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Criminal Procedure—Re-Arrest of Parolees: Washington Legislative Standards and Constitutional Considerations—Ch. 98, Wash. Laws of 1968

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RECENT DEVELOPMENTS

CRIMINAL PROCEDURE—RE-ARREST OF PAROLEES: WASHINGTON LEGISLATIVE STANDARDS AND CONSTITUTIONAL CONSIDERATIONS—Ch. 98, Wash. Laws of 1968.

During its 1969 Regular Session the Washington Legislature enacted legislation governing parole revocation hearings[1] and re-enacted existing provisions concerning the arrest and initial detention of suspected parole violators.[2] The re-enacted portion of the statute provides that any parole or probation officer may arrest a parolee without a warrant when he has "reason to believe" that a convicted person has violated any state statute or a condition of his parole.[3] The prisoner is not to be released until the board acts to reinstate his parole status.[4]

Neither the legislature nor the courts has clarified the meaning of the requirement that the arresting officer have "reason to believe" that a parolee has violated a statute or a condition of his parole. By way of dictum, however, the Washington Supreme Court has said "[W]e can find no constitutional infirmity in the statutory provisions authorizing the initial arrest and detention . . . ."[5] The court's willingness to entertain constitutional questions concerning parole revocation at the re-arrest stage suggests a departure from the traditional view of parole revocation as a statutory procedure to which constitutional considerations are only marginally applicable.[6] This note contends that a re-examination of conventional parole revocation doctrine compels the conclusion that due process considerations are applicable at the re-arrest stage, and that these considerations require that "reason to believe" be interpreted to require "probable cause" to arrest the suspected parole violator.

1. Ch. 98, §§ 2, 4, 5, 6, 7 [1969] Wash. Sess. Laws; WASH. REV. CODE §§ 9.95.120, .122, .123, .124, .125 (1969).
2. Ch. 98, § 2 [1969] Wash. Sess. Laws; WASH. REV. CODE § 9.95.120 (1969).
3. *Id.* The period of initial detention during which the parolee is held without bail may extend to forty-five days, for the parolee must be served with a copy of the factual allegations of his parole violation within fifteen days of his arrest and he is entitled to a hearing within thirty days of this time.
4. *Id.*
5. Bailey v. Gallagher, 75 Wn. 2d 260, 266, 450 P.2d 802, 805 (1969).
6. *See, e.g.*, Hyser v. Reed, 318 F.2d 225 (D.C. Cir. 1963), *cert. denied*, 375 U.S. 957 (1963); Fleming v. Tate, 156 F.2d 848 (D.C. Cir. 1946); Washington v. Hagan, 287 F.2d 332 (3d Cir. 1960), *cert. denied*, 366 U.S. 970 (1961).

I. TRADITIONAL THEORIES OF PAROLE STATUS

At least three theories have been offered to support the conclusion that parole revocation is governed solely by statutory provisions. The first of these has been labelled the "contract theory."[7] Stated simply, the argument is that the prisoner, by accepting a grant of conditional liberty, has agreed to the revocation procedures authorized by the legislature. The parolee is said to have waived whatever due process rights he may have had by consenting to the statutory conditions of release.[8]

However, the contract theory was rejected by the Supreme Court as early as 1932 when the court referred to probation as a "matter of favor, not of contract."[9] On a practical level, a prisoner faced with the alternative of imprisonment will probably "accept" any conditions that are imposed. Such an arrangement smacks of unequal bargaining power and is hardly a "contract between equals."[10]

A second theory sees the parole status as "constructive custody."[11] A revocation of this status is not considered a taking of liberty but merely a change from "constructive" to actual custody.[12] It follows that the re-taking of a suspected parole violator is not an "arrest" in the conventional sense and that the safeguards required in the case of an actual arrest need not be afforded the prisoner.[13]

Equating actual and constructive custody seems unrealistic. While

7. Comment, *Due Process and Revocation of Conditional Liberty*, 12 WAYNE L. REV. 638, 645 (1966); *see also* Comment, *Parole; A Critique of its Legal Foundations and Conditions*, 38 N.Y.U.L. REV. 703, 708 (1963).

8. *See, e.g.*, Murray v. State, 444 P.2d 236 (Okla. Crim. 1968); Fuller v. State, 122 Ala. 32, 26 So. 146 (1899).

In Rose v. Haskins, 388 F.2d 91, 100 (6th Cir. 1968), Justice Celebrezze, dissenting, inconsistently mixed two theories of parole status in tacitly recognizing due process rights which had been waived, and supporting the analysis by referring to parole as a "privilege" which thereby forecloses consideration of constitutional rights.

9. Burns v. United States, 287 U.S. 216, 220 (1932).

10. Comment, *Due Process and the Revocation of Conditional Liberty*, 12 WAYNE L. REV. 638, 645-46 (1966).

11. Robinson v. Cox, 77 N.M. 55, 419 P.2d 253 (1966); *In re* Varner, 166 Ohio St. 340, 142 N.E.2d 846 (1957); Comment, *Due Process and Revocation of Conditional Liberty*, 12 WAYNE L. REV. 638, 646 (1966).

12. *Ex parte* Tabor, 173 Kan. 686, 250 P.2d 793 (1952); McCoy v. Harris, 108 Utah 407, 408, 160 P.2d 721, 722 (1945). *But cf.*, Schooley v. Wilson, 150 Col. 483, 374 P.2d 353 (1962).

13. United States v. Follette, 282 F. Supp. 10 (S.D.N.Y. 1968); People v. Villareal, 262 Cal. App. 2d 438, 68 Cal. Rptr. 610 (1968); People v. Contreras, 263 Cal. App. 2d 281, 69 Cal. Rptr. 548 (1968); People v. Denne, 141 Cal. App. 2d 499, 297 P.2d 451 (1956).

the parolee is inhibited somewhat by the conditions of his parole, which commonly include restrictions on association and travel,[14] it cannot be seriously contended that these restrictions are comparable to the restrictions imposed upon an actual prisoner. The Colorado Supreme Court recognized this distinction between actual and constructive custody and held:[15]

> When one entitled to his liberty, even though in constructive custody of the state, is actually imprisoned, his imprisonment becomes more onerous than the law allows. Under such circumstances he may resort to the remedy of habeas corpus and is entitled to be released from physical confinement and restored to constructive custody.

The third theory argues that parole is a mere privilege,[16] and hence, as a gratuity, is revocable at the whim of the grantor.[17] Because parole is not constitutionally compelled, but exists only as a result of the benevolence of the state,[18] the parolee is considered a "creature of grace" having gained his limited freedom as a matter of privilege and not of right.[19]

The "privilege-right" distinction as applied to the status of conditional liberty, received its greatest impetus in *Esco v. Zerbst*,[20] where Justice Cardozo emphasized:[21]

14. For a discussion of common conditions of probation, *see* Best & Birzon, *Conditions of Probation; An Analysis*, 57 GEO. L. REV. 809 (1963).

15. Schooley v. Wilson, 150 Col. 483, 374 P.2d 353, 355 (1962). *Accord*, United States v. O'Donovan, 107 F. Supp. 347, 350 (N.D. Ill. 1952) where the court said:

> [S]uch parole rightfully merited and earned under the statute invests in the parolee a status or right which he has the right to defend by due process in a court of law. In such a case where it is alleged the parole termination was unlawful, the court is required to inquire into the legality of detention.

16. *See, e.g.*, Escoe v. Zerbst, 295 U.S. 490 (1935); Rose v. Haskins, 388 F.2d 91 (6th Cir. 1968); Kirsch v. United States, 173 F.2d 652 (8th Cir. 1949); Riggins v. Rhay, 75 Wn. 2d 271, 450 P.2d 806 (1969); *See also* Comment, *Due Process and Revocation of Conditional Liberty*, 12 WAYNE L. REV. 638 (1966).

17. Mahan v. Buchanan, 310 Ky. 832, 221 S.W.2d 945 (1949); State *ex rel.* McQueen v. Horton, 31 Ala. App. 71, 14 So.2d 557, *aff'd*, 244 Ala. 594, 14 So.2d 561 (1943); Vigil v. Hughes, 24 N.M. 640, 175 Pac. 713 (1918). *See also* Comment, *Constitutional Law: Parole Status and the Privilege Concept*, 1969 DUKE L.J. 139, 140 (1969).

18. *See, e.g.*, Riggins v. Rhay, 75 Wn. 2d 271, 450 P.2d 806 (1969); Hiatt v. Compagna, 178 F.2d 42 (5th Cir. 1949); Fleming v. Tate, 156 F.2d 848 (D.C. Cir. 1946). *See generally* Comment, *Due Process and Revocation of Conditional Liberty*, 12 WAYNE L. REV. 638, 643-45 (1966).

19. United States v. Frederick, 405 F.2d 129 (3d Cir. 1968); Marchand v. United States Probation Office, 296 F. Supp. 532 (D. Mass. 1969); Hiatt v. Compagna, 178 F.2d 42, 45 (5th Cir. 1949); Kirsch v. United States, 173 F.2d 652 (8th Cir. 1949).

20. 295 U.S. 490 (1935).

21. *Id.* at 492, 493.

> We do not accept petitioner's contention that the privilege has a basis in the constitution, apart from any statute. Probation or suspension of sentence comes as an act of grace to one convicted of a crime, and may be coupled with such conditions in respect of its duration as Congress may impose.

Although a few states have held that a parolee has a vested right to his conditional liberty until he violates the conditions of his parole,[22] and while at least one court has disavowed the "privilege-right" distinction altogether,[23] the majority have adopted Cardozo's analysis of conditional liberty as a mere privilege and thus not protected by due process.[24]

While the "privilege-right" distinction seems well entrenched in legal doctrine, recent Supreme Court decisions in non-parole cases indicate that the assumptions upon which it rests may be unsound.[25] Mere denomination of an interest as a privilege or right is no longer determinative of the individual's procedural rights that protect that interest.[26] Reliance on the "privilege-right" distinction has given away to a process whereby the court balances the state's need to dispense with certain procedural safeguards against the detriment to the individual that may result from the denial of those safeguards.[27]

22. *See, e.g.*, Lester v. Foster, 207 Ga. 596, 63 S.E.2d 402 (1951); State v. Zolantakis, 70 Utah 296, 259 Pac. 1044 (1927) (suspended sentence); *Ex parte* Lucero, 23 N.M. 433, 168 Pac. 713 (1917) (same).

23. Joyce v. Strassheim, 242 Ill. 359, 90 N.E. 118 (1909).

24. Comment, *Due Process and Revocation of Conditional Liberty*, 12 WAYNE L. REV. 638, 644 (1966); Annot., 29 A.L.R.2d 1074 (1953).

25. *See* Van Alstyne, *The Demise of the Right-Privilege Distinction in Constitutional Law*, 81 HARV. L. REV. 1439 (1968). In Cafeteria Workers Local 473 v. McElroy, 367 U.S. 886, 894 (1961), "[t]he easy assertion that because she had no constitutional right to be there in the first place, she was not deprived of liberty or property by the superintendent's action" was found not to be dispositive of a defense worker's claim that she had been denied procedural due process when she was summarily dismissed from employment.

26. In Knight v. State Bd. of Educ., 200 F. Supp. 174, 178 (M.D. Tenn. 1961) the court said:

> Whether the interest involved be a right or a privilege, the fact remains that it is an interest of almost incalculable value . . . . Private interests are to be evaluated under the due process clause of the Fourteenth Amendment, and not in terms of labels or fictions but in terms of their true significance and worth.

See also Dixon v. Alabama State Bd. of Educ., 294 F.2d 150 (5th Cir.), *cert. denied* 368 U.S. 930 (1961).

27. Slochower v. Board of Education, 350 U.S. 551 (1956); Cafeteria Workers Local 473 v. McElroy, 367 U.S. 886 (1961); *cf.* Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 163 (1951) (Frankfurter, J. concurring). *See generally* Van Alstyne, *The Demise of the Right-Privilege Distinction in Constitutional Law*, 81 HARV. L. REV. 1439 (1968).

II. DUE PROCESS FOR PAROLEE RE-ARREST

It appears, then, that the traditional analyses of parole revocation, denying the applicability of due process, are not persuasive.[28] Without any convincing rationale for placing parole revocation procedure outside the ambit of constitutional protection, it follows that here, as in other state-individual confrontations, due process imposes limitations on official conduct. Just as the state cannot subject a juvenile to the possibility of incarceration without assuring him due process,[29] it cannot act to deprive the parolee of his liberty without assuring the proper measure of due process. The question, then, becomes what does due process entail in the parolee re-arrest situation.

Due process conditions state action by virtue of the fourteenth amendment. The Supreme Court has long struggled with the concept of fourteenth amendent due process but has reached no unanimity.[30] Yet, since *Mapp v. Ohio*,[31] it has been clear that fourteenth amendment due process incorporates the fourth amendment guarantees against unreasonable searches and seizures. However, lower courts have held that the re-arrest of a parolee is not a seizure within the meaning of the fourth amendment.[32] Such holdings seem to be based upon the rationale of constructive custody. If, as urged above,[33] this concept is an inadequate justification for viewing parole revocation as entirely beyond the reach of fourteenth amendment due process, it seems equally non-persuasive as a rationale for holding that due process requires anything less than those safeguards necessitated by the fourth amendment. Just what the fourth amendment requires in the re-arrest context remains to be considered.

The Supreme Court has indicated that the fourth amendment protects against all unreasonable official invasions of individual liberty

28. *But see* Riggins v. Rhay, 75 Wn.2d 271, 450 P.2d 806 (1969) (rejecting application of fifth and sixth amendment safeguards and reaffirming that parole revocation procedures are governed only by statute).

29. *In re* Gault, 387 U.S. 1 n.7 (1967) (reserving issue of propriety of arrest).

30. *See* Henkin, *"Selective Incorporation" In the Fourth Amendment*, 73 YALE L.J. 74 (1963).

31. 367 U.S. 643 (1961).

32. *See, e.g.*, People v. Contreras, 263 Cal. App. 2d 281, 69 Cal. Rptr. 548 (1968); People v. Hernandez, 229 Cal. App. 2d 143, 40 Cal. Rptr. 100, (1965); People v. Denne, 141 Cal. App. 2d 499, 297 P. 2d 451 (1956).

33. *See* notes 11-15 and accompanying text, *supra*.

even if the invasion might be described as limited.[34] The parolee re-arrest problem presents a slightly different question because here the parolee's liberty is itself limited. Nevertheless, by analogy to the cases rejecting the "privilege-right" dichotomy,[35] the parolee should be viewed as having an interest in his liberty, even though that liberty is limited or conditional. The determination of reasonableness under the fourth amendment is basically a process of seeking an accommodation between state and individual interests brought into conflict by official procedure. The content of due process in the parolee re-arrest setting, therefore, must ultimately be the product of a balancing process[36]—a weighing of the state's interest in protecting its citizens by re-arresting parolees for alleged violations of state law or parole conditions against the individual's interest in protection against unjustifiable seizure.

Clearly an arrest will work a hardship upon the parolee. His liberty is at stake as well as any reputation he may have regained within his community.[37] Even if the re-arrest is later revealed to be unjustified, the stigma may remain with him. Furthermore, the Washington statute allows for detention of up to forty-five days prior to a hearing,[38] a time sufficient to work a great hardship upon a parolee whose financial and employment security may depend upon continued freedom.

The state's primary interest in re-arresting a person suspected of parole violations is protection of society from a convict who no longer merits freedom from penal confinement.[39] If procedures can be developed which offer significant protection to the parolee when re-

34. Terry v. Ohio, 392 U.S. 1 (1968).
35. *See* notes 25-27 and accompanying text, *supra.*
36. Camara v. Municipal Court, 387 U.S. 523, 534-37 (1967); Terry v. Ohio 392 U.S. 1 (1968). *See* Barrett, *Personal Rights, Property Rights and the Fourth Amendment,* 1960 SUPREME COURT REV. 46, 63; *cf.* Schwartz, *Stop and Frisk (A Case Study in Judicial Control of the Police),* 58 J. CRIM. L. C. & P. S. 433, 448-49 (1967); LaFave, *"Street Encounters" and the Constitution: Terry, Sibron, Peters and Beyond,* 67 MICH. L. REV. 40, 57 (1968). *See also* Brinegar v. United States, 338 U.S. 160, 183-84 (1949) where Mr. Justice Jackson in dissent seems to balance fourth amendment rights against the state's interest in protecting its citizenry, in his discussion of a hypothetical concerning a kidnapped child.
37. *See* Note, *Constitutional Law: Parole Status and the Privilege Concept,* 1969 DUKE L.J. 139, 146 (1969).
38. *See* note 3 and accompanying text, *supra.*
39. Comment, *Due Process and Revocation of Conditional Liberty,* 12 WAYNE L. REV. 638, 649 (1966).

arrested without subordinating the state's interest in crime prevention, utilization of the balancing test would indicate that such procedures should be followed. Moreover, it can be argued that it is in the state's interest to treat the individual fairly at all critical stages of parole revocation.[40] The purpose of parole is primarily that of rehabilitation or reformation of the convicted person,[41] and unfair or unnecessarily harsh treatment, leading to the likelihood of even greater alienation and antagonism on the part of the parolee, can only work to defeat the basic purposes of the parole system itself.[42]

The objective, then, would appear to be to assure the integrity of the re-arrest to the greatest extent possible while protecting the public interest in crime prevention. The fourth amendment's requirement of probable cause would meet this objective.[43] The requirement of probable cause to believe a statute or parole condition has been violated prior to re-arrest would protect the parolee from being returned to jail on mere suspicion but the efficiency of the state's operations would be little affected by the standard. Because probable cause can be based on hearsay or informers' tips,[44] a requirement of a showing of probable cause would not necessitate greater time in the field on the part of the parole officers.[45] Informers would be protected by the

40. In Hyser v. Reed, 318 F.2d 225, 243-44 (D.C. Cir. 1963) Judge (now Chief Justice) Burger listed three stages as especially crucial; the initial decision to use a warrant, the actual arrest and a preliminary interview with the parolee.

41. *See* Bates, *Probation and Parole as Elements in Crime Prevention*, 1 LAW & CONTEMPORARY PROBLEMS 484 (1934); Comment, *The Rights of the Probationer; A Legal Limbo*, 28 U. OF PITT. L. REV. 643 (1967).

42. Justice Hamilton utilized similar reasoning in his dissent in Mempa v. Rhay, 68 Wn.2d 882, 900, 416 P.2d 104, 114 (1966). He wrote: "[t]he threat of arbitrary or whimsical commitment does not tend to encourage either co-operation or successful rehabilitation. Reformation can best be accomplished by fair, consistent, and straight-forward treatment of the individual." *See also* Comment, *The Rights of the Probationer; A Legal Limbo*, 28 U. PITT. L. REV. 643 (1966-67).

43. In Brinegar v. United States, 338 U.S. 160, 175, 176 (1949) the Supreme Court stated:

> In dealing with probable cause, however, as the name implies, we deal with probabilities. These are not technical; they are factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act. The standard of proof is accordingly correlative to what must be proved. . . .
>
> . . . The rule of probable cause is a practical, nontechnical conception affording the best compromise that has been found for accommodating these often opposing interests. . . .

44. Draper v. United States, 358 U.S. 307 (1959).

45. Parole officers in Washington are already overworked. In 1963, the field staff was described as "inadequate, quantitatively, in most areas to perform the kind of parole supervision that the public has the right to expect." THE STATE OF WASHINGTON BOARD OF PRISON TERMS AND PAROLES AND FIELD SERVICES; A SURVEY BY THE NATIONAL COUNCIL ON CRIME AND DELINQUENCY § 3.09 (1964).

privilege against disclosure,[46] and thus be able to continue their work without loss of their "cover."

In sum, the balancing of interests test of constitutionality favors the application of a probable cause standard for the re-arrest of a parolee.[47] Yet, even if probable cause is not a constitutionally required meaning of the "reason to believe" language in the Washington parole revocation statute, that meaning could still be ascribed by a process of statutory interpretation. The test for the existence of probable cause has been formulated as follows:[48]

> [W]ould the fact available to the officer at the moment of seizure or the search "warrant a man of reasonable caution in the belief" that the action was appropriate.

The essence of this formulation is that the officer must have reason (reasonable grounds) to believe that a violation has been committed.[49] Support for interpreting "reason to believe" as equivalent to probable cause is found in the second draft of the Model Penal Code which cites the Washington statute as offering general support for the Code's requirement of probable cause to affect the re-arrest of a parolee without a warrant.[50]

III. PROCEDURE FOR TESTING THE RE-ARREST

If it be established that a probable cause standard is appropriate for the re-arrest of a parolee in Washington, a problem remains under

46. The identity of the informer upon whose information the arresting officer relies to establish probable cause for arrest need not be disclosed. If, however, the identity of the informer is necessary to a fair determination of guilt or innocence the privilege against disclosure will not be invoked. Roviaro v. United States, 353 U.S. 53, 60-61 (1957).

47. It is conceivable that the result of balancing interests in the re-arrest context might produce a probable cause standard less rigorous than that applied to arrests generally. Consider Camara v. Municipal Court, 387 U.S. 523 (1967), where the Court applied a watered-down probable cause test. There probable cause to conduct an administrative search of a particular dwelling was held to be satisfied by a finding of probable cause with respect to the area in which the dwelling is located.

48. Terry v. Ohio, 392 U.S. 1, 21-22 (1968). *See also* Draper v. United States, 358 U.S. 307, 313 (1959), in which probable cause was held to exist where:

> facts and circumstances within [the arresting officer's] knowledge and of which they had reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed.

49. *Cf.* Brinegar v. United States, 338 U.S. 160, 175 (1949).

50. MODEL PENAL CODE § 301.3, comment 1, at 150 (Tent. Draft No. 2, 1954).

the state statute concerning the time a parolee may have to wait before the propriety of his re-arrest is officially determined. As previously pointed out, the period of detention prior to a hearing may be as long as 45 days.[51] Such a prolonged detention period is an obvious injustice to a man improperly detained. Under the federal parole procedure,[52] a preliminary interview must be held in the district of the arrest as soon after the arrest as possible to appraise the parolee of the charges against him and the circumstances surrounding his alleged violation. Such an early interview might also be suitable for the additional purpose of making an appraisal of the legality of a re-arrest under the probable cause standard. No compelling state interest appears for delaying this determination and the countervailing interest of the individual in the shortest possible period of improper detention is clear.[53] The Washington scheme would be substantially improved by the addition of an early hearing requirement.

Under the Washington statute as it presently stands, the parolee's best remedy, if arrested and detained upon a showing of less than probable cause, would seem to be the writ of habeas corpus. Both the state and federal courts have held that the writ will lie to challenge the parolee's detention after re-arrest.[54] Additional methods of controlling the behavior of parole officers may be developed if necessary. Possibilities include excluding from revocation proceedings evidence garnered incident to an illegal arrest,[55] as well as internal safeguards, such as parole board sanctions for misconduct on the part of parole officers.[56]

51. *See* note 3, *supra.*

52. 28 C.F.R. § 2.40 (1970). *See also* United States v. Kenton, 262 F. Supp. 205 (D. Conn. 1967).

53. *See* note 35 and accompanying text, *supra.*

54. At the state level *see* Johnson v. Stucker, 203 Kan. 258, 453 P.2d 35 (1969); Schooley v. Wilson, 150 Col. 483, 374 P.2d 353 (1962). For federal cases holding habeas corpus will lie if a parolee is detained for an "unreasonable" duration without a hearing after his re-arrest *see* U.S. *ex rel.* Vance v. Kenton, 252 F. Supp. 344 (D. Conn. 1966); U.S. *ex rel.* Buono v. Kenton, 287 F.2d. 534 (2d. Cir. 1961).

55. The rule envisioned would be similar in operation to the exclusionary rule utilized in fourth amendment search and seizure cases. *See, e.g.*, Mapp v. Ohio, 367 U.S. 643 (1961).

56. Mr. Justice Finley of the Washington Supreme Court has suggested that alternative methods of controlling police behavior be developed. He argues that the exclusionary rule is undesirable because in the words of Justice Cardozo in People v. Defore, 242 N.Y. 13, 16, 150 N.E. 585, 588 (1926), "[t]he privacy of the home has been infringed, and the murderer goes free." Justice Finley proposes that civil remedies such as actions for false arrest and trespass as well as the court's general contempt power be utilized to control governmental action. *Finley, Who is on Trial—The Police? The Courts? Or*

IV. CONCLUSION

It seems clear that the fictions and theories used to support the argument that the sole depository of the parolee's rights is the parole revocation statute are inadequate. The state, the parolee, and society all have an interest in assuring the integrity of the parolee's re-arrest. After a weighing of these interests, interpretation of "reason to believe" in the existing statute as requiring less than probable cause for re-arrest could render this provision of the Washington statute unconstitutional. On the other hand, if "reason to believe" is interpreted as requiring probable cause, the interests of the state, of the parolee, and of society can be reconciled and the requirements of due process will clearly be met.

the Criminally Accused, 57 J. CRIM. L. C. & P. S. 379 (1966); *see also* Justice Finley's concurrence in State v. Rosseau, 40 Wn. 2d 92, 241 P.2d 447 (1952).

Possible use of the court's contempt power is explored is *Bloomrosen, Contempt of Court and Unlawful Police Action*, 11 RUTGERS L. REV. 526 (1957). *See also* 8 J. WIGMORE, EVIDENCE (McNaughton rev. 1961) § 2184a, at 31 n.1.