

**Topic:**

Kids Are People, Too  
(Under the Law)

**Time:**

2 class periods

**Historical**

**Period:**  
1967

**Core:**

US I 6120 - 0604  
US II 6250 - 10  
Gov. 6210 - 0202

**Objectives:**

1. Students will understand that children enjoy a special status under the law, but are also protected by the U. S. Constitution.
2. Students will learn what the Constitutional right of “due process” means for juveniles accused of committing offenses.

**Procedure:**

1. This lesson and particularly the central case, *In Re Gault*, lends itself to role playing because several of the parties are familiar roles — teenagers, parents, friends.
2. Distribute copies of the case summary, Handout 1, but not the decision, to all students and have them read. Don’t discuss the case yet.
3. Assign roles, empanel three judges, and use Handout 2.
4. Begin with two boys making an “obscene” phone call (they can decide exactly how it’s done). Then Mrs. Cook calls the police and so on through the hearing before the judge. Gerald should not have an attorney, but can tell his own story to the judge. You can conclude the roleplaying after the hearing, or a student could briefly argue Gerald’s right to appeal because he was denied certain significant due process rights in the original hearings. (Do not let students see the decision for this part; let them reach their own conclusions about which due process rights Gerald was denied, according to the Constitution.)
5. Have the judges read a decision — first as to his “sentence” for the phone call (Juvenile Detention Facility, probation, diversion programs) and then concerning his right to appeal the final placement on due process issues.
6. Distribute the opinions of two of the Supreme Court Justices, Handout 3. The final vote was 8 to 1. Which Justice’s opinion do the students think prevailed?
7. Distribute and/or discuss the summarized decision, Handout 4. It might help to list those due process rights now guaranteed to juveniles as a result of this case. List on the other side those “rights” given to adults, but still denied juveniles.
8. Also included for your background and/or discussion with students is Handout 5.

**Handouts/Worksheets:**

1. *In Re Gault*
2. Roles for role-playing of *Gault* case
3. Justice Fortas and Justice Stewart decide Gerald Gault’s fate
4. Decision: *In Re Gault*
5. “A Brief History of the Juvenile Justice System in Utah”

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## INTRODUCTION

Juvenile courts are set up to handle our youth's problems, and there is a legal process set down by the law that states what rights to "due process" juveniles have when they are taken into custody of the juvenile court. In 1967, the Supreme Court of the United States changed the law so that juveniles accused of a crime were given many of the same rights which had been given to adults. The change happened when the Supreme Court was asked to rule on the case of a fifteen-year-old boy named Gerald Gault.

This lesson uses several teaching strategies -- the *Gault* case and a role-play. It also provides background information for the teacher to discuss many issues central to the juvenile justice system and to illustrate the evolving history and philosophy of the system.

## HANDOUT 1

### *IN RE GAULT*

(“In re” means in the affair; in the matter of; concerning. It is generally used to designate a hearing that is not adversarial.)

On Monday, June 8, 1964, Gerald Francis Gault, age 15, and a friend, Ronald Lewis, were taken into custody by the sheriff of Gila County, Arizona. Gerald was on probation at the time because in February, 1964, he was in the company of a boy who had stolen a wallet from a lady’s purse. Gerald and his friend were taken into custody after Mrs. Cook, a neighbor of the boys, had called the police and complained that she had received a lewd and indecent phone call.

Both of Gerald’s parents were at work when Gerald was picked up. The officers made no attempt to notify them. When she returned from work, Gerald’s mother learned from a neighbor that Gerald was at the detention home. The next day Gerald, his mother, and his older brother appeared before the juvenile judge. Mrs. Cook, the neighbor who had complained, was not there. No one was sworn to tell the truth at this hearing. No transcript or recording was made. No record of the substance of the meeting was prepared. As the hearing was later remembered, there was conflict as to whether Gerald only dialed the number and another boy made the lewd remarks. At the conclusion of the hearing, the judge said he would “think about it” and sent Gerald back to the detention home, not to his own home with his parents. After three or four days, Gerald was released and driven home.

At a later hearing, on June 15, there was again some conflicting testimony about which boy dialed the number and who made “lewd statements.” Again the complainant, Mrs. Cook, was not present. Mrs. Gault asked that Mrs. Cook be present “so she could see which boy had done the talking, the dirty talking over the phone.” The juvenile judge said, “She didn’t have to be present at that hearing.” The judge did not speak to Mrs. Cook or communicate with her at any time. One of the probation officers had talked to her once — over the telephone.

Following the June 15 hearing, a “referral report” made by the probation officers was filed with the court, although not disclosed to Gerald or his parents. This listed the charge against Gerald as “lewd phone calls.” At the conclusion of the hearing, the judge found Gerald delinquent based on a preponderance of the evidence and ordered him sent to the State Industrial School “for a period of his minority (that is, until 21), unless sooner discharged by due process of law.”

The law that Gerald was found to have violated, found in the Arizona Criminal Code, provides that a person who “in the presence or hearing of any woman or child . . . uses vulgar, abusive or obscene language, is guilty of a misdemeanor . . . .” The penalty specified in the criminal code, which would apply to an adult, is a fine of \$5 to \$50, or imprisonment for not more than two months.

No appeal or higher state court is permitted by Arizona law in juvenile cases. But if a person believes he has been denied his Constitutional rights, he can appeal under the due process provision of state and federal law. Using this right, Gerald and his parents first asked the Supreme Court of Arizona to order the boy's release from the detention home. They claimed Gerald was being held illegally because he was imprisoned without a fair hearing. The Arizona Supreme Court refused their request, so Gerald and his parents asked the Supreme Court of the United States to order Gerald set free for the same reason.

## HANDOUT 2

### **ROLES FOR *IN RE GAULT***

- Gerald Gault:** White teenager, 15, has been in some minor trouble with the juvenile justice system previously.
- Ronald Lewis:** Also a teenager, Gerald's friend.
- Mrs. Cook:** Older woman. She receives the "obscene phone call". She never attends any of the probation hearings.
- Mrs. Gault:** Gerald's mother, at work when he is arrested, concerned but not very sophisticated about the law.
- Gerald's older brother:** Attends the hearing with Gerald and Mom.
- Two Probation Officers:** Picked up Gerald at his home, filled out probation reports, and attended probation hearings to "testify" as to what Mrs. Cook said about the "obscene phone call."
- Three Judges:** There was only one judge in the actual case, but if you use three, more students could be involved.
- An Attorney (optional):** To argue Gerald's right to appeal his case beyond the juvenile court.

*IN RE GAULT*

**JUSTICE ABE FORTAS' OPINION**

The Bill of Rights is not for adults alone. Juveniles need its protection, too.

Parts of the Bill of Rights apply to this case. These parts ensure “due process of law.”

What does “due process” mean to people accused of lawbreaking? It means that they have the right to expect the government to treat them fairly. Fairness is “due” them — that is, it’s owed them as citizens.

The Bill of Rights sets up some basic rules of fairness. The Fifth and Sixth Amendments to the U. S. Constitution gave Gerald the right:

1. To know the charges against him;
2. To be told that he can have a lawyer to defend him;
3. To remain silent, if he wishes;
4. To see and question his accuser — in this case, Mrs. Cook.

The judge in juvenile court did not honor these rights. For this reason, Gerald Gault should be set free.

**JUSTICE POTTER STEWART'S OPINION**

Our juvenile justice system began in 1899. Before then, children could go on trial in criminal courts at age seven. There, children had the same rights as adults. But they often got the same punishment, too. Sometimes, they were hanged.

In the last 70 years, all this has changed. Our juvenile courts now keep children from being tried — and punished — as criminals.

Juvenile court hearings aren’t like criminal trials. Juvenile court judges are expected to act like wise parents. They must have full power to decide what’s best for the child. Rules of due process would only tie the hands of these judges.

So, we must support the judge in the Gault case. Gerald Gault should not be set free.

**DECISION**  
***IN RE GAULT***

The U. S. Supreme Court approved the legal tradition of the state as *parens patriae* in juvenile cases, but not at the expense of constitutional rights. It emphasized that “neither is the Fourteenth Amendment of the Bill of Rights for adults alone.” The Court insisted that a juvenile hearing must measure up to the essentials of due process and fair treatment. The U. S. Supreme Court held that juveniles being tried as delinquents and in danger of losing their freedom were entitled to many of the rights of adult defendants. Specifically, juveniles charged with delinquent acts were entitled to be notified of the charges against them; to be represented by an attorney; to confront and cross examine witnesses; and to remain silent.

But the case left other unanswered questions. In subsequent cases, the Court decided that delinquents charged with a criminal act must be found “delinquent by proof beyond a reasonable doubt” — the same standard required in adult court. In another case, the Supreme Court protected the privacy of juvenile hearings and decided that jury trials were not required in juvenile cases.





## HANDOUT 5

### BRIEF HISTORY OF THE JUVENILE JUSTICE SYSTEM IN UTAH

#### Juvenile Court in Utah

1. **1852** The Legislature set forth the concept based on *parens patriae*: The state could intervene in the family matters and indenture a child without parental consent only if:
  - a. Child is vicious, idle, or vagrant;
  - b. Parent or guardian neglects, refuses, or otherwise fails in properly controlling the actions or education of such minor and does not train him or her up in some useful avocation.
2. **1888** Reform school was established.
3. **1894** Truancy was made a reason for intervention.
4. **1898** Intervention is lawful if a child is incorrigible, vicious, or beyond parental control.
5. **1899** Juvenile Court was established as a separate entity.
6. **1903** State curfew law was established. Children under 14 must be off the streets by 9:00 p.m.
7. **1903** Additional placement alternatives to reform school were created — Children's Aid Society, probation.
8. **1903** Office of probation officer was created.
9. **1905** Creation of Utah Juvenile Court as offspring of District Court.
  - a. Complaint and hearing required, but notification to parent not mandatory.
  - b. Juvenile proceedings not considered criminal proceedings, thus the following do not apply in juvenile court:
    - 1) Trial by jury.
    - 2) Arraignment.
    - 3) Plea.
    - 4) Manner of examination.

- 5) Right against self-incrimination.
  - c. Qualifications of judge set forth.
    - 1) Must be broad minded.
    - 2) Must reform, not punish, parent or child.
    - 3) Must preserve legal rights of parent and child.
    - 4) Should be learned in the law (not at this time necessary to be an attorney).
10. **1965** Juvenile Court Act creates separate and independent State Juvenile Courts; requires that judges be attorneys; creates Board of Juvenile Court Judges to:
- a. Appoint state court administrator.
  - b. Promulgate rules of practice and procedure.
  - c. Establish general policies for administration of the court.

Supreme Court Cases Impacting the System:

1. **1966** *Kent v. United States*. Juvenile court hearings must follow due process and provide fair treatment.
2. **1967** *In Re Gault*. Juveniles are given:
  - a. Right to counsel.
  - b. Right to notice of charges.
  - c. Right to confront and cross examine witnesses.
  - d. Privilege against self-incrimination.
3. **1970** *In Re Winship*. Juveniles charged with a criminal act must be found “delinquent by proof beyond a reasonable doubt” — the same standard required in adult court.
4. **1971** *McKeiver v. Pennsylvania*. Jury trials are not required in juvenile cases.
5. **1978** *Goss v. Lopez*. A high school student who is suspended for a short time is constitutionally entitled under the due process clause to receive “notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the case.