

Spring 1968

Introduction

Dan Hopson Jr.
Indiana University School of Law

Follow this and additional works at: <https://www.repository.law.indiana.edu/ilj>



Part of the [Courts Commons](#), and the [Juvenile Law Commons](#)

Recommended Citation

Hopson, Dan Jr. (1968) "Introduction," *Indiana Law Journal*: Vol. 43 : Iss. 3 , Article 1.
Available at: <https://www.repository.law.indiana.edu/ilj/vol43/iss3/1>

This Symposium is brought to you for free and open access by the Law School Journals at Digital Repository @ Maurer Law. It has been accepted for inclusion in *Indiana Law Journal* by an authorized editor of Digital Repository @ Maurer Law. For more information, please contact rvaughan@indiana.edu.



JEROME HALL LAW LIBRARY

INDIANA UNIVERSITY
Maurer School of Law
Bloomington

INDIANA LAW JOURNAL

Volume 43

SPRING 1968

Number 3

INTRODUCTION

DAN HOPSON, JR.†

May 15, 1967 was a date of some importance to a rather large number of Americans. It was of direct interest to those functionaries of one of the lesser-known segments of our legal system—the juvenile court. It was perhaps of fundamental importance to those families, both children and parentes, who would have contact with those functionaries.

May 15, 1967 arguably marked the turning point and, at a minimum, demanded a reassessment of the role and function of the juvenile court. Relying on the concept of *parens patriae* and starting with the novel concept that children's behavior patterns could be modified by the intervention of the state acting through a judge who was a "wise father," this institution developed the doctrine of individualized justice. This statement of doctrine and principle received near universal acclaim,¹ legislative and judicial abdication,² and very little financial support. Given these conditions, it was not surprising that this minor and low prestige legal institution fell into a state of slovenly behavior ripe for criticism and a judicial scalpel.

On May 15, 1967 the United States Supreme Court in *In re Gault*³ applied the surgeon's knife. Although the facts and holdings of *Gault* are, or at least should be, well known to all readers of this Symposium, in an introduction a brief review is appropriate.

According to the United States Supreme Court, Gerald Gault was picked up by the sheriff of Gila County, Arizona, and placed in the local detention home following Mrs. Cook's oral complaint that she had received a lewd telephone call. Gerald's mother later discovered his

†Professor of Law, Indiana University.

1. See, e.g., H. LOU, *JUVENILE COURTS IN THE UNITED STATES* (1927); Mack, *The Juvenile Court*, 23 HARV. L. REV. 104 (1909).

2. Most statutes were and are both broad and vague. An Act to Regulate the Treatment and Control of Dependent, Neglected, and Delinquent Children, [1899] III. LAWS 131, was the prototype. IND. ANN. STAT. §§ 9-3101 to 9-3124a, 9-3201 to 9-3225 (Burns 1956 Repl.), is a typical example of a "modern" statute. Appellate courts sanctioned virtually unlimited discretion in the trial court. See, e.g., *Ex parte Sharp*, 15 IDAHO 126, 96 P. 563 (1908); *In re Holmes*, 379 Pa. 599, 109 A.2d 523 (1954).

3. 387 U.S. 1 (1967).

detention and checked with the superintendent of the home. She was told the reason for Gerald's detention and that the juvenile court would hold a hearing the next afternoon.

On the morning of the hearing, the probation officer filed a petition which alleged only that Gerald was delinquent. The boy's parents never saw this petition. At the hearing, a typically informal conference, that afternoon, the judge, in the presence of the probation officer, Gerald, and his mother, questioned Gerald about the calls. He apparently admitted making them. The judge took the matter under advisement and sent Gerald back to the detention home from which he was released two or three days later.

On the same day that he was released, the probation officer sent Mrs. Gault an informal note stating that the court would hold a second hearing the next Monday. At this hearing, as at the first, the complaining witness was not present. A "referral report" was filed but not shown to the Gaults. Although the trial judge testified at a later habeas corpus hearing that Gerald had admitted making the call and some other "nuisance calls," the United States Supreme Court was skeptical as to the extent of Gerald's admissions. In any event, the juvenile court found Gerald to be delinquent and committed him to the State Industrial School.

The Gaults later filed a writ of habeas corpus, since Arizona did not provide for appeals in juvenile cases. At the habeas corpus hearing the juvenile court judge maintained that he had committed Gerald because Gerald had violated a statute making such calls a misdemeanor and because Gerald was "habitually involved in immoral matters"; both charges were within the Arizona definition of delinquency.

The Arizona Supreme Court protected the juvenile judge and denied the writ,⁴ but the United States Supreme Court reversed. Its basic holding was, for the most part, clear. At the adjudicatory phase of the juvenile court process, when under the local juvenile code the child might be committed to an institution, the child and his parents were constitutionally entitled to the following: (1) written notice of the hearing sufficiently in advance to prepare, (2) knowledge of the particular charges,⁵ (3) counsel of their own choosing, or if indigent, appointed legal counsel, (4) the privilege against self-incrimination, and (5) the right to confrontation and cross-examination.⁶ The court based its decision on the due process clause of the fourteenth amendment, and found specific stan-

4. *In re Gault*, 99 Ariz. 181, 407 P.2d 760 (1965) (en banc).

5. The court discusses both of these requirements under the heading of "Notice," but it is clear that two separate requirements exist—notice of the hearing, and notice of the charges, which may or may not be contained in the notice of the hearing.

6. The court declined to decide the constitutional necessity of the right to appellate review and a transcript of the proceedings.

dards of due process, for at least some to these rights, in the protections offered criminal defendants by the fifth and sixth amendments.

Even the most startling of constitutional cases does not come unheralded.⁷ But our legal institutions have a propensity not to anticipate. They react. Reaction occurs on many different levels and with varying degrees of promptness. Scholars and students rush to evaluate the import and scope of the new pronouncement, particularly where, as here, the opinion indicates that its narrow holding will undoubtedly be expanded and where, as here, even the direct holding is not a model of clarity.⁸ State supreme courts will modify pre-existing local doctrine and, as do the scholars, attempt when forced to spell out the reaches of the new doctrine. Later, state legislatures will play their role of organizing a new statutory framework for the personnel and staff of the courts, training schools, and police.

Reaction, however, is not limited to legal scholars or official law makers. The institutional functionaries must also react. They must continue to process cases coming through the courts. Their reaction may be minor or even non-existent. They may be ignorant of the new doctrine, they may oppose it, or they may merely lack resources—financial, staff, or statutory—to implement it. Others will react positively, but again the extent of their reaction will be limited by the extent to which they know of and understand the new rules and their implications, and to the extent that resources are available.⁹

The editors of the *Indiana Law Journal* have attempted in the Symposium to bring together a wide variety of articles exploring most of the above discussed problems and reactions. Scholars, both legal and behavioristic, present analyses of the impact, extent, and meaning of *Gault*. Professor Monrad Paulsen of Columbia University Law School, soon to be Dean of the University of Virginia School of Law, assesses the meaning and impact of *Gault* on the administration of juvenile justice. Mr. Daniel Skoler, Deputy Director, Office of Law Enforcement

7. *Kent v. United States*, 383 U.S. 541 (1966); Paulsen, *Fairness to the Juvenile Offender*, 41 MINN. L. REV. 547 (1957).

8. Carver & White, *Constitutional Safeguards for the Juvenile Offender*, 14 CRIME & DELINQUENCY 63 (1968); Coxe, *Lawyers in Juvenile Court*, 13 CRIME & DELINQUENCY 488 (1967); Cunningham, *From Gault to Urbasch*, 49 CHI. B. REC. 162 (1968); Frey, *The Effect of the Gault Decision on the Iowa Juvenile Justice System*, 17 DRAKE L. REV. 53 (1967); Lefstein, *In re Gault, Juvenile Courts and Lawyers*, 53 A.B.A.J. 811 (1967); Paulsen, *Constitutional Domestication of the Juvenile Court*, 1967 SUP. CT. REV. 233; Reynolds, *In re Gault and the Alabama Juvenile Courts*, 28 ALA. LAWYER 428 (1967); Rubin, *Constitutional Rights in Juvenile Court*, 16 CLEV.-MAR. L. REV. 477 (1967); Rubin *Juvenile Court System in Evolution*, 2 VALP. L. REV. 1 (1967); Weinstein & Goodman, *The Supreme Court and the Juvenile Court*, 13 CRIME & DELINQUENCY 481 (1967).

9. Recent issues of the *NCCD News* report the state and local efforts to conform. See, e.g., *Correctional Notes*, 47 NCCD NEWS, Jan.-Feb. 1968, at 5.

Assistance, United States Department of Justice, and former Executive Director of the National Council of Juvenile Court Judges, explores the impact of *Gault* on the role of counsel in the juvenile court. Professor Robert Furlong, of the University of Florida College of Law, critically evaluates the effect of the new protections against self-incrimination on the present and future operations of the juvenile court. Professor Albert Cohen, of the Department of Sociology and Anthropology, University of Connecticut, coming from another discipline, evaluates the sociological data underlying *Gault* and places the opinion in the larger perspective of the role of the Supreme Court as the administrator of legal institutions.

The editors have also, and perhaps more importantly, commissioned articles exploring the impact of *Gault* on the various institutional functionaries. Mr. William H. Sheridan, Assistant Director, Division of Juvenile Delinquency Service, Children's Bureau, Department of Health, Education, and Welfare, has looked at *Gault* from the perspective of one long associated with improving the quality of juvenile court supportive services and has given us insight into the reaction of probation officers. Mr. Amos Reed, Superintendent, MacLaren's School for Boys, Woodburn, Oregon, and President of the National Association of Training Schools and Juvenile Agencies has reacted to *Gault* from the viewpoint of the training school's personnel. Mr. Anthony Platt and others from the Center for Studies in Criminal Justice, Chicago, Illinois, bring to the Symposium an empirical study of the role and problems of post-*Gault* public defenders and their interaction with the juvenile court structure.

Professor Tom Schornhorst of the Indiana University School of Law rounds out the Symposium with a review of the legislative and judicial reaction to *Kent v. United States*.¹⁰ He takes a critical look at the problems of waiver to the criminal court raised by *Kent* and reminds us that in the excitement over *Gault*, the juvenile court system must not forget the special standards for waiver proceedings imposed by *Kent*.

Finally, for its Indiana readers, the *Indiana Law Journal* presents a student note exploring the present state of Indiana juvenile court law and the changes needed in that law in the light of *Gault*.

The editors are to be commended. While many articles and student comments have and will appear in law reviews,¹¹ the editors' initiative in bringing together these outstanding assessments of *Gault* will provide the legal community with greater insight into the role of *Gault* and will give them important guides for future reaction. Such service is, perhaps, the true function of a law journal.

10. 383 U.S. 541 (1966).

11. See note 8 *supra*.