

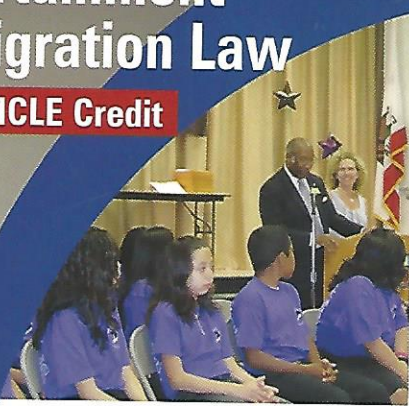
# VALLEY LAWYER

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## Law Day: Celebrating the Rule of Law



# JURY TRIALS FOR JUVENILES: Justice Affirmed or Justice Denied?

In 1971, the U.S. Supreme Court issued its landmark ruling—*McKeiver v. Pennsylvania*, 403 U.S. 528 (1971)—on whether the equal protection clause of the U.S. Constitution's 14<sup>th</sup> Amendment guaranteed juveniles the right to a jury trial.

The 6-3 plurality opinion, authored by Justice Harry Blackmun, concluded that “despite disappointments, failures, and shortcomings in the juvenile court procedure, a jury trial is not constitutionally required in a juvenile court’s adjudicative stage” and “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.”

Several justices expressed concerns that requiring jury trials would not only undermine confidentiality, but make proceedings “fully adversary” and destroy “the idealistic prospect of an intimate, informal protective proceeding,” while failing to significantly improve the ability of courts to determine case facts, as well.

Writing for the dissent, Justice William O. Douglas argued that due process is accorded to all the litigants who come before the Court and therefore, “the juvenile is constitutionally entitled to a jury trial.” The right to a jury trial was at the very core of the 14<sup>th</sup> Amendment and was seen by the framers of the Constitution as the defendant’s check against overzealous law enforcement officers and biased judges.

In this point/counterpoint article, we invite our readers to consider both sides on a hotly-debated constitutional issue that continues to resonate through the legal system.

## Genuine Equal Protection: The Case for Jury Trials in Juvenile Court

By Shep Zebberman

**P**EOPLE ARE OFTEN SURPRISED TO LEARN THAT A MINOR being accused of committing a crime in a juvenile court is not constitutionally entitled to a jury trial. It seems that equal protection under the law in this context would afford juveniles facing the same charges and consequences as accused adults the same right to trial by jury.

Neither the U.S. Supreme Court nor California has seen fit to require juveniles who find themselves facing incarceration, lifelong records, strikes and more, be entitled to trial by a jury of one’s peers.

— continued on page 28



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# The Case for Jury Trials in Juvenile Court

— continued from page 26

Instead, a juvenile is tried by a judge, commissioner or referee who acts both as the finder of fact and who makes the legal findings, rulings and sentence (known as disposition in juvenile lingo). A request in juvenile court demanding trial by jury was often met with a court's response that it would treat such a request as a waiver by the minor of juvenile court jurisdiction and certify the youth to be tried as an adult.

Courts have examined the issue of a juvenile's right to trial by jury using a due process analysis, focusing on the assurance of sufficient procedural safeguards and fundamental fairness. In *McKeiver v. Pennsylvania*,<sup>1</sup> the U.S. Supreme Court held that trial by jury in the juvenile court's adjudicative stage—juvenile lingo for trial—is not a constitutional requirement.

In so concluding, the Court listed 13 reasons why a jury trial is not a constitutional requirement centering on, among other things, the need to protect juveniles from the adversarial process of adult court by maintaining the unique function of a juvenile proceeding. Adding undue burden to the system was also a factor, i.e., costs, delay etc. The Court's analysis focused on the 6<sup>th</sup> Amendment and due process clause of the 14<sup>th</sup> Amendment to the U.S. Constitution.

The Court has declined to decide the issue of the right to trial by jury for juveniles based on the equal protection clause of the 14<sup>th</sup> Amendment. In *In Re Gault*,<sup>2</sup> Justice Hugo Black, in his concurring opinion, came close when he stated:

"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."

However, Justice Black ultimately concluded that the law in question violated the 5<sup>th</sup> and 6<sup>th</sup> Amendments rather than the equal protection clause of the 14<sup>th</sup>.

What is the essence of the equal protection clause of the Fourteenth Amendment? Section 1 provides in part that "... No state shall...deny to any person within its jurisdiction the equal protection of the laws."

The equal protection clause was initially passed to protect freed slaves after the Civil War. Subsequent decisions—most notably *Brown v. Board of Education*'s separate but equal analysis expanded its scope.

Most laws include an element of discrimination. Consider, for example, age restrictions on drinking or driving. The question answered by the equal protection clause is: Which group or class may object when treated differently by the law?

The U.S. Supreme Court initially started off equal protection analysis by incorporating groups or classes who were perceived disadvantaged by discrimination. It has subsequently refocused its analysis to focus on suspect classifications, rather than suspect classes.

A class-based approach would reserve heightened equal protection scrutiny for certain groups, such as African-Americans or women, whereas a focus on classifications considers race, gender, etc. as inherently suspicious categories for government protection. The class approach views equal protection as protecting identifiable groups; the classification approach focuses on the basis for discrimination.

The difference between the former approach and the modern trend is that to view the equal protection clause in terms of protecting the historically disadvantaged and powerless groups from more privileged and powerful ones would not treat discrimination against males the same as discrimination against females, for example. The later approach would presumably require the equal protection clause to protect any protected classification even if not perceived to be disadvantaged and any such legislation would be treated by the Court to be inherently suspect and only justifiable by compelling state interest.

Most laws are assessed to determine whether there is any rational basis for the law to be upheld. But if the injured person or groups is a member of a suspect class then the law in question is subject to a heightened scrutiny, in which case the law must have a compelling state interest to justify the discrimination, and the discrimination must be carefully tailored to serve those reasons. Suspect classes have historically included race, national origin and gender.

The focus of the Court's analysis has shifted to suspect classifications, rather than suspect classes shifting the analysis from equal protection clause protecting identifiable groups to focusing on the basis for discrimination. In the question of a juvenile's right to trial by jury, numerous fundamental rights are implicated which should trigger a strict scrutiny analysis.

Initially, substantial differences separated the procedural rights accorded to adults and those of juveniles. There were rights granted to adults that were withheld from juveniles. Rules governing the arrest and interrogation of adults by the police were not observed in the case of juveniles.

The juvenile court movement began in this country at the end of the last century. The early reformers were appalled by adult procedures and penalties, and by the fact that children

could be given long prison sentences and mixed in jails with hardened criminals.

A juvenile could be taken from the custody of his parents and committed to a state institution, pursuant to proceedings in which the juvenile court had virtually unlimited discretion, and in which a number of basic rights were denied—namely, notice of the charges; the right to counsel; the right to confrontation and cross-examination; the privilege against self-incrimination; the right to a transcript of the proceedings; and the right to appellate review.


The early reformers believed that society's role—and thus the juvenile court's role—was not to ascertain guilt or innocence, but rather focus on rehabilitation of the minor as opposed a punitive function as in adult court. The rules of criminal procedure were viewed initially as inapplicable to the juvenile system.

The proceedings were not seen as adversarial. The State was proceeding as guardian for the child. On this basis, proceedings involving juveniles were described as civil, not criminal, and therefore not subject to the procedural requirements afforded to adult criminal defendants. Juvenile cases are not technically considered convictions.

Since *In Re Gault*,<sup>3</sup> it has long been recognized that juveniles are entitled to most of the protections based on due process that an adult would be afforded in a criminal case. The two major exceptions are the right to trial by jury and the right to bail. This is because a sustained juvenile court petition, although not a conviction, can be used as a strike in the future and can send the juvenile to the functional equivalent of jail, whether called an industrial school, a ranch, a camp, or a hall, as well as many other collateral consequences identical to those of an adult.

In fact, perhaps one of the most severe consequences is that for certain offenses, a juvenile's record can never be sealed. For all intents and purposes, juvenile proceedings are now as formal, adversarial and potentially as punitive (and in some cases more punitive) as adult proceedings.

In light of these facts, it seems clear that the system created to deal with minors accused of committing crimes has graduated from rehabilitating delinquent behavior to the functional equivalent of adjudicating criminal conduct.

If so, the right to jury trial for juveniles accused of a crime should be analyzed under the 14<sup>th</sup> Amendment's equal protection clause under a heightened scrutiny standard. If the Supreme Court were to determine that equal protection entitles juveniles to trial by jury, as their adult counterparts are, the juvenile court could still maintain its special rehabilitative function and rehabilitative role if the jury found the petition to be true. 

<sup>1</sup> *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971).

<sup>2</sup> *In Re Gault*, 387 U.S. 1, 13 (1967).

<sup>3</sup> *In Re Gault*, 387 U.S. 1 (1967).

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