

Should Juveniles be tried by an impartial jury of their peers?

Does the denial of a jury trial violate the Sixth Amendment to the US Constitution?

*In this lesson, students will be introduced to the Constitutional protection of trial by jury and asked to consider and argue the merits and limits of precedent which states juveniles are not such right. Students will consider this Constitutional question by reviewing the case of *McKeiver v. Pennsylvania* as they prepare for Mock Judicial Review.*

Recommended Grade/Ability Level

10th, 11th, or 12th Grade

Recommended Lesson Length

3 Class periods

Essential Question

The constitution guarantees the right to a trial by an impartial jury of peers, but is silent on just who is guaranteed this right. Should juveniles have the right to be tried by an impartial jury of their peers?

Materials

- Access to the “Right to a Jury?” [googleslides presentation](#)
- Constitutions for students
- Posterboard/large pads of paper for students
- PBS Frontline article/chart comparing the [Juvenile Justice system and the criminal justice system](#).
- Questions for decoding Supreme Court opinions (in text of activity for day 2)
- Notecards, one for each student
- Copies of [abbreviated and annotated Opinions for *McKeiver v. Pennsylvania*](#) (majority and dissent)
 - Note: the top page of the document is the unmodified syllabus of the majority opinion, for teacher use.

Objectives

- To define the right to a trial by jury as found in the sixth amendment and associate it with Due Process.
- Connect the right to an impartial jury to values of fairness, equity, and justice.
- Identify and question the limitations of the right to a trial by jury in cases of juvenile offenders
- Compare, analyze, and synthesize the arguments for and against trial rights for juveniles--found in Supreme Court opinions--into a prepared statement.
- Define and support a claim using reasoning and evidence from a primary or secondary source.

NCSS C-3 Standards

- D1.3.9-12. Explain points of agreement and disagreement experts have about interpretations and applications of disciplinary concepts and ideas associated with a supporting question.
- D2.Civ.4.9-12. Explain how the U.S. Constitution establishes a system of government that has powers, responsibilities, and limits that have changed over time and that are still contested.
- D2.Civ.14.9-12. Analyze historical, contemporary, and emerging means of changing societies, promoting the common good, and protecting rights.

Background information/Homework/Pre-learning

Prior to this lesson, it would be important for students to have been introduced to the basics of the Supreme Court and Due Process.

Activities DAY ONE

- Warm-up/Bell Ringer

- Quick response to get students thinking about jury trials. As students settle down, ask them to write down their best answer to the questions: What is the right to a trial by jury? Why do we have this right?
- Ask students to share out their answers and then, shout out where they've gotten their information about juries? What types of TV shows or movies have they seen juries in? What are they like? Who is on a jury
Build a mindmap on the board and students share out.
- **Historical foundations of the jury system:** Introduce the basics of the right to a jury trial by using the first three slides of the "Right to an Impartial Jury?" googleslides. Annotations are provided at the bottom of each slide as suggestions for speaking points.
- **Pocket Constitution Search:** Ask students to pull out their pocket constitutions and take 2 minutes to locate the right to a jury trial in the Constitution. After locating the mentions of jury trial in both the Article III and the sixth Amendment, ask a few students to rephrase the text/pull out the key concepts of the protection.
 - Remind students about DUE PROCESS, emphasizing that the right to a trial by jury is part of what we consider fair justice (aka Due Process) in the United States.
- **Share with students the sixth slide of the googleslides powerpoint: How a jury trial works.** After sharing, ask students to share how these instructions are different from what they've previously seen or heard.
- **Questions facing the Right to a Fair Trial by Jury:** Divide students into three teams and task each team with creating a set of rules or information to present to a to-be jury during jury selection. Encourage students to be as specific as possible, creating a list, definition, or claim. Note: students are not provided any additional information for this task. Give students 7 minutes to create their list and share it back to the class. Use the products of these groups to encourage a group discussion about the role of a jury, emphasizing the need to be impartial.
 - What do jurors need to know to do their job?
 - What does it mean to be impartial?
 - Should jurors be impartial?
- **Wrap Up:** Project the scenario about the right to an impartial jury of peers. Have students write out answer on an exit slip as they leave class.
 - **Case Study:** You are a student at Penny High School in Penny Oaks, USA. Penny High is a small school where students have known each other since grade school. You and your family, of Puerto Rican descent, are newcomers to the school district, after moving to Penny Oaks few months prior. Getting used to a new school has been a challenge and you haven't made very many friends. The struggle to make friends has left you feeling uncomfortable and as a result, you haven't been leaving a very good impression upon your teachers. And, to top it off, you got caught driving without a license the other day, which made you late to pick up the 5 year old you were babysitting, from school. Now you have been accused of stealing from your school and your case has been brought to trial under criminal charges of trespassing and burglary. In your small town, the jury pool is extremely small, so several of the teachers from your school have become part of your jury. Also part of your jury is the mother of the five year old you were late to pick up and a former mayor of your town, who lost her seat after the recent election, which occurred a few days after your family moved into town.
 - **Prompts:** Is your jury impartial? Why or why not? What prevents us from being impartial? If you had the choice between having a jury at all, or just being judged by the teacher, which would you choose? Why?
 - **Homework Day One:** Ask students to pre-read the *Juvenile v. Criminal Justice* chart, with the section on jury trial removed.

Activities DAY TWO

Warm-up/Bell-Ringer: 2 minute timed reaction journal to the statement: In the United States, juvenile offenders (aged 10-17) are not guaranteed the right to a jury trial (slide 8 of googleslides presentation). Write multiple different terms on the board and challenge students to include them in their free-write: justice, fairness, peers, juvenile justice, criminal justice, impartiality, freedom of speech, due process, equality.

Introduce the McKeiver v. Pennsylvania (5-7 min): Introduce the case of McKeiver v. Pennsylvania as a Supreme Court case from 1971, which was the last time the court was asked to confront a case about the rights of Juveniles with respect to jury rights.

Be sure to introduce the reasons why juveniles are currently not guaranteed jury trials in the United States (ie, because the juvenile court system is seen as different from civil and criminal trial, this should prompt students to recall their pre-reading for homework,).

Taking your stand (10 min): After hearing, generally, the facts of the case and how the court answers the question of jury trials for juvenile offenders., ask students to arrange themselves on a spectrum of agreement to dissent with the decision (that juvenile offenders are not guaranteed a trial by jury). Ask students for their opinions on either side of the issue. Allow students to change their position based upon what they hear from their peers.

Preparing for JUDICIAL REVIEW Reviewing Majority Opinion/Dissent (30 min): Group students by where they fall on the spectrum of agreement or dissent with the case. Task pairs of students with reviewing either the majority or dissent for McKeiver v. Pennsylvania. *The opinions are already prepared with annotations and color coding to assist students as they review the documents. Each opinion has been slightly truncated and internal citations removed for reading ease.*

As students review the opinion of the case and the amicus articles, they'll be preparing for a mock debate among the supreme court justices on the fundamental question:

Should juveniles be tried by an impartial jury of their peers? Does the denial of the right to an impartial jury violate the 6th Amendment right to due process?

As pairs prepare for judicial review, they will produce a notecard(s) which includes a statement of their claim as well as a few points of reasoning, backed up with evidence in the text.

If needed, the following questions can be projected or printed on a worksheet to guide student inquiry and offer another form of formative feedback/accountability for student work.

1. What was the question the court has been asked to answer?
2. What is the Constitutional issue at stake?
3. What does the majority opinion/dissent say the outcome of the case should be?
4. What reasoning does the majority opinion/dissent give?
 - a. What is the juvenile justice system for?
 - b. How are the juvenile proceedings similar or different to a criminal trial?
 - c. Why are juries omitted from juvenile cases?
 - d. How is omitting a jury constitutional/unconstitutional?

Wrap Up/ Homework: Coordinating with their partner, each pair prepare for class the following day come to class with a notecard prepared with argument points, questions, or evidence from the briefs to bring up in debate tomorrow.

Activities DAY THREE

Warm-up/Bell-Ringer: As students walk in, have each pair write their names on a slip of colored paper (one color for each the Majority and Dissenting opinions). Provide students 5 minutes to meet with their partners and prepare the strategy judicial review.

The classroom may want to be organized as a circle/horseshoe with eight chairs in the center.

Mock Oral Arguments (40 min): Tell students that you and your classmates will take turns becoming Justices in a mock supreme court’s judicial review of the McKeiver case. Pick two of each slip of colored paper to call up the first set of petitioners and respondents. Giving students 3 minutes for each side to make their case, begin oral arguments. Once oral arguments are complete, open the floor to the rest of the class, whom may ask questions to the respondents or petitioners for an additional 3 minutes. Repeat until all groups have presented a mock argument.

Finish the class period with academy awards. What were some awesome points that were made in class? Encourage students to give credit where credit is due to their peers.

Wrap Up/ Homework: Ask students to reflect on the oral arguments in an email sent to you. What did they learn today that was new to them? Did the other side raise an argument that he/she found particularly powerful? How would you have felt as a supreme court justice, listening to this case? Who would you side with and why?

Assessment

- **In Lesson, Day 3:** Summative judicial review debate and reflection on judicial review debate
- **In Lesson, Day 2-3:** Formative worksheet & notecard preparation for debate, digest of the constitutional issues and arguments.
- **In Lesson, Day 2:** Formative take a stand organization and opinion-based defenses.
- **In Lesson, Day 2:** Formative timed journal reaction to Constitutional issue.
- **In Lesson, Day 1:** Formative posters on elements of juries.
- **Optional:** Continue the discussion of the right to a jury trial by focusing in on the impartiality of juries and wonder...can the juries of juvenile offenders be impartial? Should juries have teens on them if the offender is also a teen?
- **Optional:** Produce a list of “rules” for being a good juror and defend your beliefs.

Additional Resources

- US Courts.gov [briefing on juries](#)
- [Casepage for McKeiver v. Pennsylvania](#) on Oyez
- [State by State Juvenile Jury laws/precedent chart](#) from the National Juvenile Defender Center
- [Frontline PBS landing page for Juvenile Justice exhibit](#)
- New York Times Article: [For Young Offenders, Hope in a Jury of Their Peers](#)

- ACLU Article: [A Jury of Your Peers – The Right to a Jury Trial Free from Discrimination](#)

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JUVENILE JUSTICE	CRIMINAL JUSTICE
<p>The underlying rationales of the juvenile court system are that youth are developmentally different from adults and that their behavior is malleable. Rehabilitation and treatment, in addition to community protection, are considered to be primary and viable goals.</p>	<p>Rehabilitation is not considered a primary goal in the criminal justice system, which operates under the assumption that criminal sanctions should be proportional to the offense. Deterrence is seen as a successful outcome of punishment.</p>
<p>Limitations are placed on public access to juvenile records because of the belief that juvenile offenders can be successfully rehabilitated, and to avoid their unnecessary stigmatization. Court proceedings may be confidential to protect privacy.</p>	<p>Open public access to criminal records is required, and all court proceedings are open to the public.</p>
<p>The juvenile justice system follows a psychological casework approach, taking into account a detailed assessment of the youth's history in order to meet his or her specific needs. The juvenile offender faces a hearing, rather than a trial, which incorporates his social history as well as legal factors.</p>	<p>Defendants in the criminal justice system are put on trial, which is based largely on legal facts.</p>
<p>Law enforcement has the option of preventative detention -- detaining a youth for his own protection or the community's protection.</p>	<p>Defendants have the right to apply for bond or bail.</p>
<p>Not all states afford juveniles the right to a jury trial.</p>	<p>All defendants have a constitutional right to a jury trial.</p>
<p>A juvenile offender is judged "delinquent" rather than "guilty." Because of the individualized nature of the juvenile justice system, sentencing varies and may cover a wide range of community-based and residential options. The disposition is based on the individual's offense history and the severity of the offense, and includes a significant rehabilitation component. The disposition can be for an unspecified period of time; the court can send a youth to a certain</p>	<p>A defendant is found "innocent" or "guilty." The offender is sentenced to a specified period of time which is determined by the severity of the offense, as well as the defendant's criminal history.</p>

<p>facility or program until it is determined he is rehabilitated, or until he reaches the age of majority. The disposition may also include a restitution component and can be directed at people other than the offender, for example his parents.</p>	
<p>Parole combines surveillance with activities to reintegrate the juvenile into the community.</p>	<p>Parole is primarily based on surveillance and monitoring of illicit behavior.</p>

Adapted from Frontline PBS. "Juvenile Justice vs. Adult Justice." 2001. Adapted from Office of Juvenile Justice and Delinquency Prevention. "**Juvenile Justice: A Century of Change.**" Washington DC: Office of Juvenile Justice, 1999.

United States Supreme Court No. 322
McKEIVER v. PENNSYLVANIA, (1971)
Argued: December 10, 1970
Decided: June 21, 1971

Syllabus

The requests of appellants in No. 322 for a jury trial were denied, and they were adjudged juvenile delinquents under Pennsylvania law. The State Supreme Court, while recognizing the applicability to juveniles of certain due process procedural safeguards, held that there is no constitutional right to a jury trial in juvenile court. Appellants argue for a right to a jury trial because they were tried in proceedings "substantially similar to a criminal trial," and note that the press is generally present at the trial and that members of the public also enter the courtroom. Petitioners in No. 128 were adjudged juvenile delinquents in North Carolina, where their jury trial requests were denied and in proceedings where the general public was excluded. Held: A trial by jury is not constitutionally required in the adjudicative phase of a state juvenile court delinquency proceeding.

MR. JUSTICE BLACKMUN, joined by THE CHIEF JUSTICE, MR. JUSTICE STEWART, and MR. JUSTICE WHITE, concluded that:

1. The applicable due process standard in juvenile proceedings is fundamental fairness, which emphasized factfinding procedures, but in our legal system the jury is not a necessary component of accurate factfinding.
2. Despite disappointments, failures, and shortcomings in the juvenile court procedure, a jury trial is not constitutionally required in a juvenile court's adjudicative stage.
 - (a) The Court has not heretofore ruled that all rights constitutionally assured to an adult accused are to be imposed in a juvenile proceeding.
 - (b) Compelling a jury trial might remake the proceeding into a fully adversary process and effectively end the idealistic prospect of an intimate, informal protective proceeding.
 - (c) Imposing a jury trial on the juvenile court system would not remedy the system's defects and would not greatly strengthen the factfinding function.
 - (d) The States should be free to experiment to achieve the high promise of the juvenile court concept, and they may install a jury system; or a juvenile court judge may use an advisory jury in a particular case.

(e) Many States by statute or judicial decision deny a juvenile a right to jury trial, and the great majority that have faced that issue have concluded that the considerations involved in those cases do not compel trial by jury in juvenile court.

(f) Jury trial would entail delay, formality, and clamor of the adversary system, and possibly a public trial.

(g) Equating the adjudicative phase of the juvenile proceeding with a criminal trial ignores the aspects of fairness, concern, sympathy, and paternal attention inherent in the juvenile court system.

Blackmun's Majority Opinion

MR. JUSTICE BLACKMUN announced the judgments of the Court and an opinion in which THE CHIEF JUSTICE, MR. JUSTICE STEWART, and MR. JUSTICE WHITE join.

These cases present the narrow but precise issue whether the Due Process Clause of the Fourteenth Amendment assures the right to trial by jury in the adjudicative phase of a state juvenile court delinquency proceeding. [403 U.S. 528, 531]

I

The issue arises understandably, for the Court in a series of cases already has emphasized due process factors protective of the juvenile...

From these six cases - Haley, Gallegos, Kent, Gault, DeBacker, and Winship - it is apparent that:

1. Some of the constitutional requirements attendant upon the state criminal trial have equal application to that part of the state juvenile proceeding that is adjudicative in nature. Among these are the rights to appropriate notice, to counsel, to confrontation and to cross-examination, and the privilege against self-incrimination. Included, also, is the standard of proof beyond a reasonable doubt.

2. The Court, however, has not yet said that all rights constitutionally assured to an adult accused of crime also are to be enforced or made available to the juvenile in his delinquency proceeding. Indeed, the Court specifically has refrained from going that far:

- "We do not mean by this to indicate that the hearing to be held must conform with all of the requirements of a criminal trial or even of the usual administrative hearing; but we do hold that the hearing must measure up to the essentials of due process and fair treatment."

II [FACTS OF THE CASE]

With this substantial background already developed, we turn to the **facts of the present cases:**

No. 322. Joseph **McKeiver**, then age 16, in May 1968 was **charged with robbery, larceny, and receiving stolen goods** (felonies under Pennsylvania law) **as acts of juvenile delinquency**. At the time of the adjudication hearing he was represented by counsel. **2 His request for a jury trial was denied** and his case was heard by Judge Theodore S. Gutowicz of the Court of Common Pleas, Family Division, Juvenile Branch, of Philadelphia County, Pennsylvania. McKeiver was adjudged a delinquent upon **findings that he had violated a law of the Commonwealth**. Pa. Stat. Ann., Tit. 11, 243 (4) (a) (1965). **He was placed on probation**. On appeal, the Superior Court affirmed without opinion.

Edward **Terry**, then age 15, in January 1969 was **charged with assault and battery on a police officer and conspiracy** (misdemeanors under Pennsylvania law) **as acts of juvenile delinquency**. His counsel's **request for a jury trial was denied** and his case was heard by Judge Joseph C. Bruno of the same Juvenile Branch of the Court of Common Pleas of Philadelphia County. **Terry was adjudged a delinquent on the charges**. This followed an adjudication

and commitment in the preceding week for an assault on a teacher. **He was committed**, as he had been on the earlier charge, **to the Youth Development Center at Cornwells Heights**. On appeal, the Superior Court affirmed without opinion.

The Supreme Court of Pennsylvania granted leave to appeal in both cases...The single question considered, as phrased by the court, was "whether there is a constitutional right to a jury trial in juvenile court." The answer, one justice dissenting, was in the negative....

The details of the McKeiver and Terry offenses are set forth in Justice Roberts' opinion ...it suffices to say that McKeiver's offense was his participating with 20 or 30 youths who pursued three young teenagers and took 25 cents from them; that McKeiver never before had been arrested and had a record of gainful employment; that the testimony of two of the victims was described by the court as somewhat inconsistent and as "weak"; and that Terry's offense consisted of hitting a police officer with his fists and with a stick when the officer broke up a boys' fight Terry and others were watching.

...The several cases were consolidated into groups for hearing before District Judge Hallett S. Ward, sitting as a juvenile court. The same lawyer appeared for all the juveniles. Over counsel's objection, made in all except two of the cases, the general public was excluded. A request for a jury trial in each case was denied.

...In each case the court found that the juvenile had committed "an act for which an adult may be punished by law." A custody order was entered declaring the juvenile a delinquent "in need of more suitable guardianship"...The court, however, suspended these commitments and placed each juvenile on probation for either one or two years conditioned upon his violating none of the State's laws, upon his reporting monthly to the County Department of Welfare, upon his being home by 11 p. m. each evening, and upon his attending a school approved by the Welfare Director. None of the juveniles has been confined on these charges.

III [THE JUVENILE JUSTICE SYSTEM CAN OMIT JURY TRIALS CONSTITUTIONALLY]

It is instructive to review, as an illustration, the substance of Justice Roberts' opinion for the Pennsylvania court. ...Justice Roberts then concluded that such factors do inhere in the Pennsylvania juvenile system: (1) Although realizing that "faith in the quality of the juvenile bench is not an entirely satisfactory substitute for due process," the judges in the juvenile courts "do take a different view of their role than that taken by their counterparts in the criminal courts." While one regrets its inadequacies, "the juvenile system has available and utilizes much more fully various diagnostic and rehabilitative services" that are "far superior to those available in the regular criminal process."

...Finally, "of all the possible due process rights which could be applied in the juvenile courts, the right to trial by jury is the one which would most likely be disruptive of the unique nature of the juvenile process." It is the jury trial that "would probably require substantial alteration of the traditional practices." The other procedural rights held applicable to the juvenile process "will give the juveniles sufficient protection" and the addition of the trial by jury "might well destroy the traditional character of juvenile proceedings."

The court concluded, that it was confident "that a properly structured and fairly administered juvenile court system can serve our present societal needs without infringing on individual freedoms."

IV [THE RIGHT TO AN IMPARTIAL JURY UNDER THE 6TH AMENDMENT]

The right to an impartial jury "[i]n all criminal prosecutions" under federal law is guaranteed by the Sixth Amendment. Through the Fourteenth Amendment that requirement has now been imposed upon the States "in all criminal cases which - were they to be tried in a federal court - would come within the Sixth Amendment's guarantee." This is because the Court has said it believes "that trial by jury in criminal cases is fundamental to the American scheme of justice."

This, of course, does not automatically provide the answer to the present jury trial issue, **if for no other reason than that the juvenile court proceeding has not yet been held to be a "criminal prosecution," within the meaning and reach of the Sixth Amendment, and also has not yet been regarded as devoid of criminal aspects merely because it usually has been given the civil label.**

...Thus, accepting "the proposition that the Due Process Clause has a role to play," Gault, 387 U.S., at 13, our task here with respect to trial by jury, as it was in Gault with respect to other claimed rights, "is to ascertain the precise impact of the due process requirement." Id., at 13-14.

V [THE SIMILARITY OF A JUVENILE PROCEEDING TO A CRIMINAL TRIAL]

The Pennsylvania juveniles' basic argument is that they were tried in proceedings "substantially similar to a criminal trial." They say that a delinquency proceeding in their State is initiated by a petition charging a penal code violation in the conclusory language of an indictment; that a juvenile detained prior to trial is held in a building substantially similar to an adult prison; that in Philadelphia juveniles over 16 are, in fact, held in the cells of a prison; that counsel and the prosecution engage in plea bargaining; that motions to suppress are routinely heard and decided; that the usual rules of evidence are applied; ...that the press is generally admitted in the Philadelphia juvenile courtrooms; that members of the public enter the room; that arrest and prior record may be reported by the press ...the stigma attached upon delinquency adjudication approximates that resulting from conviction in an adult criminal proceeding.

The North Carolina juveniles particularly urge that the requirement of a jury trial would not operate to deny the supposed benefits of the juvenile court system; that the system's primary benefits are its discretionary intake procedure permitting disposition short of adjudication, and its flexible sentencing permitting emphasis on rehabilitation; that realization of these benefits does not depend upon dispensing with the jury; that adjudication of factual issues on the one hand and disposition of the case on the other are very different matters with very different purposes; that the purpose of the former is indistinguishable from that of the criminal trial; that the jury trial provides an independent protective factor; that experience has shown that jury trials in juvenile courts are manageable; that **no reason exists why protection traditionally accorded in criminal proceedings should be denied young people subject to involuntary incarceration for lengthy periods; and that the juvenile courts deserve healthy public scrutiny.**

VI [THE VALUE OF JURIES]

All the litigants here agree that the applicable due process standard in juvenile proceedings, as developed by Gault and Winship, is fundamental fairness. As that standard was applied in those two cases, we have an emphasis on factfinding procedures. The requirements of notice, counsel, confrontation, cross-examination, and standard of proof naturally flowed from this emphasis. But one cannot say that in our legal system the jury is a necessary component of accurate factfinding. There is much to be said for it, to be sure, but we have been content to pursue other ways for determining facts. Juries are not required, and have not been, for example, in equity cases, in workmen's compensation, in probate, or in deportation cases. Neither have they been generally used in military trials. In Duncan the Court stated, "We would not assert, however, that every criminal trial - or any particular trial - held before a judge alone is unfair or that a defendant may never be as fairly treated by a judge as he would be by a jury." 391 U.S., at 158. In DeStefano, for this reason and others, the Court refrained from retrospective application of Duncan, an action it surely would have not taken had it felt that the integrity of the result was seriously at issue. And in Williams v. Florida, 399 U.S. 78 (1970), the Court saw no particular magic in a 12-man jury for a criminal case, thus revealing that even jury concepts themselves are not inflexible.

...Despite all these disappointments, all these failures, and all these shortcomings, **we conclude that trial by jury in the juvenile court's adjudicative stage is not a constitutional requirement. We so conclude for a number of reasons:**

1. The Court has refrained, in the cases heretofore decided, from taking the easy way with a flat holding that all rights constitutionally assured for the adult accused are to be imposed upon the state juvenile proceeding...."It is clear to us that the Supreme Court has properly attempted to strike a judicious balance by injecting procedural orderliness into the juvenile court system. It is seeking to reverse the trend whereby `the child receives the worst of both worlds. . . .'"

2. There is a possibility, at least, that the jury trial, if required as a matter of constitutional precept, will remake the juvenile proceeding into a fully adversary process and will put an effective end to what has been the idealistic prospect of an intimate, informal protective proceeding.

...

4. The Court specifically has recognized by dictum that a jury is not a necessary part even of every criminal process that is fair and equitable.

5. The imposition of the jury trial on the juvenile court system would not strengthen greatly, if at all, the factfinding function, and would, contrarily, provide an attrition of the juvenile court's assumed ability to function in a unique manner. It would not remedy the defects of the system. Meager as has been the hoped-for advance in the juvenile field, the alternative would be regressive, would lose what has been gained, and would tend once again to place the juvenile squarely in the routine of the criminal process.

6. The juvenile concept held high promise. We are reluctant to say that, despite disappointments of grave dimensions, it still does not hold promise, and we are particularly reluctant to say, as do the Pennsylvania appellants here, that the system cannot accomplish its rehabilitative goals. So much depends on the availability of resources, on the interest and commitment of the public, on willingness to learn, and on understanding as to cause and effect and cure. In this field, as in so many others, one perhaps learns best by doing. We are reluctant to disallow the States to experiment further and to seek in new and different ways the elusive answers to the problems of the young, and we feel that we would be impeding that experimentation by imposing the jury trial. The States, indeed, must go forward. If, in its wisdom, any State feels the jury trial is desirable in all cases, or in certain kinds, there appears to be no impediment to its installing a system embracing that feature. That, however, is the State's privilege and not its obligation.

...

8. There is, of course, nothing to prevent a juvenile court judge, in a particular case where he feels the need, or when the need is demonstrated, from using an advisory jury.

...

12. If the jury trial were to be injected into the juvenile court system as a matter of right, it would bring with it into that system the traditional delay, the formality, and the clamor of the adversary system and, possibly, the public trial. It is of interest that these very factors were stressed by the District Committee of the Senate when, through Senator Tydings, it recommended, and Congress then approved, as a provision in the District of Columbia Crime Bill, the abolition of the jury trial in the juvenile court. S. Rep. No. 91-620, pp. 13-14 (1969).

13. Finally, the arguments advanced by the juveniles here are, of course, the identical arguments that underlie the demand for the jury trial for criminal proceedings. The arguments necessarily equate the juvenile proceeding - or at least the adjudicative phase of it - with the criminal trial. Whether they should be so equated is our issue. **Concern about the inapplicability of exclusionary and other rules of evidence**, about the juvenile court judge's possible awareness of the juvenile's prior record and of the contents of the social file; about repeated appearances of the same familiar witnesses in the persons of juvenile and probation officers and social workers - all to the effect that this will create the likelihood of pre-judgment - **chooses to ignore**, it seems to us, every aspect of fairness, of concern, of sympathy, and of paternal attention that the juvenile court system contemplates.

If the formalities of the criminal adjudicative process are to be superimposed upon the juvenile court system, there is little need for its separate existence. Perhaps that ultimate disillusionment will come one day, but for the moment we are disinclined to give impetus to it.

Affirmed.

Douglas's Dissent

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BLACK and MR. JUSTICE MARSHALL concur, dissenting.

These cases from Pennsylvania and North Carolina present the issue of the right to a jury trial for offenders charged in juvenile court and facing a possible incarceration until they reach their majority [AGE OF 18]. **I believe the guarantees of the Bill of Rights, made applicable to the States by the Fourteenth Amendment, require a jury trial.**

In the Pennsylvania cases one of the appellants was charged with robbery, larceny, and receiving stolen goods as acts of juvenile delinquency. He was found a delinquent and placed on probation. The other appellant was charged with assault and battery on a police officer and conspiracy as acts of juvenile delinquency. On a finding of delinquency he was committed to a youth center. Despite the fact that the two appellants, aged 15 and 16, would face potential incarceration until their majority, they were denied a jury trial.

...

Conviction of each of these crimes would subject a person, whether juvenile or adult, to imprisonment in a state institution. In the case of these students the possible term was six to 10 years; it would be computed for the period until an individual reached the age of 21. **Each asked for a jury trial which was denied. The trial judge stated that the hearings were juvenile hearings, not criminal trials. But the issue in each case was whether they had violated a state criminal law.** The trial judge found in each case that the juvenile had committed "an act for which an adult may be punished by law" and held in each case that the acts of the juvenile violated one of the criminal statutes cited above. The trial judge thereupon ordered each juvenile to be committed to the state institution for the care of delinquents and then placed each on probation for terms from 12 to 24 months.

We held in *In re Gault*, that "neither the Fourteenth Amendment nor the Bill of Rights is for adults alone." As we noted in that case, the Juvenile Court movement was designed to avoid procedures to ascertain whether the child was "guilty" or "innocent" but to bring to bear on these problems a "clinical" approach. It is, of course, not our task to determine as a

matter of policy whether a "clinical" or "punitive" approach to these problems should be taken by the States. But where a State uses its juvenile court proceedings to prosecute a juvenile for a criminal act and to order "confinement" until the child reaches 21 years of age or where the child at the threshold of the proceedings faces that prospect, then he is entitled to the same procedural protection as an adult. **As MR. JUSTICE BLACK said in *In re Gault*, supra, at 61 (concurring):**

- "Where a person, infant or adult, can be seized by the State, charged, and convicted for violating a state criminal law, and then ordered by the State to be confined for six years, I think the Constitution requires that he be tried in accordance with the guarantees of all the provisions of the Bill of Rights made applicable to the States by the **Fourteenth Amendment**. Undoubtedly this would be true of an adult defendant, and it would be a plain denial of equal protection of the laws - an invidious discrimination - to hold that others subject to heavier punishments could, because they are children, be denied these same constitutional safeguards."

Just as courts have sometimes confused delinquency with crime, so have law enforcement officials treated juveniles not as delinquents but as criminals....Nonetheless, it is clearly undesirable that juveniles be confined with adults."

...

Even when juveniles are not incarcerated with adults the situation may be no better. One Pennsylvania correctional institution for juveniles is a brick building with barred windows, locked steel doors, a cyclone fence topped with barbed wire, and guard towers. A former juvenile judge described it as "a maximum security prison for adjudged delinquents."

....

In the present cases imprisonment or confinement up to 10 years was possible for one child and each faced at least a possible five-year incarceration. No adult could be denied a jury trial in those circumstances. The Fourteenth Amendment, which makes trial by jury provided in the Sixth Amendment applicable to the States, speaks of denial of rights to "any person", not denial of rights to "any adult person"; and we have held indeed that where a juvenile is charged with an act that would constitute a crime if committed by an adult, he is entitled to be tried under a standard of proof beyond a reasonable doubt.

I added that by reason of the Sixth and Fourteenth Amendments the juvenile is entitled to a jury trial

- "as a matter of right where the delinquency charged is an offense that, if the person were an adult, would be a crime triable by jury....

..."the real traumatic" experience of incarceration without due process is "the feeling of being deprived of basic rights." ...Many of the children who come before the court come from broken homes, from the ghettos; they often suffer from low self-esteem; and their behavior is frequently a symptom of their own feelings of inadequacy. Traumatic experiences of denial of basic rights only accentuate the past deprivation and contribute to the problem. Thus, a general societal attitude of acceptance of the juvenile as a person entitled to the same protection as an adult may be the true beginning of the rehabilitative process.

Judge De Ciantis goes on to say that "[t]rial by jury will provide the child with a safeguard against being prejudged" by a judge who may well be prejudiced by reports already submitted to him by the police or case-workers in the case. Indeed the child, the same as the adult, is in the category of those described in the Magna Carta:

These cases should be remanded for trial by jury on the criminal charges filed against these youngsters.

APPENDIX TO OPINION OF DOUGLAS, J., DISSENTING

TRAUMA

The fact is that the procedures which are now followed in juvenile cases are far more traumatic than the potential experience of a jury trial. Who can say that a boy who is arrested and handcuffed, placed in a lineup, transported in vehicles designed to convey dangerous criminals, placed in the same kind of a cell as an adult, deprived of his freedom by lodging him in an institution where he is subject to be transferred to the state's prison and in the "hole" has not undergone a traumatic experience?

The experience of a trial with or without a jury is meant to be impressive and meaningful. The fact that a juvenile realizes that his case will be decided by twelve [403 U.S. 528, 564] objective citizens would allow the court to retain its meaningfulness without causing any more trauma than a trial before a judge who perhaps has heard other cases involving the same juvenile in the past and may be influenced by those 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. The real traumatic experience is the feeling of being deprived of basic rights. [In] In the matter of Reis, 1 this Court indicated the inadequacies of the procedure under which our court operates. A judge who receives facts of a case from the police and approves the filing of a petition based upon those facts may be placed in the untenable position of hearing a charge which he has approved. His duty is to adjudicate on the evidence introduced at the hearing and not be involved in any pre-adjudicatory investigation.

It is contrary to the fundamental principles of due process for the court to be compelled, as it is in this state, to act as a one-man grand jury, then sit in judgment on its own determination arising out of the facts and proceedings which he conducted. This responsibility belongs with a jury.

PUBLIC TRIAL

Public trial in the judgment of this Court does not affect the juvenile court philosophy...Its origins are obscure, but it seems to have evolved along with the jury trial guarantee in English common law and was then adopted as a provision of the Federal Constitution as well as by most state constitutions. Among the benefits of a public trial are the following:

1. "Public trials come to the attention of key witnesses unknown to the parties. These witnesses may then voluntarily come forward and give important testimony."
2. "The spectators learn about their government and acquire confidence in their judicial remedies."
3. "The knowledge that every criminal trial is subject to contemporaneous review in the [forum] of public opinion is an effective restraint on possible abuse of judicial power." (P. 270.)

Justice Black ...writes: "Whatever may be the classification of juvenile court proceedings, they are often conducted without admitting all the public. But it has never been the practice to wholly exclude parents, relatives, and friends, or to refuse juveniles the benefit of counsel." (P. 266.)

In fact, the juvenile proceedings as presently conducted are far from secret. Witnesses for the prosecution and for the defense, social workers, court reporters, students, police trainees, probation counselors, and sheriffs are present in the courtroom. Police, the Armed Forces, the Federal Bureau of Investigation obtain information and have access to the police files. There seems no more reason to believe that a jury trial would destroy confidentiality than would witnesses summoned to testify.

...

JURY OF PEERS

One of the most interesting questions raised is that concerning the right of a juvenile to a trial by his peers. Counsel has suggested that a jury of a juvenile's peers [403 U.S. 528, 571] would be composed of other juveniles, that is, a "teenage jury." Webster's Dictionary, Second Edition, 1966, defines a peer as an equal, one of the same rank, quality, value. The word "peers" means nothing more than citizens. The phrase "judgment of his peers" means at common law, a trial by a jury of twelve men. "Judgment of his peers" is a term expressly borrowed from the Magna Charta, and it means a trial by jury. The Declaration of Independence also speaks of the equality of all men. Are we now to say that a juvenile is a second-class citizen, not equal to an adult? The Constitution has never been construed to say women must be tried by their peers, to wit, by all-female juries, or Negroes by all-Negro juries.

The only restriction on the makeup of the jury is that there can be no systematic exclusion of those who meet local and federal requirements, in particular, voting qualifications.

The Court notes that presently in some states 18-year-olds can vote. Presumably, if they can vote, they may also serve on juries. Our own legislature has given first passage to an amendment to the Constitution to permit 18-year-olds to vote. Thus, it is quite possible that we will have teenage jurors sitting in judgment of their so-called "peers."

The juvenile is constitutionally entitled to a jury trial.