on his ability to understand them. *In re* Butterfield, 61 Cal. Rptr. 874 (1967); People v. Gomez, 60 Cal. Rptr. 881 (1967). In the *Butterfield* case a fifteen-year-old girl entered into wardship proceedings not knowing that long term confinement in a correctional institution was possible. The court held that the child's waiver of counsel was not an intelligent waiver and absence of counsel deprived her of due process.

It seems that in cases where waiver by the child would be impossible, because of the child's inability to understand his constitutional rights, necessity will demand that the decision with respect to waiver be made by the parents. In cases where the parents' interests are adverse to those of the child, counsel for the juvenile should be required. State v. Maloney, 433 P.2d 625 (Ariz. 1967); Marsden v. Commonwealth, 227 N.E.2d 1 (Mass. 1967).

21. It seems certain that the requirement of appointed counsel will add to the practical problems of implementation occasioned by Miranda v. Arizona, 384 U.S. 436 (1966), and Gideon v. Wainwright, 372 U.S. 335 (1963). As to these problems, see generally Comment, *Representation of Indigent Defendants in Criminal Cases: Guidelines for Louisiana*, 27 LA. L. REV. 592 (1967).

22. *In re* Gault, 387 U.S. 1, 42 (1967).

must be taken of child confessions in certain situations.[23] The need for careful examination of confessions made by juveniles seems even greater in states like Arizona where a juvenile court may waive jurisdiction in favor of a district court and thus subject the juvenile to criminal prosecution.[24] The absence of possible criminal prosecution, however, will not preclude the application of the fifth amendment privilege.[25] The Court specifically stated that delinquency proceedings are to be regarded as criminal for purposes of the privilege.[26] In the absence of a valid confession supporting an adjudication of delinquency, future adjudications will be subject to reversal unless the elements "confrontation and sworn testimony by witnesses available for cross-examination" are present.[27]

The requirements of the instant case logically follow the Court's conclusion that the difference between criminal trials and juvenile delinquency proceedings does not justify denial of constitutional safeguards to the juvenile. Mr. Justice Harlan felt that due process could have been satisfied by requirements of timely notice of charges, right to counsel, and a written record of the proceedings.[28] This view differs from that expressed

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23. *Id.* at 45. In Haley v. Ohio, 332 U.S. 596, 599 (1948), Mr. Justice Douglas, speaking for the Court, said: "What transpired would make us pause for careful inquiry if a mature man were involved. And when, as here, a mere child—an easy victim of the law—is before us, special care in scrutinizing the record must be used." *Haley* dealt with the "criminal" prosecution of a juvenile. However, in recent appellate court cases adjudications of delinquency based on confessions obtained under circumstances similar to those in *Haley* have been set aside because of the inadmissibility of the confession. See the Matter of W and S, 19 N.Y.2d 55, 277 N.Y.S.2d 675, 224 N.E.2d 102 (1966); The Interests of Carlo and Stasilowicz, 48 N.J. 224, 255 A.2d 110 (1966).

24. ARIZ. CONST. art. 6, § 15, *as amended*, 1960; ARIZ. REV. STAT. §§ 8-223, 8-228(A) (1956).

25. The fifth amendment privilege against self-incrimination, applicable to the states through the fourteenth amendment due process clause, states: "No person shall . . . be compelled in any criminal case to be a witness against himself." It is well settled, however, that the privilege may be invoked in any proceeding, regardless of its nature, so long as the statement is or may be inculpatory. In Murphy v. Waterfront Commission, 378 U.S. 52, 94 (1964), Mr. Justice White, concurring, said: "The privilege can be claimed in any proceeding, be it criminal or civil, administrative or judicial, investigatory or adjudicatory . . . and it protects any disclosures which the witness may reasonably apprehend could be used in a criminal prosecution or which could lead to other evidence that might be so used." See also Malloy v. Hogan, 378 U.S. 1 (1964); McCarthy v. Arndstein, 266 U.S. 34 (1924).

26. 387 U.S. 1, 49 (1967).

27. *Id.* at 57. In many Louisiana parishes, this requirement will effect a far more formal procedure than has heretofore existed. See generally *The Gault Case: Its Effect on Juvenile Court Practices in the Rural Parishes*, an unpublished student project on file in the LSU Law Library.

28. *Id.*

by the majority only as to degree. *Gault's* importance lies in the Court's recognition that due process requires more safeguards in juvenile courts than have previously been provided. It is likely that notions of fundamental fairness will give rise to the application of additional constitutional safeguards in the future.[29]

James M. Small

Erroneous Workmen's Compensation Payments: Effective Dodge of Tort Liability?

After four years of receiving workmen's compensation payments for an injury sustained while employed by defendant as a clerk, plaintiff was notified that payments were being discontinued. Defendant contended payments had been made only by error, that plaintiff was not engaged in a hazardous occupation, and that her employer (defendant) was not engaged in a hazardous business. Plaintiff sued for workman's compensation or, in the alternative, damages for injury ex delicto. The trial court upheld both defendant's exception of no cause of action as to workmen's compensation and the exception of prescription to her action ex delicto. On appeal plaintiff's counsel conceded that the workmen's compensation statute afforded no coverage to plaintiff. *Held*, the ex delicto claim was prescribed; prescription was not suspended or interrupted by the erroneous payment of workmen's compensation. *Williamson v. S. S. Kresge Co.*, 186 So.2d 696 (La. App. 4th Cir. 1966), *writs denied*, 187 So.2d 741.

Does this case suggest a ready scheme for an employer

29. Several state courts, relying on the instant decision, have required recordation of the proceedings, a point which was mentioned but not ruled upon in *Gault*. Ebersole v. State, 428 P.2d 947 (Idaho 1967); Summers v. State, 227 N.E.2d 680 (Ind. 1967). It has also been held, as a result of *Gault*, that juveniles have the same rights as adults to suppress illegally obtained evidence (State v. Lowery, 95 N.J. Super. 307, 230 A.2d 907 (1967), and that change of venue procedure must be accorded juveniles (State v. Lake Juvenile Court, 228 N.E.2d 16 (Ind. 1967)). It seems certain, moreover, that the rationale of *Gault* will not be limited to proceedings in juvenile courts. Already a state court has cited *Gault* as authority for its decision applying right to counsel to proceedings before a lunacy commission. Commonwealth v. Shovlin, 210 Pa. Super. 295, 231 A.2d 760 (1967). The court said: "The argument that McGurrin has not been formally convicted of a crime is no more persuasive than the argument in *Gault* that the juvenile is only adjudged 'delinquent.' Euphemistic terminology cannot obscure the fact that McGurrin has been thrown in the company of murderers, rapists, and criminals of every other conceivable nature." *Id.* at 298, 231 A.2d at 762. See also Parker v. Heryford, 379 F.2d 556 (10th Cir. 1967).