The Effect of the Gault Decision on the Iowa Juvenile Justice System

Martin Frey
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On May 15, 1967, the United States Supreme Court decided Application of Gault.¹ This case, the logical follow-up of Kent v. United States,² has raised great interest and concern in the area of juvenile justice.³ This article will analyze the Gault decision as it affects the existing Iowa juvenile justice system.⁴

On Monday morning, June 8, 1964, as the result of a verbal complaint registered by a Mrs. Cook, concerning a lewd telephone call made to her, Gerald Gault was taken into custody by the sheriff of Gila County, Arizona, and brought to the children's detention home. At the time Gerald was picked up, his mother and father were both at work. No notice that he was being taken into custody was left at the home nor were any other steps taken to advise them that their son had, in effect, been arrested. When his mother returned home at about 6 o'clock, Gerald's absence led her to inquire around the neighborhood. There she learned that Gerald was in custody. She then went to the detention home where Officer Flagg, the superintendent of the home and deputy probation officer, informed her "why Jerry was there" and that a hearing would be held in Juvenile court at 3 o'clock the following day.

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¹ 87 S. Ct. 1428 (1967).
² 383 U.S. 541 (1966). In Kent, the Supreme Court held that under D.C. Code § 11-914 (1961), which permitted the juvenile court to waive jurisdiction to the district court after "full investigation," the juvenile court must give the child, prior to entry of the waiver order, an opportunity for a hearing on the waiver issue, that he is entitled to counsel in connection with the waiver proceeding, that counsel be entitled to see the child's social records, and that the court accompany its waiver order with a statement of the reasons or considerations sufficient to make appellate review meaningful. In Kent the Supreme Court laid the basis for Gault by expressing concern that "the child receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children." Kent v. United States, supra at 556.

In retrospect the Supreme Court in Gault stated that its previous decisions in Kent v. United States, supra, Haley v. Ohio, 332 U.S. 596 (1948), and Gallegos v. Colorado, 370 U.S. 49 (1962), "unnostakably indicate that, whatever may be their precise impact, neither the Fourteenth Amendment nor the Bill of Rights is for adults alone." Application of Gault, 87 S. Ct. 1428, 1436 (1967).


⁴ The Iowa Juvenile Court was created in 1904 by ch. 11, [1904] Iowa Acts 9. In 1924, it was changed by ch. 84, §§ 350-69, [1924] Iowa Acts 179 (codified as IOWA CODE §§ 3617-77 (1924) and remained in substantially this form through its recodification as IOWA CODE §§ 232.1-39 (1962). In 1965 this act was repealed and replaced by ch. 215, §§ 1-69, 67, [1965] Iowa Acts 338-51 (codified as IOWA CODE §§ 232.1-62 (1966)). On June 12, 1967, this new chapter was amended by 2 Iowa Leg. Serv. 159-63 (1967) (commonly referred to as Senate File 200).
On the hearing day, June 9, Officer Flagg filed a petition with the court reciting only that "said minor is under the age of 18 years and in need of the protection of this Honorable Court [and that] said minor is a delinquent minor." The petition, which made no reference to any factual basis for the delinquency action, was not served on the Gaults. At this hearing, Gerald, his mother, and Officer Flagg appeared before the juvenile judge but neither Gerald's father, who was at work out of the city, nor Mrs. Cook, the complainant, was present. No one was sworn at this hearing. No transcript or recording was made. No memorandum or record of the substance of the proceedings was prepared. At this hearing Gerald was questioned by the judge about the telephone call. At the conclusion of the hearing, the judge said he would "think about it" and sent Gerald back to the detention home. Two or three days later, without explanation, Gerald was released and driven home. At 5 p.m. that evening, Mrs. Gault received a note on plain paper, not letterhead, signed by Officer Flagg, which said:

"Mrs. Gault:
"Judge McGHEE has set Monday June 15, 1964 at 11:00 A.M. as the date and time for further Hearings on Gerald's delinquency

/s/ Flagg"

At the second hearing, Gerald, his father, mother, and Officer Flagg were present before Judge McGhee. When Mrs. Gault requested that Mrs. Cook be present, the judge responded that "she didn't have to be present at that hearing." Officer Flagg filed a "referral report" with the court but its contents were not disclosed to Gerald or his parents. It listed the charge as "Lewd Phone Calls." At the conclusion of the hearing, the judge committed Gerald as a delinquent to the state industrial school and entered an order which recited that "after a full hearing and due deliberation the Court finds that said minor is a delinquent child, and that said minor is of the age of 15 years."

Since Arizona law did not provide a right to appeal from a juvenile court order, on August 3 Gerald's parents filed a petition for a writ of habeas corpus with the Arizona Supreme Court. The petition was referred for hearing to the Arizona Superior Court. On August 17, at the habeas corpus hearing, Judge McGhee was called to testify because there was no transcript of the hearings before his court. When asked under what sections of the code he found Gerald delinquent, the judge concluded that he came within sections 8-201(6)(a) and (d) of the Arizona Revised Statutes. Under section (a), which defined a delinquent child as one "who has violated a law of the state," the judge said that Gerald was found to have violated Arizona Revised Statutes § 13-377 which provided that a person who "in the presence of or hearing of any woman or child . . . uses vulgar, abusive or obscene language, is guilty of a misdemeanor . . . ." The judge also stated that Gerald violated section (d) which defined a delinquent child as one who was "habitually involved in immoral matters," because two years earlier a "referral" was made concerning Gerald
"where the boy had stolen a baseball glove from another boy and lied to the Police Department about it." The judge testified that there was "no hearing" and "no accusation" relating to this earlier incident "because of lack of material foundation." He also testified that Gerald had admitted making other nuisance phone calls in the past.

The superior court dismissed the writ and the Gaults appealed to the Arizona Supreme Court, which affirmed the dismissal. The Gaults then appealed to the United States Supreme Court contending that the Arizona Juvenile Code was contrary to the due process clause of the fourteenth amendment in that it denied the following basic rights:

1. notice of the charges;
2. right to counsel;
3. privilege against self-incrimination;
4. right to confrontation and cross-examination; and
5. right to appellate review and a transcript of the proceedings.

The Supreme Court, in reversing the Arizona Supreme Court's affirmance of the dismissal of the writ, held that Gerald and his parents were denied rights one through four. No ruling was made as to the fifth.

I. Notice of the Charges

In Gault the Supreme Court held that for notice of the first hearing to comply with due process:

1. the notice must be in writing;
2. it must be given sufficiently in advance of scheduled court proceedings to afford reasonable opportunity to prepare an appearance; and
3. it must "set forth the alleged misconduct with particularity."6

A. Notice Must be in Writing

Mrs. Gault was orally informed by the superintendent of the detention home of the reason Gerald was in custody and that a hearing would be held the next afternoon. There was no written notice prior to the first hearing. This procedure was in accordance with the Arizona Juvenile Code which did not provide for notice of any sort to be given at the commencement of the proceedings to the child or his parent. The Supreme Court held that to provide due process the notice must be in writing.

The Iowa Code, in providing for summons and service of notice, stipulates that each "shall recite briefly the substance of the petition or shall have attached a copy of the petition." The implication is that both the notice and the summons are written and not oral.8

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6 The Court's decision on notice was expressly limited to the first hearing. Application of Gault, 87 S. Ct. 1428, 1446 (1967).
7 The only notice provision in the Arizona Juvenile Code was ARIZ. REV. STAT. ANN. § 8-224(a) (1956) which provided that if a person other than the parent or guardian was cited to appear, the parent or guardian shall be notified "by personal service" of the time and place of hearing.
8 The Iowa Code interrelates the provision for summons with that for notice. IOWA CODE § 232.4 (1966) provides that the parents are summoned unless they voluntarily appear.
B. Notice Must be Given at the Earliest Practicable Time

On the night of the day on which Gerald was taken into custody, Mrs. Gault went to the detention home. There she learned only the reason Gerald was in custody and that there would be a hearing the next afternoon. On the hearing day, a petition was filed with the court but it was not served on or shown to Gerald or his parents. The Arizona Supreme Court held that a child and his parents must be advised of the facts involved in the case no later than the initial hearing. Then, if the charges are denied, they must be given a reasonable period of time to prepare. In the Gault case, however, the Arizona court held that, since Mrs. Gault was informed by the superintendent of the detention home why Gerald was in custody, she knew the exact nature of the charge against him before the hearing. The United States Supreme Court rejected this as insufficient notice:

Notice, to comply with due process requirements, must be given sufficiently in advance of scheduled court proceedings so that reasonable opportunity to prepare will be afforded. The "initial hearing" in the present case was a hearing on the merits. Notice at that time is not timely; and even if there were a conceivable purpose served by the deferral proposed by the court below, it would have to yield to the requirements that the child and his parents or guardian be notified, in writing, of the specific charge or factual allegations to be considered at the hearing, and

IOWA CODE § 232.5 (1966) states that they were served with notice if they are not summoned. By reading the two together, the parents are served with notice only if they voluntarily appear. The fact whether the information is delivered in the form of a "notice" or a "summons" appears to make little difference. Both are required by statute to "recite briefly the substance of the petition or shall have attached a copy of the petition." Therefore, both comply with the Gault requirement that the pertinent information as to the specific issues to be considered at the hearing are conveyed in writing to the interested parties.

The crucial question relates to the meaning of "voluntary appearance." If it refers to presence at the juvenile court hearing, then it becomes inconsistent with IOWA CODE § 232.8 (1966), which provides "Service of notice or summons shall be made not less than five days before the time fixed for the hearing." In addition, notice served on the parents when they appear at the hearing would not constitute notice served in sufficient time in advance of the proceedings to permit preparation as required by Gault. If a voluntary appearance refers to the police station when the child is taken into custody or to intake, where the decision is being made whether to formulate a petition, then it would be impossible to serve notice which would "recite briefly the substance of the petition or shall have attached a copy of the petition," because these procedural steps would precede the formulation of a "petition." In order to be consistent with Gault, voluntary appearance, the distinguishing factor between summons and notice, must be based on the cooperation of the parents prior to the filing of the delinquency petition by the county attorney or probation officer with the clerk of the juvenile court. IOWA CODE § 232.3 (1966). If the parents have voluntarily participated at the police station and at intake, then the court must issue notice to the parents under section 232.5 and give them sufficient time to prepare for the specific issues which will be considered at the hearing. If the parents have not voluntarily participated at the proceedings prior to the filing of the petition, then the court must issue a summons under section 232.4 which also must give them sufficient time to prepare.

9 The fact that no petition was served or supplied by the juvenile court appeared to conflict with the Arizona Supreme Court's statement that the infant and his parent were to receive a copy of the petition. Application of Gault, 99 Ariz. 181, 407 P.2d 760, 767 (1965). The Arizona court attempted to excuse the juvenile court's failure to follow this procedure by saying that Mrs. Gault knew the exact nature of the charge against Gerald before the hearing and she failed to object to the procedural inconsistency at the hearing.
that such written notice be given at the earliest practicable time, and in any event sufficiently in advance of the hearing to permit preparation.\textsuperscript{10}

The Iowa Code provides, "Services of notice or summons shall be made not less than five days before the time fixed for the hearing."\textsuperscript{11} This raises the question whether the minimum fixed time of five days is sufficient time in advance of the proceedings to reasonably prepare for the hearing. In most cases, it would seem that it would be. However, in those cases which constitute the exceptions, if the statute were construed to hold that five days notice would constitute valid notice, the statute, under the Supreme Court's ruling, would not comply with due process.\textsuperscript{12}

C. Notice Must Specify the Alleged Misconduct with Particularity

The petition filed in the Arizona Juvenile Court recited only that Gerald Gault "is a delinquent minor and that it is necessary that some order be made by the Honorable Court for said minor's welfare." This conformed with the Arizona Juvenile Code which provided:

The powers of the court may be exercised upon the filing of a petition . . . alleging that a child is . . . delinquent, and needs the care and protection of the court, without alleging the facts.\textsuperscript{13}

The United States Supreme Court held that the petition filed in this case did not give the Gaults adequate notice. Notice, to comply with due process, must "set forth the alleged misconduct with particularity." The Court noted that the National Crime Commission observed that "the unfairness of too much informality is . . . reflected in the inadequacy of notice to parents and juveniles about charges and hearings."\textsuperscript{14} The child and his parents must be notified of the specific charge or factual allegations to be considered at the hearing so that they may meet these specific issues.

To the contention that the notice requirement was waived the Court said:

Mrs. Gault's "knowledge" of the charge against Gerald, and/or the asserted failure to object, does not excuse the lack of adequate

\textsuperscript{10} Application of Gault, 87 S. Ct. 1428, 1446 (1967).
\textsuperscript{11} Iowa Code § 232.8 (1966), Iowa Code § 232.10 (1962), the predecessor to the 1966 code, also provided for at least five days notice before hearing.
\textsuperscript{12} Although this issue has never reached the Iowa Supreme Court in a delinquency setting, it was considered in Stubbs v. Hammond, 257 Iowa 1071, 135 N.W.2d 540 (1965), an action to declare a child dependent and neglected. The court held that the five day notice minimum of Iowa Code § 232.10 (1962) was insufficient to meet the basic requirement of due process in the case of a nonresident parent whose whereabouts was known. The notice given in \textit{Stubbs}, although two days more than the statutory minimum, was not reasonably calculated to reach the parent and afford him an opportunity to be heard. \textit{Compare} Moore v. Moore, 252 Iowa 494, 107 N.W.2d 97 (1961), with \textit{Stubbs} v. Hammond, supra.

The existence of a statute which provides for a set number of days notice appears to create a presumption that compliance with the statute constitutes sufficient notice. Thus the burden is now on the parents and child to show that the statutory notice was not sufficient instead of on the state to show that reasonable notice was given. This raises the question whether this shift in presumption complies with the type of notice now required by \textit{Gault}.

\textsuperscript{14} Application of Gault, 87 S. Ct. 1428, 1446 n.52 (1967).
notice. Indeed, one of the purposes of notice is to clarify the issues to be considered, and as our discussion of the facts, supra, shows, even the Juvenile Court Judge was uncertain as to the precise issues determined at the two “hearings.” Since the Gaults had no counsel and were not told of their right to counsel, we cannot consider their failure to object to the lack of constitutionally adequate notice as a waiver of their rights.\(^\text{15}\)

The Iowa Code provides that “The notice shall recite briefly the substance of the petition or shall have attached a copy of the petition.”\(^\text{16}\) The petition, in turn, “shall set forth plainly: (1) the facts which bring the child within the purview of this chapter.”\(^\text{17}\) In the past, the degree of specificity required in Iowa to constitute adequate notice has varied from the petition which merely repeated what the statute made an offense\(^\text{18}\) to the petition which described to some detail the factual situation which was alleged to constitute the statutory violation.\(^\text{19}\) In light of the Gault requirement that the alleged misconduct be

\(^{15}\) Id. at 1447 n.54.
\(^{16}\) Iowa Code § 232.5 (1966).
\(^{17}\) Iowa Code § 232.3 (1966).
\(^{18}\) For example in State ex rel. Shaw v. Breon, 244 Iowa 49, 55 N.W.2d 565 (1952), the petition alleged:

that Frank Breon under the age of 18 years * * * is a delinquent child, for that the said Frank Breon as * * * petitioner is informed and believes is growing up in idleness and crime, contrary to the statutes of the State of Iowa, in such cases made and provided, and against the peace and welfare of the State of Iowa.

\(^{19}\) The petition used by the Polk County Juvenile Court takes the following form:

TO THE HONORABLE JUDGE OF JUVENILE COURT:

Your petitioner, the Probation Officer for Polk County, Iowa, respectfully represents to your Honor that __________ a child of about the age of __________ years residing at __________ is dependent, neglected or delinquent within the purview of the statutes of the State of Iowa relating to the care, guidance and control of dependent, neglected and delinquent children in this, to-wit:

(State briefly facts relied on to sustain petition)

* * *

WHEREFORE this petitioner prays the Court to inquire into the alleged dependency, neglect or delinquency of said child or children and of the truth of the allegations herein made, in accordance with the statutes of the State of Iowa, and make such order or orders in respect to said child or children as may conduce to his or their welfare and to the best interests of the State.

__________________________  ____________________________
Petitioner  Address
set forth with particularity, notice which merely states that the child is delinquent because he violated a named statute would be insufficient. Opportunity to prepare requires a description of the facts which constitute the alleged violation. Thus the juvenile petition now appears to parallel the criminal charge. Furthermore, past practices which termed the parent's appearance at the hearing as a waiver of formal notice now also would be insufficient to constitute the notice required for due process.

II. RIGHT TO COUNSEL

The juvenile court in Gault did not advise the parents and their son of their right to counsel but instead, in the absence of an express waiver of this right to counsel, proceeded to hear, adjudicate and commit the child. This procedure conformed to the Arizona Juvenile Code which provided for the probation officer to represent the interests of the delinquent child in court. The United States Supreme Court excluded the probation officer from representing the child under the Arizona scheme because of his conflicting interests. He could not act as arresting officer and witness against the child and then represent him. The juvenile needed the assistance of counsel to cope with problems of law, make skilled inquiry into the facts, insist upon procedural

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20 This was the form used in Ethridge v. Hildreth, 253 Iowa 855, 114 N.W.2d 811 (1962), where the petition alleged only that Ethridge was a "delinquent child by reason of having committed the crime of forgery."

21 King v. Sears, 177 Iowa 163, 158 N.W. 513 (1916); De Kay v. Oliver, 161 Iowa 550, 143 N.W. 508 (1913).

22 Ariz. Rev. Stat. Ann. § 8-204(c) (1956) provided:
   The probation officer shall have the authority of a peace officer. He shall:
   1. Look after the interests of neglected, delinquent and dependent children of the county.
   2. Make investigations and file petitions.
   3. Be present in court when cases are heard concerning children and represent their interests.
   4. Furnish the court information and assistance as it may require.
   5. Assist in the collection of sums ordered paid for the support of children.
   6. Perform other acts ordered by the court.

Under the Arizona system, State Dep't of Pub. Welfare v. Barlow, 80 Ariz. 249, 296 P.2d 298 (1956), held that the parents of an infant in a juvenile proceeding cannot be denied representation by counsel of their choosing. The question then in Gault in regard to the parents was whether they should be expressly notified of this right. In regard to the child, the question was also whether he had a right to counsel separate from that of his parents.

23 The Court also excluded the judge from representing the interests of the child on the basis of Gideon v. Wainwright, 372 U.S. 335 (1963), and Powell v. Alabama, 287 U.S. 45 (1932).

24 The Court pointed out that:
   In the present proceedings, for example, although the Juvenile Judge believed that Gerald's telephone conversation was within the condemnation of ARS § 13-377, he suggested some uncertainty because the statute prohibits the use of vulgar language "in the presence of or hearing of" a woman or child. Application of Gault, 87 S. Ct. 1428, 1448 n.58 (1967).

25 The factual issue of Gerald's role in the telephone episode was in question at the hearing. Did Gerald make the lewd remarks or did he merely dial the number and hand the phone to a friend?
regularity,\textsuperscript{26} and ascertain whether the child had a defense and to prepare and submit it. The Court concluded that:

the Due Process Clause of the Fourteenth Amendment requires that in respect of proceedings to determine delinquency which may result in commitment to an institution in which the juvenile’s freedom is curtailed, the child and his parent must be notified of the child’s right to be represented by counsel retained by them, or if they are unable to afford counsel, that counsel will be appointed to represent the child.\textsuperscript{27}

The parents’ knowledge that they could have employed and appeared with counsel at the juvenile hearing did not constitute a waiver of a fully known right.

[The parents and the child] had a right expressly to be advised that they might retain counsel and to be confronted with the need for specific consideration of whether they did or did not choose to waive the right. If they were unable to afford to employ counsel, they were entitled in view of the seriousness of the charge and the potential commitment, to appointed counsel, unless they chose waiver.\textsuperscript{28}

Although the Iowa Code, as did the Arizona Code, provides for the probation officer to represent the interest of the child in court,\textsuperscript{29} the Iowa Code also provides for counsel:

The child, parents, guardian, or custodian shall have the right to [legal] counsel. If the minor, parents, guardian or custodian desire but are unable to employ counsel, such counsel shall be appointed by the court.\textsuperscript{30}

The disjunctive “or” in the phrase “child, parents, guardian, or custodian” permits statutory compliance when either the child or his parents have counsel. Thus the child is not entitled to separate counsel.\textsuperscript{31} Gault, however, provides

\textsuperscript{26} Without counsel being present, the court was able to ignore the procedural provision which required the petition to be served or supplied to the child and his parents. Application of Gault, 87 S. Ct. 1428, 1446 n.51 (1967).
\textsuperscript{27} Id. at 1451.
\textsuperscript{28} Id.
\textsuperscript{29} IOWA CODE § 231.10 (1966).
\textsuperscript{30} IOWA CODE § 232.28 (1966). The word “legal” was added to “counsel” by 2 Iowa Leg. Serv. 159, 160 (1967). Prior to the enactment of ch. 215, § 29, [1965] Iowa Acts 345 (now IOWA CODE § 232.28 (1966)), the right to counsel was controlled by IOWA CODE § 232.15 (1962) and its predecessors, § 3631 of the Codes of 1939, 1935, 1931, 1927 and 1924. Sections 232.15 and 3631, “Appointment to Represent Child,” provided:

The court may, at any time after the filing of the petition, appoint an attorney or other suitable person to represent and appear for said child.

The 1965 revision significantly changed representation by increasing the coverage to include the representation of parents, guardians, and other custodians as well as children and by making the appointment of counsel mandatory instead of permissive. The 1965 revision combined with its 1967 amendment required counsel to be legally trained instead of permitting the appointment of a layman.

\textsuperscript{31} Separate counsel would be of specific concern where there was conflict between the child and his parents. For example where the child was charged with being a delinquent under IOWA CODE § 232.2(15)(c) (1966) because he was “uncontrolled by his parents, guardian,
that both the child and his parents have individual rights to counsel. Therefore, to be consistent, the "or" in the Iowa statute must be interpreted as the conjunctive "and" so that both child and parent have this right.\textsuperscript{32}

The Iowa Code also provides for notice of the right to counsel when a summons is issued\textsuperscript{33} and when notice of the pendency of the case is served on the parents.\textsuperscript{34} However, there is no provision for notice to the child nor any definition as to what would constitute "an intentional relinquishment or abandonment" of the right to counsel.\textsuperscript{35}

### III. Privilege Against Self-Incrimination

When Gerald was questioned at the juvenile court hearings by the judge, he admitted making some of the lewd statements.\textsuperscript{36} Neither Gerald nor his parents were advised that he did not have to testify or make a statement or that an incriminating statement might result in his commitment as a "delinquent." The Arizona Supreme Court, in rejecting the Gaults' contention that Gerald had a right to be advised that he need not incriminate himself, replied:

or legal custodian by reason of being wayward or habitually disobedient," separate counsel may help resolve this conflict by bringing its sources to the surface before the court.

\textsuperscript{32} This conflict could be avoided by reading the term "or" as conjunctive if the court could say that by holding "or" disjunctive it would clearly be contrary to the legislative intent. Ness v. H. M. Itlis Lumber Co., 256 Iowa 588, 128 N.W.2d 237 (1964); Lahn v. Incorporated Town of Primghar, 225 Iowa 685, 281 N.W. 214 (1938); 2 J. Sutherland, Statutory Construction § 4923 (5d ed. Horack 1943).

It is interesting to note that in both the summons and notice of hearing forms used by the Polk County Juvenile Court the following paragraph appears:

You are further notified that the said child and his parents, guardian or custodian have the right to legal counsel in this case and that if any of the said parties desires but is unable to employ a lawyer one will be appointed by the Court upon application made to Juvenile Court prior to said hearing. (emphasis added) This illustrates that this court has interpreted the statutory "child or parent" as conjunctive rather than disjunctive.

\textsuperscript{33} After a petition has been filed and unless the parties named in section 232.5 voluntarily appear, the court shall set a time for hearing and shall issue a summons requiring the person who has custody or control of the child to appear with the child before the court at a time and place stated. The summons shall recite briefly the substance of the petition or shall have attached a copy of the petition and shall give notification of the right to counsel provided for in section 232.28.

\textsuperscript{34} The court shall have notice of the pendency of the case and of the time and place of the hearing served upon the parents, guardian, or legal custodian of a legitimate child or upon the mother, guardian, or legal custodian of an illegitimate child if they are not summoned to appear as provided in section 232.4. The notice shall recite briefly the substance of the petition or shall have attached a copy of the petition and shall give notification of the right to counsel provided for in section 232.28.

\textsuperscript{35} The practice in Polk County has been to have the probation officer advise the child that he has a right to counsel. In a significant number of cases, the child and parents have been represented by different counsel, especially when the parents have made the complaint.

\textsuperscript{36} Whether Gerald actually did make these admissions was open to question since there was no record made during these hearings. The evidence whether these statements were made had to be based on the conflicting testimony given at the habeas corpus proceedings by the juvenile court judge, Mr. and Mrs. Gault, and the probation officer. The United States Supreme Court assumed that Gerald admitted making "some of the lewd statements . . . [but not] any of the more serious lewd statements."
We think the necessary flexibility for individualized treatment will be enhanced by a rule which does not require the judge to advise the infant of a privilege against self-incrimination.\textsuperscript{37}

The United States Supreme Court disagreed.

The privilege against self-incrimination is, of course, related to the question of the safeguards necessary to assure that admissions or confessions are reasonably trustworthy, that they are not the mere fruits of fear or coercion, but are reliable expressions of the truth. The roots of the privilege are, however, far deeper. They tap the basic stream of religious and political principle because the privilege reflects the limits of the individual's attornment to the state and—in a philosophical sense—insists upon the equality of the individual and the State. In other words, the privilege has a broader and deeper thrust than the rule which prevents the use of confessions which are the product of coercion because coercion is thought to carry with it the danger of unreliability. One of its purposes is to prevent the State, whether by force or by psychological domination, from overcoming the mind and will of the person under investigation and depriving him of the freedom to decide whether to assist the State in securing his conviction.

It would indeed be surprising if the privilege against self-incrimination were available to hardened criminals but not to children. The language of the Fifth Amendment, applicable to the States by operation of the Fourteenth Amendment, is unequivocal and without exception.\textsuperscript{38}

\textsuperscript{38} Application of Gault, 87 S. Ct. 1428, 1454 (1967) (footnotes omitted).

Against the application to juveniles of the right to silence, it is argued that juvenile proceedings are "civil" and not "criminal," and therefore the privilege should not apply. It is true that the statement of the privilege in the Fifth Amendment, which is applicable to the States by reason of the Fourteenth Amendment, is that no person "shall be compelled in any criminal case to be a witness against himself." However, it is also clear that the availability of the privilege does not turn upon the type of proceeding in which its protection is invoked, but upon the nature of the statement or admission and the exposure which it invites. The privilege may, for example, be claimed in a civil or administrative proceeding, if the statement is or may be inculpatory.

It would be entirely unrealistic to carve out of the Fifth Amendment all statements by juveniles on the ground that these cannot lead to "criminal" involvement. In the first place, juvenile proceedings to determine "delinquency," which may lead to commitment to a state institution, must be regarded as "criminal" for purposes of the privilege against self-incrimination. To hold otherwise would be to disregard substance because of the feeble enticement of the "civil" label-of-convenience which has been attached to juvenile proceedings. . . .

In addition, apart from the equivalence for this purpose of exposure to commitment as a juvenile delinquent and exposure to imprisonment as an adult offender, the fact of the matter is that there is little or no assurance in Arizona, as in most if not all of the States, that a juvenile apprehended and interrogated by the police or even by the juvenile court itself will remain outside of the reach of adult courts as a consequence of the offense for which he has been taken into custody. In Arizona, as in other States, provision is made for juvenile courts to relinquish or waive jurisdiction to the ordinary criminal courts. In the present case, when Gerald Gault was interrogated concerning violation of a section of the Arizona Criminal Code, it could not be certain that the Juvenile Court Judge would decide to "suspend" criminal prosecution in court for adults by proceeding to an adjudication in Juvenile Court.
As a result of this conclusion, an admission by a juvenile may not be used against him in a delinquency proceeding unless there is clear and unequivocal evidence that the admission was made with knowledge that he was not obliged to speak and would not be penalized for remaining silent.\(^8\)

The Iowa Code makes no reference to whether the privilege of self-incrimination applies to juveniles. If this privilege was recognized in Iowa before \textit{Gault}, it must have been by case law; but, in the few delinquency cases which have been appealed to the Iowa Supreme Court, the issue of self-incrimination appears not to have been raised. Therefore, whether the juvenile was granted this privilege apparently has depended on the individual juvenile judge before whom he appeared. After \textit{Gault}, each judge must now insure that the juvenile is extended his privilege against self-incrimination.\(^4\)

It is also urged, as the Supreme Court of Arizona here asserted, that the juvenile and presumably his parents should not be advised of the juvenile's right to silence because confession is good for the child as the commencement of the assumed therapy of the juvenile court process, and he should be encouraged to assume an attitude of trust and confidence toward the officials of the juvenile process. This proposition has been subjected to widespread challenge on the basis of current reappraisals of the rhetoric and realities of the handling of juvenile offenders.

In fact, evidence is accumulating that confessions by juveniles do not aid in "individualized treatment," as the court below put it, and that compelling the child to answer questions, without warning or advice as to his right to remain silent, does not serve this or any other good purpose. ... It seems probable that where children are induced to confess by " paternal" urgings on the part of officials and the confession is then followed by disciplinary action, the child's reaction is likely to be hostile and adverse—the child may well feel that he has been led or tricked into confession and that despite his confession, he is being punished.

\textit{Id.} at 1455-56 (footnotes omitted).

\(^8\) The Court noted that: \[S\]pecial problems may arise with respect to waiver of the privilege by or on behalf of children, and that there may well be some differences in technique—but not in principle—depending upon the age of the child and the presence and competence of parents. The participation of counsel will, of course, assist the police, juvenile courts and appellate tribunals in administering the privilege. If counsel is not present for some permissible reason when an admission is obtained, the greatest care must be taken to assure that the admission was voluntary, in the sense not only that it has not been coerced or suggested, but also that it is not the product of ignorance of rights or of adolescent fantasy, fright or despair.

\textit{Id.} at 1458 (footnotes omitted).

\(^4\) Each officer of the Des Moines Police Department carries a "Miranda Card" which he has been instructed to read to any suspected offender, including juveniles, before beginning any questioning. The warning is printed on one side of a white 2\" X 3\frac{1}{4}\" card:

\begin{center}
\textbf{MIRANDA WARNING}
\end{center}

1. You have the right to remain silent.
2. Anything you say can and will be used against you in a court of law.
3. You have the right to talk to a lawyer and have him present with you while you are being questioned.
4. If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning, if you wish one.

On the reverse side of the card is:

\begin{center}
\textbf{WAIVER}
\end{center}

After the warning and in order to secure a waiver, the following questions should be asked and an affirmative reply secured to each question:

1. Do you understand each of these rights I have explained to you?
2. Having these rights in mind, do you wish to talk to us now?

At each hearing in Polk County Juvenile Court, after witnesses have been sworn and the probation officer has told what the case is about, the judge then advises the parents and
IV. CONFRONTATION AND CROSS-EXAMINATION

In *Gault*, the juvenile judge rejected the parents' request that the complainant, Mrs. Cook, be present at the delinquency hearing. Instead, Officer Flagg, by hearsay testimony, presented the evidence of the offense. Although there was an opportunity for the Gaults to cross-examine the officer, there was no opportunity to cross-examine the complainant. The United States Supreme Court held:

> [A]bsent a valid confession, a determination of delinquency and an order of commitment to a state institution cannot be sustained in the absence of sworn testimony subjected to the opportunity for cross-examination in accordance with our law and constitutional requirements.\(^{41}\)

Although the Iowa Code provides the child and his parents with the right to "question witnesses appearing at the hearing,"\(^{42}\) the scope of this right has been limited by what witnesses are present at the hearing. For example, if the factual situation of *Gault* had occurred in Iowa, it is questionable whether the child and his parents would have been able to compel the juvenile court to subpoena the complaining witness. The Iowa Code appears to make the presence of this party discretionary with the court.\(^{43}\) Under the Supreme Court's ruling in *Gault*, the subpoena of the complaining witness must be read as mandatory in the absence of other evidence to support the complaint.

The Code, although providing that the "parent or guardian shall be entitled to subpoena,,"\(^{42}\) omits any mention that the child also has this power.\(^{44}\) This becomes critical when the child and parent represent opposing interests. In the light of the sweeping import of *Gault*, the child must also have this right of confrontation.

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42 Iowa Code § 232.6 (1966).

43 Iowa Code § 232.27 (1966); The child and his parents, guardian, or custodian are entitled to be heard, to present evidence material to the case, and to question witnesses appearing at the hearing.

There is no similar provision in the 1962 code.

44 Iowa Code § 232.26 (1966), which describes the hearing, provides that "[t]he court may require the presence of witnesses deemed necessary to the disposition of the petition." (emphasis added) This discretionary provision is made operative through the court's subpoena powers: (1) the subpoena against the person whose presence "in the opinion of the court" is necessary at the hearing; and (2) the subpoena against the person whose attendance as a witness is on behalf of the parent or child and at the request of the parent. Iowa Code § 232.6 (1966). Although in the latter the issuance of the subpoena is mandatory, it may not apply to the complaining party since his presence is not on "behalf of the parents or the child" but on behalf of the state. Even if the complaining witness were called as a witness on the parent's or child's behalf, the parent and child would be bound by his witness' statements and thus deprived of effective cross-examination. See 6 B. Jones, Evidence §§ 2423-33 (2d ed. 1926); C. McCormick, Evidence § 38 (1954); 3 J. Wigmore, Evidence §§ 896-918 (3d ed. 1940).
V. RIGHT TO APPELLATE REVIEW AND A TRANSCRIPT OF THE PROCEEDINGS

Under Arizona law, since no appeal was permitted in juvenile cases, the Arizona courts reasoned that there was also no necessity for nor right to a transcript. Whether a transcript or other recording of the juvenile court hearings was made was for the discretion of the juvenile court. In order to circumvent this lack of appeal, the Gaults petitioned for a writ of habeas corpus. On appeal to the United States Supreme Court from the denial of their writ, the Gaults contended that due process required: (1) the state to provide a right to appellate review from a juvenile court order; (2) the state to provide a transcript or recording of the hearings; and (3) the juvenile judge to state the grounds for his conclusion. Although the Supreme Court refrained from ruling on these issues, it did state:

As the present case illustrates, the consequences of failure to provide an appeal, to record the proceedings, or to make findings or state the grounds for the juvenile court's conclusion may be to throw a burden upon the machinery for habeas corpus, to saddle the reviewing process with the burden of attempting to reconstruct a record, and to impose upon the juvenile judge the unseemly duty of testifying under cross-examination as to the events that transpired in the hearings before him.

Although these three questions were not answered in Gault, it is not unforeseeable that they will be raised again in the near future and answered in the affirmative.

A. Appellate Review

The Iowa Code provides that:

An interested party aggrieved by any order or decree of the [juvenile] court may appeal to the supreme court for review of questions of law and fact.

Although this provision was a recent addition to the juvenile code, the right to appeal from a juvenile court order appeared to exist before the Code pro-

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45 This issue was an attempt to extend Kent v. United States, 383 U.S. 541 (1966), which held that the Juvenile Court of the District of Columbia must accompany its waiver order with a statement of its reasons, to also require a statement of the reasons to accompany delinquency findings and commitment orders.

46 The Court excused its failure to rule by saying: "In view of the fact that we must reverse the Supreme Court of Arizona's affirmance of the dismissal of the writ of habeas corpus for other reasons, we need not rule on this question . . . ." Application of Gault, 87 S. Ct. 1428, 1460 (1967).

47 Id. (footnotes omitted).


49 The appeal provision was adopted in the 1965 revision of the Iowa Juvenile Code, ch. 215, § 59, [1965] Iowa Acts 350. Prior to this enactment, the juvenile code made no reference to appeal.
The exercise of this right has been rare. However, with the Gault ruling that the child has a right to counsel, it is predictable that the increased number of lawyers participating in juvenile court will be reflected not only in a corresponding increase in the number of appeals but also in an increase in new issues which are now clearly available through Gault.

B. Transcripts

The Iowa Code provides that:

Stenographic notes or mechanical recordings shall be required in all court hearings as in other civil cases unless the parties waive the right to such records and the court so orders.

The 1967 amendments to the Code further provide that the juvenile, himself, is not competent to waive but that his attorney or guardian ad litem could waive for him. Therefore, since the Code provides for the making of transcript, this transcript should be available to the child for appeal.

C. Grounds for the Judge's Conclusions

The Iowa Code does not require the juvenile court judge to state the grounds for his conclusion. At most, the Code provides for the statement of conclusions. To be consistent with future expansions of Kent v. United

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50 This right to appeal was based on the Iowa Rules of Civil Procedure for appeal for a final judgment (IOWA R. CIV. P. 331) and for appeal from an interlocutory order (IOWA R. CIV. P. 382). Under the Iowa rules, no permission to appeal a final judgment or decision was required but permission by the Iowa Supreme Court or one of its members was necessary in order to appeal from an interlocutory ruling or decision. The problem could then arise, as it did in State v. Larson, 250 Iowa 818, 96 N.W.2d 325 (1959), whether the juvenile court's "order and judgment" was interlocutory or final. In Larson, the juvenile court ordered that the cause be continued during the child's good behavior until further order of the court and that he be allowed to reside with his parents, that he be placed under the general supervision of the probation officer, and that he observe a 10 o'clock curfew, keep out of taverns, pool halls and motor vehicles, abstain from intoxicating liquors, and refrain from fighting, carrying weapons or associating with certain other boys. The Iowa Supreme Court dismissed the appeal from the juvenile court order for lack of jurisdiction on the ground that the order was not final but interlocutory and no permission to appeal was granted.

51 Reading the Larson case in conjunction with IOWA CODE § 232.58 (1966), the question arises whether this new provision, which provides for appeal from any juvenile court order, has enlarged this right to appeal over that which existed under the Iowa rules. That is, if the Larson situation occurred today, the child may be able to appeal from the "interlocutory" order.

52 IOWA CODE § 232.32 (1966). Within the last fifteen years only two attempts to appeal juvenile court delinquency orders have been made. In 1952 a successful appeal was made from a charge of growing up in idleness and crime. State ex rel. Shaw v. Breon, 244 Iowa 49, 55 N.W.2d 565 (1952). The second case was State v. Larson, 250 Iowa 818, 96 N.W.2d 325 (1959). For a discussion of Larson see note 50 supra.


54 The court's finding with respect to neglect, dependency, and delinquency shall be based upon clear and convincing evidence under the rules applicable to the trial of civil cases, provided that relevant and material information of any nature including that contained in reports, studies, or examinations may be admitted and relied upon to the extent of its probative value. When information contained in a report, study, or examination is admitted in evidence, the person making such
the Code must be interpreted to require the juvenile judge to state the grounds for his decision.

**CONCLUSION**

Weaknesses in the Iowa juvenile justice system occur not through direct conflict between the Iowa Code and the United States Supreme Court's holding in *Gault* but through omissions in the Code. By reading the Code in the light of *Gault*, these omissions may be supplied so that the procedure would not be in violation of due process of the fourteenth amendment. However, without positive statements of these procedural elements, room for error exists. In 1967 the Iowa legislature reconsidered the juvenile code. The results, except in a few scattered instances, did not even approach the problems raised in *Gault*. Therefore, the need still exists for a thorough reevaluation of the statutory base for the Iowa system of juvenile justice.

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56 See text and accompanying notes 30, 53, 54 supra.