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Clyde Lemon

Barry University - Dwayne O. Andreas School of Law, clyde.lemon@law.barry.edu

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“Jury of My Peers”: The Significance of a Racially Representative Jury for Juveniles in Adult Court

*Clyde L. Lemon**

Introduction

Throughout the country, a majority of states have consistently held that juveniles are not allowed to demand a jury to determine their delinquency proceedings.¹ According to the Sixth Amendment of the United States Constitution, in criminal proceedings, all offenders are afforded “the right to a speedy and public trial, by an impartial jury of the state and district”² However the purpose of this writing is to discuss how this amendment is applicable in juvenile proceedings.

The topic begins with a historical overview of the juvenile justice system followed by a discussion of juvenile transfers to the adult court system. This will be followed by a thorough discussion of the detrimental effects transfers have on juvenile delinquents.

The article will then provide an overview of the jury selection process in adult criminal court proceedings. This section will discuss why the use of a jury is necessary in juvenile proceedings. Additionally, the focus will show that many times juries are not being racially identifiable with the defendant, meaning “jury of your peers.” In the twenty-first century, there has been evidence that the jury selection process has an element of racial discrimination.³ Despite efforts to eliminate discrimination, the goal of a fully representative jury still has not come to fruition.⁴ The jury selection process and the benefits of having a racially

* Juris Doctorate Candidate, 2018, Barry University Dwayne O. Andreas School of Law; B.A., 2006, Benedict College; M.S., 2009, North Carolina Central University; M.S., 2013, Florida State University.

¹Jennifer M. Segadelli, *Minding the Gap: Extending Adult Jury Trial Rights to Adolescents While Maintaining a Childhood Commitment to Rehabilitation*, 8 SEATTLE J. SOC. JUST. 683 (2010).

² *Id.*

³Hilary Weddell, *A Jury of Whose Peers?: Eliminating Racial Discrimination in Jury Selection Procedures*, 33 B.C. J. L. & SOC. JUST. 453, 458 (2013).

⁴ *Id.*

representative jury may produce better outcomes for juvenile offenders on trial in adult court than if they remained in juvenile court without a jury.

Juvenile Justice System

HISTORICAL OVERVIEW

Throughout history, in terms of crime, juveniles have traditionally been treated differently from adults, typically because they were viewed as being less culpable and more capable of reform.⁵ As a result, the juvenile justice system has traditionally focused on the rehabilitation of juveniles rather than punishment.⁶ In 1899, Cook County, Illinois established the first juvenile justice system.⁷ This system was created to separate the juveniles from the adults in the criminal justice system.⁸ At its inception, the juvenile court system was founded on informality and sympathy.⁹ The purpose of this court system was to intervene in the lives of youthful offenders, diverting them from the more punitive criminal courts, and encouraging rehabilitation based on the juveniles' needs.¹⁰ "By 1923, the idea of juvenile court, distinct and removed from adult proceedings, was deeply entrenched in American society."¹¹ "The nation agreed that the juvenile justice system should have broad and exclusive jurisdiction over youth until the age of eighteen by encouraging: private hearings, confidential records, detention, probation, individual treatment, and a focus on rehabilitation."¹²

By 1925, forty-six states had established juvenile courts as a means of protecting them from adult courts.¹³ The overarching goal for juvenile courts was to discover problems in a child's behavior and provide the proper intervention to prevent the child from engaging in future criminal activity.¹⁴

⁵Evan Reese, *S.B. 9: A Second Chance for Juveniles Serving Life Without Parole in California in Theory – and Why It Won't Make a Difference in Practice*, 41 HASTINGS CONST. L.Q. 927 (2014).

⁶ *Id.*

⁷Steven M. Cox, John J. Conrad, & Jennifer M. Allen, *Juvenile Justice: A Guide to Theory and Practice* 8 (Phillip A. Butcher et al. eds., 5th ed. 2003).

⁸ *Id.*

⁹Segadelli, *supra* note 1, at 689.

¹⁰Cox, *supra*, note 7 at 8.

¹¹Segadelli, *supra* note 1, at 689.

¹² *Id.*

¹³Emily Ray, *Waiver, Certification, and Transfer of Juveniles to Adult Court: Limiting Juvenile Transfers in Texas*, 13 SCHOLAR 317, 326-327 (2010).

¹⁴ *Id.*

Juvenile courts have developed an interventionist approach distinguishing juvenile courts from criminal courts by using terminology such as: “adjudication,” which is the juvenile system’s version of a trial in adult court.¹⁵ Furthermore, juveniles are not “convicted,” they are “adjudicated delinquent.”¹⁶ Similarly, they are not found “guilty,” but “in violation of the juvenile code.”¹⁷ In addition, instead of being referred to as “criminals,” juveniles are referred to as “delinquents.”¹⁸ “The adjudicatory hearing is considered the fact-finding portion of the juvenile process while the dispositional hearing is the rough equivalent to the sentencing phase in adult court.”¹⁹ Additionally, the juvenile court mostly categorizes their proceedings as civil proceedings instead of criminal proceedings.²⁰

In the middle of the twentieth century, juvenile courts operated without major constitutional challenges to their approaches.²¹ Due to the informal and discretionary procedures held by the juvenile courts in the 1950s and 1960s, numerous critics began to voice their opposition of the juvenile justice system.²² Procedurally, the juvenile system began to operate similarly to that of the adult system.²³ This caused the two systems to become similar in their approaches with the juvenile system taking more of a punishment approach rather than a rehabilitative approach.²⁴ Eventually, the “tough-on-crime” attitude prevalent in the 1980s, and a series of high-profile crimes involving juveniles, resulted in the elimination of numerous protections afforded to minors.²⁵

TRANSFER FROM JUVENILE COURT TO ADULT COURT

In 1966, the Supreme Court extended several important due process rights to juveniles relating specifically to the transfer process in the case of *Kent v. United States*.²⁶ The Court in *Kent* stated a juvenile is entitled to a hearing to determine waiver of juvenile court jurisdiction, as well as a judicial statement explaining the reasons for the waiver, if waiver is granted.²⁷

¹⁵ *Id.*

¹⁶ *Id.* at 327-328.

¹⁷ *Id.* at 328.

¹⁸ *Id.*

¹⁹ Ray, *supra* note 13, at 328.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ Reese, *supra* note 5, at 934.

²⁴ *Id.*

²⁵ *Id.*

²⁶ Ray, *supra* note 13, at 328.

²⁷ *Id.* at 328-329.

“Since the late 1970’s . . . there has been a growing trend to criminalize those in the juvenile justice system and transfer more cases out of juvenile court for adult proceedings.”²⁸ This trend came to existence due to the belief that violent juvenile offenders were too much for the shortcomings of juvenile courts.²⁹ By the 1980s, in response to growing juvenile crime rates and a series of highly publicized cases involving minors, most states had abandoned the traditional common law ideal that minors were less culpable than adults were.³⁰ Most jurisdictions began to “utilize the ‘waiver’ mechanism to move juveniles directly into the adult criminal system.”³¹ In other words, judges have the power to transfer cases to adult court, if they determine the charge is serious enough.³²

In *Kent*, the United States Supreme Court held that a judge must consider nine factors before employing judicial waiver. These factors are: (1) the seriousness of the alleged offense; (2) whether the offense was aggressive, violent, premeditated, or willful; (3) whether it was an offense against persons or property; (4) the prospective merit of the complaint; (5) whether the co-offender(s) were adults; (6) the maturity level of the offender; (7) the offender’s previous juvenile record and history; (8) protection of the public; and (9) the likelihood of rehabilitation through the juvenile system.³³

Furthermore, there are three types of judicial waivers that can be used: discretionary, presumptive, or mandatory waivers.³⁴ With discretionary waiver, the judge makes the determination to waive the juvenile to adult court.³⁵ With presumptive waiver, there is no presumption to waive the case to adult court; however, the judge still retains discretion if the evidence persuades him.³⁶ With mandatory waiver, the juvenile must commit certain offenses at a statutory age, or due to his or her prior record, be waived into adult court; the case must originate in juvenile court.³⁷

²⁸Segadelli, *supra* note 1, at 689.

²⁹*Id.*

³⁰Reese, *supra* note 5 at 936.

³¹*Id.*

³²Ray, *supra* note 13, at 331.

³³Wesley Morrisette, Note, *These Aren't My Peers: Why Illinois Should Reconsider Its Age Requirement for Jury Service*, 9 NW J.L. & SOC. POL'Y 360, 363 (2014).

³⁴*Id.*

³⁵*Id.* at 364.

³⁶*Id.*

³⁷*Id.*

“Since 1992, forty-five states have passed or amended legislation making it easier to prosecute juveniles as adults.”³⁸ This is also known as statutory exclusion.

Statutory exclusion, also known as an “automatic waiver,” is a state statute that excludes certain charges—such as first-degree murder and aggravated battery with a firearm—from juvenile court’s jurisdiction based on a predetermined age range of juveniles. Any offender meeting the age criteria accused of such a charge is automatically tried as an adult.³⁹

“Consequently, the number of youth in adult jails has increased by 208% from 1990 to 2004.”⁴⁰ As law professor Helen M. Alvarè stated, “the opportunity cost of this outcome was fewer juveniles receiving the benefits of the rehabilitation programs offered in the juvenile justice system.”⁴¹ Thus, [the] transfer of minors to the adult system should be used in only the most exceptional circumstances and protections must be in place to ensure juveniles are not routinely routed out of the specialized juvenile system and into the less rehabilitative adult criminal justice system.⁴²

Unfortunately, the wisdom of viewing and treating minors differently than adults is overshadowed by the punitive desire to make minors “pay” for their crimes.⁴³ The problem with the view, “adult time for adult crime,” is that it simply does not work.⁴⁴ This notion does not work mainly because it leaves heightened chances for juveniles to become adult criminals while incarcerated in adult facilities.⁴⁵ Subsequently, thirty-three states have a policy called “once an adult, always an adult.”⁴⁶ “According to this policy, once a juvenile is tried as an adult . . . that juvenile will always be tried as an adult for certain subsequent charges.”⁴⁷ Charging the juvenile as an adult in subsequent incidents depends on the state, but the policy only applies when the subsequent charge is the same as the original transfer charge.⁴⁸

³⁸Ray, *supra* note 13, at 332.

³⁹Morrisette, *supra* note 34, at 364-365.

⁴⁰Ray, *supra* note 13, at 332.

⁴¹*Id.*

⁴²*Id.* at 341.

⁴³*Id.*

⁴⁴*Id.*

⁴⁵Ray, *supra* note 13, at 341.

⁴⁶Morrisette, *supra* notes 34, at 365.

⁴⁷*Id.* at 366.

⁴⁸*Id.*

DETRIMENTAL EFFECTS OF JUVENILE TRANSFERS

Adult jails [and prisons] expose incarcerated youth to a high risk of physical and sexual assault, thus making these facilities very unsafe for adolescents.⁴⁹ A 2007 report by the National Prison Rape Elimination Commission found that although juveniles make up 1% of the adult prison population, they accounted for 21% of the sexually assaulted prison victims.⁵⁰ Another study concluded that in comparison to adolescents in juvenile facilities, juveniles incarcerated in adult prisons are five times more likely to be sexually victimized.⁵¹ Criminologist Jeffrey Fagan notes, “[B]ecause they are physically diminutive, [juveniles] are subject to attack. . . . They will become somebody’s ‘girlfriend’ very, very fast.”⁵² A prison guard in one report stated there is almost zero chance for a young inmate to avoid being raped: “he’ll get raped within the first twenty-four hours to forty-eight hours. That’s almost standard.”⁵³

Yet another cost of incarcerating youth is their increased risk of suicide.⁵⁴ Suicide ranks as the third most common cause of death among fifteen to twenty-four-year-olds.⁵⁵ Statistics indicate that incarcerated youth are nineteen times more likely to commit suicide and thirty-six times more likely to commit suicide in an adult jail than in a juvenile detention facility.⁵⁶ Furthermore, there are several hundred attempted suicides made among individuals between fifteen to twenty-four years old.⁵⁷

Protection should be given to children in adult facilities while they grow and mature, even if they committed the most heinous crimes.⁵⁸ In fact, youth who have engaged in the most serious criminal acts are the ones most in need of intervention, rehabilitation, therapy, and treatment.⁵⁹ While youth must be held accountable for their actions, punishing them in the adult system does not accomplish any meaningful or positive outcome for them or for society as a whole.⁶⁰ Additionally, victimization becomes a vicious cycle because victimized juveniles eventually become aggressive to women and children in the future.⁶¹ “Keeping juvenile offenders out of the adult system not only helps the individual, but also benefits society by

⁴⁹Ray, *supra* note 13, at 342.

⁵⁰*Id.*

⁵¹*Id.*

⁵²Ray, *supra* note 13, at 342.

⁵³*Id.*

⁵⁴*Id.* at 343.

⁵⁵*Id.*

⁵⁶*Id.*

⁵⁷Ray, *supra* note 13, at 343.

⁵⁸*Id.* at 343-344.

⁵⁹*Id.* at 344.

⁶⁰*Id.*

⁶¹*Id.*

reducing the harmful effects following the aftermath of violence perpetrated against a young offender.”⁶²

Additionally, there are increased chances of recidivism for juveniles who are prosecuted as adults in comparison to those who remain in the juvenile system.⁶³ The Centers for Disease Control and Prevention discovered that youths convicted in the adult system are 34% more likely to recidivate than their counterparts in the juvenile court system.⁶⁴ “A MacArthur Foundation study of over 2,000 youth offenders who committed burglary, aggravated assault, or armed robbery found the offenders who were prosecuted in the adult system were 85% more likely to recidivate than those kept in the juvenile system.”⁶⁵ Criminologist Jeffrey Fagan discovered that while juvenile waivers to adult court may be temporarily beneficial to the community since the juvenile offender will be subject to longer sentences, this benefit may backfire in the form of more crime when the offender is released.⁶⁶

“In three recent decisions, the U.S. Supreme Court held that the Eighth Amendment places categorical limits on the severity of sentences that may be imposed on individuals whose crimes occurred when they were under the age of eighteen.”⁶⁷ First, in *Roper v. Simmons*, 543 U.S. 551 (2005), the Court concluded that the Eighth Amendment prohibited juveniles from being punished by death.⁶⁸ The Court’s rationale was that the most extreme punishment should be reserved for offenders who face serious criminal convictions and whose crimes are most-deserving of an execution.⁶⁹ The Court reasoned that certain differences between juveniles and adults “demonstrate that juvenile offenders cannot, with reliability, be classified among the worst offenders,” because of their immaturity and lack of responsibility.⁷⁰ Since youth are more susceptible to peer pressure and other forms of negativity, their character cannot be compared to that of adults.⁷¹

In 2010, the Court in *Graham v. Florida*, ruled that juveniles who did not commit homicides should not be subject to life-without-parole sentences, and should be afforded the opportunity for release if they have

⁶²Ray, *infra* note 182, at 344.

⁶³*Id.*

⁶⁴*Id.*

⁶⁵*Id.* at 344

⁶⁶*Id.* at 346.

⁶⁷Sarah F. Russell, *Jury Sentencing and Juveniles: Eighth Amendment Limits and Sixth Amendment Rights*, 56 B.C. L. REV. 553, 564 (2015).

⁶⁸*Roper v. Simmons*, 543 U.S. 551 (2005).

⁶⁹Russell, *supra* note 38, at 560.

⁷⁰*Id.* at 560-561.

⁷¹*Id.* at 561.

displayed a heightened level of maturity and continuous rehabilitation.⁷² The Court in *Miller v. Alabama*, also upheld the decision in *Graham* by ruling that even juvenile homicide offenders should not be subject to life-without-parole sentences.⁷³ Instead, juveniles must have “individualized” sentencing hearings that take into account the qualities of the youth.⁷⁴ *Miller* stressed that life-without-parole should not be a common trend with juvenile offenders unless in those rare circumstances when the offense is so heinous and irreparable.⁷⁵ “Although *Roper* places an absolute ceiling on punishment for juveniles (i.e., no death penalty for any juvenile), *Graham* and *Miller* lower the punishment ceiling further for some categories of juveniles.”⁷⁶

Despite the large volume of litigation involving *Miller* and *Graham*, lower courts have not used these decisions to make them applicable to the Sixth Amendment’s right to a jury trial.⁷⁷ Although several states have retained life-without-parole for juveniles, most do not indicate whether a jury or judge should impose the sentence for juveniles, even though the majority of these states rely on the judge to be the person who imposes the sentence.⁷⁸ “Even without considering the impact of the Eighth Amendment limits on sentences, some of the new statutes impermissibly expose juveniles to enhanced sentences based on judicial fact-finding.”⁷⁹ “Moreover, if punishment ceilings created by the Eighth Amendment operate in the same manner as maximum sentences under statutory or guideline provisions, then many of the statutes enacted in response to *Miller* unconstitutionally permit judges to unilaterally determine life-without-parole appropriate for a juvenile.”⁸⁰

Since the Eighth Amendment and statutory maximums trigger Sixth Amendment rights, juveniles should be afforded the opportunity to let the juries be the triers of fact before they face life-without-parole.⁸¹ Therefore, there needs to be a discussion of why juvenile offenders have not been afforded the right to a trial by jury.

⁷²*Graham v. Florida*, 560 U.S. 48 (2010).

⁷³*Miller v. Alabama*, 132 S. Ct. 2455, 2457 (2012).

⁷⁴Russell, *supra* note 4, at 554.

⁷⁵*Id.*

⁷⁶*Id.*

⁷⁷Russell, *supra* note 19, at 557.

⁷⁸*Id.*

⁷⁹Russell, *supra* note 22, at 558.

⁸⁰*Id.*

⁸¹Russell, *infra* note 167, at 578.

Jury Trial

JUVENILES SHOULD HAVE A RIGHT TO A JURY

The right to a jury trial is an essential right given to citizens of the United States, along with the other rights engrained in the Sixth and Fourteenth Amendments.⁸² “Above all, this right protects offenders from judicial bias and adjudicative unfairness; it is a check against state and judicial power.”⁸³ The right to a jury trial allows the societal norms and values of the “reasonable person” into the courtrooms, which are sometimes lost within the judicial system.⁸⁴ Additionally, the right is an objective view of democracy to the subject/defendant and society.⁸⁵

Serving on a jury is a citizen’s civic responsibility that is essential to democracy in this country.⁸⁶

Jury trials are essentially an effort to seek and determine truth. Throughout history, the methods utilized to determine innocence or guilt have been ineffective and physically unacceptable by the standards now recognized today; for example, an accused would often be thrown into a pool to see if he would sink (guilty) or float (innocent). Often the innocent were not retrieved from the water in time to ensure survival. Juries bear the great burden of determining guilt and innocence—a task not required in any other governmental body—and simultaneously acts as a barometer of society’s values and protection against centralized institutional power.⁸⁷

“In 1971 [in *McKeiver v. Pennsylvania*], the U.S. Supreme Court held that juveniles are not entitled to a jury trial as a matter of constitutional right and provided many reasons for this holding.”⁸⁸ The first reason was the Court did not believe that rights constitutionally afforded to adults should be applicable to juvenile proceedings.⁸⁹ This

⁸²Segadelli, *supra* note 110, at 700.

⁸³*Id.* at 700-01.

⁸⁴*Id.* at 701.

⁸⁵*Id.*

⁸⁶*Id.*

⁸⁷*Id.*

⁸⁸Segadelli, *supra* note 63, at 692.

⁸⁹*Id.*

oversimplifies the importance of jury trials and brings forth a concern about the efficiency of juvenile proceedings.⁹⁰

The second reason is the cautionary and protective mechanism to preserve the fundamental principles of the juvenile justice system.⁹¹ “The Court cautioned that requiring juries in juvenile proceedings would ‘remake the juvenile proceeding into a fully adversary process and put an effective end to what has been the idealistic prospect of an intimate, informal, protective proceeding.’”⁹²

The final reason the Court in *McKeiver* denied a right to a juvenile jury is because the abuse that occurs in the juvenile system is not of “constitutional dimension.”⁹³ The Court contributed these abuses to the lack of resources instead of inherent unfairness.⁹⁴ Since the ruling in *McKeiver*, the majority of states have statutorily denied juveniles’ right to jury trials.⁹⁵ Even though there have been cases that have questioned this ruling, very few states have overruled *McKeiver* in their current juvenile system.⁹⁶

However, a jury trial is essential to fair and accurate fact-finding in juvenile proceedings.⁹⁷ Studies have revealed that although judges and juries can have the same evidence presented in front of them, both can reach a completely different verdict from one another.⁹⁸ Having a jury as the trier of fact for juvenile proceedings is necessary because the evidence and facts are viewed by multiple people attempting to reach a consensus on guilt or innocence.⁹⁹

Around 2008, the national media started to take heed to this issue during the case of *In re L.M.* In this case, the Kansas Supreme Court held that the juvenile, L.M., had a constitutional right to a jury trial and overturned the trial court’s decision.¹⁰⁰ L.M. was sixteen-years old and was charged with aggravated sexual battery and alcohol possession.¹⁰¹ L.M. requested a jury trial but that request was denied and he was later found guilty of the charges and sentenced to eighteen months in a juvenile correctional facility.¹⁰² L.M. appealed relying on the Sixth and Fourteenth

⁹⁰ *Id.*

⁹¹ *Id.* at 693.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ Segadelli, *supra* note 73, at 693.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.* at 703.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ Segadelli, *supra* note 77, at 694.

¹⁰¹ *Id.*

¹⁰² *Id.*

Amendments to make three imperative arguments: 1) he claimed that Kansas's new juvenile code made the juvenile system indistinct from the adult system so he should have been afforded full constitutional protection; 2) the language of the state's constitution made the right to a jury trial applicable to him; and 3) "if juveniles were not constitutionally entitled to a jury, he should have been afforded one because of the seriousness of the offense and stigma of the sentence imposed (having to register as a sex offender)."¹⁰³

"Proponents of the viewpoint that juveniles should have a constitutional right to a jury trial utilize the rationale that the Kansas Supreme Court used in *In re L.M.*"¹⁰⁴ It is their interpretation that rehabilitation in the juvenile system is outdated and now only the criminal justice system exists.¹⁰⁵ Due to this, all offenders should be afforded the same constitutional protections within the criminal justice system.¹⁰⁶

Contrarily, those who maintain the traditional views that juveniles should not have a constitutional right to a jury trial believe that the focus of the juvenile system, rehabilitation, is the very thing that needs saving.¹⁰⁷ Thus, the right to have a jury trial will inevitably interfere with the system's principles of compassion and rehabilitation.¹⁰⁸

However, the court in *McKiever* did not provide any explanation of why denying juveniles the right to jury trials provided fairness to them.¹⁰⁹ The purpose of juries is to: 1) check the judge's discretionary abuse, 2) sustain accurate fact finding, 3) compensate for inferior counsel, and 4) legitimize the juvenile proceedings.¹¹⁰

A major characteristic of the juvenile justice system is that adjudication and sentencing decisions are in the hands of a judge.¹¹¹ The issue with this concept is that there is an assumption that judges will not have their own biases and can make consistent and fair dispositions.¹¹² However, one statement in particular indicated, "Although judges are certainly capable of adjudicating juvenile procedures in a fair manner, only a jury could ensure that an adolescent is protected from a judge who is overburdened, or even worse, jaded."¹¹³ Several factors can contribute to

¹⁰³*Id.* at 694-695.

¹⁰⁴*Id.* at 699.

¹⁰⁵Segadelli, *supra* note 108, at 700.

¹⁰⁶*Id.*

¹⁰⁷*Id.*

¹⁰⁸*Id.*

¹⁰⁹Segadelli, *infra* note 120, at 702.

¹¹⁰*Id.*

¹¹¹*Id.*

¹¹²*Id.*

¹¹³*Id.*

judges' impartiality, including: familiarity with the delinquent from past proceedings, damaging evidence, or previous dispositions on similar charges.¹¹⁴ Therefore, since judges are responsible for the fate of a juvenile, all safeguards should be put in place to ensure fairness.¹¹⁵

Jury trials can also provide accurate and fair fact finding in juvenile proceedings.¹¹⁶ "Fact-finding by a jury is necessarily a more reasoned process than fact-finding by an individual, because the [juvenile], case, evidence, and facts are viewed by multiple people who must reach a consensus of guilt in order to convict"¹¹⁷ In addition, "juries fill the gap that likely exists between an adult judge and an adolescent offender, particularly because juries are a cross section of society, and therefore, representative of the entire population."¹¹⁸ Furthermore, because juries encompass a human element, common sense, community standards, and emotions are all engulfed within the proceedings.¹¹⁹

A jury trial is also needed in juvenile proceedings because of the element of inefficient legal counsel.¹²⁰ In comparison to adult proceedings, juveniles usually receive inadequate counsel because the attorneys are usually overworked and under-supervised.¹²¹ In addition, personal complications such as balancing conscious or subconscious disapproval of the juvenile's behavior can have a detrimental effect on the attorney's ability to fully advocate for his or her client.¹²²

Jury trials allow the juvenile to see the entire legal process, thus making them feel as though their case was handled legitimately.¹²³

[P]articipation in the legal process, the very foundation upon which jury trials were constructed, empowers adolescents to take an element of responsibility and involvement in their ultimate fate—an aspect painfully missing from the current juvenile system. The perceptions of fairness, impartiality, and involvement that adolescents are likely to feel in a jury trial proceeding will only serve to heighten rehabilitation and accountability for their wrong act.¹²⁴

¹¹⁴*Id.*

¹¹⁵Segadelli, *infra* note 126, at 702-703.

¹¹⁶Segadelli, *infra* note 126, at 702-703.

¹¹⁷*Id.*

¹¹⁸*Id.*

¹¹⁹*Id.*

¹²⁰*Id.* at 703-704.

¹²¹Segadelli, *supra* note 1, at 704.

¹²²*Id.*

¹²³*Id.*

¹²⁴*Id.*

Even though jury trials can be considered inefficient procedures, they are still critical elements of the application of justice that the juvenile system should not be sheltered from because of minimal shortcomings.¹²⁵ In fact, they are even more needed in the juvenile arena because the courts lack the ability to relate to its adolescent offenders.¹²⁶

WHAT IS A “REPRESENTATIVE JURY”?

The concept of being tried by a “jury of one’s peers” has existed in the justice system for centuries.¹²⁷ For example, Article 39 of the Magna Carta provides that “[n]o freeman shall be captured or imprisoned or [diseased] or outlawed or exiled in any way destroyed, nor will we go against him or send against him, except by the lawful judgment of his peers or by the law of the land.”¹²⁸ Even in the United States Constitution, the Sixth Amendment mandates a defendant to have a trial by an “impartial jury,” thus meaning a jury drawn from a cross-section of the community.¹²⁹ In other words, the Sixth Amendment ensures the defendant will be given a fair trial by members of the community who do not hold any biases against him or her.¹³⁰

The Sixth and Fourteenth Amendments both require that citizens are protected against discriminatory jury selection practices.¹³¹ “The Fourteenth Amendment forbids intentional discrimination against protected groups, while the Sixth Amendment’s focus is not just on eradicating discrimination, but also on the broader goal of ensuring a body that is representative of the community.”¹³² Moreover, in order for a defendant to claim a violation of Equal Protection, he or she must be a member of the same group as that of the excluded juror.¹³³ However, per the Sixth Amendment, a defendant can claim a representative challenge to the court regardless of whether he or she is a member of the same group as the excluded juror.¹³⁴ For example, an element of the jury selection process is the concept of peremptory challenges.

Peremptory challenges allow opposing parties to remove potential jurors from selection without giving an explanation.¹³⁵ Peremptory

¹²⁵Segadelli, *supra* note 1, at 705.

¹²⁶*Id.*

¹²⁷Weddell, *supra* note 53, at 460.

¹²⁸*Id.*

¹²⁹*Id.*

¹³⁰*Id.*

¹³¹*Id.* at 468.

¹³²*Id.*

¹³³Weddell, *supra* note 115, at 468.

¹³⁴*Id.*

¹³⁵*Id.* at 472.

challenges are intended to provide fairness and assure both parties that a jury's decision will be based off the weight of the evidence presented at trial.¹³⁶ However, in *Batson v. Kentucky*, 476 U.S. 79 (1986), an African-American male appealed his conviction on the claim that the prosecutor used peremptory challenges to discriminatorily exclude all four minorities from the jury pool, thus leaving him with an all-White jury.¹³⁷

In a June 2010 report, the Equal Justice Initiative (EJI) studied jury selection procedures in eight southern states and uncovered widespread discrimination that posed a serious threat to the "credibility and reliability of the criminal justice system." The EJI study found that prosecutors in Houston County, Alabama, have used peremptory challenges to remove from jury service eighty percent of qualified African Americans. The study likewise found that in felony cases in Jefferson Parish, Louisiana, prosecutors are three times more likely to strike [dismiss] African American jurors than White jurors.¹³⁸

Despite having procedures in place to dispute discriminatory removal of minorities from jury pools, prosecutors are often provided an opportunity to give a "race-neutral" explanation for the strike.¹³⁹ Some examples that courts have accepted as sufficient reasons are the following: low education; living in high crime communities; similarities of a criminal; chewing gum; wearing sunglasses in court; having an illegitimate child; or having unkempt hair or a beard.¹⁴⁰ "[Since] almost any explanation can be accepted, the procedure does little to eliminate racial discrimination from jury selection procedures; consequently, minorities continue to be denied their constitutional right to sit on juries at alarming rates."¹⁴¹

Additionally, while the Supreme Court in *Batson* cited two possible remedies for a *Batson* violation, it failed to endorse either of them as preferable. One of these remedies requires replacing the entire jury venire with new prospective jurors and repeating the exercise of dismissal using peremptory challenges. Critics argue that the use of this remedy might give lawyers an

¹³⁶*Id.*

¹³⁷*Batson v. Kentucky*, 476 U.S. 79 (1986).

¹³⁸Weddell, *supra* notes 45-47, at 458-59.

¹³⁹*Id.*

¹⁴⁰*Id.* at 459, 475.

¹⁴¹Weddell, *supra* note 45, at 459.

incentive to discriminate based on race in the hopes that the jury venire will be replaced with prospective jurors who are more favorable to their case. The second suggested remedy, reinstatement of the struck juror, is also problematic because the reinstated juror might have difficulty being impartial after his or her discriminatory dismissal.¹⁴²

To further emphasize the matter, there are jurisdictions across this country that exclude felons from serving on juries.¹⁴³ Federally, ex-felons can only lift their ban on jury selection when they take the necessary steps to restore their civil rights; although, the process does not guarantee that their rights will be restored.¹⁴⁴ At the state level, forty-eight of the fifty states, including the nation's capital, ban felons from serving on juries; and out of the forty-eight, thirty-one of them impose a lifetime ban on current felons from serving on juries.¹⁴⁵ Currently, only two states allow citizens with felon status to serve on juries, Maine and Colorado; however, they can only serve as petit jurors and not grand jurors.¹⁴⁶

Based on the analysis of demographic life tables, Uggen, Thompson, and Manza (2006) estimate the size of this population and describe its general composition. After accounting for reincarceration, recidivism, and attrition, they estimate, "a 'felon class' of more than 16 million felons and ex-felons, representing 7.5 percent of the adult population, 23.3 percent of the black adult population, and an astounding 33.4 percent of the black adult male population" (p. 288). These estimates indicate that the expansion of criminal punishment has led to a continually growing criminal class that is disproportionately African-American.¹⁴⁷

With these types of bans on felons, the potential for exclusion increases racial gaps in jury selection.¹⁴⁸

Despite the requirement from the Supreme Court that jurors can be selected from a pool of the community, minorities are still

¹⁴²*Id.* at 476.

¹⁴³Darren Wheelock, *A Jury of One's "Peers": The Racial Impact of Felon Jury Exclusion in Georgia*, 32 JUST. SYS. J. 335 (2011).

¹⁴⁴*Id.* at 335-336.

¹⁴⁵*Id.* at 336.

¹⁴⁶*Id.*

¹⁴⁷*Id.* at 338.

¹⁴⁸*Id.*

underrepresented on jury venires.¹⁴⁹ If an offender feels that the jury is not representative, he or she could potentially assert a Sixth Amendment violation claim.¹⁵⁰ The Supreme Court formulated a test, known as the *Duren* test, to help determine if there has been a violation in choosing a jury.¹⁵¹ First, it must be proven that the excluded group is considered a distinctive group.¹⁵² Second, it must show the group's representation in jury venires is not an accurate depiction of the composition of the community.¹⁵³ Third, the group must be seen as underrepresented due to the discriminatory practices in jury selection procedures.¹⁵⁴ According to the Supreme Court, a group is considered a "distinctive group" when immutable characteristics such as race, gender, or ethnicity are shared with the offender, not just identifiable commonalities.¹⁵⁵ "For example, African Americans, Mexican Americans, and women have all been recognized by the Supreme Court as 'distinctive groups.'"¹⁵⁶

There are three important purposes of having a representative jury.¹⁵⁷ First, when the jury is more racially representative of the community, the jury's final verdict is seen as being a fair assessment of the viewpoint of that community.¹⁵⁸ Second, having members of the community participate on juries educates the public on the processes of the criminal justice system and affords those members some level of control within that process.¹⁵⁹ This assists with increasing public confidence in law enforcement and the government.¹⁶⁰ Third, a jury that is fairly representative of the community gives the defendants' more rights because there is a "diffused impartiality" due to the jury having various racial, gender, and class lines combined.¹⁶¹

Some states have statutes that try to assist with representativeness. For instance, in Illinois, it was ruled that requiring all jurors to be at least eighteen years old a violation of the Sixth Amendment when it pertains to juveniles being waived into adult court.¹⁶² "As a group, juveniles age fifteen to seventeen years old . . . satisfy the *Duren* test as analyzed in

¹⁴⁹Weddell, *supra* note 3, at 468.

¹⁵⁰*Id.*

¹⁵¹*Id.*

¹⁵²*Id.*

¹⁵³*Id.*

¹⁵⁴*Id.*

¹⁵⁵Weddell, *supra* note 3, at 468-69.

¹⁵⁶*Id.* at 469.

¹⁵⁷*Id.*

¹⁵⁸*Id.*

¹⁵⁹*Id.*

¹⁶⁰*Id.*

¹⁶¹Weddell, *supr* note 3, at 469.

¹⁶²Morrisette, *supra* note 34, at 370.

Sixth Amendment jurisprudence.”¹⁶³ Various characteristics allow these juveniles to be identified as a group.¹⁶⁴ This same group also share commonalities which are prejudicial to them as defendants by being absent from juries.¹⁶⁵ This same analysis can be applied to the exclusion of juvenile jurors based on race.

The initial step in the *Duren* test requires that there be a distinctive group already identified by the Supreme Court.¹⁶⁶ So far, minorities (i.e. African-Americans, Hispanics, etc.) are the established, distinctive groups in this country.¹⁶⁷ However, the Court has only addressed these issues of representativeness when the defendant is an adult. This same frame of reference can be used for selecting jurors when the offender is a juvenile in adult court. If the defendant is a juvenile, he or she is not offered the opportunity to have a representative jury, because the judge is the ultimate decider of the juvenile’s sentence.¹⁶⁸ It can be argued that since juveniles are systematically excluded from juries based on their age, then they can potentially be systematically excluded from jury venires based on their race. Therefore, if juveniles can be waived in adult court, courts should also allow juveniles to participate in jury selection and ensure that these juries are a fair representation of the community in order to avoid potential constitutional violations.

¹⁶³*Id.*

¹⁶⁴*Id.*

¹⁶⁵*Id.*

¹⁶⁶*Id.*

¹⁶⁷Weddell, *supra* note 3, at 469.

¹⁶⁸Segadelli, *supra* note 1, at 702.

