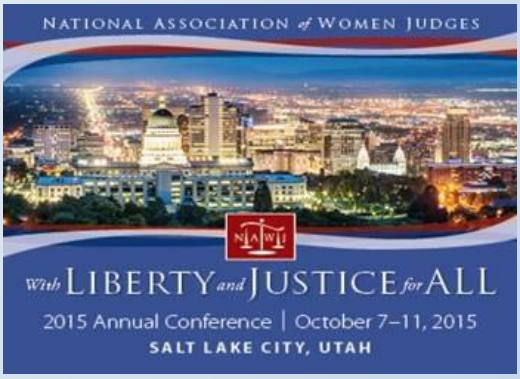

In the Matter of Gerald Gault
51 Years Later

October 9, 2015

In June 1964, fifteen-year-old Gerald Gault was sent to a prison for kids after a brief off-the-record session in a Globe, Arizona judge's chambers. How did his parents end up finding their intrepid lawyer in Sun City who would then take the case from Globe to Phoenix and then Washington, D.C.? Was this the way juvenile justice was dispensed in Arizona before the seminal *In Re Paul and Marjorie Gault* decision by Justice Fortas in 1967? What lessons do events in the summer of 1964 tell us about access to justice, about fundamental fairness, and about who would have made a difference that fateful day June 15, 1964, when a routine hearing in Gila County, Arizona set the stage for the U.S. Supreme Court ruling that changed juvenile justice in America forevermore.

Peter Cahill
PJCahill99@Yahoo.com

Lisa Pferdeort
lmpferdeort@gmail.com

PROGRAM AND DOCUMENT NOTES

In The Matter of Gerald Francis Gault
Gila County Juvenile Cause No. 2379

In the Matter of the Application of Paul L. Gault and Marjorie Gault
Arizona Supreme Court Case No. 8476
United States Supreme Court Case No. 116, October Term, 1966

The "Delinquency Documents."

Few documents in the delinquency case, *In The Matter of Gerald Francis Gault,* ever existed which is not surprising in a case where there was no due process. This is a result of a basic principle of the Juvenile Court Reform Movement, the effort to distinguish juvenile proceedings from criminal procedures in every way, from courtroom design to how a case was initiated.

A "Petition" was filed in a delinquency case, it just wasn't given either to the children or their parents. No legal "process" was issued; there was no summons, no charging document served on the child (or anyone), no "information," and no indictment. Probation officers filed "*Referral Reports,"* but these were for internal use only, forms with space for handwritten notes explaining why the petition was being filed.

In Gerald's delinquency case, there were petitions and referral reports for the February and the June 1964 incidents. But, the first time the family ever saw these was months later, at the August *habeas* hearing in Phoenix. Along with Probation Officer Flagg's note telling the family to come to court on June 15, 1964, these were made exhibits at the *habeas* hearing.

Flagg's note about the June 15 hearing initially caused some concern for Gault's lawyers. Their point was that that the family had received no notice whatsoever of the charge against him and therefore was not in a position to assert a defense. This argument that he was deprived of due process was, at least arguably, undercut by the fact that the family had received Flagg's note, notice of the hearing on the 15th. As it turned out, the state never did suggest that the requirements of due process were satisfied merely by a note from a probation officer telling the family when to come to court.

The petitions in Gerald's delinquency case are each mimeographed forms with just his name and the word "delinquent" typed in. No specifics were stated.

The two Referral Reports are the only "record" of the facts before the Gila County Juvenile Court: cryptic, scribbled, unsworn and unsigned notes regarding the February and June accusations against Gerald. The June Referral has a handwritten note *(likely made by Officer Flagg)* that states, without any attribution, what Ronnie Lewis supposedly said to Mrs. Cook on the telephone. It does not even suggest that Gerald said anything at all to Mrs. Cook.

The Petitions and the Referrals are not reproduced here because they were ordered destroyed. The originals, exhibits to the August 1964 *habeas* hearing, are kept in the National Archives.

The "*Habeas* Documents."

In contrast to the *delinquency* case against Gerald where no documents were exchanged, in the *habeas* action, *In the Matter of the Application of Paul L. Gault and Marjorie Gault,* there were of course numerous documents. But, none of the exhibits and few of the pleadings were kept by the Arizona courts. After the Arizona Supreme Court affirmed the trial court's denial of the *habeas* application, the exhibits and the pleadings were sent off to Washington. No copies of the exhibits were retained. Arizona did not even retain copies of some of the important pleadings, the appellate briefs. The SCOTUS clerk did promise to return these to Arizona but it is fortunate that this never happened. Had they been returned, they would likely have been routinely destroyed as records were microfilmed.

Once the May 1967 SCOTUS decision became final, that court's clerk sent all the exhibits, all the pleadings, and his "correspondence file" to the United States National Archives, Washington, D.C. After certification, and in compliance with the many particular rules for review of archival records, this treasure trove of history can be examined.

Source Notes:

The SCOTUS correspondence file contains the letters between Mrs. Lewis and the clerk regarding proper attire at the court.

Amelia Lewis' case-file no longer exists, according to her son, Phoenix attorney Frank Lewis. She did give multiple oral histories.

University of Nevada, Las Vegas, law school historian David S. Tanenhaus had access to Professor Dorsen's case-file, including correspondence and internal memoranda.[1] This was the source for Mrs. Lewis' comment expressing her "frustration at being left out of the [SCOTUS briefing] process."

Professor Tanenhaus' research revealed a debate within the ACLU over strategy. Professor Dorsen argued that the Gault appeal should challenge the entire juvenile court, *parens patriae* system, arguing that all children in every case were entitled to receive the full panoply of due process rights at the guilt phase of their delinquency case. As Professor Tanenhaus points out in The Constitutional Rights of Children, a dissenting view was presented by an important figure within the ACLU, someone whose opinions on juvenile delinquency carried great weight, Roger Baldwin.

Mr. Baldwin founded the ACLU in 1920. He was the ACLU's director for thirty years. And, he had substantial experience in juvenile court. In 1908, Baldwin was chief probation officer for the St. Louis Juvenile Court. He co-wrote the very first text in the field, *Juvenile Court and Probation* (1914).

Professor Tanenhaus quotes Baldwin's objection to Professor Dorsen's full-on, total challenge to the informality of juvenile court where Baldwin pointed out:

> Only a very small proportion of children who come before the courts are taken from parents or committed to institutions. To set up due process procedures, with lawyers, records, examinations of witnesses etc. for all cases would transform the whole sprit of the courts." Instead, [Baldwin] proposed the following: Reserve such protections "only for cases in which a judge contemplates separation from parents. Then on his own motion or on the parents' request, a hearing de novo [from the beginning] with all due process could be held. Perhaps more fairly before another judge, surely if requested by the parents." Baldwin preferred a middle ground between absolute *parens patriae* and complete criminal due process.

Professor Dorsen relied on Arnold and Porter attorney *(formerly Arnold, Fortas and Porter)* Daniel A. Rezneck for his expertise in criminal law and procedure. Rezneck helped Dorsen write the opening brief in the SCOTUS. Dorsen recalls that together they crafted, phrase-by-phrase, the script for Dorsen's argument to the SCOTUS

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[1] The Constitution Rights of Children, *In re Gault* and Juvenile Justice, David S. Tanenhaus, 2011, University Press of Kansas.

where Dorsen spoke, uninterrupted, for many minutes. This was the recording played at the beginning of our program.

Rezneck sat at counsel table during the SCOTUS arguments, along with Amelia Lewis. It is our opinion that that the fact that Traute Mainzer was not at counsel table is still—almost fifty years later—a source of great regret, given her pivotal role in the case. Our presentation, and Professor Tanenhaus' definitive book on the Gault cases, perhaps makes up for this omission.

Traute Mainzer's contribution to the Gault SCOTUS case was made known to and was acknowledged by Justice Abe Fortas. Justice Fortas wrote a friend, Elizabeth Wickenden, that he had sent Mainzer an autographed copy of his opinion in Gault, adding that he did not "ordinarily just send around autographed copies of opinions. My favorite ego outlet is my violin."

"Wicky" Wickenden was a common link between many of the players in Gault. She was close friends with President Lyndon Johnson, who nominated Justice Fortas to the SCOTUS, and Professor Dorsen. Wickenden, described by Professor Tanenhaus as a "legendary pioneer in the field of social services," and her husband, Arthur Goldschmidt, were close friends with Justice Fortas and his wife and they often spoke about juvenile delinquency issues.

The Lesson from the Gault: What Imprisonment Can Do to Children:

Gerald Gault has rarely spoken about what happened to him. He did speak at an event commemorating the 40th anniversary of the 1967 SCOTUS decision. Prof. Tanenhaus reports:

> Gerald Gault [58] was retired from the army after twenty-three years of distinguished service to his country, and a grandfather. …
>
> He said that Fort Grant had taught him *"how to be angry, to be mean,"* and that he spent the next thirty years trying not to be an angry, mean person.
>
> He thanked his wife–and Amelia Lewis, who died in 1994–for saving his life.
>
> [Gault] added, *"People in this society need to realize that these children that were put behind bars, without counsel, are our next leaders."*

Peter Cahill

Lisa Pferdeort

FILED
AUG 3 1964
Sylvia Hawkinson
CLERK SUPREME COURT

164769

IN THE SUPREME COURT

OF THE STATE OF ARIZONA

In the Matter of the Application of PAUL L. GAULT and MARJORIE GAULT, father and mother of GERALD FRANCIS GAULT, a Minor, for a WRIT OF HABEAS CORPUS.	FILE NO. 8476 ORDER FOR HEARING APPLICATION FOR WRIT OF HABEAS CORPUS

AUG 3 1964
SUPREME COURT FILED
DEPUTY

On reading the affidavit of PAUL L. GAULT, one of the natural parents of GERALD FRANCIS GAULT, a minor, whereby it is alleged that the said GERALD FRANCIS GAULT is restrained of his liberty and is illegally committed to the Arizona State Industrial School at Wilcox, Arizona, and kept from his natural parents, the applicants herein; and stating of what the alleged illegality consists it is

ORDERED, that the applicants appear at the hour of 2 o'clock P.M. on Monday, the 10th day of August, 1964, in the Court room of ~~the Supreme Court of~~ Div. 4, Superior Court, in Maricopa County, Arizona, to then and there present what they may desire concerning the issuance of this Writ; and it is further

ORDERED, that the Clerk of this Court give notice to the person at the Arizona State Industrial School having the custody of the said minor of the time and place for hearing said application.

Dated, this 3rd day of August, 1964.

Lorna E. Lockwood
Justice of the Supreme Court

AMELIA D. LEWIS
ATTORNEY AT LAW
FIRST FEDERAL SAVINGS BUILDING
12200 11TH AVENUE, TOMBSTONE
P. O. BOX 370
SUN CITY, ARIZONA
TELEPHONE 933-3801

'64 AUG 11 PM 12:52

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

IN THE MATTER OF THE APPLICATION OF PAUL L. GAULT AND MARJORIE GAULT, father and mother of GERALD FRANCIS GAULT, a Minor, for a Writ of Habeas Corpus.	NO. 164769 RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

COMES NOW Respondent, Arizona State Industrial School, by and through its attorney, Robert W. Pickrell, The Attorney General, and responds as follows:

I.

Respondent alleges that Petitioners' rights were not violated And that said minor was comitten to the Arizona State Industrial School according to due process and after a full and complete hearing was held on the matter.

II.

Respondents further allege that there was no abuse of discreation on the part of the presiding judge. Therefore, all matters relating to the facts of the crime or crimes in question connot be reviewed by way of a writ of habeas corpus.

Application of Oppenheimer
95 Ariz. 292.

"Under Arizona law, a writ of habeas corpus may be used only to review matters affecting a court's jurisdiction."

"In order to allow the issuance of a writ of habeas corpus on the basis of denial of due process, the denial must be such as will deprive the court of jurisdiction."

WHEREFORE, Respondent having fully answered prays this Honorable court will deny this application.

Respectfully submitted

ROBERT W. PICKRELL
The Attorney General

JERRY L. STANKE
Assistant Attorney General
Attorneys for Respondent

Copy of the foregoing mailed the 10th day of August, 1964, to:
Amelia D. Lewis, Attorney for Petitioner
P. O. Box 370,
Sun City, Arizona.

In Re the Application of Paul and Marjorie Gault

Excerpt, Arguments before the United States Supreme Court

Dec. 6, 1966

Chief Justice Earl Warren: Number 116; In the Matter of Application of Paul L. Gault et al appellant. Mr. Dorsen?

Mr. Norman Dorsen: Before proceeding to the argument, Mr. Chief Justice and members of the Court, I would like to move the admission of the Assistant Attorney General of Arizona *pro hac vice*, Frank A. Parks.

Chief Justice Earl Warren: [He is admitted for that purpose.]

Mr. Norman Dorsen: Application of Gault, Number 116.

This case raises important constitutional questions concerning the extent which requirements of procedural fairness guaranteed by the Due Process Clause of the Fourteenth Amendment are applicable to juvenile proceedings.

Appellants, the parents of Gerald Francis Gault claim in particular that the Arizona Juvenile Code on its face and is applied in this case is invalid and failing to provide the following basic protection.

The right to effective assistance of counsel, the right to adequate notice of the charges of delinquency including time to prepare, the right to confront and cross-examine the complainant, the privilege against self-incrimination and the right to a transcript and meaningful judicial review.

These issues which we do raise and pass on below will be taken up severely in due course.

In this case, Gerald Gault at age 15 was committed for the period of his minority that is for up to six years to the State Industrial School in Arizona after juvenile delinquency proceedings consisting of two hearings in the Superior Court of Gila County, Arizona.

This appeal is from a decision of the Supreme Court of Arizona in a collateral action.

That Court affirmed a decision of the Maricopa County Superior Court which after a hearing dismissed the petition for habeas corpus filed on Gerald's behalf by his parents Paul and Marjorie Gault.

Gerald is still in confinement and has been for two-and-one-half years.

The facts are relatively simple and yet it is not possible to be confident about exactly what happened with the original proceedings.

The reason is that although there were two hearings leading to the determination of Gerald's delinquency and his commitment, a transcript was not made at either one.

The facts accordingly are based on the habeas corpus proceeding in the Maricopa County Superior Court.

At that hearing, it appeared without dispute that in the morning of June 8, 1964, Gerald Gault and a friend Ronald Lewis were taken into custody by the Sheriff's Office of Gila County as the result of the complaint by one Mrs. Cook, a neighbor of the boys about an allegedly lewd telephone call.

Gerald at this time was on six-months probation following an incident in February 1964.

At that time he was with another boy who has alleged to have taken the wallet. The other boy was confined and Gerald was put on probation.

After Mrs. Cook's complaint, the boys were taken to the local probation office pursuant to the Arizona Code. The probation officers Flagg and Henderson who have the authority of peace officers in Arizona decided to detain the boys for delinquency hearing.

And Flagg interrogated Gerald at some length during the evening of June 8 and the morning of June 9.

No notice of the detention or charges was left at the Gault home.

Mrs. Gault who returned from work at 6 PM on that day, June 8 was informed by her older son, through neighbors, that Gerald was detained. And she then went to the detention home.

There she was told by Probation Officer Flagg, “Of the general nature of the charges,” and that a hearing would be held the following day, June 9.

No written notice of this hearing or the charges was given to Mrs. Gault at any time.

On June 9, a petition charging Gerald with being a delinquent minor was filed by Probation Officer Flagg with the Juvenile Court. This is on page 80 of the record of the petition.

This petition was filed pursuing to the Arizona Juvenile Code. In the Arizona Juvenile Code, a delinquent child is defined in Section 8-2016 in the appellant's brief on page 3A.

Mrs. Gault did not receive notice of the petition and did not see it until August 17 when the habeas corpus hearing was held in Maricopa County.

A juvenile referral report an internal Juvenile Court document prepared by the probation office for the Court charged Gerald with making lewd phone calls.

This was prepared when Gerald was taken into custody on June 8, was completed after the hearings and filed with the Juvenile Court on June 15.

It too was not brought to appellant's notice until the habeas corpus hearing on August 17.

Justice Potter Stewart: Did you *(emphasize)* the fact that none of these was given to Mrs. Gault, why would she be the one if you're writing your theory?

Mr. Norman Dorsen: Well, the suggestion has been made, Mr. Justice Stewart, that notice was given to Mrs. Gault.

It is plain from the record that no notice of any time was given to anyone else in the family of Gault. And therefore I want to emphasize the extents on which the fact showed any notice of any kind to any member of the family.

Justice Potter Stewart: To anybody?

Mr. Norman Dorsen: Right.

Justice Potter Stewart: Well, how about the juvenile?

Mr. Norman Dorsen: The juvenile received no notice whatsoever as far as the record shows.

There was discussion with the juvenile orally and he may have known the general tenor of the charges but the only notice that was given that was discussed in the record and discussed by the Supreme Court of Arizona with the oral notice given to Mrs. Gault on the evening of June 8.

On June 9th, the initial hearing took place in Judge McGhee's chambers. He was the juvenile judge. Present with Gerald, his mother, his older brother Lewis and Mr. Flagg and Mr. Henderson, the probation officers.

No one was sworn, no transcript was made, and neither Gerald nor Mrs. Gault was represented by a counsel or advised of any right to counsel.

With respect to Gerald's conduct that led to a finding of juvenile delinquency, there was conflict at the habeas corpus hearing.

As stated in the opinion of the Arizona Supreme Court at page 84 of your record, “There was a conflict in the testimony at the habeas corpus hearing concerning what transpired at the juvenile hearing.

Mrs. Gault testified in response to the judge's questions of the juvenile hearing. Gerald said he dialed Mrs. C's number, asked her if it was such and such a number said, there was a friend of his who wanted to talk to her then handed the phone to Ronald who made lewd remarks --”

J*ustice John M. Harlan:* I can't find it the page on the record?

Mr. Norman Dorsen: They're on page 79, Mr. Justice Harlan in the referral report.

Officer Flagg testified that at the juvenile hearing Gerald admitted making the phone call and using some of the obscene language.

Judge McGhee testified that Gerald admitted using some lewd words.

Following the hearing on June 9th Judge McGhee continued the case until June 15 because in his words, "I didn't know myself what I was going to do because I was not satisfied from the testimony there at that time."

Accordingly, Officer Flagg did some more investigating until the 11th, he testified, "I talked to Jerry more to see if he would tell me any more.

I talked to Ronnie Lewis some more looking for a change of stories perhaps."

Gerald was returned home on June 11th or 12th. On that day Mrs. Gault received the note on plain white pages from Officer Flagg which said, "Mrs. Gault, Judge McGhee has set Monday June 15th 1964 at 11 AM as the day and time for further hearings on Gerald's delinquency." Signed, Flagg.

This was the only written notice of any kind that any member of the Gault family received concerning this matter prior to the determination of delinquency and a commitment of Gerald to the industrial school.

On June 15th the second hearing was held. It was held in the presence of Gerald and both of his parents, Officer Flagg and Ronald Lewis, the other boy involved in the incident and Ronald's father.

Again, neither Gerald nor his parents was represented by a counsel.

At the habeas corpus hearing on August 17 there also was conflict about what happened at the Juvenile Court hearing of June 15, again, the words of the Supreme Court of Arizona, "It was a further conflict in the evidence of the habeas corpus hearing concerning the testimony at the second juvenile hearing."

Both Mr. and Mrs. Gault testified that no one accused Gerald of making a lewd telephone call, and also said that Gerald admitted nothing.

But Judge McGhee said Gerald admitted making some of the lewd remarks although not the more serious ones.

At this hearing Flagg supported the Gault's version stating that neither boy admitted making the actual remark. It should be noted that Mrs. Cook, the woman who had complained about the phone call was not present or called as a witness at either hearing.

Officer Flagg had talked to her over the telephone on June 9th and Judge McGhee had not spoken to her at all when Mrs. Gault passed the judge during the hearing of June 15 while Mrs. Cook was not present saying that, "She wanted Mrs. Cook present so she could see which boy had done the talking, the dirty talking over the phone."

Judge McGhee answered, “She didn't have to be present.”

On June 15th, Judge McGhee handed down an order containing no findings or facts.

The order simply states that after a full hearing and due deliberation the Court finds that the said minor is a delinquent child.

He ordered and says that the child's own good and the best interest of the state require that he be committed to the State Industrial School for the period of his minority unless sooner discharged by Due Process of law.

Justice John M. Harlan: You didn't say how old was?

Mr. Norman Dorsen: 15 years old.

In his testimony at the habeas corpus hearing, the judge, Judge McGhee indicated that there were several bases for his decision.

One was the violation of Section 13-37 of the Arizona Criminal Code which is contained in our brief in the appendix first page.

This statute makes it a crime to use, “vulgar, abusive or obscene language in the presence of a woman or child.”

A delinquent child is defined by the Juvenile Code reproduced to page 3A of appellant's brief as including the child who has violated the law of the state such as the section I have just quoted.

Justice Abe Fortas: What's the penalty for the commission at that crime by that --

Mr. Norman Dorsen: Two months is the maximum penalty plus a fine.

Justice Abe Fortas: And this boy got a --

Mr. Norman Dorsen: Up to six years Mr. Justice Fortas.

. . . . .

Continued: http://www.oyez.org/decisions/cases/1960-1969/1966/1966_116

AMELIA D. LEWIS
ATTORNEY AT LAW
FIRST FEDERAL SAVINGS BUILDING
2220 14TH AVENUE, YOUNGTOWN
P. O. BOX 370, SUN CITY, ARIZONA 85351
TELEPHONE 933-3501

December 1, 1965.

Clerk, United States Supreme Court
Washington
D. C.

Re: Matter of Gault

Honorable Sir:

Shortly I purpose to petition your Court for the allowance of an appeal or for a writ of certiroari (in the alternative) in the above matter which concerns a juvenile who was sent to the State Industrial School.

The Arizona Supreme Court is now considering rehearing the matter, on which I expect a decision shortly.

It gave its decision on November 10th in which it upheld the legality of the Arizona Juvenile Code which was put in question, as well as the matter of due process of law to the parents of the boy. The Court, as part of its opinion, held that a juvenile is not entitled to counsel.

I am not familiar with practice in your Court and would appreciate receiving from you a copy of whatever procedural steps I must abide by that do not appear in the rules or matter which may further expound the rules.

In addition, since I am not admitted to your Court, may I file as attorney for the petitioners and then be admitted on motion directly before the time of argument (assuming the Court will allow hearing on the matter). If so, may I also have copies of whatever application I should make to the Court and whether the same has to have any supporting documents from the State Bar.

Respectfully yours,

Amelia D. Lewis

Mrs. Amelia D. Lewis

P.S. Is there any set decorum as to what the Court prefers women lawyers to wear when they appear. Does one wear a hat, etc.

December 6, 1965

Amelia D. Lewis, Esquire
First Federal Savings Building
12200 11th Avenue, Youngtown
P. O. Box 370
Sun City, Arizona 85351

Re: Matter of Gault

Dear Mrs. Lewis:

Replying to your letter of the 1st, I would suggest that you consult 28 U.S.C. 1254 and 1257. Should you have any additional questions after consulting those as well as a copy of the Rules, which I enclose, I will be pleased to give you any assistance.

I am enclosing an application for admission to practice attached to which you will find the Rules governing admissions. In the event you are not admitted before the case referred to is filed, it will be necessary that you either secure the permission of some member of the Bar of this Court to appear thereon or request that the appearance of the petitioner be entered pros se.

There is no set fashion as to the attire which women lawyers appear in Court. However, a hat is never worn.

Very truly yours,

John F. Davis, Clerk

By

E. P. Cullinan
Chief Deputy

EPC:lsr

Enclosures

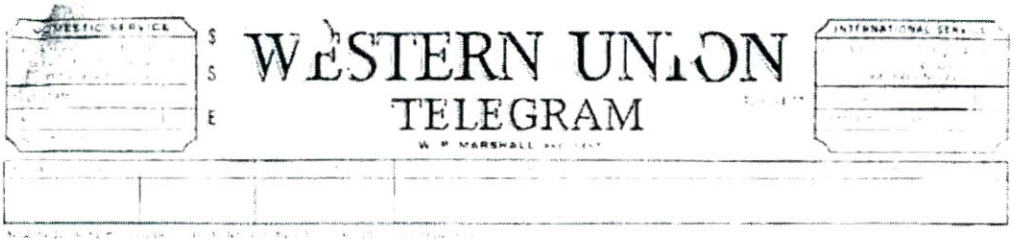
Melvin L. Wulf
156 Fifth Avenue
New York, New York

May 15, 1967

JUDGMENT in GAULT case 116 REVERSED today. CASE REMANDED. Opinion airmailed.

COLLECT
MRJr:ht
#116 Appellant

JOHN F. DAVIS, CLERK



Honorable Darrell F. Smith
Attorney General of Arizona
159 Capitol Building
Phoenix, Arizona

May 15, 1967

JUDGMENT GAULT case 116 REVERSED today. CASE REMANDED. Opinion airmailed.

COLLECT
MRJr:ht
#116 Appellee

JOHN F. DAVIS, CLERK

US Army Recruiting
PO Box 228
Santa Maria, Calif 93454

25 Sep 1968

Dear Mrs. Lewis,

Ref: Gerald Francis GAULT.

I have been in contact with Geralds Mother and she refered me to you.

Our regulations have us to waiver any minor Juvenile problems our applicants may have. According to Gerald and his mother, he should have none on record. The Police record checks we mail out show a possible active file on Gerald as you can see. They don't show any dismissed or Not Guilty or closed date. This is a must as far as the Military is concerned when there is any notation at all on the record checks.

Could you please check this out for us?

Very truly yours,

JOHN C ROSANDER
SSG USA
RECRUITER

EIHIBIT V.

SUPERIOR COURT OF GILA COUNTY
PROBATION DEPARTMENT
GLOBE, ARIZONA 85501

ROBERT E. McGHEE
JUDGE

RALPH H. HENDERSON
CHIEF PROBATION OFFICER
[redacted]
TOMMIE N. RASMUSSEN
DEPUTY PROBATION OFFICER

October 4, 1968

Amelia D. Lewis
Attorney At Law
P.O. Box 370
Sun City, Arizona

RE: GAULT, Gerald Francis

Dear Mrs. Lewis,

Our records show that Gerald Francis Gault was committed to Fort Grant on the 15th day of June, 1964.

We understand that the United States Supreme Court remanded the matter to the Arizona Supreme Court "for further proceding". As of this date we have received no mandate from the Arizona Supreme Court, and are not aware of any motion to have this done. Perhaps you could send clarification from the Supreme Court as to whether Gerald is to have another hearing, and if so, whether in juvenile or adult court.

With reference to your mention of ARS 6-236, it is our understanding under this section that records should in no way be destroyed until two years after final discharge is issued to the juvenile. This time will not close until January 26, 1969, and until then … there is some question that they should destroyed even then.

We have no animosity toward Gerald Gault, and don't feel we have given any false information.

We are enclosing a signed copy of this letter in case you should desire to give it to your client for use by Gerald's recruiter.

Sincerely,

[illegible]

[illegible]
Deputy Probation Officer

EXHIBIT II.

ARIZONA SUPERIOR COURT
GILA COUNTY

Date: August 6, 2014

PETER J. CAHILL, JUDGE	C. DURNAN
Division One	Judicial Assistant

IN THE MATTER OF:	Cause No. 2379
Gerald Francis Gault	

Fifty years ago, on June 15, 1964, fifteen-year-old Gerald Gault was adjudicated delinquent and committed to the Arizona State Industrial School for up to six years. These orders deprived Gerald of "the essentials of due process and fair treatment," without a written statement of the charge, without the right to cross-examine the complainant, without the benefit of the privilege against self-incrimination, without a transcript being kept of the proceeding, without the right of appeal, and without the right to a lawyer.[1] Does the ruling in a collateral action, *Application of Paul and Marjorie Gault,* 387 U.S. 1 (1967), require that the adjudication and commitment orders be vacated now?

Because the United States Supreme Court ordered that action be taken by Arizona courts in *"accord with right and justice,"* the orders made here in 1964 will be vacated.

I.

Paul and Marjorie Gault's challenge to their son Gerald's adjudication and commitment was a collateral action that sought *habeas corpus* relief. Although Mr. and Mrs. Gaults' *habeas* application[2] was ultimately successful, by the time the Supreme Court issued its May 1967 ruling, Gerald had already been released from custody. As a result, the ruling in *Application of Gault* had no direct effect upon this court's 1964 orders. This is demonstrated by the fact that the Docket maintained by the Gila County Clerk of the Superior Court does not reflect any action to vacate the adjudication and commitment orders. The docket still reads as follows:

1964	**GAULT, GERALD FRANCIS**	**No. 2379**
Feb. 7	Petition filed	
Feb 26	Juvenile Referral *(sic)* Report filed	
June 9	Petition filed	
June 15	Referral *(sic)* Report filed	

[1] Norman Dorsen, *Frontiers of Civil Liberties*, pp. 213-4; Pantheon Books, 1968.
[2] Filed August 3, 1964, in the Arizona Supreme Court.

June 15	Commitment to State Industrial School
1969	
Feb. 17	Order to Destroy records (see minute entry of this date)

As the Clerk's docket shows, no action was ever taken here in this court to carry out the Supreme Court's mandate that "such proceedings be had" in conformity with its judgment and in "accord with right and justice." *Application of Gault,* No. 116, October Term, 1966.[3] Taking no action was definitely not in the spirit of justice and it did not fulfill the mandate of the Supreme Court.

II.

According to pleadings filed in the Arizona Supreme Court, Gerald Gault attempted to enlist in the United States Army in 1968. When a recruiter asked about Mr. Gault's juvenile record, this court's response, despite the United States Supreme Court 1967 ruling, was that Gerald had been found delinquent and committed to the State Industrial School. This disqualified Mr. Gault from enlistment. When Mr. Gault's attorney complained, this is how the juvenile probation officer responded on behalf of this court over a year after the Supreme Court ruling in *Application of Gault*:

> We understand that the United States Supreme Court remanded the matter to the Arizona Supreme Court "for further proceeding." As of this date we have received no mandate from the Arizona Supreme Court …. Perhaps you could send clarification from the Supreme Court as to whether Gerald is to have another hearing, and if so, whether in juvenile or adult court.[4]

Gerald Gault did eventually enlist in the Army. Presumably this happened only after the routine, February 1969, order to destroy his juvenile court records.

III.

On its own motion, this court undertook a review of what happened after the United States Supreme Court ruling. To assist the court, *amicus* counsel were appointed.[5] They recommend that the 1964 orders be vacated and the State does not object. The review has however, prompted questions: *"What is the purpose of a review 50 years later? What can it do for Gerald Gault, or anyone else? Who would benefit? How would this help kids now?"*

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[3] On June 30, 1967, the Arizona Supreme Court ordered the Superior Court of Maricopa County, where the *habeas* application was denied in 1964, to "promptly conduct such proceedings not inconsistent with the opinion and mandate of the Supreme Court of the United States." Presumably because the State Industrial School gave Gerald Gault his "conditional" release from custody in December 1964 (and 1967) and then issued an "unconditional" release in January 1967, the Maricopa Clerk's Docket shows that no further action was taken or requested in that court.

[4] Amelia Lewis, counsel for Mr. and Mrs. Gault, thereafter asked the Arizona Supreme Court to issue a writ of mandamus to the Gila County Superior Court. Her motion was denied Nov. 12, 1968.

[5] Larry A. Hammond and Anna Ortiz are *pro bono, amicus curiae* counsel.

The United States Supreme Court decision compels a conclusion that Mr. Gault's June 1964 delinquency adjudication and his commitment cannot stand and must be set aside. However, this has yet to be accomplished.

The United States Supreme Court mandated that supplemental proceedings should occur in "accord with right and justice." As *amicus* counsel point out, in order to satisfy that mandate, Mr. Gault's juvenile record should have been corrected to reflect that both his delinquency adjudication and his commitment to the State Industrial School were obtained in violation of the United States Constitution. Yet, the court's docket still records Mr. Gault's determination of delinquency and his commitment to the State Industrial School.

The purpose of this review, even many years later, is to conform the rulings herein to the 1967 decision by the United States Supreme Court. To have any real meaning of course, this ought to have been done promptly after the Supreme Court's 1967 mandate.

It is likely that only the justice system will benefit from this tardy action. A 47-year delay certainly deprives Mr. Gault of any benefit from today's order. But, compliance with a mandate of the United States Supreme Court is not optional; there was no "expiration date" in the mandate witnessed by Chief Justice of the United States Earl Warren.

"*How would this help kids?"* Children on probation are required to follow through on their commitments. They receive consequences if they do not do so. When they acknowledge their shortcomings and do what they're told, they are more likely to succeed. Just as with what is expected of children, courts are expected to do what they are told. It would be wrong to leave undone what the United States Supreme Court mandated in 1967; it is right to act now.

"What is the purpose of a review, 50 years later?" The determination shown by Paul and Marjorie Gault to vindicate their son in the courts, still unfulfilled, is reason alone to act now—even a half-century late.

Accordingly,

IT IS HEREBY ORDERED that in conformity with the mandate of the United States Supreme Court and in accord with what is right and just, the June 15, 1964 Adjudication of Delinquency and Order of Commitment are hereby **VACATED**.

cc: Larry A. Hammond
Anna Ortiz

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Illinois Supreme Courtroom 2014 photo by Mark Skube, Production Manager, Illinois State Bar Association.