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Orman W. Ketcham

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McKEIVER v. PENNSYLVANIA: THE LAST WORD ON JUVENILE COURT ADJUDICATIONS?

Orman W. Ketcham†

In a series of recent cases, the Supreme Court has required the juvenile court system to afford youthful offenders certain due process safeguards that had previously been constitutionally mandated only in adult criminal trials. Hence, the world of juvenile justice has waited with some impatience for a judicial determination of exactly what "'essentials of due process and fair treatment'" are required to ensure fundamental fairness in juvenile proceedings.

It is now clear from the several opinions in McKeiver v. Pennsylvania² that the present Court has rejected Justice Black's view that the due process clause of the fourteenth amendment requires the application of all provisions of the Bill of Rights to state juvenile proceedings.³ The Court held in McKeiver that a right to trial by jury is not essential to assure fundamental fairness in a juvenile court trial. This decision may well mark the Court's final chapter on the adjudicative phase of juvenile justice.

† Judge, Superior Court of the District of Columbia. A.B. 1940, Princeton University; LL.B. 1947, Yale University.


2 403 U.S. 528 (1971). McKeiver involved the review of three state supreme court decisions, one from North Carolina and two from Pennsylvania. In the first Pennsylvania decision, Joseph McKeiver, age 16 at the time, was charged with robbery, larceny, and receiving stolen goods. McKeiver had allegedly participated with 20 or 30 other youths in pursuing three young teenagers and taking 25 cents from them. McKeiver had no record of prior arrests and was gainfully employed. The testimony of the victims, moreover, was described by the Pennsylvania Supreme Court as inconsistent and "weak." The second Pennsylvania case involved Edward Terry, then 15. Terry was charged with conspiracy and assault and battery on a police officer after he allegedly struck a policeman with his fists and a stick when the officer intervened in a fight. In both cases counsel sought a jury trial.

The North Carolina case involved Barbara Burrus and a group of 45 other black youths ranging in age from 11 to 15. The charges arose out of a series of demonstrations in late 1968. The youths were charged with willfully impeding traffic, and one youth was also charged with disrupting school sessions and defacing school property. Over counsel's objection the public was excluded; a jury trial in each case was denied.

3 In re Gault, 387 U.S. 1, 61 (1967) (concurring opinion).
The Court's opinion begins by tracing the line of six cases relating to juveniles which began with *Haley v. Ohio* in 1948 and progressed through *Gallegos v. Colorado*, *Kent v. United States*, *In re Gault*.

*Haley* involved the admissability of a confession taken from a 15 year-old boy. The boy had been arrested about midnight on a charge of murder and questioned by various police officers until approximately five o'clock in the morning. During this time the boy did not have the benefit of counsel or even the presence of a friend. When he was confronted by the alleged confessions of his "accomplices," he signed a confession typed by the police. The confession was subsequently admitted into evidence over his objection. In reversing his conviction, the Court, in an opinion written by Justice Douglas, held that the methods used in obtaining the confession violated the due process clause of the fourteenth amendment. Justice Douglas noted that "[n]either man nor child can be allowed to stand condemned by methods which flout constitutional requirements of due process of law." *Id.* at 601.

*Gallegos* a 14 year-old boy allegedly assaulted and robbed an elderly man. The boy was arrested 12 days later, convicted of "assault to injure," and committed to a reformatory for an indeterminate period of time. Subsequently the victim died and the boy was charged with first degree murder. At trial, a formal confession signed by the youth prior to the victim's death was introduced in evidence. The confession had been obtained before the boy had been brought before a court and after he had been held for five days without the benefit of advice of counsel, friend, or parent (despite the fact that his mother had attempted to see him). The Court, through Justice Douglas, held that the "totality of circumstances" surrounding the confession violated the due process clause of the fourteenth amendment. *Id.* at 55.

*Kent* involved an order by a juvenile court waiving its jurisdiction and remitting a 16 year-old juvenile to an adult court for trial. The Supreme Court held that the discretion of a juvenile court in the District of Columbia to determine whether to waive jurisdiction was not unlimited, but rather its valid exercise "assumes procedural regularity sufficient in the particular circumstances to satisfy the basic requirements of due process and fairness, as well as compliance with the statutory requirement of a 'full investigation.'" *Id.* at 553.

*Gault* involved a complaint that he had made obscene telephone calls. After a hearing in juvenile court, the youth was committed to the Arizona reformatory until he reached age 21. In an appeal from a judgment of the Arizona Supreme Court affirming the denial of a petition for a writ of habeas corpus, the Supreme Court held that the constitutional guarantee of due process applied to proceedings in which juveniles are charged as delinquents. Specifically the Court, in an opinion written by Justice Fortas, held that (1) a juvenile court adjudication of delinquency "must measure up to the essentials of due process and fair treatment" (*id.* at 30); (2) adequate notice must be furnished to the youth and his parents or guardians informing them of the specific charges involved, and such notice must be given "at the earliest practicable time, and in any event sufficiently in advance of the hearing to permit preparation" (*id.* at 35); (3) the youth and his parents or guardians must be informed of their right to be represented by counsel and, if they are unable to afford counsel, counsel must be appointed (*id.* at 41); (4) the constitutional privilege against self-incrimination is applicable to juvenile court proceedings (*id.* at 55); and (5) "absent a valid confession, a determination of delinquency ... cannot be sustained.
and Debacker v. Brainard,8 to In re Winship9 in 1970. Each successive case, with the exception of DeBacker, imposed additional due process requirements on the fact-finding or adjudicative stage of state juvenile proceedings. Now it seems that the tide has turned. In all probability, Winship established the high water mark of Supreme Court reformation of juvenile trial proceedings.

The Court's decision is expressed in several interrelated opinions. Justice Blackmun, speaking for the Chief Justice and Justice Stewart, wrote the prevailing opinion. The concurring opinion of Justice White is similar to Blackmun's and, combined with Justice Harlan's special concurrence, provided a majority of the Court. Justice Brennan concurred and dissented. Justices Douglas, Marshall, and Black dissented.

Justice Blackmun's opinion is in two parts—an adoption of the reasoning of the Supreme Court of Pennsylvania10 and an enumeration of thirteen reasons why a jury trial is not a constitutionally required element of due process in the adjudicative stage of a juvenile proceeding.

The Pennsylvania Supreme Court, with one justice dissenting, had identified four elements in the Pennsylvania juvenile process which it believed made the right to a jury trial less essential to a juvenile than to an adult, and thus not constitutionally mandated. First, the court was convinced that juvenile court judges “take a different view of their role than that taken by their counterparts in the criminal courts.”11 It also believed that the diagnostic and rehabilitative services available to the juvenile justice system are “far superior to those available in the regular criminal process.”12 Thirdly, the Pennsylvania court was of the opinion that a finding of juvenile delinquency “is significantly different from and less onerous than a finding of crim-

in the absence of sworn testimony subjected to the opportunity for cross-examination . . . .” (id. at 57).

8 396 U.S. 28 (1969). In a per curiam opinion the Court refused to consider the question of whether a youth has a constitutional right to trial by jury in juvenile court proceedings. The Court reasoned that since the appellant's hearing had preceded the Court's decision in Duncan v. Louisiana, 391 U.S. 145 (1968), which was given only prospective application in DeStefano v. Woods, 392 U.S. 631 (1968), the case was an inappropriate one for resolution of the jury trial issue. Justices Douglas and Black dissented from the Court's dismissal. 396 U.S. at 33, 35.

9 397 U.S. 358 (1970). In this case the Court held that proof beyond a reasonable doubt, an essential element in criminal trials, is required by the due process clause of the fourteenth amendment when a youth is charged with an act which would constitute a criminal offense if committed by an adult.

11 Id. at 348, 265 A.2d at 354-55.
12 Id. at 348-49, 265 A.2d at 355.
inal guilt.” Finally, it expressed the belief that the juvenile process already imposed sufficient constitutional protections to ensure “sufficient protection” for juveniles. To grant a right to trial by jury, the court stated, would be so disruptive that it “might well destroy the traditional character of juvenile proceedings.”

This list of factors differentiating a juvenile’s need for a jury trial at the adjudicative stage from an adult’s need is so subjective as to be unworthy of citation in a Supreme Court opinion. Having spent fourteen years on a juvenile court bench (which incidentally afforded juveniles the right to a jury trial), I could readily dispute the first three factors from personal experience. Moreover, the attitude of juvenile court judges, the rehabilitative facilities available, and the consequences of a finding of guilt are substantially irrelevant to the issue of whether a jury should be available to make findings of fact during a juvenile’s trial. The fourth element in the Pennsylvania Supreme Court’s opinion, the determination that a reasonable balance has already been established between due process rights and traditional juvenile court informality, seems to be the real ground for both the decision of the state court and the Supreme Court.

What of the baker’s dozen reasons stated by Justice Blackmun for reaching his conclusion? Several fall into the category of supportive precedents: the 1967 Task Force Report: Juvenile Delinquency and Youth Crime of the President’s Commission on Law Enforcement and Administration of Justice did not recommend the use of jury trials in juvenile proceedings; neither did the Standard Juvenile Court Act promulgated by the National Council on Crime and Delinquency in 1959; nor the Uniform Juvenile Court Act endorsed by the American Bar Association in 1968; nor the Legislative Guide for Drafting Family and Juvenile Court Acts published by the United States Department of Health, Education and Welfare in 1969. The majority of state legislatures similarly rejected jury trials when they established their juvenile

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13 Id. at 349, 265 A.2d at 355 (emphasis in original).
14 Id. at 350, 265 A.2d at 355.
15 Id.
16 President’s Comm’n on Law Enforcement & Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime (1967).
court systems; Congress, in adopting a new juvenile court code for the District of Columbia in 1970, abolished the previously established right to a jury trial; and the majority of state appellate courts that have ruled upon the issue since Gault have rejected the claim that a juvenile is entitled to a jury trial. Justice Blackmun also expressed the view that juvenile proceedings are not inherently unfair, rather their abuses derive from a lack of resources. He made the further suggestion that state trial judges are free to use advisory juries if they choose.

Thus pruned, Justice Blackmun's reasons are reduced to five in number:

1. A jury's verdict on the facts is not an essential element to ensure a fair trial;
2. A state has the right to experiment with juvenile procedures without the encumbrance of juries;
3. A trial by jury will not cure the existing defects in the juvenile justice system;
4. A right to a jury trial will "remake the juvenile proceeding into a fully adversary process" inimical to the informal juvenile court ideal; and
5. A requirement for adjudicative procedures identical to adult criminal proceedings will deprive the juvenile court of its reason for a separate existence.

What is needed, stated Justice Blackmun, is neither criminal nor civil procedure, but a balance between procedural orderliness and the preservation of the good motives, special concern, and paternal attention.


23 403 U.S. at 548. This statement is in some conflict with the Pennsylvania Supreme Court's approval of juvenile court services. In re Terry, 438 Pa. 339, 348-49, 265 A.2d 350, 355 (1970).

24 403 U.S. at 548.

25 Id. at 545.
of the juvenile court tradition. In accord with the fourth factor in the Pennsylvania Supreme Court's opinion, Justice Blackmun and a majority of the Court concluded that a balance had already been reached. For these Justices, providing a juvenile with the right to a jury trial would be an overreaction likely to upset this balance.

II

THE COURT'S ATTITUDE TOWARDS JURY TRIALS

The Court's view that a jury is not essential to assure fundamental fairness, although expressed in the context of juvenile proceedings, may have a far wider impact. The appointment to the Supreme Court of Justices Powell and Rehnquist may contribute to a fundamental reversal of the Court's attitude, expressed in *Duncan v. Louisiana* in 1968, concerning the importance of the jury as a fact-finding agent in judicial procedures. From his public speeches, it seems that Chief Justice Burger would prefer to eliminate the use of juries wherever legally possible, believing that they are less efficient than a qualified judge. Despite his majority opinion in *Duncan*, Justice White expressed a certain disdain for the jury system in his concurring opinion in *McKeiver*: "Although the function of the jury is to find facts, that body is not necessarily or even probably better at the job than the conscientious judge." He spoke of the jury as a means of permitting community participation in the legal process and of preventing abuses of power in cases where serious punishment may result. Because he saw the juvenile justice system as "eschewing blameworthiness and punishment for evil choice," the jury as a curb on judicial power, in his opinion, is not needed in juvenile proceedings. Chief Justice Burger and Justices White and Blackmun all seem to reject the populist principle that scrutiny of judicial proceedings—as that provided by a jury of peers—improves the quality of justice in the courts. Thus, at least three Justices now sitting appear to have a low regard for the jury as a fact-finding body. Moreover, Justice Harlan, who dissented in *Duncan*, took the position in his *McKeiver* concurring opinion that neither

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26 Id. at 547.
29 403 U.S. at 551 (emphasis added).
30 Id. at 552.
fundamental fairness nor the due process clause of the fourteenth amendment requires a jury for any person—adult or juvenile.  

Perhaps the most fascinating view of the jury function is expressed by Justice Brennan in his separate opinion in *McKeiver*, in which he concurred with the majority with regard to the cases coming from Pennsylvania, but joined the dissent with regard to the case from North Carolina. The primary function of the jury, according to Justice Brennan, is to allow "executive redress" as protection against misuse of the judicial process. "The availability of trial by jury allows an accused to protect himself against possible oppression by what is in essence an appeal to the community conscience, as embodied in the jury that hears his case." In Pennsylvania the press was generally admitted, no person desired by a litigant was excluded, and there was no statutory prohibition against admission of the public to juvenile trials. Justice Brennan found these procedures to constitute a reasonable substitute for the jury's function of protecting juveniles from oppression by the government and from "the compliant, biased, or eccentric judge." North Carolina law, on the other hand, either permitted or required the exclusion of the general public from juvenile trials.

III

ADMINISTRATIVE PROBLEMS IN JUVENILE COURTS

In addition to the listed reasons for rejecting juvenile jury trials, there is, I believe, an unstated administrative concern underlying the majority opinion. Despite the efforts of amicus curiae briefs, several Justices seem to fear that a court management crisis would be precipitated if the already labored administration of the nation's juvenile courts was burdened with the need to provide jury trials.

Justice Douglas, in his dissenting opinion, made some reference to the practical aspects of jury trials for juveniles. To rebut the inference that a jury trial is a more traumatic event for a juvenile than a

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31 Id. at 557.
32 See note 2 supra.
33 403 U.S. at 555.
34 Id. at 554-55.
36 403 U.S. at 561-62.
proceeding in which the judge decides issues of fact, he relied extensively on the expressions of a Rhode Island Family Court judge.\(^{37}\)

The fact that a juvenile realizes that his case will be decided by twelve objective citizens would allow the court to retain its meaningfulness without causing any more trauma than a trial before a judge who . . . may be influenced by . . . prior contacts. To agree that a jury trial would expose a juvenile to a traumatic experience is to lose sight of the real traumatic experience of incarceration without due process.\(^{38}\)

The most traumatic experience is, according to Justice Douglas, the feeling of not being "entitled to the same [procedural] protection as an adult."\(^{39}\) But even Justice Douglas, in this rare instance depending upon the opinion of a trial judge, does not refer to the administrative aspects of jury trials for juveniles. The suspicion persists that the practical consequences on the administrative functioning of state juvenile courts played a large part in the Court's decision to deny juveniles a right to a jury trial.

IV

IMPACT ON THE JUVENILE JUSTICE SYSTEM

For whatever reasons the Court decided not to grant the right of a trial by jury to a juvenile, it is apparent that a majority of the Justices believed they should refrain from further legal reformation of the juvenile court trial process at this time. The Justices seem to have concluded that the due process requirements previously ordered by the Court have assured the necessary "constitutional domestication"\(^{40}\) of which Justice Fortas spoke in Gault. The Court has no juvenile case on its calendar this term, and it is unlikely that in the near future the Court will accept new cases dealing with the adjudicative phase of juvenile proceedings.\(^{41}\)

If the Court accepts any juvenile case in the future, it will probably be one dealing with the many facets of juvenile pre-adjudicatory procedure, in which the juvenile justice system differs markedly from the adult criminal process. Although legal reformers appear eager to con-

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\(^{37}\) Id. at 562-72, quoting In re McCloud (Providence, R.I. Fam. Ct., Jan. 15, 1971) (DeCiantis, J.).

\(^{38}\) 403 U.S. at 563-64, quoting In re McCloud (Providence, R.I. Fam. Ct., Jan. 15, 1971).

\(^{39}\) 403 U.S. at 562, quoting In re McCloud (Providence, R.I. Fam. Ct., Jan. 15, 1971).

\(^{40}\) In re Gault, 387 U.S. 1, 22 (1967).

front the juvenile justice system with its failure to establish a right to
treatment at the dispositional or correctional end of the process, there
seems little chance that the Court as presently constituted will review
such cases. The Court will, however, find it considerably more difficult
to brush aside demands for equal protection of the law concerning
police enforcement techniques that precede any referral of the accused
to adult or juvenile court.42

On the whole, proponents of a separate juvenile justice system
seem generally satisfied with the Court's decision in McKeiver. Their
fear of the major administrative reorganization necessary to implement
a jury system for state juvenile courts has been dispelled. The public
scrutiny of juvenile proceedings that juries would bring has been
avoided, or at least postponed. As the last sentence of Justice Black-
mun's opinion states: "Perhaps . . . ultimate disillusionment will come
one day, but for the moment we are disinclined to give impetus to it."43

In years to come, however, it may be difficult to determine whether
the juvenile court's image suffered greater harm from the ringing and
documented criticisms of Justice Fortas in Gault or from the faint
praise expressed by Justices Blackmun, Harlan, and White in McKeiver.
Justice Blackmun remarked:

We must recognize, as the Court has recognized before, that the
fond and idealistic hopes of the juvenile court proponents and
early reformers of three generations ago have not been realized.
. . . Too often the juvenile court judge falls far short of that stal-
wart, protective, and communicating figure the system envisaged.
The community's unwillingness to provide people and facilities
and to be concerned, the insufficiency of time devoted, the scarcity
of professional help, the inadequacy of dispositional alternatives,
and our general lack of knowledge all contribute to dissatisfaction
with the experiment.44

Justice Harlan conceded that "juvenile delinquency proceedings have
in practice actually become in many, if not all, respects criminal
trials."45 Justice White concluded that "current unhappiness with
juvenile court performance rests on dissatisfaction with the vague and
overbroad grounds for delinquency adjudications, with faulty judicial
choice as to disposition after adjudication or with the record of re-
habilitative custody, whether institutional or probationary . . . ."46

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42 See generally Coffee, Privacy Versus Parens Patriae: The Role of Police Records in
43 403 U.S. at 551.
44 Id. at 549-44 (footnotes omitted).
45 Id. at 557.
46 Id. at 553.
These are not the words of convinced supporters of the *parens patriae* philosophy of the juvenile court movement.

In my opinion, during the years immediately ahead the juvenile justice system may expect benevolent disinterest from the Supreme Court. The attitude of the Department of Justice and its granting arm, the Law Enforcement Assistance Agency, is equally passive towards our floundering juvenile courts. Whether the attention they receive from individual state governments, together with the zeal of dedicated supporters, will be enough to shore up the crumbling foundations of the independent juvenile court system is at best uncertain.