Due Process Protects the Rights of Juveniles

Abe Fortas

In 1964 Gerald Gault was a fifteen-year-old boy who had been in trouble with the law before. On the morning of June 8 he was picked up from his home by the police for allegedly making an obnoxious, indecent telephone call to a neighbor woman. The police left no notice at his home that Gerald was being held in police custody. His mother had to find out from a friend where her son was when she returned home from work.

On June 15 the juvenile court held a fairly informal hearing to determine the charges against Gerald. He was sentenced as a juvenile delinquent to serve six years in the Arizona State Industrial School. No appeal was available in a juvenile case.

The Gault family had to bring a writ of habeas corpus, a special legal proceeding by which citizens can inquire into the legality of a person’s imprisonment, in an attempt to release Gerald from the detention school. However, there was no record or transcript of what had occurred at the juvenile hearing to present later at the habeas hearing; all that existed were the judge’s testimony of what was said in the juvenile court versus the Gault family’s version.

The case eventually went to the U.S. Supreme Court. In 1967 Justice Abe Fortas authored one of the most important decisions for juvenile rights in the history of the United States. He noted that an adult facing the same charges as those brought against Gault would have been subjected to a small fine and a maximum of two months in jail. Further, an adult would have been entitled to notice of the charges against him, the help of an attorney, the right to confront witnesses testifying against him, the right to avoid self-incrimination, the right to a transcript of the original hearing, and the right to an appeal—all the essentials of due process in a criminal case. Fortas saw no reason why juveniles should be denied the basic due process rights that were guaranteed to adults. Gault’s conviction was therefore overturned.

A year after authoring the Gault decision, Fortas was nominated to serve as chief justice of the Supreme Court. However, in the face of a financial scandal, he withdrew himself from consideration. In 1969, after decades of distinguished service in public and private legal positions, he resigned from the bench.

If Gerald [Gault] had been over 18, he would not have been subject to Juvenile Court proceedings. For the particular offense immediately involved, the maximum punishment would have been a fine of $5 to $50, or imprisonment in jail for not more than two months. Instead, he was committed to custody for a maximum of six years. If he had been over 18 and had committed an offense to which such a sentence might apply, he would have been entitled to substantial rights under the Constitution of the United States as well as under Arizona’s laws and constitution. The United States Constitution would guarantee him rights and protections with respect to arrest, search and seizure, and pretrial interrogation. It would assure him of specific notice of the charges and adequate time to decide his course of action and to prepare his defense. He would be entitled to clear advice that he could be represented by counsel, and, at least if a felony were involved, the State would be required to provide counsel if his parents were unable to afford it. If the court acted on the basis of his confession, careful procedures would be required to assure its voluntariness. If the case went to trial, confrontation and opportunity for cross-examination would be guaranteed. So wide a gulf between the State’s treatment of the adult and of the child requires a bridge sturdier than mere verbiage, and reasons more persuasive than cliche can provide. . . .