

A B A

Juvenile Justice from Hammurabi to John Rector

Trying to bring justice
to kids has troubled courts
for years

Gerald Gault was a lawyer's dream. This 15-year-old Arizona boy, accused of a minor crime, clearly seemed to have been railroaded by the juvenile justice process. He wasn't given adequate time to prepare his case. He wasn't told that he could remain silent or have the assistance of counsel. He wasn't allowed to confront the witnesses against him and cross-examine them. He wasn't given a public trial, nor was a court record kept. And he wasn't given the right to appeal.

All in all, he wasn't given any of the due process protections of an adult—and he *was given* a sentence far greater than an adult would have received for the same crime. His quest for justice took him all the way to the Supreme Court, and helped revolutionize the juvenile courts. His story dramatizes dilemmas of juvenile justice which have troubled leaders from the ancient Babylonian Hammurabi to the head of our nation's juvenile justice office, John Rector.

It all started in 1964, when Gerald and a young companion were brought before the Arizona juvenile court. The two of them, it seemed, had been making dirty phone calls, "of the irritating, offensive adolescent sex variety." One of the calls was made to a Mrs. Cook, who reported the boys to Deputy Probation Officer Flagg.

Things moved fast after that. Young Gault was taken into custody that day by the sheriff and brought to the local

Wallace Mlyniec

Struggle shapes over kids' rights

The New York Times News Service

The struggle for human rights has found a new frontier — America's children. A movement has arisen, not one of marches, petitions and boycotts, but one of constitutional arguments and legal theories.

It is a movement of the courtroom and the legislative chamber, aimed at reaching beyond patchwork protections against child abuse to establish clearcut constitutional rights for America's children.

But this movement is no less vigorous for its low profile. A spot check of 24 states by The New York Times disclosed that every one of their major cities had some legal group fighting for children's rights.

"Children's rights is a frontier area of legal thought," said J. Harvie Wilkinson, a professor of law at the University of Virginia, "and it will be a major concern of the United States Supreme Court in the next decade."

There are some state laws and regulations governing the mistreatment of children, some going back for decades. But until the early 1970s, there was no organized movement to gain individual rights for children.

That children should be protected by the Bill of Rights is a new area of social philosophical and legal thought. "We had always assumed that parents looked after children," said Robert Shepherd, professor of law at the University of Baltimore.

The leaders of the children's rights movement, which encompasses thousands of people in religious, fraternal, social and labor organizations, make a distinction between their goals and those of the advocates of racial or sexual equality. Their aim, they say, is not to let children determine their own destiny. Adults, they say, must ultimately be responsible for children.

What they hope to do is establish that a child has a right to a safe, stable home, to a reasonable education, to due process of law and to freedom from abuse and neglect. They hope, in other words, to prove that adults and institu-

tions have obligations to the young as well as powers over them.

John Rector, chief counsel of the Senate Juvenile Delinquency subcommittee in Washington, summarized the movement by saying, "We want to stop adults from being able to do anything to children and get away with it."

In the view of the movement's leaders, adults have historically been able to get away with an awesome list of injustices against the young. Among those they cite are the following:

- Committing children to mental institutions at a parent's whim, without the same medical evidence required to commit an adult.

- Placing children in reformatories although they have committed no crimes, other than so called "children's crimes" — truancy, incorrigibility and running away from home.

- Forcing children to take powerful drugs to subdue them in schools, mental and penal institutions and foster homes.

- Committing children to one foster home after another, or consigning them to foster care virtually until adulthood.

- Sending children to institutions far from the states in which they live, in effect banished by their states and cut off from their families.

"We have kidded ourselves that we love children in this country," says Peter Sandman, who heads the Youth Law Center in San Francisco, a federally funded children's rights law firm. "In fact, we treat kids as chattels and have done so for as long as there has been an America. Children are the last oppressed minority."

The drive to end that oppression has had some successes.

For example, to encourage states to stop locking up juveniles for "children's crimes," the Federal Juvenile Justice and Delinquency Prevention Act was passed in 1974. Sponsored by Sen. Birch Bayh, the act provides money for states that can find alternatives to locking up children in detention centers and reformatories.

The children's rights movement has also come to the attention of the courts. The United States Supreme Court ruled last year that states cannot, without due process, deprive children of education for disciplinary reasons and that a student can recover damages from school officials whose actions breached his right to attend school.

In 1972 Massachusetts instituted a controversial and innovative plan. State officials began closing down all reformatories and children's prisons and substituting group homes, foster homes and other residential settings for juveniles.

Now 92 per cent of 2,400 children, who would otherwise be in reformatories, live in their community. However, three secure facilities with a total capacity for 49 juveniles were reopened for youths who could not be treated in community-based residences.

Press Intelligence, Inc.
WASHINGTON, D. C. 20001

Front Page	Edit Page	Other Page
------------	-----------	------------

MIAMI, FLORIDA
NEWS

E - 93,538
NOV 3 1976

Experts on Justice Are Debating Treatment of Youthful Offenders.

By ROGER WILKINS

Shortly after Governor Carey saw a news story reporting that a 15-year-old boy who had been convicted of two murders on New York subway trains had been sentenced to a five-year term — the maximum permitted under the state's juvenile justice laws — he announced that he would soon propose legislation enabling the state to deal much more severely with similar offenders and offenses.

Urban Affairs Although it was an election-year statement, few dissenting voices have been heard.

Despite agreement on the specific case, however, the Governor's decision comes at a time when juvenile-justice experts are debating the fundamental premises under which violent young offenders have been treated for decades. The theory has been that young people can grow and change, and that given sufficiently individualized, sympathetic and intensive attention, their problems can be ameliorated and most can become useful adults.

Thus, legislatures have set up systems designed to keep youngsters out of the corrupting adult criminal stream and to provide the care that public policy of the time deemed best for them.

Theory Under Close Scrutiny

But recently, that theory been subjected to close scrutiny by both legislators and by experts in the field. A summary of the proceedings of a symposium on serious juvenile offenders, sponsored by the Law Enforcement Assistance Administration last September, indicates that one of the "major considerations" raised by the experts who participated in the conference was:

"The exercise of political power on behalf of young people in this country seems to be diminishing. Until recently, the population of this country has been composed of a large proportion of young people. As the graying of America takes place and as elderly citizens are victimized or fear becoming victims of crime, the removal of the offender from society is likely to become an increasingly more politically palatable option. Given this, some balance needs to be struck between what is seen as the protection of society and what is in the best interests of the young person."

Some of the conferees took a different view. John F. Conrad, a senior fellow in criminal justice at the Academy for Contemporary Problems at Ohio State University, was harsh in denouncing the trend toward relying more heavily on incarceration. He wrote:

processed through the adult criminal system — are to be treated as juveniles, in a court and corrections system designed for them. However, the Reform Act did differentiate, for the first time, among categories of offenders.

Thus, young people convicted of serious offenses such as murder or arson and kidnapping in the first degree can be sentenced to five-year terms — as the subway murderer was — with judicial discretion to extend the term a year at a time until the youth becomes 21.

Previously the statute had provided for indeterminate sentences up to 18 months, with discretion to extend annually after that. The average length of incarceration under that statute was seven to eight months, according to the State Division for Youth. Peter B. Edelman, director of the agency, believes the reform has been good.

"We're clearly going to get a significant increase in the time youngsters sentenced under the new provisions will serve," he said recently. "Another important development under the new law is that we're getting a phenomenally high conviction rate in the serious cases that have been prosecuted — 82 percent — that's higher than in the adult courts. Thus, for those serious crimes, there's a greater certainty of punishment and thus a greater deterrent."

In the interview, Mr. Edelman stressed the improvement in service the Carey administration had attempted to bring into the program, saying: "Some of these kids are getting training opportunities they'd never otherwise have had. Of course, you lose some, but you save an awful lot too."

The debate is thus between an enlightened concern for troubled youngsters and the protection of society or, as John M. Rector, head of the Federal Office of Juvenile Justice and Delinquency Prevention, wrote recently after arguing strenuously against promiscuous incarceration and for more resources for innovative services:

"Some youthful offenders must be removed from their homes for society's sake as well as their own. But detention and incarceration should be reserved for youths who cannot be handled by other alternatives."

more heavily on incarceration. He wrote:

"If official behavior and public policies are reliable guides to our collective attitudes, Americans do not like other people's children, especially the children of the poor. . . . We educate them in generally old and dilapidated schools, and we prefer that poor children be kept separate. . . . The truth is that we are afraid of poor children, particularly those of other races. Like children of all classes, these children from time to time confirm our fears and our dislike of them by committing atrocious and frightening crimes."

Reform Act Passed in 1976

New York State had a significant debate on these issues two years ago. A panel appointed by Governor Carey during the first year of his administration proposed reforms in the state's juvenile-justice laws, and the Legislature debated and passed the Juvenile Justice Reform Act in 1976, retaining the basic theory that offenders under the age of 16 — one of the youngest cut-off ages in the country, those over 16 are

Warrior on Delinquency Resigns Under Criticism

United Press International

John Rector, chief of the government's \$100-million-a-year campaign against juvenile delinquency, has resigned under heavy criticism, the Justice Department disclosed yesterday.

"He's not being fired. We don't have the power to fire him," said Terrence Adamson, a department spokesman. He called the resignation of the presidential appointee "a mutual agreement."

The shakeup in the Office of Juvenile Justice and Delinquency Prevention amounts to an admission by the Carter administration that its efforts to combat juvenile delinquency have so far been unsuccessful.

Adamson said Rector will take a job in the department's Office for Improvements in the Administration of Justice "where his experience in the justice field can be utilized."

Sources said supervisors encountered difficulties of style and policy in dealing with Rector.