COMMENTS

FEDERAL INJUNCTIVE RELIEF FROM ILLEGAL SEARCH

Lankford v. Gelston, 364 F.2d 197 (4th Cir. 1966)

On December 24, 1964, a police officer was shot and wounded in the course of an armed robbery in Baltimore. Early the following morning, another officer was fatally shot while searching for the robbery suspects. Suspecting that the second shooting was the work of those wanted for the robbery, the Baltimore police organized a special squad to apprehend them. The squad had a warrant for the suspects' arrest, but had no warrants to make any of the more than 300 searches—mostly of dwellings of Negroes—conducted between December 25 and January 12 in their efforts to arrest the suspects. Teams of officers conducted these searches by surrounding a house and sending a party of heavily-armed officers to the door; when the door was opened, an officer immediately entered and began to search without obtaining the occupants' consent. Most of the searches, which were conducted in a manner which often caused embarrassment and discomfort, were made on the basis of anonymous phone tips.

The plaintiffs, Negroes whose residences had been searched, brought an action in the district court seeking a temporary restraining order and a preliminary injunction against the continuation of these tactics. No restraining order issued. Three days later, the police commissioner issued a General Order declaring that an officer must have "probable cause" to believe that a suspect for whom an arrest warrant has been issued is present before he may search the premises, and the searches without warrants ceased. Thereafter, the district court refused to issue a preliminary injunction against further illegal searches.[1]

In the district court, the plaintiffs had brought their action under 42 U.S.C. § 1983 (1964),[2] claiming that the police's actions violated both the equal protection and due process clauses of the fourteenth amendment. The court found that the plaintiffs had standing to assert both claims as members of the class whose constitutional rights were allegedly being threatened. The court held that the evidence was insufficient to support a finding of racial discrimination in the conduct of the searches and denied the equal protection claim. However, with respect to the due process claim,

1. Lankford v. Schmidt, 240 F. Supp. 550 (D. Md. 1965), *rev'd. sub nom.* Lankford v. Gelston, 364 F.2d 197 (4th Cir. 1966).

2. Actually, the jurisdiction of the district court was based on 28 U.S.C. § 1343 (1964), under the substantive authority of 42 U.S.C. § 1983 (1964).

the court held that searches based on anonymous phone tips are invalid because not grounded on probable cause. In addition, the court found that the consent of the occupants of the residences searched had not been established. An injunction was denied, however, because it appeared that the relief was unnecessary. The illegal searches had almost completely stopped by the time the police commissioner took action, and the district court was of the opinion that he would make a bona fide effort to prevent such searches in the future. The Fourth Circuit Court of Appeals[3] emphasized the flagrancy of the police invasion of the rights of innocent citizens and the inadequacy of any possible redress at law. The appellate court found the General Order inadequate as a guarantee against possible recurrences of widespread illegal searches. The court noted the recent outbreaks of racial violence in urban areas and decided that, by suppressing police violation of Negro citizens' rights, it could alleviate the tension between the police and the Negro community, a probable cause of racial violence.[4] The district court was ordered to enjoin the police department from conducting further searches of residences based solely on anonymous telephone tips.

The Fourth Circuit's decision is unique. The court's opinion suggests that the federal courts may play a larger role in controlling unlawful police conduct when individual constitutional rights are threatened. More significantly, it also raises the question of whether, when illegal law enforcement practices have racial overtones, the value of a decree in solving community racial problems should be considered together with, or possibly to the exclusion of, conventional equity criteria in deciding whether injunctive relief will be granted. Never has an American court of equity avowedly undertaken to weigh the prospect of establishing racial peace in a community while deciding the appropriateness of enjoining illegal law enforcement practices.

Federal statutes provide the foundation for federal court authority to deal with the acts of state and local police which invade rights secured by the fourth and fourteenth amendments.[5] Anyone who is acting under

3. Lankford v. Gelston, 364 F.2d 197 (4th Cir. 1966).

4. *See id.* at 203-04. For a vivid illustration of the potential result of racial unrest see CALIFORNIA GOVERNOR'S COMM'N, VIOLENCE IN THE CITY—AN END OR A BEGINNING (1965).

5. Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. 42 U.S.C. § 1983 (1964); *see* 28 U.S.C. § 1343 (1964).

color of state law when he violates another person's constitutional rights is liable to the injured person, regardless of an otherwise valid governmental immunity. Until recently, there has been considerable controversy[6] as to whether section 1983 of the Civil Rights Act,[7] the under-color-of-state-law provision, restricts federal jurisdiction to cases in which a state officer is actually acting within the scope of his authority under state law. This problem has been authoritatively resolved: there is federal jurisdiction over actions against state officers who violate citizens' constitutional rights while clothed in the *apparent* authority of their state office.[8] No jurisdictional amount or diversity of citizenship requirement to invoke federal jurisdiction is present under section 1983.[9] There is ample authority for the use of section 1983 as a basis for federal jurisdiction in false arrest and false imprisonment actions, and in actions for damages for unconstitutional searches and seizures.[10] By contrast, federal suits for equitable relief from illegal police procedures have been rare.[11]

Injunctive relief has been granted in the few reported federal cases in which police conduct found violative of constitutional rights has been challenged in equity suits.[12]

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6. *See generally* Annot., 13 A.L.R. 390, 454-63 (1950); Foote, *Tort Remedies for Police Violations of Individual Rights*, 39 MINN. L. REV. 493, 509-11 (1953); James, *Federal Equity Jurisdiction to Enjoin Acts of State Officers*, 18 IOWA L. REV. 1 (1932); Comment, 37 N.D.L. REV. 433 (1961).

7. 42 U.S.C. § 1983 (1964). The text of this section is set out in note 5 *supra*; its predecessor contained similar language. *See* REV. STAT. § 1979 (1875).

8. Monroe v. Pape, 365 U.S. 167 (1961). Thus, the officer may also be violating state law.

9. Douglas v. City of Jeanette, 319 U.S. 157, *rehearing denied*, 319 U.S. 782 (1943); Ortega v. Ragen, 216 F.2d 561 (7th Cir.), *cert. denied*, 349 U.S. 940 (1954); 1 BARRON & HOLTZOFF, FEDERAL PRACTICE AND PROCEDURE § 37 (Wright ed. 1960).

10. *See, e.g.*, Lucero v. Donovan, 354 F.2d 16 (9th Cir. 1965); Rue v. Snyder, 249 F. Supp. 740 (E.D. Tenn. 1966); Selico v. Jackson, 201 F. Supp. 475 (S.D. Cal. 1962).

11. There appears to be no doctrinal obstacle to granting equitable relief under 42 U.S.C. § 1983 (1964); the ancient dictum in Gee v. Pritchard, 2 Swans. 402, 413, 36 Eng. Rep. 670, 674 (Ch. 1818), that equity grants relief only from invasions of property rights and not from invasions of personal rights, if it ever was a rule, has now fallen into disrepute. *See* Stead v. Fortner, 255 Ill. 468, 478, 99 N.E. 680, 684 (1912); Commonwealth v. McGovern, 116 Ky. 212, 238, 75 S.W. 261, 267 (1903); People *ex rel.* Bennett v. Laman, 277 N.Y. 368, 14 N.E.2d 439 (1938); Comment, 15 U. CHI. L. REV. 227 (1948). It has been argued that even the English courts have never consistently followed this dictum. *See* Moscovitz, *Civil Liberties and Injunctive Protection*, 39 ILL. L. REV. 144 (1944). Regardless of its status, this dictum should not be allowed to thwart the clear purpose of Congress to provide an equitable remedy for violations of all constitutional rights. *See* 42 U.S.C. § 1983 (1964) (specifically authorizes a "suit in equity"); Note, 39 N.Y.U.L. REV. 839, 847 (1964); *Developments in the Law—Injunctions*, 78 HARV. L. REV. 996, 998-1001 (1965).

12. *See* Hague v. CIO, 307 U.S. 496 (1939); Sellers v. Johnson, 163 F.2d 877 (8th

Two of these decisions involved the use of unlawful arrests, forcible ejections from the city, and other harassing tactics on a massive scale by police in labor disputes.[13] Another court enjoined the repeated efforts of police, through unlawful arrests and incommunicado interrogation, to coerce a confession from the plaintiff.[14] Each of these cases presented the court with instances of police conduct so clearly unlawful and so obviously motivated by bad faith and the purpose of accomplishing an improper object that the court faced no real problem in deciding whether to grant relief. None of these cases forced the courts to develop standards to govern the exercise of their discretion, because relief was so clearly available under any reasonable standard.

The proper decision was not so obvious, however, in *Sellers v. Johnson*.[15] There, a meeting of the Jehovah's Witnesses, held in a city park where hostile bystanders had gathered, had resulted in a melee. Nevertheless, the Witnesses were planning to hold another meeting. The defendant sheriff had received reports from the sheriffs of neighboring communities that carloads of hecklers were bound for the proposed meeting site bent on trouble. This prompted the defendant to blockade the roads leading to the site and to turn the Witnesses away. They filed a petition for injunctive relief to protect their first amendment right to assemble peaceably. The trial court dismissed the petition, but the Eighth Circuit found that the facts presented an appropriate case for granting relief.[16] Bad faith on the part of the sheriff was not obvious, and under the circumstances his authority to act to avert a clear and present danger of a riot was at least colorable. But the Court decided that the reports of possible trouble from hecklers were insufficient to warrant abridging the plaintiff's freedom of assembly and indicated that the defendant should have used his resources to protect this right against the threatened unlawful interference. The case was resolved entirely by the use of first amendment standards; no test of general applicability to guide discretion in cases involving law enforcement practices which threaten other constitutional rights was evolved.

In contrast to this paucity of federal authorities, numerous state cases have dealt with injunctions against unlawful law enforcement tactics.

Cir. 1947), *cert. denied*, 332 U.S. 851 (1948); Refoule v. Ellis, 74 F. Supp. 336 (N.D. Ga. 1947); American Steel Wire Co. v. Davis, 261 Fed. 800 (N.D. Ohio 1919).

13. In *Hague*, the police obstructed the union's efforts to organize; in *American Steel Wire Co.*, they prevented strike-breakers from getting to work.

14. Refoule v. Ellis, 74 F. Supp. 336 (N.D. Ga. 1947).

15. 69 F. Supp. 778 (S.D. Iowa 1946), *rev'd*, 163 F.2d 877 (8th Cir. 1947), *cert. denied*, 332 U.S. 851 (1948).

16. Sellers v. Johnson, 163 F.2d 877 (8th Cir. 1947), *cert. denied*, 332 U.S. 851 (1948).

Most of these cases, however, concern invasions of business interests, rather than denials of individual liberty. They typically involve such tactics as stationing officers on or near business premises,[17] searching the premises or customers repeatedly,[18] seizing property,[19] or questioning customers excessively—discouraging them, even if unintentionally, from patronizing the plaintiff's business.[20]

These cases are distinguishable from federal actions which may be brought under section 1983[21] in that the plaintiffs rely on commercial damage, rather than the impairment of individual liberties, as the injury which entitles them to relief.[22] Nevertheless, the criteria developed by the state courts for granting relief in these business-oriented cases can be expected to serve as at least a point of reference for the federal courts in granting injunctions against police action under section 1983.

The issues, which have been considered by state courts, in deciding whether injunctive relief from police activities is appropriate include the following:

17. *See, e.g.*, Burns v. McAdoo, 113 App. Div. 165, 99 N.Y. Supp. 51 (1906); Leib Restaurant Corp. v. Wallander, 65 N.Y.S.2d 479 (Sup. Ct. 1946).

18. *See, e.g.*, Uptown Enterprises v. Strand, 195 Cal. App. 2d 45, 15 Cal. Rptr. 486 (1961); Cleary v. McAdoo, 113 App. Div. 178, 99 N.Y. Supp. 60 (1906).

19. *See, e.g.*, Stevens v. McAdoo, 112 App. Div. 458, 98 N.Y. Supp. 553 (1906); Seaboard New York Corp. v. Wallander, 192 Misc. 227, 80 N.Y.S.2d 715 (Sup. Ct. 1948).

20. *See, e.g.*, Delaney v. Flood, 183 N.Y. 323, 76 N.E. 209 (1906); Hagan v. McAdoo, 113 App. Div. 506, 99 N.Y. Supp. 255 (1906).

In many cases the claims for relief were not based solely on business interests; the police activity complained of violated both the plaintiff's constitutional rights and his property rights in his business or livelihood. *See, e.g.*, City of Louisville v. Lougher, 209 Ky. 299, 272 S.W. 748 (1925) (freedom of speech—financial interest in giving a speech for hire); Higgins v. Krogman, 140 N.J. Eq. 518, 55 A.2d 175 (Ch. 1947), *aff'd*, 142 N.J. Eq. 691, 61 A.2d 444 (Sup. Ct. Err. & App. 1948) (freedom from unlawful arrest —right to sell merchandise); Gurtov v. Williams, 105 S.W.2d 328 (Tex. Civ. App. 1937) (freedom from unlawful arrest—right to organize for collective bargaining).

21. 42 U.S.C. § 1983 (1964).

22. Noting the preferred status of a claim for the protection of constitutional rights as compared to one for the protection of mere business interests, it might be expected that courts would create a general presumption in favor of injunctive relief when the former is involved. At present, however, the presumption is that state equity courts lack the power to grant such relief. *See* Harmon v. Commissioner of Police, 274 Mass. 56, 174 N.E. 198 (1931); Delaney v. Flood, 183 N.Y. 323, 76 N.E. 209 (1906); Conte v. v. Roberts, 58 R.I. 353, 192 Atl. 814 (1937); Annot., 83 A.L.R.2d 1007, 1016-17 (1962). The theory behind this presumption is that interference with the enforcement of the criminal law is against public policy. In City of Jacksonville v. Wilson, 157 Fla. 838, 27 So. 2d 108 (1946), the court reasoned that, even though the lower court's injunction forbade only unlawful police conduct, the very issuance of an injunction gives a court a role in supervising law enforcement activities and such supervision necessarily imposes a burden on police officers in the lawful performance of their duties.

(1) The traditional prerequisites for equitable relief. These include the inadequacy of a remedy at law,[23] "clean hands,"[24] and the irreparability of the plaintiff's injury.[25] However, the existence of an adequate legal remedy may be a meaningless factor, since all legal remedies appear to have some built-in disadvantages.[26]

(2) Whether the police conduct was beyond the scope of the officers' discretionary authority. No injunction will issue if the plaintiff fails to carry his burden of proving clearly that the police acted without reasonable grounds or probable cause.[27] If the evidence is conflicting, the plaintiff will be left to his remedy at law. If the facts are uncontroverted, however, and the court finds no reasonable basis for the police actions, injunctive relief will probably be granted.[28]

(3) The intent with which the police act. If police officers are honestly trying to perform their duties, if they are acting in good faith, courts are reluctant to enjoin them even when they have unlawfully invaded the plaintiff's rights.[29] If they are acting maliciously or corruptly, they will

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23. *See* City of Louisville v. Lougher, 209 Ky. 299, 272 S.W. 748 (1925); Burkitt v. Beggans, 103 N.J. Eq. 7, 142 Atl. 181 (Ch. 1928); Delaney v. Flood, 183 N.Y. 323, 76 N.E. 209 (1906); Klinger v. Ryan, 91 Misc. 71, 153 N.Y. Supp. 937 (Sup. Ct. 1915); Annot., 83 A.L.R.2d 1007 (1962).

24. *See* Randolph v. Kensler, 95 Kan. 32, 147 Pac. 1132 (1915) (*semble*); Delaney v. Flood, 183 N.Y. 323, 76 N.E. 209 (1906); Monfrino v. Gutelius, 66 Ohio App. 293, 33 N.E.2d 1003 (1939).

25. *See* Ruty v. Huelsenbeck, 109 N.J. Eq. 273, 156 Atl. 922 (Ch. 1931); Gurtov v. Williams, 105 S.W.2d 328 (Tex. Civ. App. 1937).

26. In his dissenting opinion in Wolf v. Colorado, 338 U.S. 25 (1949), Mr. Justice Murphy pointed out some of the infirmities of conventional legal remedies. For example, when statutes provide criminal penalties for illegal police conduct, victims of such conduct cannot expect enforcement: it is unreasonable to expect prosecutors to prosecute those with whom they work closely and upon whom they rely. Actions for trespass to land or chattels will fail unless the plaintiff can show that the trespassing officers caused property damage; punitive damages may be unavailable, or may be granted only when express malice is proved. Sovereign immunity may preclude any civil recovery. *Id.* at 41-44. *See* Edwards, *Criminal Liability for Unreasonable Searches and Seizures*, 41 VA. L. REV. 621 (1955); Foote, *Tort Remedies for Police Violations of Individual Rights*, 39 MINN. L. REV. 493 (1955).

27. *See* Joyner v. Hammond, 199 Iowa 919, 200 N.W. 571 (1924); Kalwin Business Men's Ass'n. v. McLaughlin, 216 App. Div. 6, 214 N.Y. Supp. 507 (1926); Seaboard N.Y. Corp. v. Wallander, 192 Misc. 227, 80 N.Y.S.2d 715 (Sup. Ct. 1948); Monfrino v. Gutelius, 66 Ohio App. 293, 33 N.E.2d 1003 (1939).

28. City of Louisville v. Lougher, 209 Ky. 299, 272 S.W. 748 (1925); Hagan v. McAdoo, 113 App. Div. 506, 99 N.Y. Supp. 255 (1906); *see* Higgins v. Krogman, 104 N.J. Eq. 518, 55 A.2d 175 (Ch. 1947), *aff'd*, 142 N.J. Eq. 691, 61 A.2d 444 (Sup. Ct. Err. & App. 1948).

29. *See* Wood Bros. Thresher Co. v. Eicher, 231 Iowa 550, 1 N.W.2d 655 (1942); Commission Row Club v. Lambert, 161 S.W.2d 732 (Mo. Ct. App. 1942); Andrieux v. City of Butte, 44 Mont. 557, 121 Pac. 291 (1912); Kalwin Business Men's Ass'n. v.

be enjoined.[30] It has been emphasized, however, that the showing of bad faith must be clear.[31]

There is language in some opinions to the effect that an injunction should be denied if it might interefere with legitimate law enforcement actions that might be taken against the plaintiff.[32] This, however, is really an objection to injunctions which are not drafted narrowly enough to cover only police conduct that will be illegal under any circumstances.[33]

These are guides calculated to balance the public interest in unfettered, efficient law enforcement against the need to protect individual rights from police encroachment. They purport to allow for the maximum possible freedom for officers acting honestly and reasonably, and to protect individual rights against malicious and unreasonable actions which are valueless in terms of the public's legitimate concern for effective law-enforcement.

Similarly, the *Lankford* decision emphasized such conventional equitable criteria as the inadequacy of legal remedies for the victims of the raids,[34] the plaintiffs' innocence of any wrongdoing,[35] and the fact that searches made solely on the basis of anonymous telephone tips were clearly abuses of authority[36] and were flagrantly repeated.[37] Neither bad faith nor malice

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McLaughlin, 216 App. Div. 6, 214 N.Y. Supp. 507 (1926); Seaboard N.Y. Corp. v. Wallander, 192 Misc. 227, 80 N.Y.S.2d 715 (Sup. Ct. 1948); Monte Vulture Social Club Inc. v. Wallander, 189 Misc. 162, 68 N.Y.S.2d 657 (Sup. Ct. 1947).

30. *See* Hague v. CIO, 307 U.S. 496 (1939); American Steel Wire Co. v. Davis, 261 Fed. 800 (N.D. Ohio 1919); Uptown Enterprises v. Strand, 195 Cal. App. 2d 45, 15 Cal. Rptr. 486 (1961); Hagan v. McAdoo, 113 App. Div. 506, 99 N.Y. Supp. 255 (1906); Gurtov v. Williams, 105 S.W.2d 328 (Tex. Civ. App. 1937). *But see* City of Jacksonville v. Wilson, 157 Fla. 838, 27 So. 2d 108 (1946).

31. 43 C.J.S. *Injunctions* § 111 (1945); *see* Leib Restaurant Corp. v. Wallander, 65 N.Y.S.2d 479 (Sup. Ct. 1946).

32. *See* Unity Contract Bridge Club v. Wallander, 187 Misc. 23, 63 N.Y.S.2d 455 (Sup. Ct. 1946); Burns v. McAdoo, 113 App. Div. 165, 174-75, 99 N.Y. Supp. 51, 57-58 (1906) (dissenting opinion).

33. Note, for example, the manner in which injunctions issued by trial courts were modified on appeal to restrict their scope in Des Moines Drug Co. v. Doe, 202 Iowa 1162, 211 N.W. 694 (1927), and City of Louisville v. Lougher, 209 Ky. 299, 272 S.W. 748 (1925). The injunction ordered in Lankford v. Gelston, 364 F.2d 197 (4th Cir. 1966), is confined to searches of residences for suspects not known to reside there, conducted solely on the basis of anonymous telephone tips, a basis which the court held insufficient, as a matter of law, to furnish probable cause to believe that the suspects were present.

34. Lankford v. Gelston, 364 F.2d 197, 202 (4th Cir. 1966).

35. *Id.* at 201.

36. *Id.* at 202.

37. *Id.* at 201-02.

was expressly attributed to the police, but the court pointed out that the high-ranking police officials who authorized the raids could have done so only by deliberately disregarding elementary individual rights.[38] The injunction granted, forbidding only searches of residences for non-residents made solely on the basis of anonymous telephone tips, was so narrowly drafted that it applies only to conduct which is clearly illegal, and could never encroach on the lawful exercise of police officers' discretion. Although the raids had ceased when the district court's decision was rendered, the long-standing police practice of using these tactics on a smaller scale was found sufficient, by the appellate court, to justify the granting of an injunction.[39]

Thus, the issuance of an injunction was fully justified by a well-reasoned application of conventional equitable criteria. The court, however, pointedly made the additional argument that an injunction would benefit the community by insuring against the recurrence of police violations of the rights of Negro citizens, and thereby contributing to peace between the races,[40] an argument grounded on the assumption that the illegal law enforcement tactics of the Baltimore police were a cause of racial tensions. Thus, *Lankford* left a significant question unanswered. Will the issues which have been controlling under conventional equity doctrine be considered decisive by federal courts asked to enjoin police actions in order to defend constitutional rights? Or, will they consider themselves free to grant equitable relief when an injunction might alleviate racial unrest created by long-continued abuse of these rights, even when the conventional criteria for equitable relief are not clearly satisfied?

Consideration of the potential effect of an injunction on community race relations could revolutionize the framework of analysis applied in police-injunction cases. It could entirely displace the conventional rationale that a balance must be struck between the public interest in effective law enforcement and the individual plaintiff's interest in the protection of his rights. The claim for injunctive relief might no longer be thought of as an assertion of the rights of the individuals who appear as plaintiffs before the court, but as a plea for the protection of the interests of the community at large against conduct which breeds social discord. Under such an analysis, the conventional tests, useful only in determining the merits of an individual plaintiff's case, might pale into insignificance.

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38. *Id.* at 202-03.

39. *Id.* at 203.

40. *Id.* at 203-05.

The Fourth Circuit was not required to take such steps to reach its result in *Lankford*. But its deliberate mention of the possible value of its injunction in assuring racial peace may presage a significant development in federal equity doctrine.

Admissibility of Confessions Obtained in Violation of the Juvenile Code

State v. Arbeiter, 408 S.W.2d 26 (Mo. 1966)

On December 3, 1963, Joseph Franz Arbeiter, age fifteen, was taken into custody by the St. Louis police. The police suspected that Arbeiter had fatally stabbed Mrs. Nancy Zanone the day before. Following an interrogation, Arbeiter confessed to the stabbing. In the course of the questioning, the police told Arbeiter that a witness placed him near the Zanone residence at the time of the stabbing; in fact, there was no such witness. Further, the police neglected to tell Arbeiter that Mrs. Zanone had died as a result of the stabbing. Approximately four hours after Arbeiter's apprehension he was turned over to the juvenile authorities. Subsequently, Arbeiter was certified by the juvenile court to stand trial as an adult, convicted of first degree murder, and sentenced to life imprisonment.

An appeal taken to the Supreme Court of Missouri resulted in the reversal of the conviction.[1] The court held that the failure of the police to comply with section 211.061 of the Missouri Juvenile Code, requiring an arresting officer to take a juvenile "immediately and directly before the juvenile court," required a finding that Arbeiter's confession was inadmissable.[2]

The proliferation of juvenile courts dating from the beginning of the twentieth century has not been totally successful.[3] Increasingly, the juvenile

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1. State v. Arbeiter, 408 S.W.2d 26 (Mo. 1966).

2. *Id.*

3. Kent v. United States, 383 U.S. 541 (1966); People v. Lewis, 260 N.Y. 171, 179, 183 N.E. 353, 356 (1932) (dissenting opinion); *In re* Holmes, 379 Pa. 599, 610, 109 A.2d 523, 528 (1954), *cert. denied*, 348 U.S. 973 (1955) (dissenting opinion); Antieau, *Constitutional Rights in Juvenile Courts*, 46 Cornell L.Q. 387 (1961); Handler, *The Juvenile Court and the Adversary System: Problems of Function and Form*, 1965 Wis. L. Rev. 7; Ketcham, *The Unfulfilled Promise of the Juvenile Court*, 7 Crime & Delinquency 97 (1961); Paulsen, *Fairness to the Juvenile Offender*, 41 Minn. L. Rev. 547