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JUSTICE BY ANY OTHER NAME: THE RIGHT TO A JURY TRIAL AND THE CRIMINAL NATURE OF JUVENILE JUSTICE IN LOUISIANA*

The juvenile justice system has become increasingly punitive in recent decades. While the juvenile justice system has come to resemble the adult system in this way, juveniles facing adjudication nevertheless are denied the essential Sixth Amendment due process right. This Note will argue that the Louisiana Supreme Court decided State ex rel. D.J. incorrectly and, further, will demonstrate that the nation as a whole should revisit the place of juries in juvenile proceedings.

* * *

INTRODUCTION

One of society's worst nightmares became reality on September 26, 2000. On the schoolyard of Carter G. Woodson Middle School in New Orleans, two students faced death as bullets tore through their bodies, leaving them critically wounded.¹ William P. lost his spleen and one kidney as a result of the bullet that entered his abdomen. Darrell J. remains confined to a wheelchair.² The incident received national news³ and, to some, legitimized the recent, significant transformation of juvenile justice in America — the criminalization of serious juvenile delinquency.

Soon after this incident, Darrell J. and his friend, Alfred A., faced charges of attempted second-degree murder and carrying a firearm on school property.⁴ Allegedly, Alfred passed the gun through the schoolyard fence to Darrell.⁵ Darrell then attacked William P., and the ensuing struggle led to both juveniles' near fatal injuries.⁶

As Alfred A. and Darrell J.'s case has proceeded through the Louisiana Juvenile Justice System, the courts have afforded the defendants many of the due process rights that adults facing criminal charges enjoy — including the right to counsel, the right to face their accusers, and the "beyond a reasonable doubt" standard of proof.

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¹ See *State ex rel. D.J.*, 2001-2149 (La. 05/14/02), 817 So. 2d 26, 26–28.

² See *id.* at 28 n.2.

³ See Katy Reckdahl, *Kids in the Hall*, GAMBIT WEEKLY, at <http://www.bestofneworleans.com/archives/2001/0522/covs.html> (May 22, 2001) (reporting that most large daily newspapers in the country covered the incident).

⁴ *D.J.*, 2001-2149 (La. 05/14/02), 817 So. 2d at 27.

⁵ *Id.* at 28 n.2.

⁶ *Id.*

Importantly, however, Louisiana denied Alfred's and Darrell's Sixth Amendment right to demand a jury trial⁷ — a right possessed by every American over eighteen years of age facing a criminal charge. This remains the case, despite the reality that juvenile justice has become increasingly punitive in recent decades, and consequently, more criminal in nature. Thus, while the juvenile justice system increasingly resembles the adult system in this way, juveniles facing adjudication nevertheless are denied this essential Sixth Amendment due process right.

The Sixth Amendment of the U.S. Constitution reads, "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury"⁸ It is easy to conclude that this provision of the Constitution does not apply to juvenile proceedings, simply because some courts view such proceedings as not being equivalent to criminal proceedings. In 1971, the Supreme Court said as much in *McKeiver v. Pennsylvania*.⁹ Yet, as our nation's various juvenile justice systems continue to evolve, the delineation between juvenile and criminal justice becomes further obscured.

Section 17 of Article 1 of the Louisiana Constitution, while using different language, also guarantees jury trials to the criminally accused.¹⁰ The Louisiana Supreme Court followed the precedent provided by *McKeiver* when it decided *In re Dino*,¹¹ holding that the state constitution does not extend this right to include juvenile delinquency proceedings. Importantly, the prevailing rationale supporting both of these decisions was that juvenile justice lacked the punitive nature of criminal justice and, instead, focused on rehabilitation. Subsequent to these decisions, Louisiana has changed its juvenile justice system, rendering its proceedings punitive in nature.¹² The question thus becomes, have the changes made to the Louisiana juvenile justice system since *McKeiver* and *Dino* caused delinquency proceedings to become criminal in nature?

The Juvenile District Court for the Parish of Orleans faced this question when it presided over the delinquency petitions against Darrell J. and Alfred A.¹³ The

⁷ *Id.* at 34.

⁸ U.S. CONST. amend. VI.

⁹ 403 U.S. 528 (1971).

¹⁰ LA. CONST. art. 1, § 17. Specifically, Section 17 states that:

[a] criminal case in which the punishment may be capital shall be tried before a jury A case in which the punishment is necessarily confinement at hard labor shall be tried before a jury A case in which the punishment may be confinement at hard labor or confinement without hard labor for more than six months shall be tried before a jury

Id.

¹¹ 359 So. 2d 586 (La. 1978), *overruled on other grounds by* State v. Fernandez, 96-2719 (La. 04/14/98), 712 So. 2d 485, 490.

¹² See *infra* notes 134–42 and accompanying text.

¹³ See State *ex rel.* D.J., 2001-2149 (La. 05/14/02), 817 So. 2d 26, 28.

juvenile district court judge boldly declared Louisiana's outright denial of jury trials in delinquency proceedings unconstitutional, emphasizing the punitive nature of the state's juvenile justice system.¹⁴ However, on direct appeal, the Louisiana Supreme Court affirmed the holding of *Dino* and refused to acknowledge a juvenile's right to a jury trial in a delinquency proceeding.¹⁵ This Note will argue that the Louisiana Supreme Court decided *State ex rel. D.J.* incorrectly and, further, will demonstrate that the nation as a whole should revisit the place of juries in juvenile proceedings.

First, this Note will review the history of juvenile justice in America to establish a complete picture of today's juvenile justice systems. A brief comparison of juvenile justice to criminal justice will follow in order to illuminate the increasingly blurry line between the two systems. Third, by critiquing the Louisiana Supreme Court's decision in *State ex rel. D.J.*, this Note will provide both a detailed account of the issue in Louisiana, and illustrate the flaws in the court's decision. Fourth, the controversy over jury trials in delinquency proceedings will be analyzed in a national context in order to demonstrate the national relevance of *State ex rel. D.J.* Finally, by discussing the potential consequences of allowing alleged juvenile delinquents to demand jury trials, this Note will illustrate that jury trials should be a welcomed addition to America's juvenile justice systems. Ultimately, this Note will assert that Louisiana's recent criminalization of serious¹⁶ juvenile delinquency necessitates extension of the Sixth Amendment right to a jury trial to serious juvenile delinquency proceedings. Additionally, it will demonstrate that this issue is of significant national concern, as troubled youth continue to bear the brunt of

¹⁴ See *id.*

¹⁵ See *id.*, at 34–35.

¹⁶ Limiting this discussion to serious delinquency proceedings is essential because, similar to the criminal system when an adult faces a misdemeanor charge carrying a limited sentence, having a jury would be unreasonable in a proceeding in which a juvenile is accused of a minor offense. While there is no one consideration that distinguishes serious delinquency proceedings from other proceedings, the severity of disposition options and the nature of the alleged act provide some guidance. For instance, a delinquency proceeding for a petty shoplifting offense would not qualify as serious because the alleged act was not violent or particularly troublesome. In contrast, a delinquency proceeding for armed robbery would qualify as serious because the alleged act is violent in nature, and likely disposition options include long-term confinement in a juvenile correctional facility. In Louisiana, the state's delineation between a felony-grade delinquent act and a misdemeanor-grade delinquent act might serve as an appropriate guideline for defining a serious delinquency proceeding. The state could reasonably limit a juvenile's right to demand a jury to proceedings in which the juvenile is accused of a felony-grade delinquent act. See LA. REV. CH. CODE ANN. art. 804 (West 2002) (defining "felony-grade delinquent act" and "misdemeanor-grade delinquent act"); LA. REV. CH. CODE ANN. art. 897 (West 2002) (explaining the disposition options for juveniles adjudicated for felony-grade delinquent acts); LA. REV. CH. CODE ANN. art. 897.1 (West 2002) (explaining the disposition options for juveniles adjudicated for other felony-grade delinquent acts).

punitive juvenile justice systems without the Sixth Amendment due process protection of a trial by jury.

I. THE STORY OF AMERICAN JUVENILE JUSTICE

The history of juvenile justice in America began in the Colonial Period.¹⁷ The emphasis during this era was on the family, as young lawbreakers were sent home to receive punishment from their parents.¹⁸ Only if their parents' discipline proved ineffective were they returned to public officials, who subjected them to further punishment, including public whippings, dunking, and time in the stocks.¹⁹

During the first half of the eighteenth century, a new trend in juvenile justice emerged — houses of refuge.²⁰ These public institutions seem to be the predecessors of modern-day juvenile training schools and institutions. Houses of refuge were strictly-run facilities modeled after Puritan homes, that strove to save disobedient children from their inadequate parents, from the dangers and influences of the streets, and from their own weak morals.²¹ Due to unsanitary and unsafe conditions, overcrowding, and general ineffectiveness, these houses failed to survive into the twentieth century.²² Instead, at century's turn, revolutionary juvenile court systems emerged in response to the demands of juvenile justice reformers.²³

The first juvenile court appeared in 1899 in Cook County, Illinois.²⁴ Based on the concept of *parens patriae*, juvenile courts were expected to "step in and exercise guardianship over a child found under such adverse social or individual conditions as to encourage the development of crime."²⁵ The juvenile was to "receive practically the care, custody, and discipline that are accorded the neglected and dependent child, and which, as the act states, 'shall approximate as nearly as may be that which should be given by its parents.'"²⁶ Ideally, the system would provide flexibility, so that each juvenile would receive the help he or she needed to become a productive member of society.²⁷ The juvenile courts affirmatively

¹⁷ CLEMENS BARTOLLAS, *JUVENILE DELINQUENCY* 12 (5th ed. 2000).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 12–13.

²² *Id.* at 13.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* (quoting the Chicago Bar Association, which was responsible for forming the first juvenile court).

²⁶ *Id.*

²⁷ See Robert G. Caldwell, *The Juvenile Court: Its Development and Some Problems*, in *JUVENILE DELINQUENCY: A READER* 285 (Richard D. Knudten & Stephen Schafer eds., 1970) ("The resulting tendency has been to picture juvenile delinquency as symptomatic of some

recognized that children were not solely to blame for their deviance.²⁸ They considered factors such as poverty, city life, family life, schools, and neighborhoods when determining the juvenile's fate.²⁹ Institutionalization of juveniles continued, however, as the state often determined that the interest of protecting society from a juvenile's potential actions outweighed the juvenile's needs.³⁰

By the mid-twentieth century, every state had its own juvenile court system. At the same time, however, criticism of these systems increased, as many believed the courts were administering inconsistent and arbitrary justice³¹ — proceedings were often conducted hastily; the police treated juveniles with brutality; and juvenile institutions remained unsafe.³² Many advocates for juvenile justice reform suggested that the system was creating more crime, as opposed to preventing it.³³ Even more concerning, the informality of juvenile court proceedings denied juveniles many of their basic rights.³⁴ In response, the Supreme Court heard a series of cases dealing with juveniles' due process rights in delinquency proceedings.³⁵ Most notably, the Court decided *In re Gault*³⁶ in 1957 and *Pennsylvania v. McKeiver*³⁷ in 1971.³⁸

In re Gault arose out of a controversy in Arizona involving a number of juveniles' due process rights.³⁹ Specifically, the Supreme Court held that juveniles

underlying emotional condition, which must be diagnosed by means of the concepts and techniques of psychiatry, psychology, and social work, and for which treatment, not punishment, must be administered . . .").

²⁸ *Id.*

²⁹ BARTOLLAS, *supra* note 17, at 13.

³⁰ *Id.* at 14.

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ See Caldwell, *supra* note 27, at 294. Caldwell explained:

[T]he rights of the child and his parents are especially endangered if the case is handled with extreme informality, because then there is no attorney to guard against the abuse of authority, no set rules to ward off hearsay and gossip, no way of breaking through the secrecy of the hearing, and often no appeal from the court's decision.

Id.

³⁵ BARTOLLAS, *supra* note 17, at 14.

³⁶ 387 U.S. 1 (1967).

³⁷ 403 U.S. 528 (1971).

³⁸ Other Supreme Court cases concerning the due process rights of juveniles include *In re Winship*, 397 U.S. 358 (1970) (holding that the standard of proof in delinquency proceedings is "beyond a reasonable doubt") and *Breed v. Jones*, 412 U.S. 519 (1975) (holding that juveniles are entitled to double jeopardy protections).

³⁹ See *Gault*, 387 U.S. at 4–11.

have the right to notice of charges,⁴⁰ to counsel,⁴¹ to confrontation and cross-examination of witnesses,⁴² and to the privilege against self-incrimination.⁴³ In deciding the case, the Court developed the doctrine of fundamental fairness, which is to be applied whenever the due process rights of juveniles are considered.⁴⁴ In assessing the state of juvenile justice at the time of the opinion, Justice Fortas, writing for the majority, commented:

[T]he highest motives and most enlightened impulses led to a peculiar system for juveniles And in practice . . . the results have not been entirely satisfactory. Juvenile Court history has again demonstrated that unbridled discretion, however benevolently motivated, is frequently a poor substitute for principle and procedure. The absence of substantive standards has not necessarily meant that children receive careful, compassionate, individualized treatment. The absence of procedural rules based upon constitutional principle has not always produced fair, efficient, and effective procedures. Departures from established principles of due process have frequently resulted not in enlightened procedure, but in arbitrariness.⁴⁵

Thus, after *In re Gault*, the Supreme Court established that juvenile courts in the U.S. were failing in certain capacities, particularly in upholding constitutional principles, and that courts should assess the due process rights of juveniles in delinquency proceedings using the doctrine of fundamental fairness. Moreover, *In re Gault* placed a duty upon the Court to evaluate juvenile justice procedures with a focus on juveniles' constitutional rights and the realities of juvenile justice systems.⁴⁶

Relying on the framework established by *In re Gault*, the Supreme Court decided *McKeiver v. Pennsylvania*.⁴⁷ The Court in *McKeiver* was asked to decide a due process issue left unanswered by *In re Gault* — a juvenile's right to a jury trial in a delinquency proceeding. In holding that fundamental fairness does not require the right to a jury trial, the Court supplied several reasons. Most notably, the Court explained that "[t]here is a possibility, at least, that the jury trial, if required as a matter of constitutional precept, will remake the juvenile proceeding

⁴⁰ See *id.* at 31–34.

⁴¹ See *id.* at 34–42.

⁴² See *id.* at 42–57.

⁴³ See *id.*

⁴⁴ See *id.* at 19–21, 30.

⁴⁵ *Id.* at 17–19.

⁴⁶ See *id.* at 13 (explaining, "[W]hatever may be their precise impact, neither the Fourteenth Amendment nor the Bill of Rights is for adults alone.").

⁴⁷ 403 U.S. 528 (1971).

into a fully adversary process and will put an effective end to what has been the idealistic prospect of an intimate, informal protective proceeding.”⁴⁸ The Court also reasoned that jury trials 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.”⁴⁹ Thus, after the Supreme Court affirmed juveniles’ due process rights, excluding the right to a jury trial, juvenile justice systems were restrained in their ability to administer arbitrary justice.

Despite these extensions of juveniles’ constitutional rights, problems continued to persist and new approaches to juvenile justice were considered.⁵⁰ During the 1970s, while the Supreme Court considered juveniles’ due process rights, community-based initiatives began to flourish, as reformers called for these programs to replace juvenile training schools as the source of corrective influence in a juvenile delinquent’s life.⁵¹ By the late 1970s, states were diverting status offenses⁵² from a “criminal” setting into family courts, treating status offenders similarly to dependent and neglected children. States provided these minors with social services and generally refrained from compelling institutionalization.⁵³ At the same time, the system was somewhat ignoring the more serious juvenile offenders, and public outcry over violent youth crime became apparent.⁵⁴

The reformers’ emphasis on diverting status offenders away from criminal sanctions, and seeming neglect of more serious offenders, opened the door for a new era of juvenile justice ushered in by the Reagan administration.⁵⁵ As a result of the Reagan administration’s “get tough” attitude towards juvenile delinquency, five trends emerged during the 1980s: preventative detention, transfer of juveniles to the adult criminal courts, mandatory sentencing, increased confinement of juveniles, and enforcement of the death penalty.⁵⁶ Sweeping reforms of the juvenile justice system continued into the 1990s, as the public became more aware of violent youth crimes.⁵⁷

⁴⁸ *Id.* at 545.

⁴⁹ *Id.* at 547.

⁵⁰ See BARTOLLAS, *supra* note 17, at 14.

⁵¹ *Id.*

⁵² Status offenses include running away from home, truancy, curfew violations, and underage drinking and smoking. A basic definition of a status offense is a punishable act committed by a juvenile that would not be punishable if committed by an adult. *Id.* at 5.

⁵³ *Id.* at 14.

⁵⁴ *Id.* at 15.

⁵⁵ *Id.*

⁵⁶ *Id.* at 16.

⁵⁷ *Id.* at 17 (explaining that these reforms focused on gang activity, hate crimes, gun use, and involvement with drugs).

These reforms manifested themselves in several ways, including new curfew laws,⁵⁸ parental responsibility laws,⁵⁹ a focus on combating gang activity,⁶⁰ graduated sanctions,⁶¹ boot camps, gun prevention, expanded public access to juvenile records and proceedings,⁶² common transfers to criminal courts,⁶³ and expanded sentencing authority for juvenile court judges.⁶⁴

A present-day picture of juvenile justice includes themes from each stage of juvenile justice development: from emphasis on family responsibility, to individualized dispositions, to juvenile executions. For example, a judge in juvenile court retains a wide array of disposition options, yet juveniles still face mandatory sentences and common transfer to adult criminal courts. Furthermore, harsh juvenile facilities continue to exist in this country,⁶⁵ despite the increasing effectiveness of community resources.⁶⁶

Thus, as a juvenile's right to a jury trial in a serious delinquency proceeding is considered, the history and development of juvenile justice in America must be examined in order to determine the motivations for rapidly changing juvenile justice policies and the effectiveness of each policy decision. More importantly, however, a juvenile's place in all of this change must be carefully considered, as the states flirt dangerously with serious violations of juveniles' most basic rights. As juvenile justice continues to become more punitive, Americans must be ever diligent to ensure that the rights of their fellow citizens are not denied in an effort to curb juvenile delinquency.

⁵⁸ Numerous states and localities enacted juvenile curfews to curb delinquency. BARTOLLAS, *supra* note 17, at 17.

⁵⁹ These laws hold parents civilly and criminally liable for their children's delinquent acts. *Id.* at 18.

⁶⁰ This includes both community grassroots efforts and laws that mandate harsher penalties for gang-related crimes such as drive-by shootings. *Id.* at 18-19.

⁶¹ Harsher punishments are mandated for juveniles with multiple offenses or juveniles that have the potential to commit an offense. *Id.* at 19.

⁶² See, e.g., LA. REV. CH. CODE ANN. art. 407 (West 2002) (allowing a judge to open to the public delinquency proceedings that involve violent offenses).

⁶³ See, e.g., LA. REV. CH. CODE ANN. art. 857 (West 2002) (allowing juveniles over the age of fourteen who stand accused of certain offenses to be transferred for criminal prosecution).

⁶⁴ See BARTOLLAS, *supra* note 17, at 17.

⁶⁵ See Robert G. Schwartz, *Juvenile Justice and Positive Youth Development*, in YOUTH DEVELOPMENT: ISSUES, CHALLENGES AND DIRECTIONS 256-57 (2000).

⁶⁶ *Id.* at 261 (listing as examples: the Oregon Social Learning Center that developed an effective foster-care program, and Kaleidoscope in Chicago, which utilized effective "wrap around" services).

II. CRIMINAL JUSTICE AND JUVENILE JUSTICE: AN IMPORTANT DIFFERENCE

Following this discussion of the developments in the juvenile justice system, many important questions emerge. One of these questions is: what do we hope to accomplish from a juvenile delinquency proceeding? More specifically, what should be the goal of an adjudicated juvenile delinquent's disposition?

As juvenile court systems came into existence, it was clear that rehabilitation and treatment were central to dispositions, along with the protection of society.⁶⁷ During the 1980s and 1990s, however, as violent youth crimes became the source of outspoken public concern, punishment of juvenile delinquents also became important. This is evidenced by the trends towards mandatory sentences and criminal trials for certain delinquent acts.⁶⁸

If one compares the goals of sentencing in America's criminal justice system with the present goals of dispositions in the various state juvenile justice systems, it becomes clear that the juvenile justice systems of today are very similar to the modern criminal justice system. Four common goals of the states' criminal justice systems are retribution, deterrence, incapacitation, and rehabilitation.⁶⁹ As discussed above, the latter three goals have been part of juvenile justice since the beginning of the twentieth century.⁷⁰ More recently, however, retribution has become essential in juvenile justice, despite the intentions of those who first developed the juvenile courts.⁷¹ As a result of this development, tension exists between retribution and rehabilitation, and between social control and the juvenile's welfare.⁷² In this battle, retribution and social control generally prevail.⁷³

In fact, as status offenders are diverted away from juvenile delinquency proceedings and the most serious offenders are transferred to criminal court, the focus of juvenile courts becomes directed towards serious delinquent offenders that have not committed offenses so egregious as to be tried as adults.⁷⁴ Juvenile courts

⁶⁷ See *supra* notes 24–30 and accompanying text.

⁶⁸ See *supra* notes 55–66 and accompanying text.

⁶⁹ JOHN M. SCHEB & JOHN M. SCHEB, II, *CRIMINAL LAW AND PROCEDURE* 20–21 (4th ed. 2002).

⁷⁰ See *supra* notes 24–30 and accompanying text.

⁷¹ See *supra* notes 55–66 and accompanying text.

⁷² Schwartz, *supra* note 65, at 250.

⁷³ See *id.* (arguing that juvenile justice officials do not possess a comparable level of concern to an “ordinary devoted parent”).

⁷⁴ See BARRY C. FELD, *BAD KIDS: RACE AND THE TRANSFORMATION OF THE JUVENILE COURT* 246 (1999) (describing state policies that segregate juvenile offenders according to the seriousness of the crime as a “triage” technique).

can then "get tough" and punish these remaining delinquents.⁷⁵

This point forces a serious consideration of a juvenile's right to a jury trial. The *McKeiver* decision seemed to overlook the fact that delinquency proceedings were punitive as well as rehabilitative.⁷⁶ This is true now more so than in the past, as developments in the 1980s and 1990s brought new levels of punishment to juvenile delinquency.⁷⁷

III. A THOROUGH CONSIDERATION OF *STATE EX REL D.J.*

Against one dissenting justice, the Louisiana Supreme Court in *State ex rel D.J.* decided to affirm Louisiana's practice of denying juveniles the right to jury trials in serious delinquency proceedings.⁷⁸ A close look at the majority's reasoning in this case reveals significant logical flaws in their analysis, which leaves their decision open to critique, and the state's practice vulnerable to well-founded criticism. First, it is necessary to discuss both the facts of this case and its procedural history in order to understand the context in which the Louisiana Supreme Court decided the case. It then becomes important to consider the Court's reasoning in the case, evaluating its assertions and conclusions in order to assess the validity of the majority's opinion.

A. Facts and Procedural History

On September 26, 2000, a shooting occurred on the schoolyard of Carter G. Woodson Middle School in New Orleans. According to court records, a fifteen-year-old student, Alfred A., passed a handgun through the schoolyard's fence to a thirteen-year-old student, Darrell J.⁷⁹ After Darrell J. discharged the handgun, another student, William P., obtained the gun and also fired the weapon. William P. lost his kidney and his spleen due to a gun shot wound, and Darrell J. was partially paralyzed and remains wheelchair-bound. Alfred A. was not injured in the incident.

⁷⁵ *Id.* (stating that the Supreme Court based its decision to deny juveniles the right to a jury trial on the differences between juvenile treatment and punishment).

⁷⁶ *See id.* at 247.

⁷⁷ *See supra* notes 55–64 and accompanying text.

⁷⁸ *State ex rel D.J.*, 2001-2149 (La. 05/14/02), 817 So. 2d 26, 34–35 ("While we recognize that the Louisiana juvenile is far from perfect, we are not ready to spell the doom of the juvenile court system by requiring juvenile trials in juvenile adjudications.") (citing *In re C.B.*, 97-2783 (La. 03/11/98), 708 So. 2d 391, 398).

⁷⁹ In typical delinquency proceedings, the initials of any minor discussed in the case are recorded in place of his or her full name in order to protect their anonymity. Due to the media coverage of Darrell J. and Alfred A.'s public trial, their names are known to those outside the courtroom.

On October 24, 2000, Alfred A. and Darrell J. were charged with attempted second-degree murder and carrying a firearm on school property.⁸⁰ On November 30, 2000, Darrell J., joined by Alfred A., filed a motion for a jury trial before the Juvenile District Court for the Parish of Orleans.⁸¹ After considering supporting memorandums and conducting several hearings, the court decided that the juveniles were entitled to a jury trial.⁸² The Juvenile District Court based its decision on recent changes in the state's juvenile justice system that caused delinquency proceedings to become criminal in nature.⁸³ The court also offered a supplemental ruling that declared unconstitutional Article 808 of the Louisiana Children's Code.⁸⁴ Following these rulings, the state filed a direct appeal to the Louisiana Supreme Court. The state supreme court reversed the Juvenile District Court's ruling and remanded the case for further proceedings.⁸⁵

B. Scrutinizing the Majority Opinion

The majority opinion, penned by Justice Victory, presented its argument by: (1) addressing the Juvenile District Court's opinion; (2) providing a cursory picture of the history of the juvenile justice system, including a discussion of the right to a jury trial; (3) discussing relevant precedent; (4) assessing the role of the judge in juvenile proceedings; (5) comparing certain aspects of Louisiana's criminal justice system with its juvenile justice system; and (6) looking at other states' juvenile justice laws and their approaches to the issue.⁸⁶ A careful look at several of the Louisiana Supreme Court's arguments uncovers significant flaws in the court's analysis.

The Louisiana Supreme Court first focused on a mistake committed by the Juvenile District Court for the Parish of Orleans.⁸⁷ The court pointed out that while the lower court properly recognized that Article 808 of the Louisiana Children's Code does not expressly prohibit jury trials in juvenile delinquency proceedings,⁸⁸

⁸⁰ See LA. REV. STAT. ANN. § 14:27 (West 2002); LA. REV. STAT. ANN. § 14:30.1 (West 2002); LA. REV. STAT. ANN. § 14:95.2 (West 2002).

⁸¹ D.J., 2001-2149 (La. 05/14/02), 817 So. 2d at 28.

⁸² *Id.*

⁸³ See *id.* (stating that the trial court relied on Article 808 of the Children's Code, which granted juveniles all the rights afforded criminal defendants, except jury trials, as an enabling statute, and not a due process violation).

⁸⁴ *Id.* Article 808 guarantees juveniles facing court proceedings all rights guaranteed to criminal defendants, except the right to a jury trial. LA. REV. CH. CODE ANN. art. 808 (West 2002).

⁸⁵ D.J., 2001-2149 (La. 05/14/02), 817 So. 2d at 34-35.

⁸⁶ *Id.*

⁸⁷ *Id.* at 28-29.

⁸⁸ LA. REV. CH. CODE ANN. art. 808 (West 2002).

it overlooked Article 882, which explicitly states that juvenile adjudication hearings must be held without a jury.⁸⁹ This is primarily a technical mistake and does not change the analysis on either side of the argument. However, it is important to understand that not only are juveniles facing delinquency proceedings denied the right to *demand* a jury trial, they may not even make a *request* for a jury trial, even if the court believes that a jury trial is necessary to guarantee a fair proceeding. This point made the Louisiana Supreme Court's decision critical, as their finding, that the right to a jury trial in delinquency proceedings is not constitutionally guaranteed, ensured that juveniles cannot have their cases heard before a jury.⁹⁰

The majority devoted a portion of their opinion to a review of the history of juvenile justice in America.⁹¹ One major consideration emerges from the court's discussion: Louisiana's juvenile justice system was founded upon the same philosophy as all of the other juvenile justice systems in the United States.⁹² This philosophy focused on nurturing and rehabilitating youth.⁹³ This point was important to the court because it laid the groundwork for the assertion that juvenile adjudication proceedings should be decided by a judge. However, as will be demonstrated below, this philosophy has been lost in Louisiana, as state laws have become focused more on retribution than rehabilitation.

The court then proceeded to discuss U.S. Supreme Court decisions and Louisiana Supreme Court decisions that have affected the right to a jury trial in serious delinquency proceedings.⁹⁴ First, the majority mentioned *In re Gault*, a 1967 Supreme Court case that established the "fundamental fairness" doctrine.⁹⁵ Also mentioned are decisions rendered by the Louisiana Supreme Court that relied on this doctrine.⁹⁶ The court then discussed *McKeiver v. Pennsylvania*,⁹⁷ the Supreme Court decision that denied a juvenile's right to a jury trial.⁹⁸ Finally, the court relied upon its previous holding in *In re Dino*,⁹⁹ a decision that, in following

⁸⁹ LA. REV. CH. CODE ANN. art. 882 (West 2002).

⁹⁰ Unless, of course, their decision is overruled by a future court.

⁹¹ *D.J.*, 2001-2149 (La. 05/14/02), 817 So. 2d at 29.

⁹² *Id.*

⁹³ See LA. REV. CH. CODE ANN. art. 801 (West 2002) (explaining the goal of Louisiana's juvenile justice system).

⁹⁴ See *D.J.*, 2001-2149 (La. 05/14/02), 817 So. 2d at 29-30.

⁹⁵ See *In re Gault*, 387 U.S. 1 (1967) (affirming a juvenile's right to notice of charges, to counsel, to confrontation and cross-examination of witnesses, and to privilege against self-incrimination in delinquency proceedings).

⁹⁶ *D.J.*, 2001-2149 (La. 05/14/02), 817 So. 2d at 29-30 (citing *In re Banks*, 402 So.2d 690 (La. 1978) (granting juveniles the right to preadjudication bail) and *In re Causey*, 363 So. 2d 472 (La. 1978) (allowing the defense of insanity to be raised in delinquency proceedings)).

⁹⁷ 403 U.S. 528 (1971).

⁹⁸ See *D.J.*, 2001-2149 (La. 05/14/02), 817 So. 2d at 30.

⁹⁹ 359 So. 2d 586 (La. 1978).

McKeiver, also denied juveniles the right to jury trials.¹⁰⁰ These cases demonstrate that the court would have to disregard the precedent set by *Dino*, overrule its past holding, and ignore the authority of *McKeiver*, a case that has stood for more than thirty years, if it were to declare that a juvenile's right to a jury trial in delinquency proceedings is constitutionally guaranteed.

The Louisiana Supreme Court placed undue emphasis and reliance on *McKeiver* and *Dino*. While following precedent is an essential aspect of judicial decision making, it should not be relied upon when the precedent is no longer valid.¹⁰¹ It is important to note that the Louisiana Supreme Court relied heavily on *McKeiver* when it decided *Dino*.¹⁰² Thus, in order to demonstrate the diminishing relevance of both cases, only the *McKeiver* decision must be analyzed.

Both the amicus brief¹⁰³ and Justice Johnson's dissenting opinion¹⁰⁴ emphasized two pitfalls in relying on *McKeiver* as binding precedent. First, the decision rests on a plurality opinion that resulted in an indefinite holding. Second, an important basis for the decision was the distinction between juvenile delinquency proceedings and criminal proceedings. Because this distinction no longer exists in many jurisdictions, the Supreme Court's reasoning in *McKeiver* is no longer relevant.

Justice Blackmun penned the *McKeiver* decision, and was joined by Chief Justice Burger and Justices White and Stewart. Justice Blackmun emphasized that because juvenile delinquency proceedings are premised on "[] fairness, [] concern, [] sympathy, and [] paternal attention,"¹⁰⁵ and because jury trials would cause delay, formality, adversity, and loss of confidentiality, jury trials are not constitutionally guaranteed in delinquency proceedings.¹⁰⁶ This point of view, however, was not supported by the majority of the Court and should not be relied upon as definitive.¹⁰⁷ As the amici emphasized, "While Justice Blackmun's opinion in *McKeiver* has generally been cited as the opinion of the Court, the plurality opinions actually share no common rationale."¹⁰⁸ The amici further argued that the Supreme Court has explained "the holding of the plurality opinion is the narrowest

¹⁰⁰ See *D.J.*, 2001-2149 (La. 05/14/02), 817 So. 2d at 30.

¹⁰¹ See Brief of Amici Curiae Juvenile Law Center et al. at 9, 12-13, *State ex rel. D.J.*, 2001-2149 (La. 05/14/02), 817 So. 2d 26 (No. 2001-KA-2149) [hereinafter Brief].

¹⁰² See *Dino*, 359 So. 2d at 598. The court specifically noted that:

For reasons similar to those expressed in *McKeiver*, a majority of this Court has concluded that the Louisiana due process guaranty. . . does not afford a juvenile the right to a jury trial during the adjudication of a charge of delinquency based upon acts that would constitute a crime if engaged in by an adult.

Id.

¹⁰³ Brief, *supra* note 101.

¹⁰⁴ See *D.J.*, 2001-2149 (La. 05/14/02), 817 So. 2d at 35-40 (Johnson, J., dissenting).

¹⁰⁵ *McKeiver*, 403 U.S. at 550.

¹⁰⁶ See *id.* at 545, 550.

¹⁰⁷ See *D.J.*, 2001-2149 (La. 05/14/02), 817 So. 2d at 35 (Johnson, J., dissenting).

¹⁰⁸ Brief, *supra* note 101, at 12.

grounds as to which an agreement among five justices can be inferred."¹⁰⁹ Thus, the mere fact that Justice Blackmun's opinion in *McKeiver* is a plurality opinion calls into question the Louisiana Supreme Court's reliance on *McKeiver*.

The amici and Justice Johnson argued that the distinction between criminal proceedings and Louisiana's juvenile justice system is no longer significant enough to support adherence to the Supreme Court's holding in *McKeiver*.¹¹⁰ As Justice Blackmun pointed out, it is undisputed that "fundamental fairness" must be considered when determining if jury trials should be afforded to juveniles facing delinquency proceedings.¹¹¹ Thus, when a court considers this question, it must always return to this basic standard. While at the time of the *McKeiver* decision, fundamental fairness may have warranted the denial of the right to a jury trial, the nature of juvenile justice is different today, particularly in Louisiana.¹¹² The juvenile justice system's rapid change during the more than thirty years since *McKeiver* seriously undermined any reliance on that decision, as the Court rendered its decision after considering a very different concept of juvenile justice.¹¹³ Also consider that three justices dissented in *McKeiver*, holding that juveniles have the right to a jury trial,¹¹⁴ and two concurring justices suggested that they would grant jury trials when delinquency proceedings became too criminal in nature.¹¹⁵ Thus, *McKeiver*, although binding authority, is seriously compromised because it has become outdated, and because it was decided by a Court with varying perspectives on an issue that failed to produce a majority opinion.¹¹⁶

Indeed, *McKeiver* itself also stood upon a questionable premise. The Supreme Court failed to recognize that despite the rehabilitative goals of juvenile justice systems, in reality, juveniles were being punished.¹¹⁷ The Supreme Court continually referenced the goal of rehabilitation, but this goal was no longer a

¹⁰⁹ *Id.* (citing *Marks v. United States*, 430 U.S. 188, 193 (1977)).

¹¹⁰ *See id.* at 13–15; *see also D.J.*, 2001-2149 (La. 05/14/02), 817 So. 2d at 35–40 (Johnson, J., dissenting).

¹¹¹ *McKeiver*, 493 U.S. at 544.

¹¹² Brief, *supra* note 101, at 14 ("Louisiana has incorporated principles of punishment and accountability into its juvenile justice system — the two basic hallmarks of the adult criminal justice system. Where the *McKeiver* Court assumed the justice system mandated only rehabilitation and treatment for its young offenders."); *see also D.J.*, 2001-2149 (La. 05/14/02), 817 So. 2d at 36–37 (Johnson, J., dissenting).

¹¹³ Consider the changes discussed above. *See supra* notes 51–64 and accompanying text.

¹¹⁴ *See D.J.*, 2001-2149 (La. 05/14/02), 817 So. 2d at 35 (Johnson, J., dissenting) (referring to Justice Douglas's dissent, which was joined by Justice Black and Justice Marshall).

¹¹⁵ *See id.* (Johnson, J., dissenting) (referring to Justice White's and Justice Harlan's concurring opinions).

¹¹⁶ Brief, *supra* note 101, at 12 (discounting the persuasiveness of a plurality opinion).

¹¹⁷ *See FELD*, *supra* note 74, at 246 (asserting that the punitive nature of involuntary loss of personal liberty eluded the Court in *McKeiver*).

reality.¹¹⁸ Thus, if the Court hoped to prevent punitive dispositions in juvenile courts, it did not do so by denying jury trials — punishment was already a reality. Considering again the changes that have occurred since *McKeiver*, it becomes even clearer that whatever ideal may have existed as states developed their juvenile justice systems had been eroded by the time of *McKeiver*, and continued to diminish since that landmark case.

In addition to *McKeiver* and *Dino*, the Louisiana Supreme Court also relied on *In re C.B.* to support its decision.¹¹⁹ In that case, the court declared unconstitutional a law that allowed delinquent juveniles to be sent to adult penitentiaries when they turned seventeen.¹²⁰ The court applied that reasoning to the present case by inferring that, because it chose to declare that law unconstitutional, it was also making the decision that juveniles should not be granted the right to a jury trial.¹²¹ According to the majority:

This holding is significant, because it infers that the Court determined that the other statutes that “blurred the distinction” between adult and juvenile proceedings, such as the public hearing and the sentence enhancement statutes, did not offend due process requirements to such an extent that a jury trial would be required.¹²²

This is a substantial inference for the court to make. The issue of trial by jury was not before the court when it decided *In re C.B.*; they only needed to decide the constitutionality of the law that transferred juveniles to adult prisons.¹²³ To assume that the authority to deny a juvenile’s right to demand a jury trial stems from this decision is an inappropriate inferential leap. The Louisiana Supreme Court should not conclude from its earlier silence concerning the issue of jury trials that it affirmatively asserted that juveniles should not have the right to a jury trial. Moreover, *In re C.B.* contains language which suggests that the court believed the juvenile justice system in Louisiana was becoming increasingly criminal in nature.¹²⁴ If there is any consideration that should be extracted from *In re C.B.*, it

¹¹⁸ *Id.*

¹¹⁹ *See D.J.*, 2001-2149 (La. 05/14/02), 817 So. 2d at 32.

¹²⁰ *In re C.B.*, 97-2783 (La. 03/11/98), 708 So. 2d 391.

¹²¹ *See D.J.*, 2001-2149 (La. 05/14/02), 817 So. 2d at 32.

¹²² *Id.* at 33.

¹²³ *See C.B.*, 97-2783 (La. 03/11/98), 708 So. 2d at 394–95 (listing the issues appealed to the Louisiana Supreme Court).

¹²⁴ *See id.* at 396 (explaining that “[t]he changing nature of juvenile crime, however, has engendered changes in the nature of the juvenile delinquency adjudication which have blurred the distinction between juvenile and adult procedures,” and as a result, “the once heralded distinctions between juvenile and adult proceedings in this state are fast diminishing.”).

is that Louisiana's juvenile justice system was teetering on the line between juvenile and criminal at the time the Louisiana Supreme Court decided the case.

The supreme court next anticipated how juries would affect the judge's role in juvenile delinquency proceedings, asserting that jury trials would "destroy the flexibility of the juvenile judge as the trier of fact, which allows the judge to take into consideration social and psychological factors, family background, and education in order to shape the disposition in the best interest of both the child and society."¹²⁵ This belief is faulty on two grounds. First, why would Louisiana's juvenile justice system want a trier of fact to be flexible? Determining whether a juvenile committed a delinquent act should result in a simple yes or no answer. With only two answers available to the trier of fact in an adjudication proceeding, there is no place for flexibility.

The flexibility should come into play during the disposition, which leads to the second shortcoming in the court's assertion. The fact that a jury is the trier of fact during an adjudication proceeding would have minimal effect on the judge's flexibility during the disposition. The disposition is the proceeding in which a juvenile court judge should consider "social and psychological factors, family background, and education" in order to craft an appropriate and effective disposition.¹²⁶ These considerations should help the judge determine how best to rehabilitate the juvenile delinquent. They should not determine whether or not a juvenile should be adjudicated delinquent.¹²⁷ Therefore, the court's reasoning on this matter was erroneous.

The Louisiana Supreme Court next discussed the great disparity between the sentence facing a juvenile delinquent adjudicated for attempted second-degree murder and carrying a firearm on school property versus the sentence facing an adult who commits the same offenses.¹²⁸ Admittedly, the disparity is significant. However, even though juvenile dispositions may be considered less punitive than adult sentences, such dispositions may still stray from the goal of rehabilitation. As Justice Johnson made clear in his dissent, an eight-year term at one of Louisiana's juvenile prisons is a punitive sentence.¹²⁹ Therefore, the difference between the sentences for adult and juvenile offenders is insignificant in determining whether dispositions are punitive.

¹²⁵ *D.J.*, 2001-2149 (La. 05/14/02), 817 So. 2d at 33.

¹²⁶ This language is borrowed from the text accompanying note 125, which is extracted from the majority opinion in *D.J.*

¹²⁷ *Id.* at 39 (Johnson, J., dissenting) ("The judge would still be free to take into consideration social and psychological factors, family background, and education in order to shape the disposition in the best interest of both the child and society.").

¹²⁸ *See id.* The difference being a maximum eight-year sentence for the juvenile as compared with fifty-five years for the adult.

¹²⁹ *Id.* at 37 (Johnson, J., dissenting) (pointing to several stories printed by the *New York Times* that reported on the horrifying conditions at Louisiana's juvenile prisons).

Furthermore, adults charged with offenses punishable by six months or more in prison are afforded the right to a jury trial in Louisiana.¹³⁰ Thus, even if the sentencing options for adults were equivalent to the disposition options of juveniles (a maximum of eight years in this case), adult offenders would still have the right to a jury.

In completing its argument against affording juveniles the right to a jury trial, the court compared Louisiana's juvenile justice system to the systems of other states.¹³¹ Specifically, it focused on statutes that allow juveniles under the age of fourteen to be imprisoned beyond their twenty-first birthdays if they have been adjudicated delinquent.¹³² Louisiana law ensures that a juvenile that has been adjudicated delinquent for an offense committed before his or her fourteenth birthday will not be imprisoned beyond age twenty-one.¹³³ The court likely highlights this comparison to demonstrate that, unlike other states, Louisiana has not taken certain steps to criminalize juvenile delinquency. This point should not affect the outcome of the case. While Louisiana does not have this particular law, it does have other laws that criminalize juvenile delinquency.¹³⁴ Thus, the presence or absence of this law is not a dispositive factor in the assessment of Louisiana's juvenile justice system.

In order to support its reasoning and decision in this case, the Louisiana Supreme Court cited several decisions from other jurisdictions.¹³⁵ The decisions have refuted challenges to *McKeiver's* reasoning,¹³⁶ have refused to recognize the right to a jury trial based on the state constitution,¹³⁷ have maintained *McKeiver's* applicability despite changes in the juvenile justice system,¹³⁸ and have rejected claims that equal protection requires that juveniles have the right to jury trials.¹³⁹ It is important to note that the court was not citing binding authority, as opinions rendered by other states' courts are, at best, persuasive. Additionally, none of the cases cited by the court expressly consider the Louisiana juvenile justice system. Just as in any other state, it is a unique system that should be individually

¹³⁰ See *id.* at 39 (Johnson, J., dissenting).

¹³¹ See *id.* at 33.

¹³² See *id.* at 33.

¹³³ *Id.*

¹³⁴ For example, the two laws highlighted in this opinion. See *id.* at 31 (discussing LA. REV. CH. CODE ANN. art. 407(A) (West 2002) (allowing delinquency proceedings to be open to the public if they concern an act of violence or a subsequent adjudication) and LA. REV. STAT. ANN. § 15:529.1 (West 2002) (mandating sentencing for habitual offenders)).

¹³⁵ See *id.* at 34.

¹³⁶ *Id.* (citing *United States v. C.L.O.*, 77 F.3d 1075 (8th Cir. 1996), *cert. denied*, 518 U.S. 1027 (1996)).

¹³⁷ *Id.* (citing *State v. Lord*, 822 P.2d 177 (1992), *cert. denied*, 506 U.S. 856 (1992)).

¹³⁸ *Id.* (citing *In re Myresheia W.*, 72 Cal. Rptr. 2d 65 (1998)).

¹³⁹ *Id.* (citing *People In re T.M.*, 742 P.2d 905 (Colo. 1987)).

considered by the Louisiana courts. Because the Louisiana juvenile justice system is peculiar to Louisiana, it should be treated as such by its state courts. Accordingly, the national trend that upholds *McKeiver* and its progeny is minimally important.

C. What the Louisiana Supreme Court Failed to Discuss

Beyond what the court offered as its reasoning for its decision, it is also important to consider what the court failed to discuss in its opinion. While the court mentioned the two laws that the juveniles, the amici, and the dissent suggested blurred the line between juvenile and criminal proceedings, it did not adequately address the effects of these laws.¹⁴⁰ The majority also failed to refute specifically the argument made by Justice Johnson in dissent that these laws make the Louisiana juvenile justice system so similar to the criminal justice system that the reasoning of *McKeiver* no longer applies in Louisiana.¹⁴¹ Justice Johnson pointed out that the Louisiana law, which opened all juvenile delinquency proceedings involving crimes of violence to the public, destroys the confidentiality of juvenile proceedings.¹⁴² Confidentiality has been considered an essential aspect of juvenile justice.¹⁴³ Justice Johnson cited three articles published in Louisiana, which discuss the story of Darrell J. and Alfred A., recounting the events of the schoolyard shooting and revealing the two youths' full names, thereby demonstrating that this law clearly affects juvenile proceedings.¹⁴⁴ Therefore, the publicity directed towards these proceedings was no different than the publicity that would be directed towards a high-profile criminal trial. This certainly does not evoke images of the intimate settings foreseen by the creators of the modern juvenile justice systems.

Justice Johnson also discussed Louisiana's Habitual Offender Law, which allows juvenile adjudications for drug offenses or violent crimes to be considered in subsequent proceedings concerning adult felony offenses.¹⁴⁵ Darrell J.'s and Alfred A.'s potential adjudication for their involvement in the schoolyard shooting could be used to enhance any adult felony charges that they might face in the

¹⁴⁰ See *State ex rel. D.J.*, 2001-2149 (La. 05/14/02), 817 So. 2d at 31.

¹⁴¹ See generally *id.* at 817 So.2d at 36-39 (Johnson, J., dissenting).

¹⁴² *Id.* at 36 (referring to LA. REV. CH. CODE ANN. art. 407(A) (West 2002)).

¹⁴³ See *id.*

¹⁴⁴ See *id.* (citing to Natalie Pompilio, *Two Teenagers Shoot Each Other at School; 13-year-old hits rival, 15, who Grabs Gun, Fires*, TIMES PICAYUNE, Sept. 27, 2000, at A1; Bob Ussery, *Suspect in Shooting Released from Hospital; Woodson Student Faces Friday Hearing*, TIMES PICAYUNE, Oct. 12, 2000, at B3); see also Katy Reckdahl, *Kids in the Hall*, GAMBIT WEEKLY, at <http://www.bestofneworleans.com/archives/2001/0522/covs.html> (May 22, 2001).

¹⁴⁵ See *D.J.*, 2001-2149 (La. 05/14/02), 817 So. 2d at 36-37.

future.¹⁴⁶ In addition to the press coverage of their adjudication, the significant effect that these laws have on a juvenile's experience is evident.

After mentioning mandatory maximum sentencing laws and the harsh reality of the Louisiana training institutes (youth detention centers),¹⁴⁷ Justice Johnson concluded that "[g]iven the incorporation of principles of punishment and accountability into the juvenile system, the adjudications have become more criminal than civil in nature."¹⁴⁸ This thorough consideration of the laws that sit at the heart of this controversy was not matched by the majority. Their discussion instead avoided mentioning the reality of these laws' effects, focusing instead on the considerations mentioned above.¹⁴⁹

D. Conclusions about State ex rel. D.J.

The Louisiana Supreme Court's decision in *State ex rel. D.J.* contained several flaws that rendered the court's logic invalid. The court made arguments that were irrelevant to the decision at hand, relied on outdated precedent, misinterpreted binding precedent, and ignored the realities of Louisiana's juvenile justice system. As a result, the court denied juveniles in its state the right to jury trials, a right that should be constitutionally guaranteed under the Sixth Amendment.

IV. BEYOND LOUISIANA: JURY TRIALS IN DELINQUENCY PROCEEDINGS ACROSS AMERICA

It is important to look beyond Louisiana when considering jury trials in delinquency proceedings in order to illustrate the current state of this nationwide controversy. An investigation into other states' experiences with this issue reveals that some states grant juveniles the right to demand jury trials.¹⁵⁰ It also demonstrates that the current controversy in Louisiana is not the sole instance of

¹⁴⁶ See *id.* at 39.

¹⁴⁷ It is also interesting to note that Louisiana incarcerates juveniles at a higher rate than any other state. JUVENILE JUSTICE CTR., THE A.B.A., CHILDREN LEFT BEHIND: AN ASSESSMENT OF ACCESS TO QUALITY OF REPRESENTATION IN DELINQUENCY PROCEEDINGS IN LOUISIANA 2 (Gabriella Celeste & Patricia Puritz eds., 2001) [hereinafter CHILDREN LEFT BEHIND].

¹⁴⁸ *D.J.*, 2001-2149 (La. 05/14/02), 817 So. 2d at 32 at 38 (Johnson, J., dissenting). Others have highlighted the Louisiana training institutes as particularly harsh. See Schwartz, *supra* note 65, at 256-57; CHILDREN LEFT BEHIND, *supra* note 147, at 8 (explaining that Louisiana training institutes often lack proper rehabilitative services and receive frequent complaints about abuse).

¹⁴⁹ See *supra* notes 91-139 and accompanying text.

¹⁵⁰ See *infra* notes 152-54 and accompanying text.

debate over jury trials in delinquency proceedings in the United States.¹⁵¹

A. Some States Allow Juries in Delinquency Proceedings

Less than twenty states grant juveniles the right to jury trials.¹⁵² Some states grant this right in order to protect a juvenile from the potential prejudice of a judge, while others simply believe that the right to a jury trial is of fundamental importance.¹⁵³ In fact, many states have even codified this right.¹⁵⁴ This is important, not because the laws of other states should be a controlling influence on Louisiana, but because these states demonstrate that jury trials can be part of delinquency proceedings and, furthermore, have not destroyed any state juvenile system's ability to operate.

B. Some States Struggle With the Same Issues as Louisiana

Beyond this brief mention of states that have granted juveniles the right to jury trials, it is important to consider other states that have recently grappled with the issue. In the past decade, scholars have considered certain states' recently enacted laws that, like the two Louisiana laws highlighted in *State ex rel. D.J.*, enhance the punitive aspect of the states' juvenile justice systems. It is valuable to consider scholars' thoughts on these legislative developments and how they might affect a juvenile's right to a jury trial. This review will help place Louisiana's situation in a modern, national context, demonstrating both that Louisiana's situation is not unique and that a serious look at this issue is necessary at this juncture in the evolution of the American juvenile justice system.

California passed Proposition 184 in 1995, popularly referred to as a "three-strikes-and-you're-out" law.¹⁵⁵ It requires a sentence of twenty-five years to life imprisonment if a defendant has two prior felony convictions.¹⁵⁶ David C. Owen looked at how this law affects California's juvenile justice system.¹⁵⁷ Under the new law, juvenile delinquency adjudications count towards the three strikes if they

¹⁵¹ See *infra* notes 155–82.

¹⁵² Korine L. Larsen, *With Liberty and Juvenile Justice for All: Extending the Right to a Jury Trial to the Juvenile Courts*, 20 WM. MITCHELL L. REV. 835, 856 (1994).

¹⁵³ *Id.* at 857.

¹⁵⁴ See, e.g., N.M. STAT. ANN. § 32A-2-16 (Michie 2002); WYO. STAT. ANN. § 14-6-223 (Michie 2001); KAN. STAT. ANN. § 38-1656 (2000); ARK. CODE. ANN. § 9-27-505 (Michie 1995).

¹⁵⁵ CAL. PENAL CODE § 1170.12 (West Supp. 1995).

¹⁵⁶ *Id.*

¹⁵⁷ See David C. Owen, Comment, *Striking Out Juveniles: A Reexamination of the Right to a Jury Trial in Light of California's "Three Strikes" Legislation*, 29 U.C. DAVIS L. REV. 437 (1996).

concern violent acts.¹⁵⁸ Therefore, similar to the law in Louisiana, juvenile delinquency adjudications in California have serious future effects on juveniles' adult lives. Owen presented the following hypothetical situation in order to demonstrate the severe implications of this law on the juvenile justice system:

John J. Delinquent is a nineteen-year-old man residing in the state of California. When John J. was thirteen, a California juvenile court sentenced him to six months in a California Youth Authority detention center for burglarizing a neighbor's house. A year later, he received a one year sentence for forcefully taking a fellow student's lunch money. John J. did not receive jury trials in those juvenile proceedings because, under California law, he did not have the right to a jury trial. Currently, John J. Delinquent is serving twenty-five years to life in a California state prison for robbing a slice of pizza from a child. Under California's "three strikes" law, Proposition 184, the trial court used John J.'s two prior juvenile adjudications to enhance his sentence to a minimum of twenty-five years.¹⁵⁹

Despite the fact that John J. was a juvenile when he was adjudicated for the first two offenses and was not afforded the right to a jury trial, these two offenses counted towards his three strikes.¹⁶⁰ Even though this is a hypothetical, the fact that John J. faces twenty-five years in prison for burglarizing a neighbor's house, robbing a peer, and stealing a slice of pizza would (hopefully) seem extreme to most. The fact that his convictions for two of these offenses occurred without the option of a jury trial should offend the American sense of justice.¹⁶¹

Owen argued that Proposition 184 fundamentally altered juvenile court proceedings in California.¹⁶² He summarized his discussion by commenting, "Today, California defines juvenile adjudications as felony convictions for the purpose of sentence enhancement . . . Proposition 184 . . . has created extremely harsh punitive consequences of juvenile adjudications for serious juvenile offenders. In addition, the purpose and processes of juvenile proceedings now reflect the punitive nature of the adult criminal justice system."¹⁶³ With this in mind, Owen concluded that serious juvenile offenders should have the right to jury

¹⁵⁸ See CAL. PENAL CODE § 1170.12 (West Supp. 1995).

¹⁵⁹ Owen, *supra* note 157, at 437 (footnotes omitted).

¹⁶⁰ *Id.* at 438.

¹⁶¹ As Owen pointed out, this story is not a far stretch from the truth. A widely publicized story out of California demonstrated that a man could face twenty-five years in prison for stealing a slice of pizza. *Id.* at 437 n.5 (citing *25 Years for a Slice of Pizza*, N.Y. TIMES, Mar. 5, 1995, S1 at 21).

¹⁶² *Id.* at 464.

¹⁶³ *Id.*

trials.¹⁶⁴

The District of Columbia's decision to deny juveniles the right to demand a jury trial in delinquency proceedings recently came into question after a class-action suit condemned the District's juvenile justice system.¹⁶⁵ The class-action suit criticized the nonrehabilitative nature of the system, accusing juvenile treatment facilities of failing to provide adequate care, rehabilitation, and treatment.¹⁶⁶ Although this case ended in a settlement, Judge Ricardo Urbina issued a consent decree, which was binding upon the District, that mandated a panel be formed to create a plan for improving conditions in the District's juvenile facilities.¹⁶⁷ Despite the consent decree, facilities remained inadequate, as the District refused to comply.¹⁶⁸

Susan E. Brooks highlighted this class action in her discussion of a juvenile's right to a jury trial in the nation's capital.¹⁶⁹ The lack of rehabilitation in the treatment facilities supported her view that it is past time for jury trials in delinquency proceedings.¹⁷⁰ The ills of the treatment facilities include overcrowding, lack of continuum of care, physical abuse of the youth, poor education services, excessive lockdowns, and insufficient medical services.¹⁷¹ These deficiencies prove that the District's juvenile justice system is not rehabilitative.¹⁷² She concludes her comments on the issue by explaining:

Despite well-meaning intentions, the juvenile court system is not exactly a safe haven for wayward youth. In fact, conditions for juveniles facing delinquency proceedings are hostile in the courtroom and beyond . . . [i]t is necessary to implement juvenile jury trials to ensure that only those juveniles who truly need help are put into the overcrowded facilities which purport to provide such help.¹⁷³

Thus, Brooks proposes yet another argument for jury trials in juvenile proceedings: juries will ensure that only those juveniles who have truly committed delinquent offenses will be adjudicated, enabling juvenile justice systems to focus their limited

¹⁶⁴ *Id.*

¹⁶⁵ See Susan E. Brooks, *Juvenile Injustice: The Ban on Jury Trials in the District of Columbia*, 33 U. LOUISVILLE J. FAM. L. 875, 902 (1995) (referencing *Jerry M. v. District of Columbia*, No. 1519-85 (D.C. filed 1985)).

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.* at 903.

¹⁶⁹ See *id.* at 902-04.

¹⁷⁰ See *id.*

¹⁷¹ *Id.* at 903 (citing Michael K. Lewis, *Twenty-Third Report of the Monitor* (Feb. 16, 1993)).

¹⁷² *Id.*

¹⁷³ *Id.* at 908.

resources on those who might best benefit from their rehabilitative efforts.

Jury trials in delinquency proceedings also caused controversy in Wisconsin in 1996, when the state significantly changed its Juvenile Justice Code.¹⁷⁴ These changes included the separation of juvenile delinquents from "children in need of supervision" in the code sections,¹⁷⁵ the lowering of both the minimum age that a youth can be adjudicated delinquent from twelve to ten-years-old and the maximum age from eighteen to seventeen-years-old, and most importantly, the elimination of jury trials in juvenile delinquency proceedings.¹⁷⁶ Thus, Wisconsin's juvenile justice system presented a unique look at the issue of jury trials, as they had been part of the state's juvenile justice tradition.

Soon after Wisconsin's new Juvenile Justice Code took effect, a case was brought before the state's supreme court that challenged the Code's constitutionality.¹⁷⁷ In a 4-3 decision, the Wisconsin Supreme Court held that the Juvenile Justice Code did not create a juvenile justice system that was criminal in nature and, therefore, jury trials were not constitutionally guaranteed.¹⁷⁸ The court pointed to the Code's balanced approach, which considered rehabilitation, accountability, and community protection.¹⁷⁹

Jaime L. Preciado argued that the Wisconsin Supreme Court, in overlooking several features of the new Juvenile Justice Code, erroneously declared the Wisconsin legislature's decision to remove jury trials from delinquency proceedings constitutional.¹⁸⁰ Wisconsin serves as a valuable example of the wide array of juvenile justice systems in America. Despite Wisconsin's tradition of jury trials in delinquency proceedings, and apparent precedent that recognizes the right to jury trials in delinquency proceedings,¹⁸¹ the court recently denied juveniles this due process protection.¹⁸²

These brief discussions of recent controversies over jury trials in delinquency proceedings demonstrate the national scope of this issue. While a minority of states have resolved this issue by granting juveniles the right to a jury trial, a broad, national overview seems to highlight the tensions among the tradition of denying

¹⁷⁴ See Jaime L. Preciado, Comment, *The Right to a Jury Trial in Wisconsin: Rebalancing the Balanced Approach*, 1999 WIS. L. REV. 571, 586-87 (1999).

¹⁷⁵ The laws created a new Juvenile Justice Code that focused on juvenile delinquency, but laws concerning children in need of supervision remained in the Children's Code. See WIS. STAT. ANN. § 938.01 (West 2000).

¹⁷⁶ Preciado, *supra* note 174, at 586-87.

¹⁷⁷ See *id.* at 571 nn.4-6 (citing *In re Hezzie R.*, 580 N.W.2d 660 (1998); *In re Luis H.*, 580 N.W.2d 660 (1998); *In re Ryan D.L.*, 580 N.W.2d 660 (1998)).

¹⁷⁸ *Id.* at 573.

¹⁷⁹ *Id.* at 574.

¹⁸⁰ See *id.* at 571-606.

¹⁸¹ *Id.* at 587-90.

¹⁸² *Id.* at 572-73 (citing *In re Hezzie R.*, 580 N.W.2d 660 (1998)).

juveniles this right, *McKeiver*'s uncertain holding, and increasingly punitive juvenile justice reforms. If the Louisiana Supreme Court (or California or Wisconsin) became the first court to grant juveniles the right to jury trials, it would have national implications. An affirmative recognition by one state that its juvenile justice system has become so criminal in nature that jury trials are a constitutional necessity would have the potential to start a new national trend. Perhaps, this trend might finally give significant meaning to Justice Fortas's majority opinion in *In re Gault*.¹⁸³

Unfortunately, with the *State ex rel. D.J.* decision by the Louisiana Supreme Court, the ideal moment to give significance to Justice Fortas's sentiments¹⁸⁴ may have passed. Just as in California, Louisiana considers juvenile delinquency adjudications when determining minimum sentencing guidelines.¹⁸⁵ Like the District of Columbia, Louisiana has a notoriously inadequate juvenile justice system known for the harsh existence it bestows upon the juveniles that are subjected to its "rehabilitative" efforts.¹⁸⁶ Moreover, as previously discussed, Louisiana opens certain delinquency proceedings to the public.¹⁸⁷ So, if there ever was a place and time for a state to be the first state in recent years to find it necessary to allow juveniles facing serious delinquency charges to demand jury trials, that place and time was Louisiana in 2002. Hopefully, another state soon will question the reasonableness of its determination to deny juveniles facing serious delinquency proceedings the right to jury trials.

V. EVALUATING THE EFFECTS OF JURIES ON THE JUVENILE JUSTICE SYSTEM

There are arguments on both sides of this issue that highlight the potential effects of jury trials on juvenile proceedings. Opponents argue that jury trials would be too burdensome on an already overburdened juvenile court docket.¹⁸⁸ They also argue that the role of the judge would be so diminished that his or her ability to shape a delinquency proceeding to meet a juvenile's best interest would be severely hampered.¹⁸⁹ Opponents further suggest that jury trials would destroy all remnants of the nurturing ideal to which the juvenile courts have traditionally aspired.¹⁹⁰

¹⁸³ See *supra* text accompanying note 45.

¹⁸⁴ See *id.*

¹⁸⁵ See LA. REV. STAT. ANN. § 15:529.1 (West 2002).

¹⁸⁶ See *supra* note 148 and accompanying text.

¹⁸⁷ See LA. REV. CH. CODE ANN. art. 407(A) (West 2002); see also Brief, *supra* note 101, at 14.

¹⁸⁸ See *infra* notes 194–201 and accompanying text.

¹⁸⁹ See *infra* notes 205–08 and accompanying text.

¹⁹⁰ See *infra* notes 209–11 and accompanying text.

Proponents of juries in juvenile delinquency proceedings argue that juries would grant more consideration to the defenses and claims raised by juveniles facing delinquency adjudication.¹⁹¹ Juries would also take the adjudication decision-making power out of judges' hands, who tend to declare youth delinquent, despite inadequate proof.¹⁹² In addition, proponents demonstrate that many of the nurturing aspects of the juvenile courts can remain despite the presence of jury trials.¹⁹³

Arguments on both side of the debate must be thoroughly considered before one can decide whether juries would be beneficial or detrimental to juvenile delinquency proceedings. This evaluation will reveal that, although opponents of jury trials in delinquency proceedings advance valid policy arguments, the arguments advanced by jury trial proponents establish that juvenile justice will be a more equitable and effective institution if juveniles are awarded the right to jury trials in serious delinquency proceedings.

A. Negative Effects of Juries on the Juvenile Justice System

Opponents of jury trials in delinquency proceedings argue that jury trials burden an already overwhelmed juvenile justice system.¹⁹⁴ Jury trials, by their very nature, would consume more time and drain more resources from a state's juvenile justice system.¹⁹⁵ This possibility threatens to completely overwhelm juvenile courts, as they already face overloaded dockets.

Several well-documented sources suggest that juvenile courts are overworked, causing them to spend an inadequate amount of time with each juvenile brought before them.¹⁹⁶ In many cities, less than ten minutes is spent on each juvenile's adjudication.¹⁹⁷ For example, in 1996, a study determined that Chicago's juvenile courts see over sixty cases a day and spend an average of six minutes on each case.¹⁹⁸ In New York City, family court judges, who are responsible for delinquency proceedings, each heard approximately 5,500 cases in one year.¹⁹⁹ Los

¹⁹¹ See *infra* notes 214–23 and accompanying text.

¹⁹² See *infra* notes 223–28 and accompanying text.

¹⁹³ See *infra* p. 306.

¹⁹⁴ See Larsen, *supra* note 152, at 866 (referring to opinions held by the Alabama, North Dakota and Pennsylvania Supreme Courts).

¹⁹⁵ *Id.*

¹⁹⁶ See DOUGLAS E. ABRAMS & SARAH H. RAMSEY, CHILDREN AND THE LAW: DOCTRINE, POLICY AND PRACTICE 1044 (2000).

¹⁹⁷ *Id.* (citing Jerome J. Shestack, *What About Juvenile Justice?*, A.B.A. J. 8 (1998)).

¹⁹⁸ *Id.* (citing Fox Butterfield, *With Juvenile Courts in Chaos, Critics Propose Scrapping Them*, N.Y. TIMES, Jul. 21, 1997, at A1).

¹⁹⁹ *Id.* (citing FUND FOR MODERN COURTS, THE GOOD, THE BAD, THE UGLY OF THE NEW YORK CITY FAMILY COURT 6, 9 (1997)).

Angeles courts afforded each juvenile only four or five minutes on average.²⁰⁰ Adding the time and resources associated with jury trials to already overburdened courts might completely derail the juvenile justice system.²⁰¹ These statistics suggest that the courts simply do not have the time to devote to jury trials.

In response to this potential negative effect, proponents of juries in juvenile proceedings need only make two points. First, not all juveniles facing delinquency proceedings would be afforded a jury — only those facing serious delinquency charges.²⁰² Second, the statistics mentioned above suggest that juvenile courts are in dire need of additional resources from the states, including more judges and more courtrooms. Any burden that juries might bring upon the juvenile courts could also be answered with the devotion of additional state resources. A lack of resources should never be an excuse to deny a class of citizens their constitutional rights.

Opponents of jury trials in delinquency proceedings contend that juries would impede judges' efforts to ensure the best interests of juveniles appearing in their courts.²⁰³ In Justice Victory's majority opinion in *State ex rel. D.J.*, he voiced a concern that juries would "destroy the flexibility of the juvenile judge as the trier of fact, which allows the judge to take into consideration social and psychological factors, family background, and education in order to shape the disposition in the best interest of both the child and society."²⁰⁴ On the surface, this seems like a valid concern, as the juvenile courts were supposed to be a place where the judge was able to have great flexibility in his or her approach to each juvenile delinquent.²⁰⁵ Juries might take this flexibility away, and the vision of the nurturing juvenile court will be lost.²⁰⁶

In the ideal picture painted by those who developed the juvenile courts in the beginning of the twentieth century, this may have been a valid concern. However, as will be further discussed below, judges actually have a tendency to be unduly harsh when they consider alleged juvenile delinquents, turning too quickly to

²⁰⁰ *Id.* at 1044–45 (citing EDWARD HUMES, NO MATTER HOW LOUD I SHOUT: A YEAR IN THE LIFE OF JUVENILE COURT 36, 78–79 (1996)).

²⁰¹ See Larsen, *supra* note 152, at 866 (pointing out that the Alabama Supreme Court refused to allow juries in delinquency proceedings for just that reason).

²⁰² Furthermore, not all juveniles facing serious delinquency proceedings would ask for a jury trial. See BARTOLLAS, *supra* note 17, at 474 (stating that jury trials are seldom demanded in the states that grant juveniles the right to a jury trial). This can also be inferred from the fact that one study indicated that more than one-third of criminal cases that went to trial were bench trials. See Nancy Jean King, *The American Criminal Jury*, 62 LAW & CONTEMP. PROBS. 41, 59 (1999). Therefore, it can be assumed that at least some juveniles, if given the option, would elect for their delinquency proceedings to be heard in front of a judge rather than a jury.

²⁰³ See, e.g., *State ex rel. D.J.*, 2001-2149 (La. 05/14/02), 817 So. 2d 26, 33.

²⁰⁴ *Id.*

²⁰⁵ See BARTOLLAS, *supra* note 17, at 13.

²⁰⁶ See Larsen, *supra* note 152, at 864.

adjudication.²⁰⁷ Furthermore, juries also are susceptible to feeling sympathy for the accused.²⁰⁸ Juveniles would be free to present evidence of their social, educational, and economic background for the jury's consideration.

Adding to their concern about judges' nurturing roles in the process, opponents of juries in juvenile proceedings also fear that the process will become less nurturing overall.²⁰⁹ First, juries will cause the process to become more adversarial.²¹⁰ Second, the private setting will be lost, where the court could assess and rehabilitate juveniles outside the view of the public.²¹¹ Opponents might maintain that a jury's detailed evaluation of an accused juvenile's life will destroy the notion that juvenile courts are a private and discrete setting where troubled youngsters can receive a helping hand. The jurors would have an open window into the life of an accused juvenile.

In response to these two concerns, proponents of jury trials might offer multiple points of consideration. First, an adversarial process is not necessarily detrimental as it will demonstrate the seriousness of the offense to the juvenile. Furthermore, it will guarantee juveniles' right to a fair trial, as every fact and proposition will be contested and the procedures that have been developed to guarantee a defendant's rights in criminal trials will be used to ensure that a juvenile will receive the just proceeding that he or she deserves. Second, juveniles' privacy concerns have been completely trampled by laws, such as the one enacted in Louisiana,²¹² that have opened serious delinquency proceedings to the public. With these laws in effect, what privacy interests are bench trials protecting? Having a jury hear the intimate details of the juvenile's life is no more intrusive than allowing the press to tell the juvenile's story to the public.²¹³

²⁰⁷ See *infra* notes 224–28 and accompanying text.

²⁰⁸ See FELD, *supra* note 74, at 154.

²⁰⁹ See Larsen, *supra* note 152, at 865 (citing Washington Supreme Court and Oregon Supreme Court decisions that clung to the notion of a nurturing courtroom).

²¹⁰ See, e.g., *McKeiver v. Pennsylvania*, 403 U.S. 528, 545 (1971) ("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. . . ."); see also Larsen, *supra* note 152, at 865 (citing to *McKeiver* and a Kentucky Court of Appeals case).

²¹¹ See, e.g., *McKeiver*, 403 U.S. at 550.

²¹² LA. REV. CH. CODE ANN. art. 407 (West 2002).

²¹³ See Katy Reckdahl, *Kids in the Hall*, GAMBIT WEEKLY, at <http://www.bestofneworleans.com/archives/2001/0522/covs.html> (May 22, 2001) (telling the story of Darrell J. and Alfred A.).

B. Positive Effects of Juries on the Juvenile Justice System

Proponents of jury trials in delinquency proceedings contend that juries often give more credence to defenses and other claims raised by juveniles than judges.²¹⁴ Judges have been shown to be more likely to convict a defendant than juries.²¹⁵ Scholars suggest that there are several causes of this phenomenon.²¹⁶ First, there are differences in how judges and juries hear evidence. Because juvenile judges hear hundreds, if not thousands, of cases every year, their senses may become dulled, and they may consider evidence less meticulously than a jury member that hears only one case in a span of several years.²¹⁷ Second, juries hold some sympathy for the defendant and, consequently, may be "easier" on the accused.²¹⁸ Third, juries have a tendency to adhere more rigidly to the "beyond a reasonable doubt" standard of proof.²¹⁹ Fourth, judges tend to come from different social, economic, and educational backgrounds than do jury pools.²²⁰ This difference is accentuated by voir dire, where potential jurors are excluded for their beliefs and experiences, and sometimes their level of education.²²¹ Judges are not subject to such a selection process before they hear a case.²²² Lastly, judges may be more likely to adjudicate a youth delinquent, despite a lack of proof, if the judge believes that the youth needs the help of the system.²²³

Proponents of jury trials in delinquency proceedings also believe that juries would be beneficial because they would remove the adjudication decision from the hands of juvenile court judges, who have been proven to be unreliable finders of fact.²²⁴ A recent examination of judicial fact finding in juvenile justice proceedings by Martin Guggenheim and Randy Hertz demonstrates that judges often adjudicate a juvenile delinquent based on insufficient evidence.²²⁵ Several examples exist in

²¹⁴ See, e.g., Brief, *supra* note 101, at 16–18.

²¹⁵ See FELD, *supra* note 74, at 154.

²¹⁶ See Martin Guggenheim & Randy Hertz, *Reflections on Judges, Juries, and Justice: Ensuring the Fairness of Juvenile Delinquency Trials*, 33 WAKE FOREST L. REV. 553, 571–82 (1998).

²¹⁷ See FELD, *supra* note 74, at 155.

²¹⁸ *Id.* at 154.

²¹⁹ *Id.*

²²⁰ *Id.* at 155.

²²¹ *Id.*

²²² *Id.*

²²³ *Id.* at 154.

²²⁴ See, e.g., Larsen, *supra* note 152, at 860 (arguing that juries would "[a]ssure [a]ccurate [f]act [f]inding").

²²⁵ See Guggenheim & Hertz, *supra* note 216, at 553. The amici discuss Guggenheim and Hertz in their brief to the Louisiana Supreme Court, highlighting some of the same and some different factors discussed by Guggenheim and Hertz; see also Brief, *supra* note 101, at

support of this claim. For instance, in Louisiana, a boy was convicted of intentionally damaging property after he toppled face first into the wall of a store following a struggle with a store manager who caught the boy shoplifting.²²⁶ In Texas, a judge adjudicated a youth delinquent for evading a lawful arrest after holding that a police officer had probable cause to arrest the youth, despite the officer's inability to point out any evidence of illegal conduct on the part of the youth.²²⁷ In Washington, a juvenile was adjudged delinquent for aiding and abetting animal cruelty after the youth merely giggled when a friend threw a pigeon into a fountain.²²⁸

Guggenheim and Hertz also pointed out that judges are often prone to favoring the facts put forth by the state.²²⁹ Reasons for this tendency may be judges' concerns for being labeled as soft on crime, judges' beliefs that they can protect society by erring on the side of conviction, or perhaps, judges' desires to ensure that every youth that needs services receives them.²³⁰ Also, judges tend to develop relationships with the police officers that testify before them, and may be easily convinced by the officers' testimony.²³¹ Additionally, judges' experience on the bench may cause them to become skeptical of the testimony of the accused.²³²

Still other factors must be considered. Judges always hear inadmissible evidence before deeming it inadmissible.²³³ For some, the evidence may be difficult to ignore. Indeed, empirical evidence and the accounts of some judges demonstrate that this evidence often received consideration, if only on the subconscious level.²³⁴

Considering all the factors presented by Guggenheim and Hertz, it becomes clear that judges can be too quick to adjudge a youth delinquent. Furthermore, judges are susceptible to bias and sometimes are unable to be the neutral fact finder that the system asks them to be.²³⁵

16-18.

²²⁶ Guggenheim & Hertz, *supra* note 216, at 564 (citing *In re J.C.G.*, 97-1044 (La. App. 2 Cir. 02/04/98), 706 So. 2d 1081, 1082).

²²⁷ *Id.* at 565 (citing *In re C.R.*, No. 03-96-00429-CV, 1997 WL 348532, at *2 (Tex. Ct. App. June 26, 1997)).

²²⁸ *Id.* (citing *State v. Simon*, No. 38J02-0-I, 1997 WL 292344, at *1 (Wash. Ct. App. June 2, 1997)). These are only three of the sixteen examples provided by Guggenheim and Hertz that demonstrate judicial fact-finding inadequacies. *See id.* at 564-66, n.55.

²²⁹ *See id.* at 569.

²³⁰ *Id.* at 569-70.

²³¹ *Id.* at 574.

²³² *Id.* at 574.

²³³ *See id.* at 571-74.

²³⁴ *Id.* at 572; *see also* FELD, *supra* note 74, at 156 ("Defendants reasonably may question the impartiality and fairness of their trials whenever judges possess information that would not be admitted in a jury trial because of concern that it would prejudice the fact-finders.").

²³⁵ Also, recall Justice Fortas's comment, "unbridled discretion, however benevolently motivated, is frequently a poor substitute for principle and procedure." *See supra* text

Proponents of jury trials might also point out that the goal of a nurturing judicial process can be preserved despite the use of juries. Juries would not take judges' disposition powers away. Every juvenile that would be adjudicated delinquent would turn to a juvenile court judge for his or her disposition. In fact, a jury trial would produce a detailed record of the juvenile's offense and background. The minute facts that a jury trial would produce might even help the court achieve its goal of nurturing and rehabilitating youth by providing the judge with a detailed account of the offense and a thorough portrayal of the juvenile's developmental, social, and economic status.

While there are valid arguments on either side of the debate, it seems apparent that juries would benefit the juvenile justice system considerably by enhancing juveniles' access to fair and effective trials. Furthermore, any potential negative effects, such as unbearable delay or the destruction of judges' flexibility to cater to each juvenile individually, can be overcome. No one can be certain about the effects juries might have in delinquency proceedings; however, it seems the foreseeable benefits to juveniles who face the increasingly punitive consequences of these proceedings, far outweigh the potentially negative effects associated with jury trials.

VI. CONCLUSION

The right to demand a jury trial in criminal proceedings is guaranteed by the Constitution.²³⁶ Every person that faces a serious criminal charge enjoys this right. For some reason, however, the overwhelming majority of states have not extended this right to delinquency proceedings.²³⁷ Originally, this decision was founded on the nurturing ideals of the modern juvenile justice system.²³⁸ In theory, juries would only interfere with a juvenile court's ability to provide a young offender with the guidance and support that he or she needed.²³⁹ Yet, somewhere along the way, this foundation crumbled. As states continue to alter their juvenile justice systems in order to protect society and to hold youth accountable for their actions, the punitive aspect of criminal justice invades the juvenile sphere. Louisiana stands as a clear example of this transition. Now, it seems that the difference between juvenile justice and criminal justice is only nominal.

accompanying note 44.

²³⁶ U.S. CONST. amend. VI.

²³⁷ See *supra* notes 151-52 and accompanying text.

²³⁸ See *McKeiver v. Pennsylvania*, 403 U.S. 528, 547 (1971).

²³⁹ *Id.* (explaining, "The imposition of the jury trial on the juvenile court system would . . . provide an attrition of the juvenile court's assumed ability to function in a unique manner.").

State ex rel. D.J. and similar controversies outside of Louisiana demonstrate that a strong voice exists that demands the right to a jury trial in delinquency proceedings. This is an issue of national concern, as it threatens to maintain the consistent and systematic denial of juveniles' due process rights. The juvenile justice system of each state must be closely examined in order to determine if a meaningful distinction between juvenile justice and criminal justice still exists.

When the Louisiana Supreme Court decided *State ex rel. D.J.*, it did so by relying on outdated premises, arguments, and beliefs. Because of this decision, Louisiana continues to deny juveniles their due process rights. If other states continue to ignore this issue of constitutional concern, they will do no better. Juveniles should be guaranteed the right to a jury trial when they face allegations of serious delinquency, as the nation's juvenile justice has become nothing short of criminal. Recall the language of the Sixth Amendment: "In *all* criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury. . . ." ²⁴⁰ The label "delinquency proceeding" does not change the reality that juveniles such as Darrell J. and Alfred A. are facing criminal prosecutions. Accordingly, every time a state refuses to allow a jury to perform the fact-finding function in a serious delinquency proceeding, it concurrently denies the alleged juvenile delinquent his or her constitutionally guaranteed right.

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²⁴⁰ U.S. CONST. amend. VI (emphasis added).