

## *IN RE GAULT*

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.

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### **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 Gerry 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, Gerry 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. Gerry Gault should not be set free.

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### DECISION

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 the Fourteenth Amendment of the Bill of Rights is 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 the jury trials were not required in juvenile cases.