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August 2015

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Recommended Citation
Kunczt, Robert M. (1968) "Constitutional Rights of Youthful Offenders; In the Matter of Gault," *Akron Law Review*: Vol. 1 : Iss. 1 , Article 6.
Available at: http://ideaexchange.uakron.edu/akronlawreview/vol1/iss1/6

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Kunczt: In the Matter of Gault

CRIMINAL LAW AND PROCEDURE—CONSTITUTIONAL RIGHTS OF YOUTHFUL OFFENDERS.

In the Matter of Gault, 35 U.S.L. Week 4399 (May 15, 1967).

After the decisions in *Gideon v. Wainwright,* 372 U. S. 335 (1963), *Miranda v. Arizona,* 384 U. S. 436 (1966), and *Escobedo v. Illinois,* 378 U. S. 478 (1964), which revealed the Supreme Court's solicitude of the constitutional rights of adults, it seemed improbable that the lower courts would long be permitted to continue ignoring the constitutional rights of juveniles. Thus the decision in the principal case, which represents a breakthrough in the assurance of a fair hearing to minors, comes as no surprise. The case holds that under the Fourteenth Amendment a juvenile has a right to notice of the charges against him, to counsel, to confrontation of his accusers, to cross-examination, and to invoke the privilege against self-incrimination.

The petitioners, the parents of Gerald Francis Gault, sought the release of their son, who had been committed to the State Industrial School of Arizona for allegedly making lewd telephone calls. The petitioners contended that the proceedings under which their son was committed violated his constitutional rights.[1]

Gerald was taken into custody on June 8, 1964 and was held in the Gila County Detention Home until June 11. His parents were not informed of his apprehension, and this information was obtained only after they had sent Gerald's brother to look for him. After learning what happened they went to the Detention Home and were informed by a probation officer that there would be a hearing the next day.

The hearing was held and Gerald, his mother, and two probation officers were present. The complainant did not appear. A probation officer filed with the court a petition which merely stated that Gerald was a delinquent minor and needed the protection of the Juvenile Court. The petition was not served on the Gaults, nor did they see it until two months later. Gerald was questioned about the telephone calls, but there is a dispute as to what he stated, the only record being the testimony of the juvenile judge, one of the probation officers, and of Mrs.

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[1] The State contended that Arizona's Juvenile Code is to be read as impliedly implementing the due process concept and that the proceedings of the Gault case did not offend these requirements. *Application of Gault,* 407 P. 2d 765.

Published by IdeaExchange@UAkron, 1968

Gault. After this hearing Gerald was returned to the detention home and subsequently released on June 11. On the day of his release a note was given to his mother indicating the date of the next hearing.[3]

At the next hearing, which took place four days later, the complainant was again absent.[4] After receiving a referral report, the judge committed Gerald to the "State Industrial School for the period of his minority (that is, until 21), unless sooner discharged by due process of Law" (p. 4400).

In reversing this decision, the Supreme Court held that the processes used by the Juvenile Court of Arizona violated the constitutional rights of the individual to due process, confrontation, cross-examination, to counsel, and to refuse self-incrimination.

The basic problem in the operation of the juvenile courts lies not in their denial of the right to counsel or to confront one's accusers or to engage in cross-examination, but in their failure to remember the purpose of the juvenile court. There are at least three promises of the juvenile court that remain unfulfilled:

> "First, the promise that the consequences of a finding of delinquency will, in fact, be noncriminal and that the stigma of a criminal record will not obtain.
>
> Second, the promise that the hearing itself will be promptly held, easily understood, fair, and compatible with, if not a part of, the treatment process. . . .
>
> (Third), the promise that the child's treatment subsequent to a finding of delinquency will approximate as closely as possible that which he should have received from his natural parents." [5]

As to the first promise, the founders of the juvenile court envisioned a system that would protect an offender from being unduly penalized for acts ascribable to the indiscretion of youth.

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[3] The entire text of the note is as follows:

"Mrs. Gault:

"Judge McGhee has set Monday June 15, 1964 at 11:00 a.m. as date and time for further hearings on Gerald's delinquency.

/s/ Flagg"

The State claims that this was proper notice and that Mrs. Gault knew what the charges were against Gerald.

[4] Those present at the hearing were Gerald, his parents, Ronald Lewis (who was with Gerald when the calls were made) and his father, Officers Flagg and Henderson, and the judge.

[5] Rosenheim, *Justice and the Child,* 27 (1962).

Yet it is a well-known fact that in practice a youth's mistake commonly follows him through life, for his records are frequently made available to such organizations as the F. B. I., the armed services, government agencies, and to private employers.[6] In most states police keep records of juvenile contacts and have authority to disclose them. The police receive numerous requests from the F. B. I., armed forces, and social agencies, and usually comply.[7]

With reference to the second promise, juvenile court hearings often amount to little more than a process of legal paper filing. Those who have no knowledge of the law and are not represented by counsel are easily confused by the process and are consequently unable to take an active part in their defense. It has been stated that, "Unless appropriate due process of law is followed, even the juvenile who has violated the law may not feel that he is being fairly treated and may therefore resist the rehabilitative efforts of Court personnel." [8]

The third promise, that the child's treatment subsequent to a finding of delinquency should be comparable to that which his natural parents would have provided, is seldom honored. Subsequent to the delinquency finding the offender is usually placed in a detention home for a specified period. This is pure and simple punishment. However, it is punishment more of a delinquency status than punishment for specific conduct. If punishment is the answer, then it should surely be confined to the situation where there has been a formal determination that a specific crime has been committed.

The Supreme Court has now ruled that an individual is not beyond the protection of the Constitution's due process clause merely because he is a minor. Those who administer the juvenile courts must now implement this new standard. Those who find the burden of this task difficult to accept would do well to remember that the most effective form of teaching is the setting of a good example. Thus the youthful offender who receives fair treatment is more likely to respond to rehabilitative efforts than is the one who is treated arbitrarily. The achievement of a higher rate of rehabilitation is surely worth the expenditure of some additional effort.

ROBERT M. KUNCZT

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[6] *In the Matter of Gault,* 35 U.S.L. Week 4399, at 4405 (May 15, 1967).

[7] *Ibid.*

[8] *Id.* at 4406.