GAULT AND CIVIL COMMITMENT: EXTENSION
OF CRIMINAL SAFEGUARDS TO "CIVIL"
PROCEEDINGS

I. INTRODUCTION

Originally, the custody and care of the mentally ill was considered to be a part of the King's executive power as parens patriae.¹ In the United States, control of the mentally ill is a power reserved to state authorities. It is generally thought that this power involves protection of two different interests. On the one hand, the mental incompetent himself is entitled to protection and care; on the other hand, society as a whole ought to be protected from the actions of the mentally ill.² One of the methods employed by the state to protect the interests of society in this respect is the civil commitment proceeding. In order to fulfill its duty to the proposed patient, it would seem that the state is under an obligation to assure that his individual rights will not be compromised as a result of the commitment proceeding.

The juvenile court system is a relatively recent innovation in Anglo-American law. It was not until the end of the nineteenth century that the movement to establish separate treatment for juveniles involved in criminal offenses began. The people behind this movement were appalled by the fact that children over the age of seven³ could be imprisoned for extended periods alongside hardened adult offenders without any opportunity for social and moral reeducation.⁴ The result of this movement was the establish-

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¹ The King received this particular guardianship from the lords of the fees under 17 Edw. 2, cc. 9, 10 (1324), but historians say that it was actually recognized much earlier. ¹ Pollock & Maitland, The History of English Law 481 (2d ed. 1898). In English practice there was a distinction between lunatics and idiots in that the former malady was considered usually to occur in later life and was often only temporary, while the idiot was popularly considered to be under the special protection of heaven, which had seen fit to deprive him of his sanity. See generally 32 C.J. Insane Persons § 162 (1923). For a history, see Witt v. Heyen, 114 Kan. 869, 221 P. 262 (1923).

² The protection of society's interest is derived from the police power of the state to protect itself against breaches of the peace. The state's authority to protect the individual himself comes from the state's position as parens patriae. Ross, Commitment of the Mentally Ill: Problems of Law and Policy, 57 Mich. L. Rev. 945, 955-60 (1959).

³ Children under the age of seven were presumed to be incapable of forming the requisite mens rea.

ment of separate juvenile courts.5

Commitment proceedings, on the other hand, have enjoyed a relatively long history, having their roots in the English common law. An early English statute6 provided that "The King shall have the Custody of the Lands of natural Fools [idiots], taking the Profits of them without Waste or Destruction, and shall find them their Necessaries, of whose Fee soever the Lands be holden." The act went on to establish the King as trustee of the lands of lunatics, without, however, requiring the King to provide necessaries to them as in the case of idiots.7

The King's power to inquire into a person's sanity, however, did not usually arise until there existed a possibility of the subject's imprisonment to prevent him from causing others harm. Once it was established that the subject presented a danger to the community, he was sent to an ordinary prison or chained up in a dungeon. It was not until the beginning of the nineteenth century that, because of the activities of social reformers and developments in medical science, attention began to focus upon the miserable treatment afforded to the mentally ill and changes began to appear.

In the United States, the commitment power was first exercised by the equity courts. There were, however, many states which failed to adopt any procedure to deal with the problems of the mentally ill.8

Despite the fact that over five hundred years separate the origin and development of proceedings involving juveniles and those involving mental incompetents, there are three basic areas of similarity between them which justify the application of analogous legal principles to both proceedings. First, both proceedings have been termed "nonadversary" and "civil."9 Second, both juvenile

5. "The juvenile court is conspicuously a response to the modern spirit of social justice." LOU, JUVENILE COURTS IN AMERICA 2 (1927).
6. 17 Edw. 2, cc. 9, 10 (1324). See 1 Statutes at Large 181 (Ruffhead ed. 1763).
8. New York, for example, had no such provision for 100 years. See Witt v. Heyen, 114 Kan. 869, 875, 221 P. 262, 265 (1923).
9. A "civil action" is "... a proceeding in a court of justice by one party against another for the enforcement or protection of a private right, or for the redress or prevention of a private wrong." Pearson v. State, 159 Tex. 66, 315 S.W.2d 935, 937 (1956). See Ex parte Tom Tong, 108 U.S. 556, 559 (1883): "Proceedings to enforce civil rights are civil proceedings, and proceedings for the punishment of crimes are criminal proceedings." See also Lake v. Cameron, 364 F.2d 657 (D.C. Cir. 1966); Fee v. United States, 274 F.2d 558 (D.C. Cir. 1959) (juvenile case); Dooling v. Overholser, 243 F.2d 825 (D.C. Cir. 1957). Note also that the term "ad-
and commitment proceedings are aimed at rehabilitation rather than punishment. Finally, both types of proceedings involve the adjudication of a status rather than establishment of the existence of certain facts, as is necessary for conviction in a criminal proceeding. It is the purpose of this article to explore the possible extension of recent Supreme Court decisions involving the application of procedural due process in juvenile court actions to civil commitment proceedings.

II. THE GAULT DECISION

The result of the establishment of separate juvenile courts has been succinctly stated by Mr. Justice Fortas:

There were many consequences of this reform [of juvenile courts], one of which was that juveniles became nonpersons in the sense that the constitutional guarantees of jury trial, right to counsel, right to confront accusers, right to bail, privilege against self-incrimination and so forth have not been available to them.

One theory that has been advanced for refusal to recognize the rights of juveniles is that a child has a right "not to liberty but to custody," and consequently, since he has no rights, he can be deprived of none in proceedings before the juvenile court.

verse" connotes an element of hostility under claim of title. A commitment proceeding is not a suit to determine rights between the petitioner and the one informed against. The petitioner receives no direct benefit therefrom.

10. The purpose of the juvenile court is "to reclaim, rehabilitate, and salvage, wherever possible, youth that may have violated moral sense, decent conduct and the law." In re Cotton, 30 N.Y.S.2d 421, 423 (Dom. Rel. Ct. 1941). "Its purpose is corrective and reformatory, and its ultimate purpose by its procedures is to permit the juvenile judge to best guide and control juvenile wrongdoers, with more consideration for the future development than for their past shortcomings." DeBacker v. Brainard, 183 Neb. 461, 475, 161 N.W.2d 508, 515 (1968).

11. "Status" has to do with the legal position of an individual in or with regard to the rest of the community. In the juvenile proceeding, the status involved is whether or not the juvenile is a delinquent. In the commitment proceeding, the status involved is whether the individual is mentally stable in comparison to the rest of society. However, in a criminal proceeding the proof of certain acts is first and foremost before the adjudication of the defendant's position as a criminal can be established. See Cohen, The Function of the Attorney and the Commitment of the Mentally Ill, 44 Tex. L. Rev. 424, 449 (1966).


13. "The basic right of a juvenile is not to liberty but to custody. He has the right to have someone take care of him, and if his parents do not afford him this custodial privilege, the law must do so." Shears, Legal Problems Peculiar to Children's Courts, 48 A.B.A.J. 719, 720 (1962). See also Ex parte Crouse, 4 Whart. 9, 11 (Pa. Sup. Ct. 1839); In re Ferrier, 103 Ill. 367, 371-73 (1882). But see In re Gault, 387 U.S. 1, 22-23, n.30
rationale behind this argument is that since the court is providing the youth with the care and custody which should have been given him by his parents, the court acts in loco parentis, and the youth is therefore neither entitled to nor deprived of any of the rights which would normally attach to proceedings in a court of law. The idea has also been advanced that, since the proceedings are “non-criminal” and “nonadversary,” the principles of procedural due process need not be applied.\textsuperscript{14} To the contrary, however, it has been said that “The rhetoric of the juvenile court movement speaks of assistance, treatment, friendly concern; the reality reflects the hardness of the criminal process.”\textsuperscript{15} Indeed, deprivation of liberty is possible in juvenile proceedings.\textsuperscript{16} Moreover, it seems clear that basic fairness demands a full exploration of all issues where an individual, adult or child, sane or insane, is confronted with the possibility of being deprived of his liberty.\textsuperscript{17} Prior to 1967, however, the extent to which the mandates of due process were applicable to juvenile proceedings remained undefined,\textsuperscript{18} even though some commentators advocated recognition of the rights of juveniles:

In their zeal to care for children neither juvenile judges nor welfare workers can be permitted to violate the Constitution, especially the constitutional provisions as to due process that are involved in moving a child from its home. The indispensable elements of due process are: first, a

\textsuperscript{14} See Pee v. United States, 274 F.2d 556, app. B at 563 (D.C. Cir. 1959). See also Paulsen, supra note 4, at 173, quoting from Hurley, Origins of the Illinois Juvenile Court Law, in \textit{The Child, The Clinic and The Court} 328 (1925). "Never mind that the doctrine of the crown as \textit{parens patriae} had been applied only to protect children in respect to their property against the acts of greedy adults or to assure a child a proper upbringing but never to immunize a child against the consequences of criminal conduct. It was close enough to do a job. 'In short, the Chancery practice was substituted for that of the criminal procedure.'"


\textsuperscript{16} Since the juvenile courts generally have jurisdiction until the person passes the age of 18, incarceration in some type of correctional institute at the minimum of three years is likely, since the “sentence” usually expires when majority is reached, if commitment is ordered.

\textsuperscript{17} See, e.g., Dupuy v. Tedora, 204 La. 560, 15 So. 2d 886, 890 (1943): [Due process] means that no person shall be deprived of life, liberty, property, or of any right granted him by statute, unless the matter involved shall first have been adjudicated against him upon trial conducted according to established rules regulating judicial proceedings. It forbids condemnation without a hearing.

\textsuperscript{18} “Even rules required by due process in civil proceedings, however, have not generally been deemed compulsory as to proceedings affecting juveniles.” \textit{In re Gault}, 387 U.S. 1, 17, n.22 (1967).
tribunal with jurisdiction; second, notice of a hearing to the proper parties; and finally, a fair hearing. All three must be present if we are to treat the child as an individual human being and not to revert, in spite of good intentions, to the more primitive days when he was treated as a chattel.\(^{19}\)

On May 15, 1967 the Supreme Court of the United States decided the case of In re Gault,\(^{20}\) which involved an alleged denial of certain procedural rights, universally recognized as being required in proceedings involving adults, to a juvenile charged with delinquency. Mr. Justice Fortas, writing the Court's opinion, stated the decision's basic premise when he wrote: "[N]either the Fourteenth Amendment nor the Bill of Rights is for adults alone."\(^{21}\) The decision of the Court resulted in the application of four due process rights to juvenile proceedings which might lead to commitment.\(^{22}\) While the precise scope of the decision is not yet fully understood,\(^{23}\) it is believed that the principles expounded therein can have application to civil commitment proceedings.

One further observation should be made in connection with the Gault decision. While the holding of the Supreme Court was explicitly limited to the application of four of the rights asserted, in the course of its opinion the Court stated: "[I]t would be extraordinary if our Constitution did not require the procedural regularity and the exercise of care implied in the phrase 'due process.'"\(^{24}\) This statement leaves open for speculation the possibility that in the future additional requirements of due process may be carried over to juvenile proceedings.\(^{25}\)

21. Id. at 13.
22. The petition in the Gault case alleged deprivation of six basic rights: (1) notice of the charges, (2) right to counsel, (3) right to confrontation and cross-examination, (4) privilege against self-incrimination, (5) right to transcript of the proceedings, and (6) right to appellate review. However, a majority of the Court limited its decision to holding that juvenile proceedings which may result in commitment must measure up to the essentials of due process covered by the first four of the above mentioned rights.
24. 387 U.S. at 27-28. The majority in reaching its decision employed the selective incorporation theory, which holds that some of the guarantees of the Bill of Rights are imported into the Fourteenth Amendment via the due process clause, and are therefore enforceable against the states. Mr. Justice Harlan, in his concurring opinion, reasoned on a theory of a very limited selection of rights. Mr. Justice Black based his concurring opinion on the full incorporation theory.
25. See Comment, note 23 supra.
III. THE GAULT DECISION AND CIVIL COMMITMENT

Like proceedings involving juvenile offenders, civil commitment proceedings are generally termed “nonadversary.” Moreover, as in cases before juvenile courts, the reality of procedures taken before commitment agencies belies the rhetoric. The theory, analogous to that advanced in the area of juvenile rights, has been that the mental incompetent has a right “not to liberty but to custody,” and that therefore any procedure which the state establishes to determine whether an alleged incompetent should be committed is permissible. However, because of the similarities in proceedings involving juveniles and those involving alleged incompetents, the reasoning employed in the Gault decision would appear to be applicable. As has been mentioned, in both instances the proceedings involve the adjudication of a status. In both, persons are involved whose capacity to fully and effectively protect their own interests against unlawful or arbitrary action is at best questionable. Finally, in both types of proceedings, the liberty of an individual is at stake. Admittedly, there are differences between the proceedings. In the first place, the fact that invokes the jurisdiction of the juvenile court, the age of the youth, is not generally a subject of controversy, while the fact that invokes the jurisdiction of the commitment board, the mental state of the alleged incompetent, is the precise issue before the board. Moreover, a youth involved in delinquency proceedings has generally committed acts which, if done by an adult, would constitute a crime, or otherwise has exhibited antisocial behavior patterns. In the case of commitment proceedings, however, activity of a much less dangerous character may be sufficient to support a commitment order.

26. "An insanity proceeding is in invitum, and seeks to deprive the citizen of his liberty or property, or both. Such proceeding seeks to take away from the citizen not only his right to the possession of his own property, but also his right to contract freely with respect to his property, and to dispose of and do with it as he will." Ruckert v. Moore, 317 Mo. 228, 295 S.W. 794, 798 (1927). "The situation in a guardianship proceeding is, of course, somewhat anomalous, for in one sense there are not two antagonistic sides to it. The person who by petition arouses the jurisdiction and duty of the county court may have nothing inimical in sentiment or interest to the alleged incompetent. He may be actuated purely by desire . . . to protect the public at large. Nevertheless, he, by his own volition, assumes an attitude of practical antagonism to the freedom of the other, however benevolent his motives. . . ." In re Welch, 108 Wis. 387, 84 N.W. 550, 551 (1900). See also Hall v. Hall, 122 Neb. 228, 240, 239 N.W. 825, 830 (1932); Cohen, supra note 11, at 433.

27. See text at note 11 supra.

28. See, e.g., Fiaha v. Tomek, 164 Neb. 20, 33, 81 N.W.2d 691, 698 (1957): "It is well settled that in the determination of the mental condition of a person his conversations, acts, declarations, and conduct in gen-
These differences are believed to be irrelevant to the problem under study. If anything, they would seem to call for a greater degree of care before commitment is ordered in proceedings affecting mental incompetents than in proceedings involving juvenile offenders. What is relevant is that either proceeding may result in a deprivation of the liberty of the subject for a long or indeterminate period of time. Moreover, in both types of proceedings arbitrary or unlawful action is possible. Further, in view of the Gault decision, it seems inescapable that the application of due process rights may no longer be dependent upon irrelevant factors, such as the age or mental stability of the person involved. Likewise, the mere labeling of a proceeding as “civil” and “nonadversary” is clearly ineffective to bar the application of due process rights to any proceeding in which substantial interests of an individual are at stake.\footnote{People v. Moore, 261 Cal. App. 2d 529, 68 Cal. Rptr. 98, 100 (1968).} It is submitted, therefore, that such due process rights as are consonant with the nature of the proceeding and the interests at risk must be applied in civil commitment proceedings.\footnote{Experience should teach us to be most on our guard to protect liberty when the Government’s purposes are beneficent.” Olmstead v. United States, 277 U.S. 438, 479 (1928) (dissenting opinion).}

IV. PROCEDURAL DUE PROCESS IN COMMITMENT PROCEEDINGS

In some areas procedural due process rights in civil commitment proceedings appear to be adequately secured. For example, the right to notice of charges and the right to appellate review are generally provided for by statute in most jurisdictions.\footnote{See, e.g., Neb. Rev. Stat. §§ 83-323, -328.03 (Reissue 1966); § 83-325 (Supp. 1967). See Appendix infra.} But there remain areas in which the procedural requirements of due process of law are not clearly resolved, although the rights may sometimes be granted.\footnote{Consideration in this article is focused solely on involuntary commitment proceedings rather than both methods of commitment. The voluntary commitment proceeding is not adversary in the sense that a person is being deprived of something against his will. See, e.g., Neb. Rev. Stat. §§ 83-323, -328.03 (Reissue 1966); § 83-325 (Supp. 1967). See Appendix infra.} One such area involves the right to counsel in commitment proceedings.\footnote{The full scope of the right to counsel granted by the Gault decision has still not been fully realized. See, e.g., Parker v. Heryford, 379 F.2d 556 (10th Cir. 1967). See also Comment, note 23 supra, at 567-67.} While statutes in 39 jurisdictions make some provision regarding the right to representation in commitment proceedings at the trial, upon the theory that such proof is frequently decisive upon the question of sanity and insanity.”
proceedings,\textsuperscript{35} the conferral of the right has generally been the result of legislative policy, rather than of a view that such representation is required by state or federal constitutions.

Both juvenile and civil commitment proceedings have traditionally been characterized as "civil" in nature. It is apparent, however, that courts will no longer countenance a denial of fundamental constitutional rights solely because the proceedings in which rights are denied are said to be "civil" rather than "criminal" in nature. Mr. Justice Fortas, speaking of the applicability of the privilege against self-incrimination to fact-finding hearings which may result in juvenile commitment, has stated: "For this purpose, at least, commitment is a deprivation of liberty. It is incarceration against one's will, whether it is called 'criminal' or 'civil.'"\textsuperscript{36} In short, it appears that the focal point has shifted from the label put on the proceedings to the nature of the consequences which may follow from the proceedings. If there is a significant risk that a person may be deprived of his liberty as a result of the proceedings, the fundamental guarantees of due process of law must attach, regardless of whether the proceedings are of a civil nature and seek only to adjudicate status.\textsuperscript{37}

Several recent cases have underscored the new approach. In \textit{Nieves v. United States},\textsuperscript{38} it was held that a youth involved in juvenile court proceedings was entitled to a jury therein. In the course of its opinion, the court stated:

\begin{quote}
A growing number of opinions have swept aside technical distinctions between criminal and civil labels and, looking to the nature of the proceedings, have held that the Bill of Rights guarantees must be made available in federal juvenile courts.\textsuperscript{39}
\end{quote}

In \textit{People v. Valdez},\textsuperscript{40} which involved commitment of the defendant as a narcotics addict, the court held that the burden of proof in such proceedings was the same as in civil proceedings. The court, however, in arriving at its conclusion, looked beyond the "civil"

\begin{footnotesize}
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\item See Appendix infra.
\item \textit{In re Gault}, 387 U.S. 1, 50 (1967).
\item 260 Cal. App. 2d 946, 67 Cal. Rptr. 583 (1968). Valdez had argued that the burden of proof should be the same as in a criminal case because the commitment proceedings had far more serious results than a civil judgment for monetary damages.
\end{enumerate}
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The court noted that narcotic commitment proceedings were often characterized as "civil," "non-punitive," and "remedial." However, "a situation may well arise where such characterization may break down in the face of the reality of the addict's involuntary confinement."41

V. PARTICULAR RIGHTS

A. THE RIGHT TO COUNSEL

The Supreme Court of Minnesota has pointed out that "Due process of law requires an orderly proceeding adapted to the nature of the case, in which the citizen has an opportunity to be heard, and to defend, enforce, and protect his rights."42 It seems clear that, at least in some types of proceedings, the opportunity to be heard is nugatory unless it includes an opportunity to be heard by counsel.43 The nature of commitment proceedings and the interests at risk therein would seem to raise the right to be heard by counsel in such proceedings to a constitutional level. In the first place, the

41. Id. at 589 (emphasis added).

42. State ex rel. Blaisdell v. Billings, 55 Minn. 467, 474, 57 N.W. 794, 795 (1894). The opinion goes on to state: "A hearing, or an opportunity to be heard is absolutely essential. 'Due process of law' without these conditions cannot be conceived." Note, however, that a petition for habeas corpus or for a restoration order filed by one adjudicated insane without the assistance of counsel, guardian, or other person competent to take action in the petitioner's behalf is valid in the eyes of the law. See Dooling v. Overholser, 243 F.2d 825 (D.C. Cir. 1957); Howard v. Overholser, 130 F.2d 429, 434 (D.C. Cir. 1942). The Dooling case involved the petitioner's claim that he was not represented by counsel at the sanity hearing. The court, relying on the Howard decision, held that such a proceeding was not in accord with due process. The Dooling court cited the following passage from the Howard case as the basis for its decision: "Not only in respect to transactions, but in relation to litigation, elementary conceptions require that he be represented by another mentally and legally competent." 130 F.2d at 434. It should be noted that the Dooling case does not guarantee the right to be represented by an attorney, rather "representation... must be an impartial person not otherwise interested in the proceedings." 243 F.2d at 828. However, this view has probably changed now in light of the "right to counsel" cases. The position now would seem to be that the counsel must be a legally trained person.

43. "The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours." Gideon v. Wainwright, 372 U.S. 335, 344 (1963). Mr. Justice Sutherland, writing thirty years earlier stated: "The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel... [The accused] requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence." Powell v. Alabama, 287 U.S. 45, 68-69 (1932). See also State v. United States Veterans Hospital, 268 Minn. 213, 128 N.W.2d 710 (1964).
fact that a person is brought before a commitment board places his competency to adequately protect his interests immediately in question. Secondly, a finding of incompetency may result in commitment of the proposed patient to an institution for an indeterminate period of time.

There is precedent for a conclusion that the right to be heard by counsel in civil commitment proceedings is of constitutional texture. In People v. Stanley,\textsuperscript{44} the New York Court of Appeals ruled that an indigent mental patient is entitled to counsel as a matter of constitutional right in habeas corpus proceedings brought to secure his release from a mental institution. Among the cases cited by the court in support of its decision was the Supreme Court case of Gideon v. Wainwright,\textsuperscript{45} which held that the right to counsel is essential to a fair trial in criminal proceedings.

The position taken by the National Crime Commission in regard to the right to counsel in juvenile proceedings is persuasive on the question of applicability of the right to counsel in commitment proceedings:

[The juvenile courts] deal with many cases involving conduct that can lead to incarceration or close supervision for long periods, and therefore juveniles often need the same safeguards that are granted to adults. And in all cases children need advocates to speak for them and guard their interests, particularly when disposition decisions are made. It is the disposition stage at which the opportunity arises to offer individualized treatment plans and in which the danger inheres that the court's coercive power will be applied without adequate knowledge of the circumstances.\textsuperscript{46}

The reasoning of the commission, which the Supreme Court found to be compelling in Gault,\textsuperscript{47} is equally applicable to commitment proceedings. This is particularly true in regard to the statement referring to the dispositive stage of the proceedings, since it is at this point that counsel can represent the interests of the incompetent with reference to possible alternatives to commitment.

\textsuperscript{44} 17 N.Y.2d 256, 217 N.E.2d 636, 270 N.Y.S.2d 573 (1966). It should be noted that this case grants the right of counsel in a habeas corpus proceeding, which would usually be initiated after the commitment proceeding. However, this distinction does not seem important in view of recent Supreme Court cases, and, moreover, the consequence of the proceeding in Stanley was either to deprive the petitioner of his liberty due to his illness, or to free him. This is the same as in commitment proceedings, and consequently the decision seems to have application to such proceedings also.

\textsuperscript{45} 372 U.S. 335 (1963).


\textsuperscript{47} In re Gault, 387 U.S. 1, 38-39, n.65 (1967).
or if commitment is necessary, the place, duration, and conditions of confinement. An attorney is certainly in a better position to make recommendations in these matters than the person who has been adjudged incompetent, even though he may be acting in a capacity which goes "beyond traditional areas and procedural devices." Moreover, two positive advantages will result from effective use of counsel at this stage. In the first place, the tribunal will be relieved of much of the burden of investigating the relative advantages and disadvantages of alternative dispositions, since counsel will assume at least part of this burden. Further, the activity of counsel in this area will tend to offset any biased or ill-considered information which may have come to the board's attention.

The main obstacle to application to commitment proceedings of the principles enunciated in criminal proceedings in regard to the right to counsel appears to be the fact that in commitment cases there is an adjudication of status, rather than a finding of commission of a specific criminal act. It is submitted, however, that the distinction "breaks down in the face of the reality" of the nature of the proceedings. The reality is that an adjudication of mental incapacity may result in the deprivation of both the liberty and property of the person adjudged. There is in fact a very real possibility that the alleged incompetent may be incarcerated against his will, even though the proceeding addresses itself only to a question of "status." The Gault decision was premised largely upon the idea that the terminology adopted in connection with a proceeding does not justify placing those proceeded against beyond the pale of constitutional protection. Since the execution of a commitment order must be considered as a deprivation of liberty in its most fundamental sense, it seems apparent that the due process guarantee of right to counsel must apply to proceedings for civil commitment. Accordingly, those jurisdictions where it is discretionary with the court to appoint counsel when the alleged incompetent is not represented, as well as those jurisdictions where no provision

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49. See pp. 162-63 & note 71 infra.


51. But see People v. Stanley, 17 N.Y.2d 256, 217 N.E.2d 636, 637, 270 N.Y.S.2d 573, 575 (1966) (dissent): "The basic concept in these contentions is that a mental hospital is equated to a prison. The two ought not be equated. They are totally different. The fact that a temporary deprivation of freedom exists in both does not make them alike." See also Prochaska v. Brinegar, 251 Iowa 834, 102 N.W.2d 870 (1960).
is in force regarding counsel, would seem to be required by due process of law to make mandatory provision for appointment of counsel, where the alleged incompetent is unable to procure adequate representation. Moreover, it would seem that indigents should be able to secure representation on the same basis as persons who are wealthy. It is suggested that an alleged incompetent, whether he is rich or poor, has a constitutional right to assistance of counsel, which the court must provide if he is unable to secure his own, unless there has been an effective waiver of the right.

B. Admissibility of Hearsay Evidence

Pointer v. Texas held that the use of hearsay evidence in criminal proceedings denies the defendant his Sixth Amendment right to confront and cross-examine sworn witnesses. Tradition ally, hearsay, in the form of social reports concerning the background and environment of the youth, has been admitted into evidence in juvenile proceedings. Relying upon the "civil" nature of the proceedings, one court has said that a juvenile judge could properly consider hearsay evidence, if it is "of a kind on which reasonable men are accustomed to rely in serious affairs." The evidentiary problem raised involves the reliance upon investigative materials concerning the juvenile at the adjudicatory stage of the

52. See, e.g., a mandatory provision, Utah Code Ann. § 64-7-36 (G) (Supp. 1967); a discretionary provision, Fla. Stat. c. 394.22(4) (1960); and no provision, Maryland. See Appendix infra.


54. The ability to waive this right presents an interesting question as to what amounts to a waiver. The Supreme Court in Johnson v. Zerbst, 304 U.S. 458 (1938), ruled that the right to counsel may be waived; however, the waiver must be an intelligent one. See Moore v. Michigan, 355 U.S. 155, 160-62 (1957); United States v. Plattner, 330 F.2d 271, 276 (2d Cir. 1964). In short, the party may waive rights only if he has an intelligent understanding of the consequences. This presents problems in the commitment field when the proposed patient wishes to act pro se. The general rule has been developed, therefore, that if the proposed patient's right to represent himself jeopardizes the hearing of the issues or threatens society's interest in providing full protection of his rights, the right to waive court-appointed counsel may be restricted.

55. 380 U.S. 400, 403 (1965): "We hold today that the Sixth Amendment's right of an accused to confront the witnesses against him is likewise a fundamental right . . . ."

56. The Sixth Amendment provides in part that: "In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him . . . ."


While the Court did not pass upon the issue in the *Gault* case, Mr. Justice Fortas, speaking for the Court, stated:

Absent a valid confession adequate to support the determination of the Juvenile Court, confrontation and sworn testimony by witnesses available for cross-examination were essential for a finding of "delinquency". . . .

The recommendations in the Children's Bureau's "Standards for Juvenile and Family Courts" are in general accord with our conclusion. They state that testimony should be under oath and that only competent, material and relevant evidence under rules applicable to civil cases should be admitted in evidence.60

It seems clear that the use of social reports in delinquency proceedings without supporting testimony subject to cross-examination is violative of the Sixth Amendment right established by the *Pointer* case, although the Fortas dictum leaves the juvenile court a greater latitude than is generally accorded adult criminal courts.62

The civil-criminal dichotomy would seem to be ineffective to allow the admission of hearsay into evidence in juvenile proceedings for the same reasons that it is ineffective to deny the juvenile the right of counsel: The court must look to the real nature of the proceeding and the interests at risk therein, and if there is a possibility of deprivation of life, liberty, or property,63 the mandates of due process of law should apply. There should be no distinction based upon age differences in the use of hearsay evidence, since the hearsay rule has been held to be fundamental to the concept of due process.64

59. Note, however, that such material may be used in the dispositive stage. See note 71 infra.

60. *In re Gault*, 387 U.S. 1, 56-57 (1967).

61. There is an important distinction to be made here. Evidence which may be received in a delinquency case (e.g. *Gault*) should be differentiated from evidence introducable in a juvenile court where the charge is incorrigibility or neglect. In the former the constitutional standards of confrontation and cross-examination must be met in order to have a valid proceeding, while in the latter the requirements are not so stringent. See generally Note, *Rights and Rehabilitation in the Juvenile Courts*, 67 COLUM. L. REV. 281, 336-37 (1967). It is important to note that neither type of juvenile proceeding could be sustained solely on inadmissible evidence. See, e.g., Diernfield v. People, 137 Colo. 238, 323 P.2d 628 (1958); *In re Mantell*, 157 Neb. 900, 62 N.W.2d 308 (1954).

62. One reason for this greater flexibility is the "civil" label that has been attached to such proceedings. See notes 9 & 14 supra.

63. *In re Gault*, 387 U.S. 1, 50 (1967).

Reports similar to those used in juvenile proceedings have generally been admitted in commitment proceedings on the ground that the action is civil in nature. The Nebraska statute, for instance, contains language allowing the commitment board to receive “what testimony [it] deem[s] desirable and necessary” at the preliminary hearing,65 which would seem to give the board a broad discretion in regard to admission of evidence. Thus, under the Nebraska Act and statutes with similar provisions, it would seem that investigative reports, which may themselves be hearsay, might be admitted66 even though they contain unsubstantiated statements and rumors uncovered in the investigation. Use of such reports would seem to deprive the alleged incompetent of an opportunity to rebut or explain much of the evidence used against him. If the Pointer doctrine is applicable to commitment proceedings, therefore, the use of such reports would seem to violate the due process rights of the alleged incompetent.

The solution to this problem would seem once again to rest upon a “piercing of the veil” which surrounds commitment proceedings. As has already been indicated, the applicability of due process rights to noncriminal proceedings appears no longer to depend upon the terminology used in connection with a proceeding,67 but rather upon the interests that are at risk there.68 Accordingly, since a deprivation of liberty is possible in commitment proceedings, it would appear that the rights of cross-examination and confrontation must be recognized.69 The immediate impact of this reasoning is that the tribunal which makes the determination of the question of competency must be denied access to the investigative reports prior to and during its deliberation upon that question.70 This approach does not necessarily require, however, that the reports be excluded from consideration at the dispositional stage. It has been held that a trial judge in a criminal case may properly con-

66. There has been some argument that only a “misguided” judge would be affected by such evidence in deciding the case. MCCORMICK, EVIDENCE § 60 (1954). However, there is an obvious prejudicial effect of such evidence on the case. See Note, Improper Evidence in Nonjury Trials: Basis for Reversal?, 79 HARV. L. REV. 407, 409 (1965).
67. See note 9 supra.
69. See text at note 42 supra.
70. One solution advanced is to allow the tribunal or board to view such reports, but limit the report to facts directly ascertained by the investigator, the physician, or the psychiatrist. Cf. Note, Rights and Rehabilitation in the Juvenile Courts, 87 COLUM. L. REV. 281, 336-37 (1967).
Consider evidence inadmissible at the adjudicative stage when determining the sentence to be given the defendant.\textsuperscript{71}

In any event it would seem that there is no justification for discriminating in the application of the normal rules of evidence between proceedings involving children or incompetents and those involving adults. The rules of evidence have a sound basis in human experience, and, under the rationale of the \textit{Pointer} decision, are fundamental to the concept of due process of law, and therefore should be applied in all cases in which a deprivation of liberty is possible.\textsuperscript{72}

\section{C. The Right to Jury Trial}

Under the early English practice, the question of a person's sanity arose only in the event that incarceration was contemplated.\textsuperscript{73} Because the King's right to enter upon the lands of a lunatic and take the profits therefrom\textsuperscript{74} came within the scope of the \textit{Magna Carta},\textsuperscript{75} it was necessary that the question of lunacy be submitted to a local folkmoot. The practice became settled in the writ \textit{de idiota inquirendo},\textsuperscript{76} and was carried over to early American practice:

\begin{quote}
[W]hen application is made to the chancellor for a commission of lunacy, and that accompanied by affidavit evincing the lunacy of the party, a commission is issued under
\end{quote}

\textsuperscript{71} In Williams \textit{v. New York}, 337 U.S. 241 (1949), the Supreme Court held that hearsay evidence could be employed at the dispositional stage in a criminal case. Note, however, that the reason for the hearsay rule in the first place is the inherent unreliability of hearsay evidence, which would seem to indicate that such evidence ought not be relied upon at any stage in the proceedings. However, Mr. Justice Black in the Williams case stated: "[M]odern concepts individualizing punishment have made it all the more necessary that a sentencing judge not be denied an opportunity to obtain pertinent information by a requirement of rigid adherence to restrictive rules of evidence properly applicable to the trial." \textit{Id.} at 247. \textit{See also} id. at 249-50. The Supreme Court still adheres to the Williams decision. See \textit{Specht v. Patterson}, 386 U.S. 605, 608 (1967). \textit{See also} United States \textit{v. Trigg}, 392 F.2d 860, 864 (7th Cir.), \textit{cert. denied}, 391 U.S. 961 (1968).

\textsuperscript{72} \textit{See text at note 42 supra.}

\textsuperscript{73} \textit{Annot.}, 33 A.L.R.2d 1145, 1148 (1954).

\textsuperscript{74} \textit{See note 1 supra.} \textit{See also Witt v. Heyen}, 114 Kan. 869, 221 P. 262, 264 (1923).

\textsuperscript{75} "No Freeman shall be taken, or imprisoned, or be disseised of his Freehold, or Liberties, or free Customs, or be outlawed, or exiled, or any otherwise destroyed; nor will we not pass upon him, nor condemn him, but by lawful Judgment of his Peers, or by the Law of the Land." \textit{Magna Carta} c. 29, 1 \textit{STATUTES AT LARGE} 7-8 (Ruffhead ed. 1763).

\textsuperscript{76} "An old common-law writ . . . to inquire whether a man be an idiot or not." \textit{Black's Law Dictionary} 481 (4th ed. 1951). An inquisition was held before a jury, and the question of the mental disorder of a person determined by a verdict.
the great sale [sic], and the commissioners named. Upon notice to them they issue a warrant to the sheriff, directing him to summon jury and witnesses to attend the trial; and the commissioners explain the business to them: The supposed lunatic to be notified and present if he chooses, and if necessary, is examined, and the jury signs the inquisition.

The practice set forth above was adopted in most of the original states, either by statute or by custom, but as the nation grew, new states did not adopt the jury method. The right to jury trial conferred by the constitutions of the new states was construed to be limited to instances where the right existed at common law, and since the use of juries in the inquisition procedure was not thought to have been so recognized, many of the new states did not feel constrained to adopt it.

Today the majority of jurisdictions do not provide for trial by jury in civil commitment proceedings. In view of the approach taken in recent Supreme Court decisions, however, a reconsideration of the question seems to be in order.

As early as 1938 it was noted that:

Insanity is not a crime and therefore the constitutional guarantee of jury trial is not applicable; nevertheless, confinement in a mental hospital is as full and effective a deprivation of personal liberty as is confinement in jail.

In *Duncan v. Louisiana*, the Supreme Court held that the right to a jury trial in serious criminal cases is a fundamental right and therefore must be recognized by the states under the Fourteenth Amendment mandate of due process. The Court premised its decision, not upon the nature of the charge against the defendant, but upon the gravity of the sentence that could be imposed.

79. "The general rule seems to be that there is no right to a jury trial in proceedings to determine the question of a person's sanity, except where, as in some jurisdictions, the right is conferred by statute. Indeed, 'It is well understood that at common law there was no right of trial by jury in sanity inquisitions.'" *In re Warner's Estate*, 137 Neb. 25, 30, 288 N.W. 39, 44 (1939). See also *Sharum v. Meriwether*, 156 Ark. 331, 246 S.W. 501 (1923); *Ex parte O'Connor*, 29 Cal. App. 225, 155 P. 115 (1915); *In re Bresee*, 82 Iowa 573, 48 N.W. 991 (1891).
80. *See Appendix infra.*
82. 391 U.S. 145 (1968).
83. Id. at 157-58.
84. The charge was simple battery yet carried with it a two-year sentence. Id. at 146.
The rationale invoked above in regard to the application of other rights to commitment proceedings once again seems persuasive. The courts will look through the rhetoric of a proceeding in order to determine what interests are really at risk. Since "due process of law requires an orderly proceeding adapted to the nature of the case," the right to jury trial held to be fundamental in criminal cases in *Duncan* should be applicable to civil commitment proceedings, where the interests at risk are equally as grave as those in a criminal proceeding.

It should be noted in this connection that, although the due process clause of the Fourteenth Amendment has been held to incorporate many of the guarantees of the Bill of Rights, the clause is by no means limited in its expanse by the incorporation theory. Thus, even though the Sixth Amendment right to jury trial is delimited by the phrase "[i]n all criminal prosecutions," and although the Seventh Amendment right to jury trial in "Suits at common law" is inapplicable to civil commitment proceedings, these limitations do not pose an absolute barrier to a finding that due process of law carries with it a right to jury trial in areas not covered by the Sixth and Seventh Amendments.

Most authorities who oppose the adoption of the jury system in commitment cases base their contentions upon the argument that the issues presented are essentially medical and beyond the capacity of the ordinary layman. However, while the proceeding is spoken of as a "statistical analysis" determined upon medical issues, the real nature of the proceeding is such that the basic question, whether to commit the alleged incompetent, must be answered by a judgment upon social values: To what extent can society tolerate the presence of the individual in its midst? One author has stated that there are two basic defects in the argument that commitment proceedings involve a judgment that is essentially medical. In the first place, the diagnostic aspect of psychiatry is not a branch of

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86. See, e.g., Griswold v. Connecticut, 381 U.S. 479 (1965). See also note 24 supra.
87. See note 56 supra.
88. The Seventh Amendment states: "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved . . . ." It does not therefore apply to commitment cases in which the matter in controversy is the sanity of the person. There is no issue where there is any "value in controversy." See Ward v. Booth, 197 F.2d 963 (9th Cir. 1952).
89. See Ross, supra note 2, at 963.
90. Id. at 981.
medicine but is rather a distinct art employed to explain behavioral characteristics. Secondly, a psychiatrist is not necessarily the person most qualified to determine whether a person should be committed. The idea behind this latter statement is that commitment depends mainly upon a social value judgment, in the making of which psychiatric testimony is only one factor to be considered. Moreover, the effect of an adjudication of incompetence may be a deprival of personal liberty. It is submitted, therefore, that a jury is the best agent available to answer the questions of social values posed in commitment proceedings, quite irrespective of the constitutional aspect of the problem of a right to jury trial in such proceedings. In this connection it should be noted that juries are often called upon to make decisions respecting the conflicting testimony of experts in areas equally as esoteric as human behavior.

In the Court's opinion in the Duncan case, Mr. Justice White stated:

Providing an accused with the right to be tried by a jury of his peers gave him an inestimable safeguard against the corrupt or overzealous prosecutor and against the complaint, biased, or eccentric judge. If the defendant preferred the common-sense judgment of a jury to the more tutored but perhaps less sympathetic reaction of the single judge, he was to have it. Beyond this, the jury trial provisions in the Federal and State Constitutions reflect a fundamental decision about the exercise of official power—a reluctance to entrust plenary power over the life and liberty of the citizen to one judge or to a group of judges.91

When the real character of the proceeding is considered and it is realized that a consequence of a civil commitment proceeding may be a deprival of liberty and property, the idea expounded by Mr. Justice White appears to be applicable to commitment proceedings. As one writer has pointed out, "a deprivation of liberty is correct only after an individual determination—not a statistical analysis."92 The judgment upon the question of commitment should be made by the application of the social value test to the evidence presented by medical authorities by a jury of laymen.

VI. CONCLUSION

The approach to commitment proceedings which this article has attempted to elucidate was expressed by the language of the Supreme Court of Kansas in In re Wellman,93 wherein the court con-

91. 391 U.S. at 156.
92. See Cohen, supra note 11, at 457.
93. 3 Kan. App. 100, 45 P. 726 (1896).
considered a commitment statute which did not contain provisions for notice or hearing:

No mere ex parte proceeding can affect either personal or property rights. . . . [Deprivation of these rights] would not only be a serious infringement of natural rights, but would be a flagrant violation of the constitutional guaranty that no person shall be deprived of his liberty or property without due process of law. Notice and opportunity to be heard lie at the foundation of all judicial procedure. They are fundamental principles of justice which cannot be ignored. Without them, no citizen would be safe from the machinations of secret tribunals, and the most sane member of the community might be adjudged insane and landed in the madhouse.94

While providing the fundamental safeguards to persons brought before commitment tribunals may entail additional time and expense for the state, it is believed that these safeguards, at least, must be implemented in order to maintain the viability of the great principles established in this country to secure private rights. In the words of the Supreme Court:

We fully recognize the danger of a deprivation of due process in proceedings dealing with persons charged with insanity . . . and the special importance of maintaining the basic interests of liberty in a class of cases where the law though “fair on its face and impartial in appearance” may be open to serious abuses in administration and courts may be imposed upon if the substantial rights of the persons charged are not adequately safeguarded at every stage of the proceedings.95

John J. Gross ‘69
## APPENDIX

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x Indicates jurisdiction has statutory provision in this area.

(A) Use of jury is in the court's discretion not the patient's.

(B) No hearing unless requested by patient.

(C) Jury allowed on review if requested.

(D) Jury allowed on review.

(E) Request necessary.

(F) Request necessary for counsel; if indigent, court-appointed.

(G) Right to jury trial implied by § 122-63 (N.C. Gen. Stat. (1984)).
1. ** Ala. Code tit. 22, § 324 (Supp. 1967)** ("No person shall be committed to any institution established pursuant to the provisions of this article without his consent or except by due process of law in a court of competent jurisdiction." (emphasis added)); § 205(18B) (jury) (App. 1965).

2. **Alaska Stat. § 4671 (hearing, jury) (1963); § 47.30.070(h) (counsel) (1962).**

3. ** Ariz. Rev. Stat. § 36-513 (generally); § 36-513(A) (notice); § 36-513(B) (hearing); § 36-514(A) (counsel) (Supp. 1967).**

4. ** Ark. Stat. § 59-234 (notice and hearing; applies to dangerous patients); § 59-236 (review) (Supp. 1967).**

5. **Cal. Welf. & Inst'ns Code § 5559 (notice and hearing—request necessary; right to be represented) (West 1967).**

6. **Colo. Rev. Stat. Ann. § 71-1-5(1) (notice and hearing); § 71-1-8 (1) (counsel); § 71-1-13 (review; jury on review if request made) (1963).**

7. **Conn. Gen. Stat. Rev. § 17-178 (notice, hearing, right to be represented); § 17-201 (review; right to counsel hereunder) (Supp. 1965).**

8. **Del. Code Ann., Chancery Ct. Rules 100-05 (generally; hearing and jury) (1953).**

9. ** Fla. Stat. § 394.22(4) (notice, hearing, counsel) (1960); § 394.-22(15) (f) (review) (Supp. 1968).**

10. **Ga. Code Ann. § 88-506(a) (hearing); § 88-506(b) (notice); § 88-506(d) (counsel); § 88-506(f) (review; jury available hereunder) (Supp. 1967).**

11. **Hawaii Rev. Laws § 81-20 (notice); § 81-21 (hearing; written request necessary); §§ 81-22, -40, -44 (review) (Supp. 1965).**

12. **Ill. Ann. Stat. c. 91 , § 8-3 (notice); § 8-5 (hearing); § 8-6 (jury; request necessary); § 8-22 (counsel; request necessary); § 8-22.1 (counsel, provided to indigents) (Smith-Hurd 1965). See also Ill. Ann. Stat. c. 91½, § 9-2 (jury trial); § 9-4 (counsel) (Smith-Hurd 1967).**

13. **Ind. Ann. Stat. § 22-1209 (general); § 22-1216 (notice and counsel); § 22-1217 (hearing) (1964).**

14. **Iowa Code Ann. § 229.2 (hearing); § 229.5 (counsel); § 229.17 (review) (Supp. 1968).**

15. **Kan. Stat. Ann. § 59-2260 (counsel); § 59-2261 (jury; request necessary); § 59-2264 (hearing); § 59-2272 (notice) (1964).**

16. **Ky. Rev. Stat. Ann. § 203.014 (counsel); § 203.016 (notice); § 203.022 (hearing, jury); § 203.024 (review) (Supp. 1968).**

17. **La. Rev. Stat. § 28:53 (generally; review); §§ 28:55, :56 (hearing); § 28:54 (commission to inquire into facts; request necessary) (West 1967).**


19. **Md. Code art. 16, § 134 (generally); art. 59, §§ 20, 21 (review) (1965).**

20. **Mass. Gen. Laws Ann. c. 123, § 51 (hearing; request necessary; notice, right to be represented) (1965).**


23. **Miss. Code Ann. § 6909-08 (generally; notice, hearing, review) (1953).**


27. **N.H. Rev. Stat. Ann. § 153-B:53 (generally; review); §§ 153-B:55, :56 (hearing); § 153-B:54 (commission to inquire into facts; request necessary) (West 1967).**


29. **N.C. Gen. Stat. § 131E-22 (generally; hearing, counsel) (1960); § 131E.-22(15) (f) (review) (Supp. 1968).**

30. **N.D. Cent. Code Ann. § 22-1209 (general); § 22-1216 (notice and counsel); § 22-1217 (hearing) (1964).**


32. **Okla. Stat. Tit. 22, § 29 (generally; notice, hearing, counsel) (1960); § 29.-29(15) (f) (review) (Supp. 1968).**

33. **Or. Rev. Stat. § 412.560 (generally; notice, hearing, counsel) (1960); § 412.-560(15) (f) (review) (Supp. 1968).**


36. **S.C. Code Ann. § 63-33-10 (generally; notice, hearing, counsel) (1960); § 63-33-10(15) (f) (review) (Supp. 1968).**

37. **S.D. Codified Laws § 34-2-33 (generally; notice, hearing, counsel) (1960); § 34-2.-33(15) (f) (review) (Supp. 1968).**


40. **Utah Code Ann. § 78-30-1 (generally; notice, hearing, counsel) (1960); § 78-30.-1(15) (f) (review) (Supp. 1968).**


42. **Va. Code Ann. § 37.21 (generally; notice, hearing, counsel) (1960); § 37.21.-21(15) (f) (review) (Supp. 1968).**

43. **Vermont Stat. Ann. tit. 16, § 231 (generally; hearing, counsel) (1960); § 16.-231(15) (f) (review) (Supp. 1968).**

44. **Wash. Rev. Code Ann. § 74.08.070 (generally; hearing, counsel) (1960); § 74.08.-70(15) (f) (review) (Supp. 1968).**

26. Mont. Rev. Codes Ann. § 38-201(1) (hearing); § 38-213(1) (review; jury available if request made); § 38-214 (hearing) (1947).
32. N.Y. Mental Hygiene Law § 73(1) (notice); § 73(2) (hearing; demand necessary); § 74 (review); § 77 (counsel). See § 70(5) (generally) (McKinney Supp. 1968).
33. N.C. Gen. Laws Ann. § 122-63 (hearing and notice; trial implied); § 122-65 (second hearing); § 122-86 (review) (1964).
34. N.D. Cent. Code § 25-03-11(2) (notice); § 25-03-11(6) (hearing and counsel); § 25-03-21 (review) (1960).
37. Ore. Rev. Stat. § 426.070 (hearing); § 426.09 (notice); § 426.100 (counsel) (1967).
38. Pa. Stat. Ann. tit. 50, § 1202(c) (right to be represented); § 1203 (a) (hearing); § 1241 (review) (Supp. 1967).
39. R.I. Gen. Laws Ann. § 26-2-11 (hearing, notice, right to be represented); § 26-2-13 (counsel appointed if patient indigent); § 26-3-10 (review) (1956).
40. S.C. Code Ann. § 32-959 (notice); § 32-961 (hearing); § 32-962 (counsel); § 32-967 (review with jury; trial de novo) (1962).
41. S.D. Code § 30.0107 (notice, hearing, and right to be represented) (Supp. 1966).
42. Tenn. Code Ann. § 33-604(b) (generally; hearing, notice, jury; request necessary for latter); § 33-604(c) (counsel); § 33-604(e) (review); § 33-316 (review) (Supp. 1968).
44. Utah Code Ann. § 64-7-36(B) (notice); § 64-7-36(G) (hearing and right to be represented); § 64-7-49 (review) (1967).
49. Wis. Stat. Ann. § 51.02(1)(a) (notice); § 51.02(2) (hearing and right to be heard); § 51.02(4) (appointment of guardian ad litem); § 51.03 (jury; demand necessary) (1957).
50. Wyo. Stat. Ann. § 25-80(d) (notice, hearing, right to be represented); § 25-80(g) (counsel); § 25-80(i) (jury; request necessary) (1967).