# The Burger Court Opinion Writing Database

## *In re Winship*

397 U.S. 358 (1970)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University
Forrest Maltzman, George Washington University




To: Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
~~Mr. Justice Fortas~~
Mr. Justice Marshall



# SUPREME COURT OF THE UNITED STATES

From: The Chief Justice

Circulated: 2/26/70

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No. 778.—October Term, 1969

In the Matter of Samuel Winship, Appellant. } On Appeal From the Court of Appeals of New York.

[March —, 1970]

Mr. Chief Justice Burger, dissenting.

The Court today takes one more step in erasing the original concept of juvenile courts designed as less formal means than criminal courts to cope with the special and often sensitive problems of youthful offenders. Since I see no constitutional requirement of due process sufficient to overcome the legislative judgment of the States in this area, I dissent from further strait-jacketing of an already overly-restricted system. What the juvenile court systems need is not more but less of the panoply of legal and judicial formalism and procedure: the system requires breathing room and flexibility in order to survive, if it can survive the repeated assaults from this Court.

Much of the judicial attitude manifested by the Court's opinion today and earlier holdings in the field is really a protest against inadequate juvenile court staffs and facilities; the lack of support and the distressing growth of juvenile crime combined to make for a literal breakdown in many juvenile courts. No one saw constitutional problems while those courts functioned in the atmosphere and conditions of an earlier day, when juvenile judges were not crushed with an avalanche of cases.

My hope is that today's decision will not spell the end of a generously conceived program of compassionate treatment of youthful offenders designed to mitigate the rigors and trauma of exposing them in a traditional

# SUPREME COURT OF THE UNITED STATES

No. 778.—October Term, 1969



In the Matter of Samuel W., Appellant. } On Appeal From the Court of Appeals of New York.



[March —, 1970]

Mr. Chief Justice Burger, dissenting.

The Court's opinion today rests entirely on the assumption that all juvenile proceedings are "criminal prosecutions," hence subject to constitutional limitations. This derives from earlier holdings, which like today's holding, were steps eroding the differences between juvenile courts and traditional criminal courts. The original concept of the juvenile court system was to provide a benevolent and less formal means than criminal courts could provide for dealing with the special and often sensitive problems of youthful offenders. Since I see no constitutional requirement of due process sufficient to overcome the legislative judgment of the States in this area, I dissent from further strait-jacketing of an already overly-restricted system. What the juvenile court systems need is not more but less of the trappings of legal procedure and judicial formalism; the juvenile system requires breathing room and flexibility in order to survive, if it can survive the repeated assaults from this Court.

Much of the judicial attitude manifested by the Court's opinion today and earlier holdings in this field is really a protest against inadequate juvenile court staffs and facilities; we "burn down the stable to get rid of the mice." The lack of support and the distressing growth of juvenile crime have combined to make for a literal breakdown in many if not most juvenile courts. Constitutional problems were not seen while those courts

p. 1

To: Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. [illegible]
Mr. Justice Marshall



# SUPREME COURT OF THE UNITED STATES

From: The Chief Justice

Circulated:

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No. 778.—October Term, 1969

In the Matter of Samuel Winship, Appellant. } On Appeal From the Court of Appeals of New York.

[March —, 1970]

Mr. Chief Justice Burger, with whom Mr. Justice Stewart joins, dissenting.

The Court's opinion today rests entirely on the assumption that all juvenile proceedings are "criminal prosecutions," hence subject to constitutional limitations. This derives from earlier holdings, which like today's holding, were steps eroding the differences between juvenile courts and traditional criminal courts. The original concept of the juvenile court system was to provide a benevolent and less formal means than criminal courts could provide for dealing with the special and often sensitive problems of youthful offenders. Since I see no constitutional requirement of due process sufficient to overcome the legislative judgment of the States in ~~this area, I dissent from further strait-jacketing of an~~ already overly-restricted system. What the juvenile court systems need is not more but less of the trappings of legal procedure and judicial formalism; the juvenile system requires breathing room and flexibility in order to survive, if it can survive the repeated assaults from this Court.

Much of the judicial attitude manifested by the Court's opinion today and earlier holdings in this field is really a protest against inadequate juvenile court staffs and facilities; we "burn down the stable to get rid of the mice." The lack of support and the distressing growth of juvenile crime have combined to make for a literal breakdown in many if not most juvenile courts.

# SUPREME COURT OF THE UNITED STATES



No. 778.—October Term, 1969

In the Matter of Samuel Winship, Appellant. } On Appeal From the Court of Appeals of New York.

[March —, 1970]

Mr. Justice Black, dissenting.

The majority states that "many opinions of this Court indicate that it has long been assumed that proof of a criminal charge beyond a reasonable doubt is constitutionally required." *Ante,* at 4. I have joined in some of those opinions, particularly the dissent of Mr. Justice Frankfurter in *Leland* v. *Oregon,* 343 U. S. 790, 802 (1952). The Court has never clearly held, however, that proof beyond a reasonable doubt is either expressly or impliedly commanded by any provision of the Constitution. The Bill of Rights does by express language provide for a right to counsel in criminal trials, a right to indictment, and the right of a defendant to be informed of the nature of the charges against him.[1] And in two places the Constitution provides for trial by jury,[2] but nowhere in that document is there any statement that conviction of crime requires proof of guilt beyond a reasonable doubt. The Constitution thus goes into some detail to spell out what kind of trial a defendant charged with crime should have, and I believe the Court has no power to add to or subtract from the procedures set forth by the Founders. I realize that it is far easier to substitute individual judges' ideas of "fairness" for the fairness prescribed by the Constitution, but I shall not at any time surrender my belief that that document itself should be our guide, not our own concept of what is

[1] Amends. V, VI, U. S. Constitution.
[2] Art. III, § 2, cl. 3; Amend. VI, U. S. Constitution.

To: The
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Fortas
Mr. Justice Marshall



# SUPREME COURT OF THE UNITED STATES

From: Black, J.

No. 778.—October Term, 1969

Circulated:

In the Matter of Samuel Winship, Appellant. | On Appeal From the Court of Appeals of New York.

Recirculated: MAR 30 1970

[March —, 1970]

Mr. Justice Black, dissenting.

The majority states that "many opinions of this Court indicate that it has long been assumed that proof of a criminal charge beyond a reasonable doubt is constitutionally required." *Ante,* at 4. I have joined in some of those opinions, particularly the dissent of Mr. Justice Frankfurter in *Leland* v. *Oregon,* 343 U. S. 790, 802 (1952). The Court has never clearly held, however, that proof beyond a reasonable doubt is either expressly or impliedly commanded by any provision of the Constitution. The Bill of Rights, which in my view, is made fully applicable to the States by the Fourteenth Amendment, see *Adamson* v. *California,* 332 U. S. 46, 71–75 (1947) (Black, J., dissenting), does by express language provide for, among other things, a right to counsel in criminal trials, a right to indictment, and the right of a defendant to be informed of the nature of the charges against him.[1] And in two places the Constitution provides for trial by jury,[2] but nowhere in that document is there any statement that conviction of crime requires proof of guilt beyond a reasonable doubt. The Constitution thus goes into some detail to spell out what kind of trial a defendant charged with crime should have, and I believe the Court has no power to add to or subtract from the procedures set forth by the Founders. I realize that it is far easier to substitute individual judges' ideas

[1] Amends. V, VI, U. S. Constitution.

[2] Art. III, § 2, cl. 3; Amend. VI, U. S. Constitution.

April 3, 1970

MEMORANDUM FOR THE CONFERENCE

Re: No. 778- In the Matter of Samuel Winship.

I would like to make a change in my dissenting opinion as handed down on Tuesday. The following passage would be substituted for the last two sentences in footnote 11:

> It is, of course, significant that since the adoption of the Fourteenth Amendment this Court has held almost all the provisions of the Bill of Rights applicable to the States: the First Amendment, e.g., Gitlow v. New York, 268 U.S. 652 (1925), Cantwell v. Connecticut, 310 U.S. 296 (1940), Edwards v. South Carolina, 372 U.S. 229 (1963); the Fourth Amendment, Mapp v. Ohio, 367 U.S. 642 (1961); the Fifth Amendment, Chicago B & O R. Co. v. Chicago, 166 U.S. 226 (1897), Malloy v. Hogan, 378 U.S. 1 (1964), Benton v. Maryland, 395 U.S. 784 (1969); the Sixth Amendment, Gideon v. Wainwright, 372 U.S. 335 (1963), Pointer v. Texas, 380 U.S. 400 (1965), Klopfer v. North Carolina, 386 U.S. 213 (1967), Duncan v. Louisiana, 391 U.S. 145 (1968); and the Eighth Amendment, Robinson v. California, 370 U.S. 660 (1962). To me this history indicates that in the end Mr. Flack's thesis has faired much better than Mr. Fairman's "uncontroverted" scholarship.

Respectfully,

H. L. B.

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# SUPREME COURT OF THE UNITED STATES

No. 778.—October Term, 1969

In the Matter of Samuel Winship, Appellant. } On Appeal From the Court of Appeals of New York.

[February —, 1970]

Mr. Justice Brennan delivered the opinion of the Court.

Constitutional questions decided by this Court concerning the juvenile process have centered on the adjudicatory stage at "which a determination is made whether a juvenile is a 'delinquent' as a result of alleged misconduct on his part, with the result that he may be committed to a state institution." *In re Gault*, 387 U. S. 1, 13 (1967). *Gault* decided that, although the Fourteenth Amendment does not require that the hearing at this stage conform with all of the requirements of a criminal trial or even of the usual administrative proceeding, the Due Process Clause ~~does require application~~ during the adjudicatory hearing of "the essentials of due process and fair treatment." *Id.*, at 30. This case presents the single, narrow question whether proof beyond a reasonable doubt is among the "essentials of due process and fair treatment" to be applied during the adjudicatory stage when a juvenile is charged with an act which would constitute a crime if committed by an adult.[1]

[1] Here, as in *Gault*, "we are not . . . concerned with . . . the pre-judicial stages of the juvenile process, nor do we direct our attention to the post-adjudicative or dispositional process." 387 U. S., at 13. In New York, the adjudicatory stage of a delinquency proceeding is clearly distinct from both the preliminary phase of the juvenile process and from its dispositional stage. See N. Y. Family

# SUPREME COURT OF THE UNITED STATES

No. 778.—October Term, 1969

In the Matter of Samuel Winship, Appellant. | On Appeal From the Court of Appeals of New York.

[March —, 1970]



Mr. Justice Harlan, concurring.

No one, I daresay, would contend that state juvenile court trials are subject to *no* federal constitutional limitations. Differences have existed, however, among the members of this Court as to *what* constitutional protections do apply. See *In re Gault*, 387 U. S. 1 (1967).

The present case draws in question the validity of a New York statute which permits a determination of juvenile delinquency, founded on a charge of criminal conduct, to be made on a standard of proof which is less rigorous than that which would obtain had the accused been tried for the same conduct in an ordinary criminal case. While I am in full agreement that this statutory provision offends the requirement of fundamental fairness embodied in the Due Process Clause of the Fourteenth Amendment, I am constrained to add something to what my Brother Brennan has written for the Court lest the true nature of the constitutional problem presented become obscured or the impact on state juvenile court systems of what the Court holds today may be exaggerated.

## I

Professor Wigmore, in discussing the various attempts by courts to define how convinced one must be to be convinced beyond a reasonable doubt, wryly observed: "The truth is that no one has yet invented or discovered a mode of measurement for the intensity of human belief. Hence, there can yet be no successful method

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 5, 6

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall

# SUPREME COURT OF THE UNITED STATES

No. 778.—October Term, 1969

In the Matter of Samuel Winship, Appellant. | On Appeal From the Court of Appeals of New York.

[March 31, 1970]

From: Harlan, J.

Circulated: _____

Recirculated: MAR 30 1970

Mr. Justice Harlan, concurring.

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## I

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# SUPREME COURT OF THE UNITED STATES

No. 778.—October Term, 1969

In the Matter of Samuel Winship, Appellant. } On Appeal From the Court of Appeals of New York.

[February —, 1970]

Mr. Justice Brennan delivered the opinion of the Court.

Constitutional questions decided by this Court concerning the juvenile process have centered on the adjudicatory stage at "which a determination is made whether a juvenile is a 'delinquent' as a result of alleged misconduct on his part, with the result that he may be committed to a state institution." *In re Gault,* 387 U. S. 1, 13 (1967). *Gault* decided that, although the Fourteenth Amendment does not require that the hearing at this stage conform with all of the requirements of a criminal trial or even of the usual administrative proceeding, the Due Process Clause does require application during the adjudicatory hearing of "the essentials of due process and fair treatment." *Id.*, at 30. This case presents the single, narrow question whether proof beyond a reasonable doubt is among the "essentials of due process and fair treatment" to be applied during the adjudicatory stage when a juvenile is charged with an act which would constitute a crime if committed by an adult.[1]

[1] Here, as in *Gault,* "we are not . . . concerned with . . . the pre-judicial stages of the juvenile process, nor do we direct our attention to the post-adjudicative or dispositional process." 387 U. S., at 13. In New York, the adjudicatory stage of a delinquency proceeding is clearly distinct from both the preliminary phase of the juvenile process and from its dispositional stage. See N. Y. Family

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# SUPREME COURT OF THE UNITED STATES

No. 778.—October Term, 1969

In the Matter of Samuel Winship, Appellant. | On Appeal From the Court of Appeals of New York.

[March —, 1970]

Mr. Justice Brennan delivered the opinion of the Court.

Constitutional questions decided by this Court concerning the juvenile process have centered on the adjudicatory stage at "which a determination is made whether a juvenile is a 'delinquent' as a result of alleged misconduct on his part, with the result that he may be committed to a state institution." *In re Gault,* 387 U. S. 1, 13 (1967). *Gault* decided that, although the Fourteenth Amendment does not require that the hearing at this stage conform with all of the requirements of a criminal trial or even of the usual administrative proceeding, the Due Process Clause does require application during the adjudicatory hearing of "the essentials of due process and fair treatment." *Id.,* at 30. This case presents the single, narrow question whether proof beyond a reasonable doubt is among the "essentials of due process and fair treatment" to be applied during the adjudicatory stage when a juvenile is charged with an act which would constitute a crime if committed by an adult.[1]

[1] Thus, we do not understand how The Chief Justice can assert in dissent that this opinion "rests entirely on the assumption that all juvenile proceedings are 'criminal prosecutions,' hence subject to constitutional limitations." Here, as in *Gault,* "we are not . . . concerned with . . . the pre-judicial stages of the juvenile process, nor do we direct our attention to the post-adjudicative or dispositional process." 387 U. S., at 13. In New York, the adjudicatory stage of a delinquency proceeding is clearly distinct from both the

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# SUPREME COURT OF THE UNITED STATES

No. 778.—October Term, 1969

In the Matter of Samuel Winship, Appellant. | On Appeal From the Court of Appeals of New York.

[March —, 1970]

Mr. Justice Brennan delivered the opinion of the Court.

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[1] Thus, we do not see how it can be said in dissent that this opinion "rests entirely on the assumption that all juvenile proceedings are 'criminal prosecutions,' hence subject to constitutional limitations." Here, as in *Gault*, "we are not . . . concerned with . . . the pre-judicial stages of the juvenile process, nor do we direct our attention to the post-adjudicative or dispositional process." 387 U. S., at 13. In New York, the adjudicatory stage of a delinquency proceeding is clearly distinct from both the

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# SUPREME COURT OF THE UNITED STATES

No. 778.—October Term, 1969

In the Matter of Samuel Winship, Appellant. | On Appeal From the Court of Appeals of New York.

[March 23, 1970]

Mr. Justice Brennan delivered the opinion of the Court.

Constitutional questions decided by this Court concerning the juvenile process have centered on the adjudicatory stage at "which a determination is made as to whether a juvenile is a 'delinquent' as a result of alleged misconduct on his part, with the consequence that he may be committed to a state institution." *In re Gault*, 387 U. S. 1, 13 (1967). *Gault* decided that, although the Fourteenth Amendment does not require that the hearing at this stage conform with all the requirements of a criminal trial or even of the usual administrative proceeding, the Due Process Clause does require application during the adjudicatory hearing of "the essentials of due process and fair treatment." *Id.*, at 30. This case presents the single, narrow question whether proof beyond a reasonable doubt is among the "essentials of due process and fair treatment" required during the adjudicatory stage when a juvenile is charged with an act which would constitute a crime if committed by an adult.[1]

[1] Thus, we do not see how it can be said in dissent that this opinion "rests entirely on the assumption that all juvenile proceedings are 'criminal prosecutions,' hence subject to constitutional limitations." As in *Gault*, "we are not here concerned with . . . the pre-judicial stages of the juvenile process, nor do we direct our attention to the post-adjudicative or dispositional process." 387 U. S., at 13. In New York, the adjudicatory stage of a delinquency proceeding is clearly distinct from both the preliminary phase of the

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

March 4, 1970

No. 778, In the Matter of Winship

Dear Chief,

I am glad to join your dissenting opinion in this case.

Sincerely yours,

P.S.

The Chief Justice

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 24, 1970

Re: No. 778 - In the Matter of
Samuel Winship

Dear Bill:

Please join me.

Sincerely,

B.R.W.

Mr. Justice Brennan

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 18, 1970

Re: No. 778 - In the Matter of Winship

Dear Bill:

Please join me.

Sincerely,

T.M.

Mr. Justice Brennan

cc: The Conference