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 Referal *(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 9	Petition filed
June 15	Referal *(sic)* Report filed
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

Office Distribution:
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