

## FACTS

Introductions: In week 7 we analyzed the case *McKeiver v. Pennsylvania*. McKeiver argued, that judges could fact find as well as juries. I found this interesting. How could the facts of a case, be mitigating or aggregating? We learned, that facts permutated by social sciences in the 18<sup>th</sup> century, galvanized progressives and created a policy called *Parins Patria* (PP), to protect children from the horrors of the justice system (EJCpp19). We learned that facts created the need to create a juvenile justice court to protect juveniles from (PP) welfare policy. Facts mandate criminals, like citizens, to have due process of law, and facts mandated in the 21st century, gave juveniles due process (EJCpp54). Because of McKeiver, I thought, “why wouldn’t the facts of a case, outweigh any other procedural part of the juvenile justice system”? Feld wrote that “the edifice of juvenile justice is built on binary categories-either child or adult (EJCpp195). In this paper I will underscore the binary categories for fact finding in the juvenile court, what policies the juvenile courts adhere to, how policies could be better applied to juveniles, and what is a better approach to using facts in case for adjudication. I will highlight why I think McKeiver’s unconstitutionality applied fact-finding, and lastly I will reflect on how fact-finding played a profound role in redirecting my life. The text I will use **The Evolution Of The Juvenile Court (EJC) by BARRY C. FELD, Burning Down The House (BDH) by NELL BERNSTEN, True Note Book (TN) and Sup #1, #2 (see key on previous page) and case law.** Discussion: The (JJC), was created because (PP) in the 18<sup>th</sup> century wasn’t protecting children, when it was created to protect them. The facts that helped establish the policy (PP) were also instrumental with the inception of the Juvenile justice court (JJC), so, why do we find facts? How do we Facts find? Fact-finding consist of two parties; those parties present their facts in front of a governing body be it the judge or the jury. The degree of reasonable doubt needed to prove ones case differs from the justice system, criminal or civil see (*Miller v. Racette*, 2012 U.S. Dist. LEXIS 77288, 2021 WL 1999490, at \* 8 (9<sup>th</sup> ed. 2009)). Juveniles in the justice system could not exercise their right to fact find, until (*Duncan v. Louisiana*). “Fact finding by judges over juries differ” Justice Blackmun surmised in *Ballew v. George* continuing “ there is a superiority of group decision making over individual judgments [...] judges do not discuss the law or evidence before reaching a conclusion

[...] judges in a bench trial do not state the law, which makes it more difficult for an appellate court to determine whether she currently understood or applied it” (EJCpp256). Judges Blackume said were not immune to corruption because of the law but said. “Without a jury, judges can adjudicate many delinquents without an attorney, which prejudices fact finding [...] the need to administer the courtroom, make evidentiary rulings, take notes, and conduct sidebars with lawyers divert judges attention during proceedings, and increases the likelihood of erroneous convictions” (EJCpps256, pp257) Blackmun continued; “Jury’s tend to carry the community’s norm’s and sense of justice when they apply the law to the facts” [...] “that as a jury, some group members tend to remember facts that others forget and the give-and-take of deliberations airs competing reviews and promotes more accurate decisions,” [...]“The youthfulness of a defendant is a factor that elicits jury sympathy and adjudicates many delinquents without an attorney, which prejudices, fact finding, and increases the likelihood of erroneous conviction” (EJCpps256,257). Based on Blackmun’s own dissent *Ballew v. Georgia*, it is only fair to assume that judges cannot always fact find properly. The (JJC) traditionally kept juveniles out of the adult court system, but constitutional violations in the (JJC) and abuse by state laws created a need for juvenile justice reforms. Those reforms came in the early 21<sup>st</sup> century, primarily in the 1970’s. Because of reforms in the 70’s, push back came in 1980’s, spearheaded by president Ronald Reagan, which spilled into the 1990’s. These decades were called “The Get Tough Era”. These decades saw laws created that offset the constitutional protections juveniles were getting. Laws that allowed states to create legal blueprints to circumvent the (JJC) protective provisions **Legislative offense exclusion (EJCpp112) (United States v. Bland) gave states the legality to rewrite sentencing creating mandatory minimum sentencing (EJCpps209-215) and gave prosecutors judicial jurisdiction in their legal system (EJCpp40). States adopted unconstitutional judicial waiver (Kent v. United States EJCpp111) Transfer laws allowed for less or no proportionality hearings \* these laws did give juveniles the chance to petition for in front of an adult judge but the conundrum was the (JJC) which was created to keep juveniles out of the adult court (EJCpp108) Judges, prior to the “the Get tough era” were detaining juveniles without preliminary hearings (EJCpps111-116). Judges prejudice the juvenile by not appointing a counsel to**

represent them. The likely hood of a Judge re-adjudicating a juvenile went up if the juvenile had been in the judge's court (EJCpp106) and the possibility of a juvenile having a fair and accurate trial was slim. "The Get Tough Era" gave states the blue print to make prejudicial laws (EJCpp89). Judges wouldn't have to weight out the facts of a case, new or old. " The Get Tough Era" highlighted transfer of juveniles to adult court. "Between 1985 and 2011, juvenile court judges detained about one fifth of all youth referred to them" (EJCpp129) children were transferred during those decades (BDHpp261). I believe that the flexibility and informality that judges have on juvenile proceedings highlights that there are differences between a judges' and a juries' threshold to meet reasonable doubt standards for adjudication of a defendant in juvenile court. This flexibility through (PP) violated juveniles right and created a need for a (JJC). The rights to a jury trail are a constitutional provision (fourth Amendment). They are essential in the juvenile and adult justice system (EJCpp257). Juries are essential to a defendant's defense (EJCpp255). Due process grants defendants the right to a jury trial, give the defendant the option to be heard in front of their peers. Jury carries the community's sense of justice (Blackmun). That sense of security is essential as a safeguard to a healthy democracy. Juries make the majority of their decisions from the facts of a case. If a jury is involved in any case, any defense teams chance of presenting total evidence to a judge or to a jury increases. Procedural laws could be looked at retroactively, if a defendant has a jury trial and looses. Juries make decisions from the judicial instructions, from courtroom protocol, from the prosecutor's evidence and from the defense's evidence. Juries, constitutionally, are capable to deliberate the totality of a case. This allows both parties to present their facts to the court. But *Biediger v. Quinnipiac University*, 691 f.3d 85, 102 (2d Cir. 2012) narrows a juries reasoning for fact-finding if an expert opinion is presenting the findings. "The court is required to evaluate the admissibility of each expert's opinion is well established" See Fed.R.Evid. 602 also see ECJpp205 limitation of Neuroscience) A jury's dismissal of a case gives the defendant double jeopardy protection for re-persecution (see *OJ Simpson v. state of California*). If left unchecked by a jury, the courts' can create procedural corruption (*Gault*) Blended Sentencing (EJCpp110), not until the

**(*Duncan v. Louisiana*) case did juveniles have this security. The court did not award the juvenile the protections that adults had won through (*Duncan v. Louisiana*).** (PP) Policy created the concept of a welfare court. This court was to protect a child, rather than apply criminality to a child delinquent. This welfare court circumvented the need for any general courtroom protocol. Bernstein writes, “The understanding that teenagers are biologically different from adults, that their developing minds made them both more malleable and less culpable, was central to the invention of the (JJC), with the presumption that juveniles possessed a particular amenability to rehabilitation” (BDHpp208) In the case of a child, recent psychological studies on the development of a young persons brain, have shown that children are different than adults (BDHpps208, 209). Because of those developmental differences, a juvenile’s defense team could use these facts as mitigating factors. Psychological research of youth brain development supported Bernstein’s argument. It supported the reasoning for (PP) claim for a need for a child welfare court. The research supported why juveniles, may have developmental issues. The research opened the door to use brain research as mitigating factors that children are different. Those factors are important in a fact-finding phase of a trial or the sentencing phase of a trial (Miller, Graham, Roper) of a crime. A jury would analyze those mitigating factors differently than the judge during the fact-finding or sentencing phase of a trial (EJCpp242). The sixth Amendment grants defendants, delinquents, and adults a right to counsel. Yet, juveniles did not have this right until late in the 21st century *Gideon v. Wainwright* (EJCpp245). This type, and many other types of discriminatory practices have hindered juvenile defendants ability to have procedural due process and to have a jury or a judge fact find their case. *Baldwin v. New York* held that no crime that carries an authorized sentence of six months or longer could be determined a petty offense (EJCpp244). Yet the majority of juveniles go before a magistrate for petty offensives more frequently than for major felonies, the constitution requires a competence hearing of a defendant’s ability to partake in the judicial procedure and judicial preliminary proceedings before any punishment may ensue. Petty crime policy and tough on crime regulation allowed courts to circumvent those constitutional procedures (EJCpps110-112), and proper protocol to be applied to juveniles (EJCPP 241 Gault, pp247 Call Of Justice, pp246 GUILT, GIDEON, pp249 PLEAS WITHOUT

BARGAINS, 248 MARRANDA WAIVERS). These discriminatory practices affect juveniles' outcomes in the courtroom (EJCpp247). The doctrine (PP) allowed lawyers to not want to rock the boat, leaving juveniles without full constitutional protection (EJCpp204,251) McKeiver exacerbated discrimination that juveniles faced in court by "making: juvenile and crime court procedurally indistinguishable" (EJCpp254) McKeiver says "states denying delinquent protection the court deemed fundamental to criminal trial" (EJCpp254). Lastly, McKeiver held that the (JJC) proceeding have not yet been held to be a criminal prosecution. A part of McKeiver's ruling said *plurality* (ECJpp254) reasoned a judge could find facts as accurately as a jury (EJCpp244) but This *informality* (pp254) would compromise the ability of accurate fact-finding, examples of these informality are part and parcel in the inception of the juvenile court (ch1 the progressive Juvenile Court), findings that lead for the need for juveniles to be protected under criminal due process (ch2 The due process ERA). (*Duncan*) gave adult defendants the right to a jury trial to assure fact-finding and to prevent governmental oppression, which the McKeiver decision contrasted by denying delinquents protection in the court. Duncan stated that that was fundamental. (ECJpp254). McKeiver fostered a punitive approach to (JJC) that converged with criminal courts and imposed harsh collateral consequences for delinquency convictions like Waiver policy (EJCpp122) and, that eroded the rational for fewer procedural safeguards. The McKeiver decision was a devastating decision. It rolled back juveniles civil and criminal rights. The decision dismantled the possibility for continued progressive due process protections that adults in custody had fought for, that would allow the juvenile court system to apply. The evolution of the juvenile court because of the ideology of (PP) has applied gross negligence by judges and states during the "Get Tough Era" negligence by the states that created discrimination against the Juvenile's for centuries. See (Arthur G. Dozer School for Boys BDHpp290) and let states view its children through the lens of them being "*other*". The McKeiver decision left a legacy that the (PP) policy, allowed states to cast other person's child as "*other*". In a land with laws, lawlessness is worse then no law at all. *Personal reflection*: I was 19 when I got locked up. I was 22 when I was to go to trial on my case. My attorneys told me, a day before trial, if I go ahead with a trial I'd have no way to win. They said that any legal recourse that the judge could rule my favor but the judge would probably rule in the

DA's favor. There was no other explanation they could give me other than "I signed away my Miranda rights even though the Miranda rights were read ORS 135.070 they were insufficient. They said I waved arraignment ORS 135.010 by 135.070. I never got arraigned on time pursuant to ORS 135.010, I never went to a preliminary hearing pursuant to ORS 135.070 to this day my OJIN reflects that I never was given Miranda rights. My case file reflects that. But saying all that, my attorneys didn't want a jury trial. They never explained to me why the judge would rule in the DA's favor except for the ORS 135.010 and 135.070 explanations. If I had gone to trial all those violations would have been relitigated in appeal's court if I lost. My attorneys were gun hoe? About getting me to sign a plea. I didn't know why I needed to care about the law before it affected me personally twelve years later, I wish I would have been steadfast in my self worth and belief in the judicial system's fairness.

Recommendation for reforms: Civics should be taught in elementary school to high school. Resource centers with legal counselors and support counselors should be placed in all communities. Communities must be informed about their civil rights to engage their civil rights. Every community should have watchdogs that are chaired by five community leaders and five state government appointees to oversee legal measures that affect their community. I believe there should be a grant that encourages attorneys to practice child laws, but I think that a prerequisite for a degree in the legal field and in the criminal justice field should require at least (16 credits) child physiology classes. I think a system should be in place that assesses judicial laws as they apply in court or the Supreme Court. If a certain number of law suits are filed against laws and if a certain amount of money is awarded to the violated then that law should be amended immediately and constitutionally incapable of being remanded. The plaintiff and their family should be able to win damages up to \$500,000,00 if their constitutional protections were violated beyond a reasonable doubt. See *United States v. Chimurenga*, 760 F2d 400, 405 (2d Cir 1985) citing *Addington v. Texas*.) *Conclusion*, McKeiver dismantled measures that cases in the adult court established to protect the defendant. McKeiver tried to convolute the application of fact-finding, broadening a judge's discretion and providing less oversight of a judge. Justice Blackmun recognized that there is a superiority of group decision making *Ballew v. Georgia*, yet opined his McKeiver dissent, believing juveniles were not

*criminally proceed-able* (BDHpp252) reducing them, delinquent and stripping them of their constitutional rights, by saying judges' fact-find as accurate as juries. Fact finding, demands tediousness (EJCpp257). Facts are the paramount to any part case, they explain or hinder the defendant. During the fact-finding phase of a case, we should expect due diligence on behalf of the fact-finder.