Note

In Re the Welfare of Due Process

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On a fall evening in November 2006, a fifteen-year-old boy named S.C. walked into a convenience store in northern Minnesota.[1] Prior to that night, S.C.'s criminal record consisted of just one short line.[2] In his hurry to get some cash out of the register, S.C. shot at the two men working behind the store's counter[3]—he hit each of them three times; one of them was shot in the back as the man tried to escape.[4]

Though S.C.'s offense was frighteningly violent, his defense attorneys worked tirelessly to keep their young client out of the criminal justice system, and in the juvenile court.[5] Like many juvenile offenders,[6] S.C. struggled with many personal issues.

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1. *In re* S.A.C., No. A07-1109, 2008 WL 170580, at *1, *3 (Minn. Ct. App. Sept. 23, 2008).

2. *See id.* at *2 n.2.

3. *Id.* at *1.

4. *Id.*

5. *See generally id.* at *1–3 (providing an account of the trial court certification hearing). The interlocutory appeal itself further indicates a great deal of effort to keep S.C. in juvenile court.

6. *See* EDWARD HUMES, NO MATTER HOW LOUD I SHOUT: A YEAR IN THE LIFE OF JUVENILE COURT 73 (1996) (noting that many children in juvenile court make "claims of terrible abuse, all of it documented and indisputable"). This common-sense conclusion is supported by psychiatric research. *See* Karen M. Abram et al., *Comorbid Psychiatric Disorders in Youth in Juvenile Detention*, 60 ARCHIVES OF GEN. PSYCHIATRY 1097, 1098–99 (2003) (noting that

At fifteen, he had a substance abuse problem,[7] mental health concerns,[8] and a history of domestic abuse and instability.[9] The district court spent three days hearing arguments during his certification to stand trial as an adult,[10] including the opinions of multiple psychiatric professionals.[11] In 2008, after the district court judge certified him to stand trial as an adult, the Minnesota Court of Appeals reviewed the record of that hearing.[12]

S.C.'s defense attorneys expended a great deal of time and energy to keep him in juvenile court.[13] The rationale behind this effort lies in what are seen as the fundamental differences between juvenile and adult criminal justice—different judicial processes, due process protections, and sentencing goals.[14] S.C.'s attorneys wanted to keep him in juvenile court because of its perceived protections against unfair publicity, its rehabilitative sentencing philosophy, and its attitude of parental care,[15] but their rationale may have been misguided. Unfortunately, the juvenile system has changed dramatically since its inception.[16] Juvenile courts today mirror the more punitive adult system, with the difference being that they lack the due process protections of the latter.[17] Young offenders are sentenced under codes that list as their first priority "public safety," rather than rehabilitation.[18] Like adults, they are incarcerated in correc-

many abused children are at a high risk of "cycl[ing] through" the juvenile justice system and further finding substantial rates of comorbidity, or the co-occurrence of mental health and substance abuse problems, among detained youth).

7. *In re S.A.C.*, 2008 WL 170580, at *1 n.1, *3.

8. *Id.* at *1–2.

9. *See id.* at *2 n.2.

10. *Id.* at *2.

11. *See id.* at *1–3.

12. Mark Stodghill, *Court: Consider Teen an Adult*, DULUTH NEWS TRIB., Jan. 23, 2008, at B1.

13. *See generally In re S.A.C.*, 2008 WL 170580, at *1 (interlocutory appeal of adult certification).

14. *See generally* JOHN C. WATKINS, JR., THE JUVENILE JUSTICE CENTURY 46–60 (1998) (describing foundational philosophies of juvenile justice).

15. *See id.* at 47–50.

16. *See* David S. Tanenhaus, *The Evolution of Juvenile Courts in the Early Twentieth Century: Beyond the Myth of Immaculate Construction*, *in* A CENTURY OF JUVENILE JUSTICE 42, 43 (Margaret K. Rosenheim et al. eds., 2002) (noting changes in the juvenile system).

17. *See* Barry C. Feld, *A Century of Juvenile Justice: A Work in Progress or a Revolution that Failed?*, 34 N. KY. L. REV. 189, 253–54 (2007).

18. *See In re* L.M., 186 P.3d 164, 168 (Kan. 2008).

tional facilities,[19] and may be required to register as offenders for certain crimes.[20] Often, information about their offense is made public.[21]

This Note argues that the juvenile justice system has become as punitive, as public, and as formalistic as the adult system. Therefore, juveniles are entitled to a trial by jury. Part I provides a brief history of the right to a jury trial, and describes the juvenile system as it functions today. Part II analyzes the legal precedent in this area and examines the ways in which systemic change and statistical realities should inform the question of whether juries are necessary in juvenile court. Part III proposes an answer to this question. The right to a jury trial must be provided to juvenile offenders as long as the system remains punitive, but the juvenile system must eventually return to its rehabilitative roots. An ultimatum to provide key due process protections like the jury would perhaps hasten this return to rehabilitation. This in turn would enable courts to more effectively address cases similar to S.C.'s and vindicate efforts to keep such cases within the juvenile court's jurisdiction.

I. A JURY OF ONE'S PEERS AND THE JUVENILE COURT

One cannot appreciate the necessity of the right to a jury trial in the juvenile court system without first understanding the place of the jury in United States law. The Sixth and Fourteenth Amendments combine to provide for the right to trial by jury in criminal proceedings.[22] The jury importantly checks the power of the state,[23] and is the only such procedural safeguard mentioned three times in the Constitution.[24] Courts and commentators have debated the value of the jury trial at length, providing the rich history discussed below. The following sections also trace the history of the juvenile court system from its progressive roots to its modern purpose, and address the system's current practical realities.

19. *Id.* at 169.

20. *Id.* at 165.

21. *Id.* at 170.

22. U.S. CONST. amends. VI, XIV. In these pertinent parts, the Constitution provides: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury" and "[n]o State shall make or enforce any law which shall . . . deprive any person of life, liberty, or property without due process of law." *Id.*

23. Duncan v. Louisiana, 391 U.S. 145, 155–56 (1968).

24. *See* U.S. CONST. art. III, § 2, amends. VI, VII.

A. THE CONSTITUTIONAL RIGHT TO A JURY TRIAL

The nature of the right to a jury trial in the United States is perhaps best expressed by the Supreme Court in *Duncan v. Louisiana*.[25] In that seminal case, the Court used the Fourteenth Amendment's Due Process Clause to incorporate the right to trial by jury against the states.[26] The Court found that the right to a jury was "fundamental to the American scheme of justice,"[27] and, although it was perhaps conceivable to develop another mechanism for a fair trial, our nation had yet to implement any such alternative.[28] Juries are perceived as bastions against government oppression, and as common-sense checks on the law; they ensure that justice, and a defendant's constitutional rights, are protected.[29] Our founders relied on juries to prevent bias and oppression, and to facilitate accurate fact-finding.[30] A fair trial without a jury was difficult to imagine.[31]

Despite the historic enthusiasm for providing a defendant with a jury of his peers, debate rages over the continuing validity and cost-effectiveness of the jury.[32] Commentators suggest that juries cannot correctly apply complicated law,[33] especially to difficult scientific or business-related facts.[34] Some posit that juries may improperly engage in nullification,[35] and require

25. *See generally Duncan*, 391 U.S. at 145.

26. *Id.* at 148–49.

27. *Id.* at 149.

28. *Id.* at 150 n.14.

29. *See id.* at 155–56 (describing the rationales behind providing juries in criminal trials, which include acting as a check on the inherent power of the prosecutor and the judge, and preventing "against arbitrary law enforcement").

30. *See id.* at 155–57.

31. *See id.* at 152–53 (recounting the historic emphasis on the right to trial by jury).

32. *See generally* STEPHEN N. SUBRIN ET AL., CIVIL PROCEDURE 377–82 (2d ed. 2004) (describing the different sides of the debate over the modern civil jury). This debate is largely fought in the realm of civil procedure; criminal cases, specifically those that carry the possibility of incarceration or death, have always been seen as different. *See Duncan*, 391 U.S. at 157–58. The cost-benefit analysis weighs heavily in favor of a jury of one's peers in this context. *Cf. id.* at 145 (stating that severity of punishment is relative to the level of constitutional protection).

33. *See* Harry Kalven, Jr., *The Dignity of the Civil Jury*, 50 VA. L. REV. 1055, 1062–63 (1964).

34. *Cf. id.* at 1069–72 (noting problems inherent in jury determinations of fees in personal injury cases).

35. *See* SUBRIN, *supra* note 32, at 378 (quoting JEROME T. FRANK, COURTS

more time and money than they are worth.[36] Others argue, however, that juries are fully capable of understanding the law and its application, so long as the elements are properly explained in the courtroom.[37] Further, serving on a jury may be an important component of civic engagement, and may enhance citizens' level of ownership over the system.[38] To the extent that juries take more time and cost more money, this expense is perhaps a small price to pay for fundamental fairness.

Despite the ongoing debate, juries have long been considered an indispensable requirement when the case carries the penalty of serious punishment.[39] This assertion perhaps holds especially true in settings rife with the specific problems that juries are meant to address.[40] One candidate for such a setting—the juvenile court system—is discussed below.

B. BEGINNINGS AND EVOLUTION OF THE JUVENILE COURT

Progressive reformers created the nation's first juvenile justice system in Chicago in 1899[41] with the understanding that it would be qualitatively different from the criminal system used to prosecute adult offenders.[42] Reformers built the juvenile system on the premise of *parens patriae*,[43] the belief that young offenders are different from adult offenders.[44] They conceived of the system as an alternative to funneling children directly into the criminal justice system.[45] Although proceedings in juvenile court were initially open to the public, juvenile

ON TRIAL 110–11, 129–30 (1949)).

36. *See* Kalven, *supra* note 33, at 1055, 1059–67.

37. *See id.*

38. *See id.* at 1062.

39. Duncan v. Louisiana, 391 U.S. 145, 150 n.14 (1968).

40. *See id.* at 156. Such problems include arbitrariness, prosecutorial overreaching, and probable bias.

41. *See* Juvenile Court Act of 1899, 1899 Ill. Laws 131 (codified as amended at 705 Ill. Comp. Stat. Ann. 405/1-2).

42. *See generally* WATKINS, *supra* note 14, at 46 (describing the founding theories of juvenile justice).

43. *Id.* at 47. The doctrine *parens patriae*, which originated in the chancery jurisprudence of ancient England, roughly translates to "the state as parent." *Id.* at 9.

44. *See id.* at 46 (the desire to "disassociate" juvenile law from the general criminal common law reflects the belief that children are different from adults in ways that require legal differentiation); *see also* Roper v. Simmons, 543 U.S. 551, 569–71 (2005) (suggesting that some level of the understanding that "kids are different" remains today, at least in the capital punishment context).

45. *See* WATKINS, *supra* note 14, at 47.

courts would later become "sheltered place[s],"[46] where young offenders would avoid the stigma of public disapproval,[47] and where the focus would be "treatment, supervision, and control rather than punishment."[48] To realize the goal of successful rehabilitation, juvenile courts would "exercise[] broad discretion to intervene in the lives of young offenders"[49] and would be nonadversarial, such that the trappings of the criminal system—its terminology, its facilities, and its fundamental due process protections—would be unnecessary.[50]

The Warren Court recognized the problems inherent in this rejection of due process protections in *In re Gault*.[51] Here, the Court held that the juvenile system needed to afford juvenile offenders many of the same due process rights enjoyed by adults to ensure that justice was done.[52] Commentators note that *In re Gault* set off a process of "constitutional domestication"[53] whereby the Court recognized the necessity of due process in juvenile court proceedings, even though the system was "separate" from the adult system.[54] Constitutional domestication continued in the form of cases such as *In re Winship*, which set "beyond a reasonable doubt" as the standard of proof in juvenile cases.[55]

Some proponents of the "kids are different" ideology lamented this development as a blurring of the lines between juvenile and criminal court.[56] These decisions, however, forced the legal community to recognize that juvenile courts were dif-

46. Tanenhaus, *supra* note 16, at 42–43.

47. *See* WATKINS, *supra* note 14, at 49–50.

48. Barry C. Feld, *The Constitutional Tension Between* Apprendi *and* McKeiver*: Sentence Enhancements Based on Delinquency Convictions and the Quality of Justice in Juvenile Courts*, 38 WAKE FOREST L. REV., 1111, 1138 (2003).

49. *Id.*

50. *Id.* at 1138–39.

51. 387 U.S. 1, 12–13 (1967).

52. *See id.* at 13 ("[N]either the Fourteenth Amendment nor the Bill of Rights is for adults alone."); *id.* at 30 (quoting Kent v. United States, 383 U.S. 541, 562 (1966) (further holding that juvenile court proceedings must "measure up to the essentials of due process and fair treatment")).

53. *See, e.g.*, Feld, *supra* note 48, at 1140.

54. *Id.* at 1142.

55. *In re* Winship, 397 U.S. 358, 368 (1970).

56. *See generally*, HUMES, *supra* note 6, at 25 (providing a general overview of arguments against constitutional domestication, including the observation that "[t]hirty years later, the system has yet to recover from that one lewd phone call, or from the hidden price tag attached to the reforms [*In re Gault*] spawned").

ferent in name, but not in practice or outcome, than the adult courts from which children were supposedly insulated.[57] The word delinquent "ha[d] come to involve only slightly less stigma than the term 'criminal' applied to adults."[58] In light of this fact, Justice Fortas called for a "candid appraisal" of the "claimed benefits of the juvenile process."[59] Today, state legislatures and courts[60] continue to debate juvenile justice policy and discuss which due process protections must be afforded to young offenders in juvenile court.[61]

C. MODERN REALITIES OF JUVENILE JUSTICE

There is more to this story than the historical underpinnings of the jury trial and the juvenile court. The modern realities of juvenile justice, including which juveniles are involved, where they are sent, and the practical effects of their adjudication, must inform an analysis of the issue as well.

1. Juveniles in the System

The most current compilation of statistics put out by the

57. *See, e.g.*, REPORT OF THE PRESIDENT'S COMMISSION ON CRIME IN THE DISTRICT OF COLUMBIA 773 (1966). The Court cited this study in *In re Gault*, 387 U.S. at 20. Examples of more recent studies revealing the similarity between juvenile justice outcomes and criminal outcomes abound. *See, e.g.*, NAT'L CTR. FOR JUVENILE JUSTICE, JUVENILE COURT STATISTICS 2003–2004, at ix (2007) (providing a comprehensive overview of juvenile justice contacts and processing from 1985–2004); OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, STATISTICAL BRIEFING BOOK, http://ojjdp.ncjrs.gov/ojstatbb/default.asp (last visited Oct. 23, 2009).

58. *In re Gault*, 387 U.S. at 24.

59. *Id.* at 21.

60. Juvenile justice is largely a creature of state law. Federal law provides that a juvenile "shall not be proceeded against in any court of the United States unless the Attorney General . . . certifies to the appropriate district court" that a State has, or will take, no jurisdiction over the juvenile; programs and/or services are not currently available in state court; or the offense is a violent controlled substance offense in which the federal government has "substantial" interest. 18 U.S.C. § 5032 (2006). The Juvenile Justice and Delinquency Prevention Act of 2002 further states as its purpose to "assist state and local governments" in addressing juvenile crime. 42 U.S.C. § 5602 (2006). For this reason, splits among state courts on juvenile justice issues are salient.

61. *See, e.g.*, State v. McFee, 721 N.W.2d 607, 615 (Minn. 2006) (discussing whether courts can consider juvenile crimes decided without a jury to calculate sentencing for later adult crimes without violating due process); Assem. 4792, 232d Leg. Sess. (N.Y. 2009) (proposing a bill of rights for juveniles in the juvenile justice system); Assem. 223, 99th Leg., Reg. Sess. (Wis. 2009), *available at* http://www.legis.state.wi.us/2009/data/AB-223.pdf (last visited Oct. 23, 2009) (recommending a right to trial by jury for juvenile offenders).

National Center for Juvenile Justice[62] provides the short answer to the question of who ends up in the juvenile justice system and in juvenile detention facilities. The incarcerated population is overwhelmingly African-American, male, and under the age of sixteen.[63] The characteristics of the kids most likely to end up in the system are disturbing from the perspective of racial equality. Accordingly, the federal government passed legislation requiring states to take efforts to reduce "disproportionate minority contact" in order to be eligible for certain federal funds.[64]

In spite of such efforts to reduce disproportionate minority contact in the juvenile justice system, the problem remains.[65] Furthermore, a report submitted to the Office of Juvenile Justice and Delinquency Prevention in 2007[66] indicates that it cannot be explained away by suggesting that certain racial groups commit more crime.[67] Although the study is reluctant to conclude that racial bias is the singular cause of disproportionate contact,[68] it asserts that "[disproportionate minority contact] can not [sic] be explained by differences in the offending behavior of different racial groups"[69] and "the weight of the evidence suggests that the effect of race/ethnicity on the chance of being contacted/referred is reduced but remains significant when both offending and risk are controlled."[70] Differences in offending cannot explain away the numerical

62. *See* NAT'L CTR. FOR JUVENILE JUSTICE, *supra* note 57.

63. *Id.* at 9, 12, 26.

64. *See* Juvenile Justice and Delinquency Prevention Act of 2002, 42 U.S.C. § 5633(a)(22) (2006) (requiring states, in order to be eligible for "formula grants," to "address juvenile delinquency prevention efforts and system improvement efforts designed to reduce . . . the disproportionate number of juvenile members of minority groups, who come into contact with the juvenile justice system").

65. *See, e.g.*, NAT'L CTR. FOR JUVENILE JUSTICE, *supra* note 57, at 20–21.

66. DAVID HUIZINGA ET AL., DISPROPORTIONATE MINORITY CONTACT IN THE JUVENILE JUSTICE SYSTEM: A STUDY OF DIFFERENTIAL MINORITY ARREST/REFERRAL TO COURT IN THREE CITIES, at i, 32 (2007) [hereinafter DMC REPORT].

67. *See id.* at i; *cf.* NAT'L COUNCIL ON CRIME AND DELINQUENCY, AND JUSTICE FOR SOME: DIFFERENTIAL TREATMENT OF YOUTH OF COLOR IN THE JUSTICE SYSTEM 6, 37 (2007) (asserting that minority youths receive "different" treatment in the justice system).

68. HUIZINGA ET AL., *supra* note 66, at ii.

69. *Id.* at iii.

70. *Id.* at ii.

disparities.[71] The possibility of racial bias in juvenile justice is an important aspect of *who* is locked up; the question of *where* offenders go is also important.

2. Juvenile Facilities

The facilities in which the system houses juveniles[72] who are adjudicated delinquent[73] for serious offenses[74] are often considered the last stop before confinement in an adult facility—essentially, they are miniature prisons.[75] In Minnesota, judges commit serious juvenile offenders to a correctional facility in Red Wing.[76] The same facility also houses adult offenders.[77] Although the punishment rationale for incarcerating the adult offenders is supposedly different from the rehabilitative rationale for incarcerating the juvenile offenders,[78] the facility itself is exactly the same.[79] Even if other states do not house adult and juvenile inmates in the same place, or do not make this fact publicly known, the mission statements and descriptions of their juvenile facilities include terminology reminiscent

71. *See* Donna M. Bishop, *The Role of Race and Ethnicity in Juvenile Justice Processing*, *in* OUR CHILDREN, THEIR CHILDREN 23, 61 (Darnell F. Hawkins & Kimberly Kempf-Leonard eds., 2005).

72. A Minnesota statute designates the Minnesota Correctional Facility-Red Wing for the housing of juveniles. *See* MINN. STAT. § 242.41 (2006).

73. See WATKINS, *supra* note 14, at 49, for a discussion of "adjudged delinquent" as a term of art in the juvenile system, mirroring the use of "convicted" in the adult system.

74. The statute describing the Minnesota Correctional Facility-Red Wing does not define "serious offense." *See* MINN. STAT. § 242.41. For the factors that a Minnesota juvenile court would consider when determining whether a juvenile's conduct is serious enough to warrant detention, see MINN. R. JUV. DEL. P. 5.03.

75. *See* CLEMENS BARTOLLAS ET AL., JUVENILE VICTIMIZATION: THE INSTITUTIONAL PARADOX 259–60 (1976) (comparing juvenile institutions to all "total institutions"); BARRY C. FELD, NEUTRALIZING INMATE VIOLENCE: JUVENILE OFFENDERS IN INSTITUTIONS 197–98 (1977) (noting that adults and juveniles convicted of crimes will be similarly imprisoned).

76. MINN. STAT. § 242.41.

77. *See* Daily Inmate Profile Report, http://www.corr.state.mn.us/facilities/tourreport/08FacilityInmateProfile.pdf (last visited Oct. 23, 2009) (recording a total of forty adult offenders housed at the facility). The report lists only adult offenders and is updated daily.

78. *See* MINN. STAT. § 242.19 (2006) (providing that the purpose of a juvenile disposition is "treatment and rehabilitation"). A different section of the code provides for rehabilitative programs for adults, but does not characterize such programs as the "purpose of incarceration." MINN. STAT. § 244.03 (2006).

79. *Compare* MINN. STAT. § 242.41 (establishing the facility housing juvenile offenders), *with* Daily Inmate Profile Report, *supra* note 77 (listing adult offenders housed at the same facility).

of adult prison, such as "locks on the doors" and "hardware designed to restrict . . . movement . . ." and "protect public safety."[80]

The names given to juvenile facilities are also notable. In its decision in *In re L.M.*, a case discussed at length below, the Kansas Supreme Court pointed out that its "[s]tate youth center" was now referred to as a "[j]uvenile correctional facility,"[81] a term similar to that given to adult facilities in the state.[82]

3. Consequences of a Delinquent Adjudication

Since *In re Gault*, courts and commentators have recognized that, although "delinquent" and "criminal" are two different words, "[i]t is disconcerting . . . that this [former] term has come to involve only slightly less stigma than the [latter]."[83] There are many consequences of adjudication beyond this common-sense stigmatic effect. A court may use a juvenile adjudication to enhance an adult sentence,[84] to require a juvenile to register as a sex offender,[85] or to impeach a witness in the courtroom.[86] These adjudications may also be available to employers or other persons searching public records.[87]

80. New York City Department of Juvenile Justice, Secure Detention Facilities, http://www.nyc.gov/html/djj/html/facilities.html (last visited Oct. 23, 2009); *see also* Kansas Juvenile Justice Authority, Larned Juvenile Correctional Facility, http://www.jja.ks.gov/facilities_larned.html (last visited Oct. 23, 2009); Wisconsin Department of Corrections, Juvenile Corrections, Type I Facilities, http://www.wi-doc.com/Type1_facilities.htm (last visited Oct. 23, 2009).

81. *In re* L.M., 186 P.3d 164, 169 (Kan. 2008) (quoting KAN. STAT. ANN. § 38-2302 (2006)).

82. *Id.*

83. *In re* Gault, 387 U.S. 1, 23–24 (1967); *see also In re* Jeffrey C., 849 N.Y.S.2d 517, 518 (N.Y. App. Div. 2008) (referring to the "stigma of a juvenile delinquent adjudication"); *In re* R.M., 234 S.W.3d 103, 105 (Tex. App. 2007) (noting the presence of the "stigma attached to being adjudged a juvenile delinquent").

84. *See* United States v. Jones, 332 F.3d 688, 694 (3d Cir. 2003) (allowing "prior juvenile adjudication" to be considered at sentencing); United States v. Smalley, 294 F.3d 1030, 1032–33 (8th Cir. 2002) (arguing juvenile adjudications found to be procedurally sufficient may be consider that at adult sentencing).

85. *See* MINN. STAT. § 243.166 (2006).

86. FED. R. EVID. 609.

87. *See* James Jacobs & Tamara Crepet, *The Expanding Scope, Use, and Availability of Criminal Records*, 11 N.Y.U. J. LEGIS. & PUB. POL'Y 177–78 (2008) (noting that the Federal Bureau of Investigation has "proposed adding the arrests of adults *and juveniles* . . . in[to] the National Crime Information Center") (emphasis added).

An important, serious consequence of a delinquent adjudication is the possibility that it may be used to enhance a person's subsequent criminal sentences. Criminal defendants have the right to force the State to prove every element of the alleged crime beyond a reasonable doubt.[88] The factfinder must hear and decide each element that the court can use to enhance a sentence out of the range suggested by the sentencing guidelines.[89] There is one exception to this rule, previously recognized in *Jones v. United States*:[90] the fact of a prior conviction (usually indicated by a defendant's criminal history points) requires no independent proof.[91] The rule in many jurisdictions is that a juvenile adjudication counts as a prior conviction,[92] despite the fact that the person had no right to a jury.[93] Courts have upheld sentence enhancements brought about by reliance on a defendant's juvenile record.[94]

Adjudications for certain sex offenses also require a juvenile to register as a sex offender in some states.[95] Sex offender registration is required to protect the public from potentially dangerous persons, because sex offenders are perceived to recidivate at higher rates and supposedly pose a unique threat to their communities.[96] Regardless of the policy rationale, placing a juvenile's name on this public offender list is highly stigmatic.[97] Although it may be true that a judge often

88. Apprendi v. New Jersey, 530 U.S. 466, 475–76 (2000).

89. *Id.* at 476.

90. 526 U.S. 227 (1999).

91. *Id.* at 243 n.6.

92. *See, e.g.*, United States v. Jones, 332 F.3d 688, 694 (3d Cir. 2003); United States v. Smalley, 294 F.3d 1030, 1032–33 (8th Cir. 2002).

93. *E.g.*, McKeiver v. Pennsylvania, 403 U.S. 528, 533 (1970) (holding that "not . . . *all* rights constitutionally assured to an adult . . . are to be enforced or made available to the juvenile") (emphasis added).

94. *See* Feld, *supra* note 48, at 1114 (citing both *Jones*, 332 F.3d at 696, and *Smalley*, 294 F.3d at 1033).

95. *See, e.g.*, MINN. STAT. § 243.166 (2006) (requiring any person "convicted of or *adjudicated delinquent* for" certain predatory sexual offenses to register) (emphasis added); *In re* Hezzie R., 580 N.W.2d 660, 671–72 (Wis. 1998) (requiring any person "convicted or *adjudicated delinquent* . . . for a sex offense" to register) (emphasis added) (citing WIS. STAT. § 301.45 (2007)).

96. *See* Catherine L. Carpenter, *The Constitutionality of Strict Liability in Sex Offender Registration Laws*, 86 B.U. L. REV. 295, 325–27 (2006) (discussing the original purposes behind offender registration laws).

97. *See id.* at 324 (characterizing "sex offender registration [as the] modern day scarlet letter"). Laws requiring registration and community notification have been challenged even for adult offenders for this reason. *See, e.g.*, Smith v. Doe, 538 U.S. 84, 86 (2003) (noting the "stigma" accompanying regis-

has the discretion whether to impose this requirement,[98] the ramifications of registration may be felt by the offender well into adulthood.[99]

Another ramification of a juvenile adjudication is found in the Federal Rules of Evidence. Rules 608 and 609 provide that when a witness places herself on the stand, she puts her "character for truthfulness"[100] at issue. Under this rationale, the opposing side's attorney may impeach the witness with her prior record of felonies or of crimes with an element of dishonesty.[101] Rule 609(d) provides only that juvenile adjudications are "*generally* not admissible,"[102] and explicitly allows a juvenile adjudication to be used to impeach a witness other than the accused if the judge determines that such use is required for "fair determination of . . . guilt."[103] Hence, in the same way that a witness may end up "on trial" herself for a prior adult conviction, so may she be "tried" and discredited based upon a prior juvenile adjudication.[104]

Finally, to the extent that juvenile adjudications end up in the newspapers, or as part of the public record,[105] they are available to any entity that searches public records databases.[106] Courts have suggested that this is a common occurrence.[107] Records may thus be obtained by employers, educational institutions, housing authorities, and private data miners who sell the information to whomever will pay for it.[108]

With the historical role of the jury and the juvenile justice

tration statutes despite the fact that notification requirements are nonpunitive).

98. *See In re Hezzie R.*, 580 N.W.2d at 671–72 (discussing factors a judge may weigh when deciding whether to impose reporting requirements).

99. *See* Carpenter, *supra* note 96, at 334 (noting that some jurisdictions require a "lifetime registration" even for juveniles).

100. FED. R. EVID. 608(a)(1), 609.

101. FED. R. EVID. 609(a)(1)–(2).

102. FED. R. EVID. 609(d) (emphasis added).

103. *Id.*

104. This is exactly what happened in *Davis v. Alaska*, 415 U.S. 308, 319–20 (1974).

105. *See In re* L.M., 186 P.3d 164, 170 (Kan. 2008) (requiring that official juvenile files must be open to the public unless the adjudicated child is under the age of fourteen and the judge orders the file closed in the best interests of the child (citing KAN. STAT. ANN. § 38-2309(b) (2006))).

106. *Cf.* Jacobs & Crepet, *supra* note 87, at 177–78 (noting the increasing number of entities interested in conducting public records searches for criminal records, which in many states would include one's juvenile record).

107. *See id.*

108. *See id.*

system (both as it was meant to be and as it is today) in mind, this Note analyzes below the right to a jury trial in juvenile court, in light of both legal precedent and practical realities.

II. PRECEDENT AND PRACTICE: THE JURY TRIAL RIGHT IN JUVENILE JUSTICE TODAY

The question of whether the right to a jury trial applies to juvenile offenders must be analyzed with attention to both legal precedent and systemic changes; the "candid appraisal" of the juvenile justice system called for in 1967[109] continues. Legislatures have debated sentencing and crime control policy, which led in recent years to "get tough" political platforms[110] and punitive legislative reforms.[111] Courts have subsequently attempted to determine to what extent those changes demand a reassessment of the due process rights available to young offenders. In 2008, the Kansas Supreme Court decided that juveniles tried in that state are entitled to a trial by jury under the Federal Constitution.[112] This section will draw upon such legal precedent, as well as the systemic developments in juvenile justice, to reexamine the jury trial question and to argue that, due to the punitive nature of the system and its inherent biases, juries are required.

109. *In re* Gault, 387 U.S. 1, 21 (1967).

110. *See* Barry C. Feld, *Race, Politics, and Juvenile Justice: The Warren Court and the Conservative "Backlash,"* 87 MINN. L. REV. 1447, 1451–52 (2003) (describing conservative politicians' use of "get tough" rhetoric in the 1990s, which was made possible by sensational media coverage and increases in homicide rates among juveniles). This sensational media coverage of violent youth crime continues. *See, e.g.*, Rick Bragg, *When a Child Is Accused of Killing and a Law Stays Firm*, N.Y. TIMES, June 22, 2000, at A18 (mentioning a "nightmare epidemic of school shootings" and "killers too young to see an R-rated movie"); Clarence Page, *Crime Makes a Comeback*, CHI. TRIB., July 16, 2006, at C5 (referring to "juveniles who are not content to merely rob or steal").

111. *See, e.g.*, 1992 Kan. Sess. Laws 479 (codified as amended at KAN. STAT. ANN. § 21-4702 (2007)) (describing the state's sentencing guidelines as applicable to "all offenders," including juveniles); 1994 La. Acts 120 (codified as amended at LA. CHILD. CODE ANN. art. 407(A) (2004)) (reducing the amount of confidentiality inherent in the juvenile system); 1995 Wis. Sess. Laws 77 (codified as amended at WIS. STAT. § 938.01 (2005)) (listing as the intent of the statute to "protect citizens . . . [and] to hold each juvenile offender directly accountable," and relocating the juvenile code to be adjacent to the State's criminal code).

112. *In re* L.M., 186 P.3d 164, 174 (Kan. 2008).

A. LEGAL PRECEDENT: *MCKEIVER* (AND ITS PROGENY) TO *IN RE L.M.*

In *McKeiver v. Pennsylvania*, the only Supreme Court decision on the issue of the right to a jury trial in juvenile court, a plurality concluded that due process in the juvenile context did not demand the provision of this safeguard, in part because to so require would "remake the juvenile proceeding into a fully adversary process."[113] The Court expressed concern for the unique nature and rehabilitative focus of the juvenile system and asserted that requiring a jury trial would do away with the system's inherent "sympathy" and "paternal attention."[114] Justice White based his concurrence on the "differences of substance" between the juvenile and adult systems.[115] Since *McKeiver*, state courts have confronted the issue of jury trials for juvenile offenders on many occasions and have nearly universally agreed with the holding in that case.[116]

In 2008, however, Kansas, noting the drastic transformation of the juvenile system in the years since 1971, bucked the trend and held that juveniles charged with imprisonable offenses had the constitutional right to a jury trial.[117] Kansas's decision in *In re L.M.* rekindles the debate concerning the goals of juvenile justice, the realities of the system as it functions today, and fundamental fairness. The opinion provides a starting point from which to answer the question whether juvenile offenders are entitled to jury trials.[118] What is largely missing from the court's analysis, however, is attention to current juvenile justice statistics and the historical role of the jury, both of which are crucial to an understanding of why the jury trial is absolutely necessary in the juvenile courtroom.

113. McKeiver v. Pennsylvania, 403 U.S. 528, 545 (1971) (stating that "trial by jury in the juvenile court's adjudicative stage is not a constitutional requirement").

114. *Id.* at 547–50.

115. *Id.* at 551–53 (White, J., concurring). In his concurrence White relied on what are today highly questionable premises. He asserted that, in the juvenile justice system, "[c]oercive measures, where employed, are considered neither retribution nor punishment," that the system went out of its way to avoid stigmatization of individual offenders, and that confinement was not a "measure of the seriousness of the particular act . . . performed." *Id.* at 552.

116. *See, e.g.*, State *ex rel.* D.J., 817 So. 2d 26, 34–35 (La. 2002); *In re* J.F., 714 A.2d 467, 473 (Pa. 1998); *In re* Hezzie R., 580 N.W.2d 660, 677–78 (Wis. 1998).

117. *See In re L.M.* 186 P.3d at 170.

118. *See id.* at 167–70.

B. SYSTEMIC CHANGE—CHARACTERIZING THE PUNITIVE PURPOSE

The juvenile justice system is not the same as when it started. It has developed over time into a justice system that emphasizes punishment and incapacitation as much as the adult system. This fact was recognized in *In re L.M.*,[119] but is even more apparent after an examination of the practical aspects of the system.

1. The Steady Erosion of Rehabilitative Purposes

The premise underlying many courts' determinations that there is no right to a jury trial in juvenile proceedings is that the purpose of juvenile intervention is treatment as opposed to punishment.[120] Although this premise may have been valid in 1899,[121] whether it remains so today is debatable. Commentators assert that the modern juvenile court emphasizes "punishment," and that this, "rather than treatment, of delinquents raises fundamental questions about the adequacy of procedural protections in the juvenile court."[122] If the purposes of the juvenile justice system have become indistinguishable from the purposes of the adult system, there is perhaps no principled reason why the due process rights afforded in each system are different.[123]

The Supreme Court decision in *McKeiver* and a number of the state court decisions denying juveniles the right to a jury are characterized by strong dissents pointing to the same punitive developments in juvenile justice cited by commentators.[124]

119. *Id.*

120. *See McKeiver*, 403 U.S. at 544 (citing the PRESIDENT'S COMM'N ON LAW ENFORCEMENT AND ADMIN. OF JUSTICE, TASK FORCE REPORT: JUVENILE DELINQUENCY AND YOUTH CRIME 9 (1967)); *see also, e.g.*, *In re* J.F., 714 A.2d at 471–72; *In re Hezzie R.*, 580 N.W.2d at 670.

121. *See* WATKINS, *supra* note 14, at 46–60.

122. Barry C. Feld, *The Juvenile Court Meets the Principle of Offense: Punishment, Treatment, and the Difference It Makes*, 68 B.U. L. REV. 821, 822 (1988).

123. *See id.* at 909–10 ("The current status of the juvenile court system, which has become increasingly criminalized and more like its adult counterpart, raises the question whether there is any reason to maintain a separate juvenile criminal court whose sole distinguishing characteristic is its persisting procedural deficiencies.").

124. *See, e.g.*, *Ex rel.* D.J., 817 So. 2d 26, 35 (La. 2002) (Johnson, J., dissenting) ("Recent and numerous changes in our Juvenile Justice System require a reevaluation of fundamental fairness . . . ."); *In re Hezzie R.*, 580 N.W.2d at 686 (Bradley, J., dissenting) ("[T]hese continuing sanctions 'look[],

Even the majority decisions in these cases often concede that the "idealistic hopes" of the juvenile justice system "have not been realized."[125] It was this argument that allowed the Kansas Supreme Court to find a constitutional right to a jury trial in *In re L.M.*,[126] in which it found that the systemic changes "superseded" the reasoning promulgated by the Supreme Court in *McKeiver* and in an earlier Kansas case.[127] The court held that, since the "juvenile justice system is now patterned after the adult criminal system," and the "benevolent *parens patriae* character that distinguished it [is eroded]," "juveniles have a constitutional right to a jury trial."[128]

In addition to analyzing the punitive nature of juvenile adjudications in broad, as the above decisions have done, one might also look to the Supreme Court's opinion in *Kennedy v. Mendoza-Martinez*,[129] which provides a list of factors to consider when determining whether something is punitive. The factors include: "[w]hether the sanction involves an affirmative disability or restraint," "has historically been regarded as a punishment," is imposed only after a finding of mens rea, "promote[s] . . . retribution and deterrence," and applies to behavior that is already classified as a crime.[130] In more recent years, courts have applied these factors when determining whether such policies as registration and civil commitment for "sexual predators"[131] are punitive in nature.[132] It is probable that ap-

talk[], [and] smell like adult criminal code, criminal consequences'."). The dissents in these and other cases rely to a large extent on changes in state statutory language. *See, e.g.*, 1992 Kan. Sess. Laws 1207 (codified as amended at KAN. STAT. ANN. § 21-4702 (2007)); 1994 La. Acts 1008 (codified as amended at LA. CHILD. CODE ANN. art. 407(A) (2004)); 1995 Wis. Sess. Laws 1049 (codified as amended at WIS. STAT. § 938.01 (2005)).

125. *McKeiver*, 403 U.S. at 543–44; *see also In re J.F.*, 714 A.2d at 471 (conceding that the juvenile justice system in Pennsylvania had "move[d] away from the rehabilitation and protection of juvenile offenders" but suggesting that this merely reflected the "changing nature of juvenile crime"); *Ex rel. D.J.*, 817 So. 2d at 34 (recognizing that the juvenile court system in Louisiana was "far from perfect").

126. *See In re* L.M., 186 P.3d 164, 171 (Kan. 2008).

127. *Id.* at 170 (referring to *McKeiver*, 403 U.S. at 550 and to *Findlay v. State*, 681 P.2d 20 (Kan. 1984)).

128. *Id.*

129. 372 U.S. 144 (1963).

130. *Id.* at 168–69 (going on to hold that the citizenship penalty at issue was indeed punitive in nature).

131. State v. Carpenter, 541 N.W.2d 105, 115 (Wis. 1995).

132. *See, e.g.*, Young v. Weston, 898 F. Supp. 744, 752–53 (W.D. Wash. 1995) (finding that the state's Sexually Violent Predator Statute could not be

plying the same factors to the juvenile justice system would indicate the same erosion, and would bolster the argument made in cases like *In re L.M.*[133]

As Professor Barry Feld asserts, it *does* make a difference whether courts classify a sanction as punishment or treatment.[134] Historically, only the treatment-based nature of the juvenile system allowed courts to rule that juries are unnecessary.[135] Without this treatment-based footing to stand on, it is difficult to determine whether the decisions disallowing jury trials would stand.

The similarities between juvenile and adult criminal justice[136] are illustrative. These similarities, however, are not the only way to define the true purpose of modern juvenile justice. An examination of the facilities in which juveniles are incarcerated, and of the consequences of a delinquent adjudication, leads to the same conclusion. Mission statements may alone indicate a punitive purpose, but what the system actually *does* with juvenile offenders is even stronger evidence that youth are being punished, and not treated.

2. *Where* Offenders Are Sent Says Something About *Why* They Are Sent There

When the same facility is used to house both juvenile offenders and adult offenders, the purposes of confinement in that facility may be the same for both populations. This is one conclusion to be drawn from the situation in the correctional facility in Red Wing, Minnesota, wherein both juvenile and adult inmates are housed in the same facility.[137] Concededly,

construed as civil); *Carpenter*, 541 N.W.2d at 113 (finding that commitment of "sexually violent persons" was not punishment oriented).

133. For example, using the factors in conjunction with statutory language and structure would bolster the assertion that "[the] changes to the juvenile justice system have eroded the benevolent parens patriae character that distinguished it from the adult criminal system." *In re L.M.*, 186 P.3d at 170.

134. *See generally* Feld, *supra* note 122. The article is aptly subtitled "Punishment, Treatment, and the *Difference It Makes*" (emphasis added).

135. *See, e.g.*, McKeiver v. Pennsylvania, 403 U.S. 528, 552 (1971) (White, J., concurring).

136. For example, the similarities in terminology and statutory structure are striking, and form the basis of the court's decision in *In re L.M.*, 186 P.3d at 168–71.

137. *See* Facility Information for the Minnesota Correctional Facility in Red Wing, http://www.corr.state.mn.us/facilities/redwing.htm (last visited Oct. 23, 2009) (illustrating the fact that the facility houses both juvenile and adult offenders).

one could imagine the argument that keeping juvenile and adult populations separate from each other would remedy the problem. In the Red Wing example, this assertion would fail to fully address the fact that the environment within the facility does not vary based on whether the population is adult or juvenile.[138]

Troublingly, many states now call their juvenile detention centers by the same names as their adult facilities[139] and include prison-like language in the descriptions of the centers.[140] It may be true that a state could offer the juveniles housed in a particular facility, whatever its name, opportunities for treatment and more favorable living conditions not offered to adults. The literature on conditions of confinement in juvenile detention facilities, however, points in the opposite direction.[141]

The report published by the Justice Policy Institute suggests that the 591 secure juvenile facilities in this country suffer the same malaise as do jails and prisons housing adult offenders.[142] The facilities are overcrowded, understaffed, and

138. *Cf. id.* (providing no indication that any portion of the facility, constructed in 1889, varies according to the age of the inmate housed there); Virtual Tour of MCF-Red Wing, http://www.corr.state.mn.us/aboutdoc/tour/default.htm (last visited Oct. 23, 2009) (providing only one example of a security unit, suggesting that all the security units within the facility are the same).

139. *See In re L.M.*, 186 P.3d at 169 (referring to the fact that a juvenile detention center is now known as a "[j]uvenile correctional facility" (quoting KAN. STAT. ANN. § 38-2302 (2006))); *cf. In re L.M.*, 186 P.3d at 169 (noting that a facility for juvenile detention was previously termed a "[s]tate youth center" (quoting KAN. STAT. ANN. § 38-1602(g) (1982) (repealed 2006))).

140. *See, e.g.*, New York City Department of Juvenile Justice, Secure Facilities, http://www.nyc.gov/html/djj/html/facilities.html (last visited Sept. 13, 2009) (describing the facility as being "characterized by locks on the doors" and utilizing "other restrictive hardware designed to restrict the movement of the residents and protect public safety").

141. *See generally* BARRY HOLMAN & JASON ZIEDENBERG, JUSTICE POLICY INST., THE DANGERS OF DETENTION: THE IMPACT OF INCARCERATING YOUTH IN DETENTION AND OTHER SECURE FACILITIES (2006), http://www.justicepolicy.org/images/upload/0611_REP_DangersOfDetention_JJ.pdf (describing correctional facilities as comparable to adult prisons and detailing the effects of detention on juveniles); Sarah Livsey et al., *Juvenile Residential Facility Census, 2004*, JUVENILE OFFENDERS & VICTIMS: NAT'L REPORT SERIES BULLETIN (2009), *available at* http://www.ncjrs.gov/pdffiles1/ojjdp/222721.pdf (demonstrating that many juvenile facilities are overcrowded and utilize confinement features).

142. *See* HOLMAN & ZIEDENBERG, *supra* note 141, at 2; *cf.* ELLIOTT CURRIE, CRIME AND PUNISHMENT IN AMERICA 61 (1998) (speaking generally of the costs and consequences of the prison experiment, and specifically of problems such as overcrowding).

therefore are plagued with "neglect and violence,"[143] including inmate assaults on staff and other inmates, inmate abuse, and mental illness.[144] The report focuses on the effects of detention on young offenders themselves and on the communities from which they are taken.[145] But it also makes key observations regarding the facilities in the process, finding that "[d]etention centers do serve a role by temporarily supervising . . . youth."[146] This role is far removed, however, from the treatment and rehabilitation envisioned by the founders of the juvenile justice system.[147]

Another report released in 2009 by the Office of Juvenile Justice and Delinquency Prevention offers a clearer picture of conditions in secure juvenile facilities.[148] This study also found that many juvenile facilities housed more residents than they had standard beds,[149] and that the problem of overcrowding was more pronounced in large, publicly run correctional facilities.[150] Furthermore, the study noted that ninety-two percent of secure juvenile facilities had "confinement features" in addition to locking juveniles in their rooms to sleep, including internal security doors to lock youth in specific areas, razor wire, and external fences or walls.[151] Of course, those people who assert that juvenile confinement remains fundamentally different from adult confinement may argue that the facility itself is less important than the programming and treatment opportunities available within its walls, as posited above. The counterargument is the same; if a facility is operating at full or overcapacity and has all the security features of a prison, the purpose of placing a young person in that facility is likely based more on punishment than on treatment.

143. HOLMAN & ZIEDENBERG, *supra* note 141, at 2.

144. *See* Angie Cannon, *Juvenile Injustice*, U.S. NEWS & WORLD REPORT, Aug. 9, 2004, at 30–31.

145. *See generally* HOLMAN & ZIEDENBERG, *supra* note 141, at 4–16 (discussing recidivism rates, the impact of detention on inmates' mental health, education, employment, and cost effectiveness).

146. *Id.* at 3.

147. *See, e.g.*, Feld, *supra* note 48, at 1138 (explaining that one of the original purposes of the juvenile system was to treat young offenders, rather than punish or warehouse them).

148. *See generally* Livsey et al., *supra* note 141 (reporting the internal conditions of juvenile facilities nationwide).

149. *Id.* at 7.

150. *See id.* at 7–8.

151. *See id.* at 5–6 (noting that ninety-two percent of detention centers reported confinement features).

The impact of detention (as opposed to alternative forms of correction) on recidivism rates, overall crime rate, and governmental budget is a separate debate. The fact that incarceration in juvenile correctional facilities is shown to have a negative impact on all of the above,[152] as well as on the mental health, and the educational and occupational achievement of juvenile offenders,[153] is, however, illustrative. Researchers, legislators, and lawyers know that other means of correction work better than secure confinement in terms of true rehabilitation.[154] Despite this knowledge, detention of young offenders continues to increase.[155] This fact further suggests that the true purpose of juvenile detention is the punishment and warehousing of juveniles rather than any form of paternal assistance that would make the juvenile system fundamentally different from the adult system.

3. Delinquent Adjudications Are Reused for Punitive Purposes

One may not be convinced that juvenile justice is entirely punitive by the argument that the juvenile system has become too similar to the adult system in its structure, terminology, and/or facilities. The fact that juvenile adjudications are used after the fact to punish a young offender, however, is unavoidable.

As discussed above, the rule in *Apprendi* allows a court to use a delinquent adjudication to enhance an adult sentence automatically without independent proof to the jury.[156] Furthermore, adjudications for sex offenses often require the young offender to register as a sex offender for life,[157] subjecting him to

152. *See* HOLMAN & ZIEDENBERG, *supra* note 141, at 4–8, 10–11 (asserting that detention does not reduce recidivism, does not reduce the overall crime rate in communities, and is not cost-effective).

153. *See id.* at 8–10 (finding that detention inflicts harm upon the mental health of young inmates and makes it difficult for them to find success in education and/or employment endeavors).

154. *See, e.g.*, *id.* at 16 (citing studies that show alternatives to confinement that are cost-effective at reducing recidivism).

155. *Id.* at 2.

156. In both *United States v. Jones*, 332 F.3d 688, 696 (3d Cir. 2003) and *United States v. Smalley*, 294 F.3d 1030, 1033 (8th Cir. 2002), the courts upheld the use of a juvenile adjudication as a fact of prior conviction to enhance a criminal sentence. *See also* Apprendi v. New Jersey, 530 U.S. 466, 475–76 (2000).

157. *See* Carpenter, *supra* note 96, at 334.

close scrutiny well into adulthood.[158] Juvenile adjudications may be used against a person testifying as a witness at an unrelated trial under Federal Rule of Evidence 609.[159] And, although not punitive in the legal sense of the word, the ability of the news media to print accounts of cases involving persons as young as age fourteen[160] also punishes juvenile offenders by subjecting them to the same public outrage that the juvenile system originally intended to protect against.[161]

If the purpose of a juvenile adjudication were truly to clear a path for an individual offender into rehabilitative, treatment-based programs,[162] then the adjudication itself would be analogous to a doctor's written order to fill a prescription. One would never expect such an order to come back to haunt the patient in later proceedings. Instead, juvenile adjudications are treated in much the same way as a guilty verdict or plea for an adult offender—as a point militating in favor of increased punishment, supervision, and stigma in the future.

Taken together, both the immediate and subsequent consequences of a delinquent adjudication indicate that the purpose of the system is to punish and *not* to treat. The purpose is to make it possible to gather up delinquent juveniles and warehouse them as we do adult offenders, in jails and prisons that may seem like good investments, but that offer little more than paid supervision and high-tech locks on the doors.[163] The purpose is to allow the system to have as much control over an offender for as long as possible, so that more punishment may be doled out if necessary. The "get tough" movement has not forsaken juvenile justice.[164]

The court in *In re L.M.* finely characterized the punitive

158. *See id.* at 334–35 (describing various states' registration requirements).

159. FED. R. EVID. 609(d).

160. *Cf. In re* L.M., 186 P.3d 164, 170 (Kan. 2008) (citing KAN. STAT. ANN. § 38-2309(b) (2006)) (noting that the statute requires that official juvenile files must be open to the public unless the adjudicated child is under the age of fourteen).

161. *See* Tanenhaus, *supra* note 16, at 43 (using the words "sheltered place" to describe the setting of the juvenile court system).

162. This, of course, was the original plan of the progressive founders of the system. *See, e.g.*, WATKINS, *supra* note 14, at 49–50; Feld, *supra* note 48, at 1138.

163. *See generally* CURRIE, *supra* note 142, at 85–109 (explaining the many problems associated with increased incarceration).

164. *See generally* Feld, *supra* note 110 (describing the movement and the effect of the political environment on juvenile justice policy).

purpose of the modern juvenile justice system, and provided many of the same grounds in support that are presented and supplemented in this Note.[165] The punitive purpose, however, is not the only argument in support of providing the right to a jury trial in juvenile court. The historical role of juries also provides courts with a basis for requiring a jury in juvenile proceedings.

C. THE HISTORIC ROLE OF THE JURY—CHECKING BIAS AND GOVERNMENT OPPRESSION

The right to a jury trial exists in large part to protect against possible bias and government oppression[166] and therefore is most important to preserve in settings in which these problems are apparent.

Many scholarly commentaries expound the importance of the jury in protecting against government oppression, ensuring the protection of individual autonomy in the face of state control, and allowing for accurate fact-finding.[167] In *Duncan v. Louisiana*, the Supreme Court expressed this commitment with language such as "fundamental to the American scheme of justice"[168] and "inestimable safeguard against the corrupt or overzealous prosecutor."[169]

A closer look at the facts of *Duncan* reveals also that there is another, related reason why the opportunity to try one's case before a jury of peers is so important—to protect against arbitrary enforcement of the laws, which often presents itself in the form of racial bias.[170] Gary Duncan was nineteen years old when tried in 1967.[171] His cousins, two younger black kids, had recently transferred to a previously all-white school pursuant to a desegregation order.[172] They were having trouble with bul-

165. *See In re L.M.*, 186 P.3d at 168–71.

166. *See* Duncan v. Louisiana, 391 U.S. 145, 155–56 (1968).

167. *See* AM. BAR FOUND., SOURCES OF OUR LIBERTIES: DOCUMENTARY ORIGINS OF INDIVIDUAL LIBERTIES IN THE UNITED STATES CONSTITUTION AND BILL OF RIGHTS 7–10 (Richard L. Perry & John C. Cooper eds., 1959). *See generally* WILLIAM FORSYTH, HISTORY OF TRIAL BY JURY 165 (1852) (discussing the authority of the jury verdict over any witness testimony).

168. *Duncan*, 391 U.S. at 149.

169. *Id.* at 156.

170. *See* Hiroshi Fukurai, *A Quota Jury: Affirmative Action in Jury Selection*, 25 J. CRIM. JUST. 477, 477–78 (1997).

171. *Duncan*, 391 U.S. at 147.

172. Brief for Appellant at 3–4, Duncan v. Louisiana, 391 U.S. 145 (1968) (No. 410).

lying at school.[173] In this racially charged environment, Mr. Duncan was on his way home one afternoon, and saw his two cousins on the side of the road confronted by four white boys.[174] He told his cousins to get in his car,[175] and allegedly slapped (or touched—it is not clear) the arm of one of the white boys in the process.[176] Regardless of the resolution of this factual dispute, it is at least possible that Mr. Duncan's race, and the race of the boys he allegedly assaulted, played a role in either the charging of his case or its outcome.[177]

The era of race riots and marches on Washington and desegregation of public schools has perhaps passed,[178] but race is still a thorny issue in the fields of criminal and juvenile justice.[179] Reports of disproportionately large numbers of black men under the supervision of the criminal justice system[180] and on death row[181] abound. Cases in which black offenders harm white victims are more likely to result in capital charges.[182] The judiciary is made up predominantly white men.[183] The punishment for so-called black drugs is still higher than for their

173. *See id.* at 4 (asserting that the young cousins had been "assaulted, threatened, and otherwise harassed" by white students at their new school).

174. *Id.*

175. *Id.*

176. *Id.*

177. *Cf. id.* at 3–4 (referencing repeatedly Mr. Duncan's race, the school situation, and the race of the boys involved, which indicates that racial tension was an important factor in at least some aspects of the case).

178. *Cf.* Bruce Ackerman, *The Living Constitution*, 120 HARV. L. REV. 1737, 1788 (2007) (characterizing the "civil rights era" as the decade of the 1960s). It is quite possible to extend this characterization a few years further back from this point, with events such as the decision in *Brown v. Board of Education* as early as 1954. 347 U.S. 483 (1954).

179. *See generally* HUIZINGA ET AL., *supra* note 66.

180. *See* CURRIE, *supra* note 142, at 13.

181. *See, e.g.*, Laura M. Argys & H. Naci Mocan, *Who Shall Live and Who Shall Die? An Analysis of Prisoners on Death Row in the United States*, 33 J. LEGAL STUD. 255, 278–79 (2004) (noting the problem of minority overrepresentation without determining the precise cause of the disparity).

182. *See* Scott Phillips, *Racial Disparities in the Capital of Capital Punishment*, 45 HOUS. L. REV. 807, 811–12 (2008) (suggesting that the race of both the defendant and the alleged victim interact to produce the situation, in which black defendants with white victims are the most likely of any subset to end up on death row).

183. *See* Edward M. Chen, *The Judiciary, Diversity, and Justice for All*, 91 CAL. L. REV. 1109, 1111–12 (2003) (asserting that there is a "lack of judges of color within the federal judiciary," that "[o]nly 22.6% of active judges are women" and providing statistics in support of these propositions).

white counterparts,[184] regardless of the fact that the drugs are pharmacologically identical.[185] And in the juvenile system, disproportionate minority confinement has become so predominant that legislatures have structured spending to encourage states to take action against the problem.[186]

Some of the above problems, including disproportionate minority contact, meet time and again with the counterargument that minorities simply commit more crime.[187] If this is the case, then police and prosecutors cannot help but arrest and incarcerate them at a higher rate than the white population. For some crimes, this may be accurate,[188] but the research shows that the level of disparity cannot be easily explained away with the answer "they commit more crime,"[189] and is instead consistent with racial bias remaining a very real problem.[190]

Racial bias, when acted upon in an official capacity (such as on the part of a police officer or a county attorney) is a form of arbitrary law enforcement and government oppression of certain populations[191]—precisely the sort of problem that juries can guard against.[192] When the colonists faced criminal charges in 1776, they wanted juries of their peers to decide their guilt or innocence rather than members of the king's loyal entou-

184. *See* Lindsay C. Harrison, *Appellate Discretion and Sentencing After* Booker, 62 U. MIAMI L. REV. 1115, 1133–34 (2008) (noting that African Americans constitute the defendants in the vast majority of crack cocaine convictions and are sentenced to disproportionately longer prison terms than Caucasian drug offenders).

185. *Id.* at 1134.

186. *See* Juvenile Justice and Delinquency Prevention Act of 2002, 42 U.S.C. § 5633(a)(22) (2006).

187. This argument is noted by David Huizinga et al. in their report on the subject to the Office of Juvenile Justice and Delinquency Prevention. *See* HUIZINGA ET AL., *supra* note 66, at 1.

188. *See id.* at 24. The author reports that minorities appear to commit more violent and property offenses than do whites. *Id.*

189. *Id.* at ii, 41. Statistically controlling for self-reported offending allowed the study authors to assert that "levels of delinquent offending have only marginal effects on the level of DMC." *Id.* at 26, 41.

190. *See id.* at ii (noting that racial bias is consistent with but does not necessarily explain disproportionate minority contact in the juvenile justice system).

191. *See, e.g.*, Feld, *supra* note 110, at 1469–70 (describing the manner and consequences of racially biased law enforcement in the South before the civil rights era).

192. *See* Duncan v. Louisiana, 391 U.S. 145, 155–56 (1968) (citing oppression by the government and arbitrary enforcement of the law as reasons to provide a criminal defendant with a jury of his peers).

rage.[193] In much the same way, an African-American or Hispanic alleged offender may want a jury to include members of her geographical, racial, or cultural community, who might have a more open mind regarding persons who look like her.[194]

Systems plagued with problems of racial disparity and probable discrimination have an incentive to rely on the province of the jury to guard against making the problem even worse.[195] This is true of the juvenile justice system, with its well-documented problem of disproportionate minority confinement.[196] Juries of laypersons may not always reach different conclusions than a judge would. Perhaps racial disparity would continue to be an issue even if juries were available. Taking this as true, however, allowing guilt to be determined by a jury as opposed to a single judge would increase the appearance of the legitimacy of the outcome,[197] and perhaps increase confidence in the system as well.[198] As with so many aspects of criminal justice, appearances and public perception are important components of due process;[199] the juvenile justice system is no different in this regard.

A recent occurrence, although not specifically related to race, sums up the point regarding the propensity for government oppression and abuse of discretion in the juvenile justice system. In February 2009, two judges in Pennsylvania pled guilty to taking kickbacks in consideration for sending juvenile offenders who otherwise would have been sentenced to probation to private correctional facilities.[200] Aside from the fact that these official (and appalling) acts of judicial discretion likely

193. *See id.* at 152 ("Royal interference with the jury trial was deeply resented.").

194. This was the reasoning employed by the Supreme Court in deciding that using race as the basis for impaneling a jury, when the result was a homogenous jury different in race from the defendant, was a violation of the Equal Protection Clause. Hernandez v. Texas, 347 U.S. 475, 477 (1954).

195. *See* Fukurai, *supra* note 170, at 477–78.

196. *See generally* HUIZINGA ET AL., *supra* note 66 (discussing several factors that might affect disproportionate minority contact).

197. This need for legitimacy and confidence is well known in the field of criminal justice and many commentators have made note of it. *Cf.* Fukurai, *supra* note 170, at 477–78 (noting that juries containing members of the same race as defendants are commonly regarded as having greater legitimacy than are racially homogeneous juries).

198. *Cf. id.* (noting the importance of juries that mirror the racial characteristics of defendants).

199. *Id.*

200. *See* Ian Urbina & Sean D. Hamill, *Judges Plead Guilty in Scheme to Jail Youths for Profit*, N.Y. TIMES, Feb. 13, 2009, at A22.

ruined young lives, and the fact that officials may never know just how many juveniles were affected,[201] the situation sends a powerful message.

The juvenile justice system is no longer so different from the adult system to warrant different and fewer due process protections. The propensity for inappropriate and biased exercises of judicial discretion coupled with the punitive nature of the system combine to make juries necessary in juvenile court.

III. PROVIDE JURIES IN JUVENILE COURT—BUT WORK TO MAKE THEM UNNECESSARY

In light of the purpose the juvenile court currently serves, the consequences it doles out, and the manner in which it disproportionately affects minority youth, the right to a trial by jury is a necessity in juvenile court. Juries consisting of a representative cross-section of the adult community should thus be provided to all young offenders facing incarceration. This solution, however, needs last only so long as the juvenile system remains untrue to its rehabilitative roots.

A. THE TEMPORARY SOLUTION: JURY TRIALS FOR JUVENILE OFFENDERS

In light of the punitive purpose of the juvenile court system and current problems of racial disparity, the right to a jury trial for juvenile offenders is a procedural necessity. The jury is a fundamental safeguard of the rights of the accused,[202] whether youth or adult. Juries should thus be provided to all juvenile offenders in the same manner that they are provided to adults—in other words, any time a juvenile is accused of a crime for which the sentence may include incarceration.

Of course, providing juries will be another expenditure of resources,[203] which would perhaps further strain a system already at its fiscal breaking point. Having juries in the courtroom will also, by definition, deplete the confidential nature of juvenile hearings. The expenditure of resources argument is fair, especially in light of the current economic environment. Just as constitutional protections are jealously

201. *See id.* (stating that more than 5000 juveniles appeared before the judge since the scheme began, but providing no definite evidence of the number of offenders that were sentenced inappropriately).

202. *See* Duncan v. Louisiana, 391 U.S. 145, 156 (1968).

203. *See* Kalven, *supra* note 33, at 1059–60 (noting that bench trials are forty percent less time consuming than jury trials).

guarded in the criminal system[204] no matter their cost, however, so must they be guarded for juvenile offenders. In response to the argument about confidentiality, the confidential nature of the juvenile system has already been largely eroded.[205] The loss of confidentiality is one of the reasons justifying providing juries in the first place.[206]

The solution, or at least the discussion, must not end here. Underlying the determination of what due process safeguards are necessary *right now* is the question of whether the safeguards will always be necessary. Alternatively, should policymakers endeavor to return the juvenile justice system to its roots in individualistic treatment, and rehabilitation such that perhaps the "trappings" of criminal justice are truly not required?[207]

B. FAST FORWARD: IS THIS THE WAY WE WANT JUVENILE JUSTICE TO FUNCTION?

In other contexts, the Supreme Court has suggested that remedial actions are constitutionally required for a time, but will not remain necessary forever.[208] Such may be the case with providing juries to juvenile offenders. When the Supreme Court decided *Grutter v. Bollinger* (an affirmative action case argued under the Equal Protection Clause), it asserted that race-based affirmative action, when done correctly, was "narrowly tailored" to the "compelling interest" of diversity in higher education.[209] The Court was careful to leave itself an escape hatch. Since the use of race as a factor for admission to law school at all, whether it favored white students, black students, or whomever, was not easy to condone under the Constitution,[210] lan-

204. *See, e.g.*, *Duncan*, 391 U.S. at 148 ("[M]any of the rights guaranteed by the first eight Amendments to the Constitution have been held to be protected against state action by the Due Process Clause of the Fourteenth Amendment.").

205. For a discussion of this issue, see *In re* L.M., 186 P.3d 164, 170 (Kan. 2008).

206. *See id.* (characterizing the lack of confidentiality as yet another factor making the juvenile system indistinguishable from the adult system).

207. This was the original intention. *See* Feld, *supra* note 48, at 1138–39.

208. *See, e.g.*, Grutter v. Bollinger, 539 U.S. 306, 341–43 (2003) (anticipating that law school affirmative action admissions programs will "no longer be necessary" in twenty-five years).

209. *Id.* at 343.

210. *See id.* at 341–42 (noting that the Fourteenth Amendment, by its terms, prohibits all classification based on race, and therefore such "classifications, however compelling their goals, are potentially . . . dangerous").

guage was included to suggest that as soon as it was no longer necessary to remedy the evils of past discrimination, the practice should cease.[211]

The decision to provide a jury in juvenile delinquency cases may warrant the same treatment, because if changes are made to the system such that the court really acts as *parens patriae*, thus fulfilling its core rehabilitative principles,[212] the formalistic due process protections would be extraneous.[213] The question becomes whether such a return to rehabilitation is desirable.

C. THE PRACTICAL REALITIES OF A RETURN TO REHABILITATION

Research shows that a return to rehabilitation is good correctional policy. For instance, rehabilitative programs such as multisystemic therapy, in which offenders remain in their communities and are subject to intensive correctional intervention, are widely considered to be highly effective forms of rehabilitation.[214] Multisystemic therapy and similar programs are more of an expense up front,[215] but the return on the investment in the form of reduced recidivism rate and fewer people in prison over time makes the program ultimately cost-effective.[216] This cost-effectiveness point perhaps rings even more true when the offenders being treated and/or rehabilitated are young, with many years ahead of them in which they could burden the system—or not. In the face of anticrime rhetoric, and the ease of claiming a "get tough" platform, it is always difficult to argue for something that appears more le-

211. *Id.* at 341–43.

212. Upholding these principles is, not to overstate the point, the original intention of the juvenile justice system. *See generally* WATKINS, *supra* note 14, at 46–60 (discussing the original intentions of the juvenile justice system).

213. *See* Feld, *supra* note 48, at 1138–40 (making the point that the due process safeguards available to adults were not available to juveniles because of the focus on the "best interests of the child").

214. Alan Carr, *Contributions to the Study of Violence & Trauma: Multisystemic Therapy, Exposure Therapy, Attachment Styles, and Therapy Process Research*, 20 J. OF INTERPERSONAL VIOLENCE 426, 427–29 (2005).

215. *Cf.* Francis T. Cullen & Paul Gendreau, *Assessing Correctional Rehabilitation: Policy, Practice, and Prospects*, *in* 3 CRIMINAL JUSTICE 2000, at 109, 152–53 (Julie Horney et al. eds., 2000) (describing the numerous preemptive actions which are part of a multisystemic therapy program).

216. *See id.* at 152 ("[Multisystemic therapy] has achieved reductions in recidivism and has been cost effective."); Carr, *supra* note 214, at 429 ("[O]utcome data . . . show[s] that multisystemic therapy is less costly and more effective than routine community-based service and residential services.").

nient, or too "soft."[217] The social-science research shows, however, that this argument could be won.[218] When it was said that "nothing works" when it comes to the rehabilitation of offenders in the 1970s,[219] not much had yet been tried.[220] Today it is possible to argue the alternative.[221]

A strong counterargument posits that perhaps we should integrate juvenile justice with criminal justice,[222] and protect young offenders by offering "youth discounts" for their age at the time of the offense.[223] Arguably, this is what already occurs. Juvenile courts transfer a large, and growing,[224] number of young offenders to adult court, where the youth is then treated as an adult in all senses of that word.[225] In states with sentencing guidelines,[226] a judge may depart from the recommended

217. Feld, *supra* note 110, at 1451–52, 1505–07 (discussing the political dynamics of being "tough" or "soft" on crime).

218. *See, e.g.*, Carr, *supra* note 214, at 427–29; Cullen & Gendreau, *supra* note 215, at 152.

219. Robert Martinson, *What Works?—Questions and Answers About Prison Reform*, PUB. INT., Spring 1974, at 22, 48 (commonly known as the "nothing works" article).

220. *Cf.* Cullen & Gendreau, *supra* note 215, at 127, 130–31 (noting that cognitive behavioral programs had not been tried in 1974 and that Martinson himself later noted that the conditions of program delivery could have a significant positive effect).

221. *See, e.g.*, *id.* at 124–33 (reviewing and rebuking the "nothing works" study and its results); Carr, *supra* note 214, at 427–29.

222. *See* Feld, *supra* note 17, at 253–54 ("[P]unitive transfer laws and harsher delinquency sentences . . . have transformed the system into a scaled-down second-class criminal court for juveniles."); Barry C. Feld, *Abolish the Juvenile Court: Youthfulness, Criminal Responsibility, and Sentencing Policy*, 88 J. CRIM. L. & CRIMINOLOGY 68, 69 (1997) [hereinafter Feld, *Abolish the Juvenile Court*] ("[A] state could try all offenders in one integrated criminal court, albeit with modifications to respond to the youthfulness of younger defendants.").

223. *See* Barry C. Feld, *A Slower Form of Death: Implications of* Roper v. Simmons *for Juveniles Sentenced to Life Without Parole*, 22 NOTRE DAME J.L. ETHICS & PUB. POL'Y 9, 55–65 (2008) [hereinafter Feld, *Slower Form of Death*] (arguing for the "youth discount" when children are tried and sentenced as adults); Feld, *Abolish the Juvenile Court*, *supra* note 222, at 115–33 (stating that a "youth discount" is an essential part of effective juvenile justice policy).

224. *See* Feld, *Slower Form of Death*, *supra* note 223, at 11–14 (discussing the mechanisms used by states to try more than 255,000 juveniles as adults annually and the ways that states made this transfer easier in the early 1990s).

225. *Id.* at 16.

226. Many states now do have such guidelines. *See* NEAL B. KAUDER & BRIAN J. OSTROM, NAT'L CTR. FOR STATE COURTS, STATE SENTENCING GUIDELINES: PROFILES AND CONTINUUM 4 (2008), http://www.pewcenteronthestates.org/uploadedFiles/NCSC_Sentencing_Guidelines_profiles_July_2008.pdf. The

sentence if either aggravating or mitigating factors are present.[227] Provided that a sentence is not mandatory,[228] a judge can already offer a "youth discount" if she finds that the age of the offender makes him less culpable or his offense less egregious.[229] The problem with this structure is the fact that a court can also find an offender's young age to be an aggravating rather than a mitigating factor.[230] Judges are not immune from rhetoric and the need to "get tough" on young criminals.[231] That some crimes, especially violent person crimes, can be committed by a person not yet old enough to hold a learner's permit is disconcerting, and is perhaps the reason that the "youth discount" theory has not yet taken hold.[232]

The "youth discount" proposal has merit, but may provide both too much and not enough of a solution to the problem. Instead, the separation between juvenile and criminal should be maintained, and an attempt made to return the system, if not to 1899, at least to its core principles of rehabilitation and individualization.[233] The founders of the juvenile justice system not only recognized that juveniles were different, but that each was different from the next.[234] The system was designed not only to be less harsh, but to be tailored to an individual offender's

guidelines in place in Minnesota have been the "most heralded and emulated as a model," and thus serve as an illustrative example in this context. Blake Nelson, *The Minnesota Sentencing Guidelines: The Effects of Determinate Sentencing on Disparities in Sentencing Decisions*, 10 LAW & INEQ. 217, 222 (1992).

227. *See, e.g.*, MINNESOTA SENTENCING GUIDELINES § II.D cmt. II.D.01 (2009).

228. *But see* Feld, *Slower Form of Death*, *supra* note 223, at 9 (pointing out that life without parole sentences for juveniles are mandatory in some jurisdictions).

229. *See* MINNESOTA SENTENCING GUIDELINES § II.D.2(a)(5) (providing that "[o]ther substantial grounds . . . which tend to excuse or mitigate the offender's culpability" can be considered); *cf. id.* § II.D.1 (indicating that age is not among factors that may not be used as the basis of a sentencing departure).

230. *See, e.g.*, People v. DeSantis, 831 P.2d 1210, 1243 (Cal. 1992); State v. Butler, No. 2001CA00069, 2002 WL 253853, at *4 (Ohio Ct. App. Feb. 19, 2002).

231. *See* Feld, *supra* note 110, at 1562.

232. *Cf.* Tamar R. Birckhead, *North Carolina, Juvenile Court Jurisdiction, and the Resistance to Reform*, 86 N.C. L. REV. 1443, 1496 (2008) (noting "the specter of youth violence" in the continuing nature of the debate over juvenile justice policy).

233. *See* WATKINS, *supra* note 14, at 46–60 (discussing these core principles).

234. *Id.*

needs.[235] It is this second half of the equation that is missing from the "youth discount" plan.

The options available for reform in the juvenile court may be expressed as a tripartite choice—allow juvenile justice to continue as a punitive system, but provide all appropriate due process safeguards (such as requiring juries in the system as it functions today); stop pretending that the juvenile court is separate and recognize that kids are different in a new way (the youth discount); or return the system to its original rehabilitative purposes.[236] It has been said that "neither the Fourteenth Amendment nor the Bill of Rights is for adults alone."[237] This sentiment certainly has the ring of truth, but at base, the ultimate abandonment of a system designed with the best interests of children in mind is perhaps frightening as well.[238]

Courts and legislatures should maintain the separation between adult and juvenile justice and seek an eventual return to the original intentions and practices of the juvenile court. A return to rehabilitation would not be especially easy, or perhaps popular, but with a judicious allocation of resources such a transformation *is* possible. To the extent that requiring a jury in juvenile court is seen as simply too expensive or too time-consuming to fathom, such a requirement may even act as a necessary ultimatum prodding the system to make rehabilitative reform efforts. If this were to happen, a court would need to consider factors such as the purposes of the system, propensity for racial disparity, and the historical rationale behind the constitutional right at issue to make the determination of which precise due process safeguards to provide.

CONCLUSION

For so long as the juvenile justice system remains a "scaled-down, second-class criminal court for young people,"[239] juveniles have a constitutional right to a trial by jury. Juveniles are still different, but they are not so different that they can be denied due process of the law. A new evaluation of due process rights will be necessary if and when the juvenile justice system is made rehabilitative not only in name but in practice. The de-

235. *Id.*

236. This tripartite framework was expressed concisely by Judge Crippen in *In re* D.S.F. 416 N.W.2d 772, 777 (Minn. 1987) (Crippen, J., dissenting).

237. *In re* Gault, 387 U.S. 1, 13 (1967).

238. *In re D.S.F.*, 416 N.W.2d at 778 (Crippen, J., dissenting).

239. Feld, *supra* note 17, at 253–54.

sirability of this eventual outcome may be disputed, but regardless of the ongoing debate, the fact that the right to a trial by jury is constitutionally required *right now* is inescapable. Juvenile delinquents may not be the same as adult criminals, but they are being given the same treatment and consequences by the justice system. The same due process rights—the right to a trial by jury—should follow.