Sentencing Under the Federal Youth Corrections Act: When May a Youth Be Treated as an Adult?

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INTRODUCTION

All judges confront difficult issues in sentencing, but those judges who must sentence juveniles face an especially complicated set of problems. Since the establishment of the first juvenile court, our society has asked judges to treat juveniles somewhat differently than adults. Judges who sentence juveniles are expected to impose punishment which satisfies society's demands for deterrence and retribution, but which also recognizes that younger offenders may be more amenable than adults to education and rehabilitation.

The Federal Youth Corrections Act¹ was passed in 1950 in an attempt to give federal judges guidance in the sentencing of juvenile offenders. The Youth Corrections Act, described as the most comprehensive federal statute concerned with sentencing,² presents a number of alternatives which judges are to consider when sentencing youth offenders who are under twenty-two years of age at the time of conviction.³

The Youth Corrections Act certainly has not solved the juvenile crime problem. In fact, juveniles are committing more violent crimes than ever before.⁴ In addition, judges have had difficulty  

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¹ 18 U.S.C. §§ 5005-5026 (1976) [hereinafter referred to as YCA].


³ The designation of "youth offender" is one of four categories of offenders under the United States Code. The other categories are the following: juveniles (convicted persons under the age of 18) who are sentenced under the Federal Juvenile Delinquency Act, 18 U.S.C. §§ 5031-5042 (1976); young adult offenders (between the ages of 22 and 26 when convicted) who may be sentenced under the YCA if the court finds that there is reasonable ground to believe that the defendant will benefit from treatment under the Act, 18 U.S.C. § 4216 (1976); and adult offenders.

⁴ Misconduct by the young, however, is not a new phenomenon. After compiling reports by many writers from medieval times to the present, Lamar Empey concluded that flaunting of adult standards by the young probably has not increased over the centuries. For example, Empey noted that the 19th century Americans "exhibited fright and pessimism over youth

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implementing the Act’s provisions. This article will examine the latest problem involved in interpreting and implementing the Youth Corrections Act: the continuation of treatment of youthful offenders following the commission of subsequent crimes. The problem will be discussed in the context of the United States Supreme Court’s decision in *Ralston v. Robinson.*

**HISTORY OF THE FEDERAL YOUTH CORRECTIONS ACT**

The Federal Youth Corrections Act (YCA) was passed by Congress in an effort to provide a system for treatment and rehabilitation of youth offenders. The original impetus for the YCA was a report made to the Judicial Conference of the United States in 1942 which recommended that new sentencing procedures be adopted to treat criminally inclined youth. The report was presented before hearings held a year later in the House of Representatives and the Senate, and was ultimately incorporated in the youth corrections bill which was passed by both Houses of Congress.

The bill’s statement of purpose emphasized that the bill was designed to promote the rehabilitation of those who, in the opinion of the sentencing judge, show promise of becoming useful citizens. In addition, it was recommended that a system of analysis and treatment be developed that would cure, rather than accentuate, the anti-social tendencies that had led to the commission of crime.

behavior. No decent man could safely walk the streets of San Francisco; the term hoodlum was coined to describe the members of teenage gangs.” L. EMPEY, AMERICAN DELINQUENCY: ITS MEANING AND CONSTRUCTION 2 (1978).

More recent statistics have demonstrated that juveniles are responsible for a high proportion of crimes committed. For example, the number of persons arrested in the United States under 18 years of age increased from 31,750 in 1948 to 234,474 in 1956; during the same period, the percentage of arrests of persons under 18 years of age as compared to total arrests increased from 4.2% to 11.3%. F.B.I., 19 UNIFORM CRIME REPORTS 117 (1948); F.B.I., 27 UNIFORM CRIME REPORTS 110 (1956). In 1974, juveniles under 18 years of age accounted for almost one-third of all those arrested for felony offenses. Between 1960 and 1974, the percentage of juveniles under 18 who were arrested increased over 200%. F.B.I., 46 UNIFORM CRIME REPORTS 182 (1975). In 1980, those under 21 years of age comprised 38.4% of all those who were arrested. F.B.I., UNIFORM CRIME REPORTS 202 (1980).


7. In 1941, Mr. Chief Justice Stone appointed a committee to study the topic of punishment for crime. A subcommittee of these jurists focused on the problem of treating juvenile offenders. Their recommendations were presented to the Judicial Conference in 1942.

The passage of the bill was prompted by congressional notice of statistics which demonstrated that the period between sixteen and twenty-three years of age is the focal source of crime, and by testimony of sociologists and psychiatrists that special factors operate in this period to cause anti-social conduct.

Recognizing that existing methods of dealing with youthful offenders were insufficient, Congress looked to the principles of the Borstal system as a solution. This system, designed originally to treat young offenders in England, operated by segregating younger offenders (between the ages of sixteen and twenty-three) from adult offenders, and by offering young offenders special programs of education and vocational training based on their individual needs. Congress provided for a parallel system in the United States through the creation of a Youth Corrections Division under the Board of Parole. The Youth Division, in conjunction with the Bureau of Prisons, was to establish a method of classifying and treating youth offenders convicted in federal courts.

**SENTENCING PROVISIONS UNDER THE YCA**

The sentencing provisions which were incorporated in the YCA reflect congressional intent to provide individualized treatment for youth offenders. The Act defines treatment as "corrective and preventive guidance and training designed to protect the public by correcting anti-social tendencies of youth offenders." In order to

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9. The bill included the following statistics taken from the 1949 Semiannual Crime Report of the Federal Bureau of Investigation:

Persons 16 to 23, inclusive, constitute 20 percent of our population above the age 15 (based on 1940 census figures), but they are responsible for 47.3 percent of our robberies; they constitute 55.4 percent of our apprehended burglars, and 63.1 percent of our automobile thieves. Youths under the age of 24 are arrested for major crimes (homicide, robbery, assault, burglary, larceny-theft, auto theft, and rape) in greater numbers than persons of any other 5-year age group 25 years of age or older. They are arrested for serious crimes twice as often as adults from 30 to 34; three times as often as those 40 to 44, and four times as often as those 45 to 49.

*Id.* at 3984.

10. Under the Borstal system, a convicted offender was sent to a hospital for a thorough examination. If no physical or mental defect were found, the youth then met with a board who determined to which facility he would be sent to best meet his particular needs. The basic treatment program consisted of instruction in one of a number of trades, in combination with educational and recreational classes and physical activity. Statistics compiled in the 1930's indicated that the Borstal's were very successful, rehabilitating a claimed 70% of trainees. See *Barman, The English Borstal System* (1934); *Gibbens, Psychiatric Studies of Borstal Lads* (1963); *Wardner & Wilson, The British Borstal Training System, 64 J. Crim. L. & Criminology* 118 (1973).

deal with the problems of these youths, the Act provides for the segregation of the committed youth offenders, "insofar as practical," so as to avoid the influence of association with the more hardened inmates serving traditional criminal sentences.\(^\text{13}\)

In the actual process of sentencing, judges are given four options under the Act. First, under section 5010(b), the judge can put a youth offender on probation. Second, the judge can sentence the offender to the custody of the Attorney General for treatment and supervision until discharged by the Youth Division.\(^\text{14}\) This sentence is imposed in lieu of a definite term. A youth offender sentenced under this section may be released at any time, but must be released with or without supervision upon expiration of four years from the date of conviction, and unconditionally discharged upon expiration of six years from the date of conviction.\(^\text{15}\)

The third sentencing option is available when a judge feels that a youth would not derive the maximum benefit from treatment by the Youth Division before expiration of six years from the date of conviction. The Act allows the judge to sentence the youth offender to the custody of the Attorney General for any term of imprisonment authorized by the statute under which he was convicted.\(^\text{16}\) Such a committed youth offender may be released at any time by the Youth Division, but must be released under supervision no later than two years before the expiration of the term imposed by the court. The youth must be unconditionally discharged


\(^{13}\)If the court is of the opinion that the youth offender does not need commitment, it may suspend the imposition or execution of sentence and place the youth offender on probation." 18 U.S.C. § 5010(a) (1976).

\(^{14}\)If the court shall find that a convicted person is a youth offender, and the offense is punishable by imprisonment under applicable provisions of law other than this subsection, the court may, in lieu of the penalty of imprisonment otherwise provided by law, sentence the youth offender to the custody of the Attorney General for treatment and supervision pursuant to this chapter until discharged by the Commission as provided in section 5017(c) of this chapter.


\(^{15}\)18 U.S.C. § 5017(c) (1976).

\(^{16}\)If the court shall find that the youth offender may not be able to derive maximum benefit from treatment by the Commission prior to the expiration of six years from the date of conviction it may, in lieu of the penalty of imprisonment otherwise provided by law, sentence the youth offender to the custody of the Attorney General for treatment and supervision pursuant to this chapter for any further period that may be authorized by law for the offense or offenses of which he stands convicted or until discharged by the Commission as provided in section 5017(d) of this chapter.

on or before expiration of the maximum term imposed. Finally, if the judge finds that the youth will not derive benefit from treatment, he can sentence the youth offender under any other applicable penalty provision. In such a case, the offender would be eligible for parole and mandatory release, as would any adult offender.

The Act reserves to the sentencing judge's discretion the decision as to whether or not an offender under age twenty-two will benefit from treatment. In order to allow the judge to make the most informed decision, however, the Act allows the judge to gather additional information about the youth by ordering that he be committed to the custody of the Attorney General for observation and study. Following such an order, the Youth Division must issue a report to the court within sixty days.

In keeping with the philosophy of treatment rather than punishment for youth offenders, the Act provides that if the offender is discharged unconditionally before the expiration of the maximum sentence, the conviction is automatically "set aside" and the offender is issued a certificate to that effect. When a youth offender has been placed on probation, the court may in its discretion unconditionally discharge a youth offender from probation prior to the end of the previously fixed term. Once again, the discharge automatically sets aside the conviction, and a certificate so stating is issued.

**INTERPRETING THE REQUIREMENT OF TREATMENT UNDER THE YCA**

**Prior Supreme Court Cases**

Although Congress was clear about its policy of providing for treatment and rehabilitation of youth offenders under the YCA, Congress failed to give detailed specifications as to how the Act should be implemented. As a consequence, courts have been re-

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19. If the court desires additional information as to whether a youth offender will derive benefit from treatment under subsections (b) or (c) it may order that he be committed to the custody of the Attorney General for observation and study at an appropriate classification center or agency. Within sixty days from the date of the order, or such additional period as the court may grant, the Division shall report to the court its findings.
quired to provide answers to some very practical questions about how to treat youth offenders. One of these questions was answered by the Supreme Court in *Dorszynski v. United States.* The Court was asked in *Dorszynski* to interpret the requirement of section 5010(d) that a judge find the offender will not benefit from treatment. The Court first examined the legislative history of the Act, and concluded that Congress had not intended to restrict the broad discretion which is vested traditionally in the sentencing judge. Based on this examination, the Court ruled that the statutory requirement of a "no benefit" finding is not a substantive standard under which a judge must make a statement of the supporting reasons for his decision. Rather, the Court found, section 5010(d) is included to ensure that the judge is aware of the possibility of sentencing under the YCA. The section merely requires that the judge make a clear finding that the youth will either benefit or not benefit from treatment.

In *Durst v. United States,* decided four years after *Dorszynski,* the Supreme Court was asked to determine whether a judge could require restitution or a fine or both when placing a youth offender on probation under the YCA. After recognizing that section 5010(a) of the YCA neither granted nor withheld judicial authority to impose restitution or a fine, the Court examined other sections of the Act to see whether they included any references to penalty options. The Court pointed to section 5023(a), which provides that nothing in the Act shall affect the provisions of the general probation statute. Noting that a provision of the probation statute expressly provided that a defendant on probation could be required either to pay a fine or to make restitution, the Court in *Durst* concluded that such sentencing alternatives were also available under the YCA.

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24. 418 U.S. at 441.
25. *Id.* at 442-44.
27. *Id.* at 549.
29. 434 U.S. at 555.
Sentencing Under the YCA

In Ralston v. Robinson, the Supreme Court was again required to address a circumstance not expressly provided for in the YCA. The Court was asked to decide whether a youth offender sentenced to a consecutive adult term of imprisonment while serving a sentence under the YCA must receive YCA treatment for the remainder of his youth sentence. The Supreme Court, in an opinion delivered by Justice Marshall, held that the YCA does not require such treatment.

Factual Background

John Carroll Robinson was seventeen-years-old when he pleaded guilty to a charge of second degree murder. After being sentenced under section 5010(c) of the YCA to a ten-year term of imprisonment, Robinson was placed at the Kennedy Youth Center in Morgantown, West Virginia, on the sentencing judge's recommendation. Robinson's release was dependent on two conditions: attainment of at least an eighth grade level of education, and the successful completion of training in a trade of his choice. In addition, the sentencing judge recommended that Robinson receive weekly individual therapy. Before release, Robinson was to undergo psychological reevaluation.

A year after his murder conviction, Robinson was found guilty of assaulting a federal officer while incarcerated at the Federal Correctional Institution at Ashland, Kentucky. For this conviction he was sentenced by the United States District Court for the Eastern District of Kentucky to serve an additional ten-year adult sentence. The court stated that "the defendant will not benefit any further under the provisions of the [YCA]" and, therefore, "decline[d] to sentence under said Act." After a review of the presentence report, however, the judge reduced the sentence to sixty-six months. This new sentence was to be served consecutively to the YCA sentence. Finally, the judge recommended that a facility providing greater security would be more appropriate for

32. Robinson was convicted of violating 18 U.S.C. §§ 111, 1114.
33. 102 S. Ct. at 237.
Robinson than the Kentucky institution.\textsuperscript{34}

Following this 1975 conviction and sentencing, Robinson was transferred to the Federal Correctional Institution in Oxford, Wisconsin. Because of disciplinary problems, Robinson was later placed in a federal facility in Lompoc, California. In 1977, Robinson pleaded guilty to a charge of assaulting a federal officer while confined in the Lompoc institution. He was sentenced under 18 U.S.C. § 5010(d) of the YCA as an adult, to a term of one year and one day to run consecutive to and not concurrent with the term he was then serving. The Bureau of Prisons classified Robinson as an adult after he received this second adult sentence. Consequently, he was no longer segregated from adult prisoners.\textsuperscript{35} Robinson was transferred to the United States Penitentiary in Terre Haute, Indiana, and, after accumulating numerous misconduct reports,\textsuperscript{36} was sent to the United States Penitentiary at Marion, Illinois, a maximum security facility.\textsuperscript{37}

Robinson filed a petition for habeas corpus in the United States District Court for the Southern District of Illinois on May 25, 1978. After reviewing the petition, the United States magistrate recommended that Robinson be transferred to an institution where he would be segregated from adult offenders and would receive treatment as prescribed by section 5011 of the YCA.\textsuperscript{38} The district court then issued an order granting the writ of habeas corpus, and on June 17, 1980, Robinson was transferred from Marion to the Federal Correctional Institution at Memphis, Tennessee. The government appealed from the district court's order, and the order was subsequently stayed. Robinson, in turn, appealed the stay of the order. The appeals were consolidated before the United States

\textsuperscript{34} Id.
\textsuperscript{35} Robinson contended that he had never been segregated from non-YCA prisoners nor given any special YCA treatment as mandated by the original sentencing judge. Petitioner's Brief at 7. The Court, however, did not address this issue. 102 S. Ct. at 237 n.2.
\textsuperscript{36} The Bureau of Prisons reported that from the time of his incarceration in July, 1974 through July, 1980, Robinson had been cited in 36 incident reports, many for violent conduct. Brief for the Petitioner at 6 n.6, Ralston v. Robinson, 102 S. Ct. 233 (1981).
\textsuperscript{37} Institutions in the federal prison system have been grouped into security levels based on seven factors: 1) perimeter security, 2) towers, 3) external patrol, 4) detection devices, 5) security of housing areas, 6) type of living quarters and 7) level of staffing per population size. Level one is the lowest in security and level six is the highest. Marion is a level six facility. United States District Court, Northern District of Illinois & the Bar Association of the Seventh Federal Circuit, Manual Prepared for Seminar on the Federal Sentencing Process (Oct. 31, 1981) 170, 178 [hereinafter cited as Seminar, Federal Sentencing].
Court of Appeals for the Seventh Circuit.

The Seventh Circuit Decision

The Seventh Circuit affirmed, holding that Robinson must be treated pursuant to the YCA until the termination of his YCA-imposed sentence. In reaching this conclusion, the court first noted that the YCA contained no provision authorizing a YCA sentence to be reevaluated by another judge. The court then turned to the statutory language of the YCA, the pertinent legislative history, and the Supreme Court’s decision in Dorszynski v. United States for guidance. The court concluded that all of these sources were consistent in emphasizing the YCA’s rehabilitative purpose.

Next, the court noted that both the legislative history and the Dorszynski decision emphasized that “[s]entencing a youth offender under the YCA does not deprive the court of any of its present function as to sentencing.” The Seventh Circuit reasoned that to interpret the Act so as to allow a second judge, while sentencing on a totally unrelated matter, to reevaluate the original YCA sentence would deprive the first judge of his traditionally exclusive sentencing function. The court refused to mandate such a departure from tradition in the absence of clear congressional expression. In his concurring opinion, Judge Pell noted that while there was nothing in the record to indicate that “either Robinson or society will benefit by continuing the YCA treatment,” the continuing treatment was mandated by the statute.

In addition to preserving the sentencing judge’s discretion to utilize the YCA, the Seventh Circuit also rejected the Bureau of Prisons’ contention that the Bureau should have authority under section 5011 to decide whether a prisoner serving a YCA sentence but facing a consecutive adult sentence should be confined as an adult. In construing the language of section 5011 which requires segregation of youth offenders “in so far as practical,” the court agreed with a Third Circuit decision, Thompson v. Carlson, where the same issue concerning the Bureau’s confinement deter-

41. . 642 F.2d at 1080 (citations omitted).
42. Id. (Pell, J., concurring).
43. 624 F.2d 415 (3d Cir. 1980).
mination was raised and rejected. The court quoted with approval the following language from the *Thompson* decision:

> If we were to so construe the statute, we would expand considerably the power given to the Bureau of Prisons by vesting in it that which Congress has given exclusively to the judiciary, i.e., the determination whether the offender can benefit under the YCA. We find no statutory basis or policy reason for such a construction.\(^4\)

In *Thompson*, a seventeen-year-old received an eight-year sentence under section 5010(c) of the YCA.\(^4\) While incarcerated under the YCA sentence, he was convicted of first degree murder as a result of his participation in the stabbing of a fellow inmate. Thompson was then sentenced to a consecutive adult term of life imprisonment after the sentencing judge made a specific finding that Thompson would not derive further benefit under the YCA.\(^4\)

The Seventh Circuit, however, disagreed with the Third Circuit's disposition of the treatment issue in *Thompson*. The Third Circuit had held that a prisoner who was given a consecutive adult sentence while serving a YCA sentence could be returned to the general prison population if the judge made a specific finding that the prisoner would no longer benefit from treatment under the Act.\(^4\)

According to the *Thompson* court, “the YCA statute itself expressly recognizes that there can be judicial reevaluation during the service of the YCA sentence.”\(^4\) It provides, for example, that nothing in the Act “shall limit or affect the power of any court to suspend the imposition or execution of any sentence and place a youth offender on probation.”\(^4\) The court reasoned that “it would not be inconsistent with the statutory scheme to hold that a judicial reevaluation of the continued benefit of commitment as a YCA offender is permissible when such a reevaluation is triggered by the offender’s own commission of a crime”\(^5\) and where the second judge is thus making a “no benefit” finding on the basis of newly available information.

A contrary construction of the YCA, according to the Third Circuit in *Thompson*, would lead to a futile result. Under sections

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44. 642 F.2d at 1082 (citations omitted).
46. 624 F.2d at 416.
47. Id. at 419, 422.
48. 624 F.2d at 421 (citing 18 U.S.C. § 5023 (1976)).
50. 624 F.2d at 421-22.
5017(b) and (c) of the YCA, all YCA offenders must be condition-
ally discharged for at least two years before the end of their sen-
tence. It would be "patently impossible" to satisfy this require-
ment in Thompson's case, however, because imposition of the con-
secutive life sentence meant that he would not be eligible for re-
lease until he had served ten years of the life sentence. The court thus concluded that "this provides further indication that the concern of the statute is toward those prisoners who will be released following the YCA sentence," and that the rehabilitative purpose of the YCA could not be met in this case.

The Seventh Circuit's decision that Robinson be treated as a youth until the expiration of his YCA sentence was also at odds with the Fourth Circuit's decision in Outing v. Bell. In Outing, the Fourth Circuit held that a prisoner who was sentenced to a consecutive adult term after initially being imprisoned under a YCA sentence did not fall within the definition of a YCA inmate under prison regulations, and that mandatory segregation from the adult prison population was not required by the wording of the YCA. Because the Seventh Circuit's interpretation of the YCA treatment provisions was in opposition to the approaches taken previously by two other circuits, the United States Supreme Court in 1981 granted certiorari in Ralston.

The Supreme Court Decision

In resolving the conflict among the circuits, the United States Supreme Court relied principally on its own prior interpretation of the YCA in Dorszynski v. United States. The Ralston Court observed initially that its previous examination of the history, structure, and underlying policies of the YCA had uncovered two relevant tenets: "the YCA strongly endorses the discretionary power of a judge to choose among available sentencing options" and "the YCA prescribes certain basic conditions of treatment for YCA

51. 624 F.2d at 422 (citing 18 U.S.C. § 4205(a) (1976)).
52. Id. at 422.
53. 632 F.2d 1144 (4th Cir. 1980).
54. Under the operative policy statement 7300.136 of the National Bureau of Prisons, a YCA inmate was defined as an inmate sentenced under the YCA "who is not also sentenced to a concurrent or consecutive adult term, whether state or federal." Id. at 1146.
55. Id.
offenders."

The Court's analysis of the YCA in prior cases and in Ralston led to the following sequence of conclusions. First, the Court noted that the YCA prescribes an individualized treatment program requiring that youth offenders be segregated from adults and that they receive rehabilitative treatment. Second, the purpose of this treatment is to prevent youths from becoming hardened criminals by keeping them away from those youths and adults with few prospects of rehabilitation. Third, whether to use the particular treatment methods of the YCA depends on the exclusive decision of the sentencing judge. Finally, when some of the traditional authority of prison officials to moderate confinement conditions was withdrawn by Congress, Congress did not intend that no one exercise the authority. In the Court's words, "[t]he only reasonable conclusion is that Congress reposed that authority in the court, the institution that the YCA explicitly invests with the discretion to make the original decision about basic treatment conditions."

To bolster these conclusions, the Court pointed to the fact that the YCA does permit a youth offender originally sentenced under the YCA to be treated later as an adult in certain situations. As an example, the Court noted that under the YCA a court may sentence a defendant to an adult term if the defendant has committed an adult offense after receiving a suspended sentence and probation as a youth under section 5010(a). In addition, a judge may impose a concurrent adult sentence on an adult offender serving a YCA term. Finally, the YCA provides that any conditional release may be revoked and an adult sentence immediately imposed if the youthful offender violates the terms of the release by committing a crime. This is true even if the youth sentence has not yet expired.

The Court concluded that "a judge who sentences a youth offender to a consecutive adult term may require that the offender

59. 102 S. Ct. at 242.
60. Id.
61. Id.
62. Id.
63. Id.
64. Id.
65. Id. at 242-43.
66. Id. at 243.
also serve the remainder of his youth sentence as an adult.'\textsuperscript{67} The standards to be applied "in determining whether an offender will obtain \textit{further} benefit from YCA treatment," according to the Court, are no different from those applied in imposing a YCA sentence originally.\textsuperscript{68} A judge should make a sentencing decision "informed by both the rehabilitative purposes of the YCA and the realistic circumstances of the offender."\textsuperscript{69} Applying these principles to the facts in \textit{Ralston}, the Court found that the second judge made a sufficient finding that Robinson "would not benefit from YCA treatment during the remainder of his youth term."\textsuperscript{70} The Court emphasized, however, that in the future judges would be required to make an explicit "no benefit" finding in such a situation.\textsuperscript{71}

\textbf{ANALYSIS OF THE SUPREME COURT'S DECISION}

In \textit{Ralston v. Robinson},\textsuperscript{72} the Supreme Court was faced with resolving a difficult policy issue: what should be done with youthful offenders who are not being rehabilitated through YCA treatment programs? The majority answered this question in the most practical way possible, that is, by preserving the broad discretion of subsequent judges to sentence YCA offenders to consecutive adult sentences. While such a decision may be satisfying in its practicality, the Court's decision is nevertheless an unwarranted act of legislation. In addition, the Supreme Court's interpretation may permit violations of the offenders' constitutional rights to equal protection of the laws and to protection against double punishment.

Normally, when confronted with a question of statutory construction, the Supreme Court looks to the intent of Congress in enacting the statute for the answer.\textsuperscript{73} But in resolving the issues raised in \textit{Ralston}, traditional rules of statutory construction are not especially helpful. Congress did not specifically address the

\textsuperscript{67} Id.
\textsuperscript{68} Id. at 244.
\textsuperscript{69} Id.
\textsuperscript{70} Id. The Court noted that the court of appeals apparently "believed that a rehabilitative purpose may have existed here. However, given the facts of this case, any such belief is sheer speculation." Id. at 243 n.11.
\textsuperscript{71} Id. at 244. The second judge in this case merely stated that Robinson would not benefit "further" under the YCA. Id.
\textsuperscript{72} 102 S. Ct. 233 (1981).
\textsuperscript{73} 2A SUTHERLAND, STATUTORY CONSTRUCTION § 45.05 (1973).
problem of how to treat youthful offenders who commit additional crimes while serving their YCA sentence.

Despite the fact that the statutory language and the legislative history of the YCA provide no clear answer to the Ralston problem, the Supreme Court was not totally without guidance. Rather than refusing to decide the issue by ruling, in effect, that the YCA does not apply to subsequently convicted YCA-sentenced offenders, the Court could have examined the broad legislative purpose underlying the statute.74

There is support for the view that a statute should not be confined in its operation to only what was within the contemplation or intention of the legislature which enacted it, but that, instead, the words of a statute should be regarded as embodying a kind of delegation of authority to exercise responsible creative judgment in relating the statutory concept, spirit, purpose, or policy to changing needs of society.75

Professor Robert E. Keeton has suggested that courts engaging in such an analysis of legislative purpose follow a four-step process to resolve statutory construction problems:

First: Apply the mandate of the statute if it appears that the legislature did in fact both consider and prescribe for the problem at hand.

Second: If the problem falls beyond the core area that the legislature both considered and prescribed for, defer to the legislature’s manifested determinations of principle and policy to the extent they can be ascertained and are relevant to the problem at hand.

Third: Subject to the obligations to apply the legislature’s mandate and defer to its manifestations of principle and policy, resolve the problem at hand in a way that in the court’s view produces the best total set of rules, including those within the core area of the statute and other cognate rules of law, whatever their source.

Fourth: In deciding the scope of both the legislature’s mandate and its manifestations of principle and policy, appraise the available evidence candidly and without resort to contrary-to-fact presumptions; employ a rebuttable presumption that the legislature is ordinarily clear about its considered mandates, leaving courts to act in accordance with the second and third

74. Id. at § 45.09.
75. Id.
guidelines with respect to questions it does not clearly answer.\textsuperscript{76}

Applying Keeton's model to the instant case both highlights the weaknesses in the majority's reasoning and demonstrates how the Court has gone beyond its proper role by usurping the legislative function under the guise of interpretation.\textsuperscript{77}

\textit{Judicial Legislation}

The majority in \textit{Ralston} initially followed Keeton's model, first, by recognizing that the problem fell beyond the core area of the statute and, second, by deferring to Congress's manifested determinations of principle and policy to the extent they were ascertainable and were relevant. Two legislative goals of the YCA were identified by the \textit{Ralston} majority: the continuation of the power of the sentencing judge to choose among sentencing options, and the opportunities for treatment of YCA offenders. This conclusion is consistent with the criterion in the second step of Keeton's model: these two purposes are clearly relevant and there is sufficient legislative history to support the majority's conclusion that these are the basic principles underlying the YCA.

The majority cannot resolve satisfactorily the issue in \textit{Ralston}, however, because the Court was satisfied in identifying only these two basic principles. But the principles are inconsistent. As a result of recognizing the judge's broad sentencing discretion, the Court limits the YCA offender's right to treatment. Conversely, by requiring the maintenance of YCA treatment, the Court limits the sentencing judge's discretion.

The majority should have resolved the conflict in \textit{Ralston} by following Professor Keeton's third proposition. In essence, he maintains that subject to any obligation to defer to legislative manifestations of principle and policy, a court should "resolve the problem of interpretation in a way that produces . . . the best total set of rules . . . ."\textsuperscript{78} The decision in \textit{Ralston}, however, does not meet this test. The majority's decision conflicts with the traditional

\textsuperscript{76} R. KEETON, \textit{VENTURING TO DO JUSTICE} 94-95 (1969) (footnote omitted) [hereinafter cited as KEETON].

\textsuperscript{77} As the Supreme Court has explained: "While the judicial function in construing legislation is not a mechanical process from which judgment is excluded, it is nevertheless very different from the legislative function. Construction is not legislation and must avoid 'that retrospective expansion of meaning which properly deserves the stigma of judicial legislation.'" Addison v. Holly Hill Fruit Products, Inc., 322 U.S. 607, 618 (1944) (quoting Kirchbaum Co. v. Walling, 316 U.S. 517, 522 (1942)).

\textsuperscript{78} KEETON, supra note 76, at 94-95.
common law rule that a sentencing court has the authority, during the same term of court, to change an imposed term of imprisonment but not to increase a sentence once it has become final. As Justice Stevens pointed out in his Ralston dissent, the Supreme Court has recognized consistently that a court may amend a sentence so as to mitigate the punishment but not so as to increase it. Although it is not clear whether such a result is constitutionally mandated, a court is apparently without authority to increase the term of imprisonment after revoking probation.

79. United States v. Benz, 282 U.S. 304, 306 (1931). In Benz, the defendant was indicted for violation of the National Prohibition Act. He pleaded guilty and was sentenced to imprisonment for a term of 10 months. While imprisoned and before expiration of the term of the federal district court which imposed the sentence, the court entered an order reducing the sentence to six months. The issue presented to the Supreme Court was whether the district court had the power to amend the sentence by shortening it. The Court held, as a general rule, that judgments, decrees, and orders were within the control of the district court during the term at which they were made, and as a result were subject to being amended, modified, or vacated by the district court. However, the Court stated that in criminal cases the punishment may not be increased or augmented. In Benz, since the power of the court was exercised to mitigate the punishment, not to increase it, it was brought within the limitation.

The distinction between mitigating a punishment and increasing it is based on the fact that to increase the penalty would subject the defendant to double punishment for the same offense in violation of the fifth amendment: "For of what avail is the constitutional protection against more than one trial if there can be any number of sentences pronounced on the same verdict?" Id. at 308. See also ABA STANDARDS, SENTENCING ALTERNATIVES AND PROCEDURES § 6.1(b) (Final Draft, Sept. 1968).


81. Roberts v. United States, 320 U.S. 264, 266-67 (1943). In Roberts, the defendant was sentenced to two years and fined $250.00. Pursuant to the Probation Act operative in 1943, the district court suspended the execution of the sentence and ordered defendant's release on probation for a five-year period. Approximately four years later, the court held a hearing and revoked the original sentence of two years, and imposed a new sentence of three years. The issues presented to the Supreme Court were: (1) whether the Probation Act authorized a sentence imposed before probation, the execution of which has been suspended, to be set aside and increased upon revocation of probation, and (2) if construed to grant such a power, did the Act violate the prohibition against double jeopardy? The Court did not reach the second issue. 320 U.S. at 265.

The Court began with the assumption that the district court's authority to suspend or increase a sentence fixed by a valid judgment must be derived from the Probation Act itself since the federal courts had no such power prior to the passage of the Act. At § 725, the Probation Act provides that "the court may revoke the probation or the suspension of sentence and, may impose any sentence which might originally have been imposed." Id. at 266 (citations omitted). Although the government argued that the language of this last phrase gave the courts the power to impose a new sentence after revocation of probation to the extent of what could have been imposed originally, the court refused to give such an expansive reading to the Act. Instead, the Court held that, when read in the context of the entire Act, the phrase meant that Congress merely conferred upon the lower court a choice between imposing sentence before probation is awarded, or after probation is revoked. It did not afford the court the power to set aside a valid judgment and increase the sentence after
Possible Equal Protection Violations

The majority's decision in *Ralston v. Robinson* also creates a situation where the sentencing procedure may violate a youth offender's rights under the equal protection clause of the fourteenth amendment. Courts have uniformly upheld past challenges to the constitutionality of the YCA's provisions which permit youth offenders to be confined for longer periods than they would be subject to confinement as adults. These courts have agreed with the

revocation of probation.

The exceptions to the general rule that a court is without authority to increase the term of imprisonment after revoking probation have been developed for criminal cases in which the original conviction and sentence are set aside and a more severe sentence is imposed following retrial and reconviction, *North Carolina v. Pearce*, 395 U.S. 711 (1969), or where a reviewing court imposes a more severe sentence under a statute which gives the government an explicit right to appeal. *United States v. DiFrancesco*, 449 U.S. 117 (1980). The exceptions are not relevant to this case where there was no retrial and where there is no explicit grant of statutory authority to modify the original sentence.

Absent explicit statutory authority, the government has no right to appeal in a criminal case. *United States v. Scott*, 437 U.S. 82 (1978). In *United States v. DiFrancesco*, 449 U.S. 117 (1980), however, the Court held that where a statute did accord the government such a right, there was no violation of the double jeopardy clause when the reviewing court imposed a more severe sentence on appeal. In this case, the Organized Crime Control Act of 1970 authorized the imposition of an increased sentence upon a convicted dangerous special offender (18 U.S.C. § 3575(b)) and granted the United States the right, under specified conditions, to take that sentence to the Court of Appeals for review (18 U.S.C. § 3576). The Court upheld the constitutionality of this latter provision. Examining the series of cases interpreting the double jeopardy clause, the Court concluded that the considerations which bar reprosecution after an acquittal do not prohibit review of a sentence: a limited right of appeal does not subject the defendant to the embarrassment and anxiety that are associated with repeated attempts to reconvict. Moreover, the double jeopardy clause does not provide the defendant with the right to know at any specific moment in time what the exact limit of his punishment will turn out to be. The Court characterized as dictum the language in *United States v. Benz*, 282 U.S. 304 (1931), which quoted from *Ex parte Lange*, 18 Wall. 163 (1874) to the effect that the practice of barring an increase in sentence by the trial court after service of the sentence is constitutionally based, and stated that the dictum in *Benz* should be confined to *Lange*'s specific context, where the trial court erroneously imposed a greater sentence than the legislature had authorized. 449 U.S. at 138.

The Roberts case is most closely analogous to the instant case in that it interpreted the sentencing court's power under the Probation Act, an act similar in nature to the YCA in that it is designed to "provide an individualized program offering a young or unhardened offender an opportunity to rehabilitate himself . . . To accomplish this basic purpose Congress vested wide discretion in the courts." 320 U.S. at 272. In contrast, *DiFrancesco* presents a case where Congress had drafted a sentencing provision to attack a specific problem (the tendency of some judges to mete out light sentences in cases involving organized crime management personnel) which was "limited in scope and . . . narrowly focused on the problem so identified." 449 U.S. at 142.

82. See, e.g., *McGann v. United States*, 440 F.2d 1065 (5th Cir. 1971); *Guidry v. United States*, 433 F.2d 968 (5th Cir. 1970); *Johnson v. United States*, 374 F.2d 966 (4th Cir. 1967).
Fifth Circuit’s reasoning\textsuperscript{83} that the YCA’s provision for treatment is not a heavier penalty but actually a benefit that allows the youth offender “the opportunity to escape from the physical and psychological shocks and traumas attendant upon serving an ordinary penal sentence . . . . ”\textsuperscript{84} In a later case,\textsuperscript{85} the District of Columbia Court of Appeals expanded this concept by stating that the basic theory of the Act is rehabilitative and that “this rehabilitation may be regarded as comprising the quid pro quo for a longer confinement but under different conditions and terms than a defendant would undergo in an ordinary prison.”\textsuperscript{86} Under the Ralston majority’s interpretation of the YCA, however, youth offenders are now subject to incarceration \textit{in an ordinary prison} for a longer period of time than if sentenced as adults. This result eliminates any quid pro quo argument. As the dissent notes, the youth offender also loses the good time allowances available to offenders sentenced as adults.\textsuperscript{87}

The Ralston majority recognizes the equal protection problem, but concludes that because Robinson was sentenced under section 5010(c) and not under section 5010(b), the problem need not be addressed.\textsuperscript{88} The majority merely notes that “[w]e assume that dis-

\textsuperscript{83} Cunningham v. United States, 256 F.2d 467 (5th Cir. 1958) (defendant pleaded guilty to a charge of theft of a clock radio in violation of 18 U.S.C. § 661, a misdemeanor providing for a maximum sentence of one year, but was sentenced instead to an indeterminate sentence under § 5010(b) of the YCA).

\textsuperscript{84} Id. at 472.

\textsuperscript{85} Carter v. United States, 306 F.2d 283 (D.C. Cir. 1962). The defendant originally pleaded not guilty to a four-count indictment charging housebreaking and grand larceny. The sentence for housebreaking was two to 15 years, D.C. CODE ENCYCL. § 22-1801(b) (West 1967), and the sentence for grand larceny was one to 10 years, D.C. CODE ENCYCL. § 22-2201 (West 1967). Carter later withdrew the not guilty plea and pleaded guilty to petty larceny, a misdemeanor with a maximum one-year sentence. D.C. CODE ENCYCL. § 22-2202 (West 1967).

\textsuperscript{86} 306 F.2d at 285.

\textsuperscript{87} 102 S. Ct. 233, 251 (1981). In support of the observation that youth offenders lose good time allowances available to adult offenders, the dissent cites the following cases: Staudmier v. United States, 496 F.2d 1191, 1192 (10th Cir. 1974); Hale v. United States, 307 F. Supp. 345, 346 (D. Okla. 1970); Foote v. United States, 306 F. Supp. 627, 628-29 (D. Nev. 1969). Id. at 251 n.17.

\textsuperscript{88} The majority in Ralston stated:

\textbf{We need not address the question whether a judge may modify the basic treatment terms of a youth sentence whose length exceeds the maximum penalty authorized by law for an adult, since respondent’s YCA sentence was imposed under § 5010(c), not § 5010(b). We recognize that if the basic treatment elements of a YCA sentence under § 5010(b) are modified at such a time that a youth effectively serves an adult sentence of greater length than an adult could receive, there would be a serious issue whether such a sentence is authorized by any statute and, if so,
strict judges will keep these considerations in mind when deciding whether to modify YCA treatment terms of a sentence imposed under section 5010(b)." 88 Concerning sentencing under section 5010(c), the majority responds by stating that "whether respondent's sentence was longer than he would have received as an adult is speculation . . . . " 89 However, the majority ignores the fact that a youth can now actually be sentenced under section 5010(c) to a longer sentence than he could receive as an adult, and that its decision gives a second sentencing judge the power to require the youth to serve that longer sentence "under the adult conditions he paid a price to avoid." 90

The Proper Approach

The fourth of Keeton's propositions suggests that the majority should have interpreted the YCA by appraising the available evidence candidly and without resort to any contrary fact presumptions. Available evidence from the legislative history of the YCA points out that Congress's overriding concern was with providing treatment for youth offenders. Indeed, the language of the bill which became the YCA focused almost exclusively on a discussion of the English Borstal system 92 and on the need to provide such treatment for youth offenders in this country.

Congressional views about judicial discretion when implementing or refusing to implement the YCA are much less clear. Not only did Congress fail completely to mention what authority a second judge would have in imposing an adult sentence on a youth currently serving a YCA sentence, the legislative history also contains almost no language dealing with any aspect of judicial discretion. For example, the only reference to judicial discretion in the YCA bill states that "the power of the court to grant probation is left undisturbed by the bill." 93 Moreover, in the only hearing held on the bill the observation was made that:

The act . . . does not interfere with the power of the judge [with respect to sentencing] but gives him merely an alternative

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88. 102 S. Ct. at 244 n.13.
89. Id.
90. Id.
91. Id. at 251 (Stevens, J., dissenting).
92. See supra note 8 and accompanying text.
method of treatment of those people . . . . He may still give the youth offender the punishment prescribed by existing statutes, there is nothing in the bill that prevents that. All that the bill does is to provide that if in his judgment and discretion, he thinks that the offender before the court is one that can be treated with advantage under this bill, he can sentence him under this bill instead of under existing law . . . . 94

Even this testimony from the congressional hearing on the YCA suggests that the sentencing judge's options are framed in terms of the treatment objective.

In contrast to this single reference to judicial discretion is the frequent testimony supporting the rehabilitative purpose of the bill. Testimony on this aspect of the bill included the following statements:

By Judge Laws:
That is precisely what this bill does and accomplishes. It makes possible the turning over of these adolescents, many of whom are physically or mentally sick, to a classification center where they may be studied extensively by any number of individuals and put in places of imprisonment or restraint where they can be rehabilitated and built up. 95

By James Bennett:
From the hundreds of cases of this type which have come across my desk I have formed the conclusion that in the task of correcting the offender the crucial element is that of time. Attitudes, habits, interests, standards cannot be changed overnight. 96

By Judge Phillips:
Again, reliable statistics demonstrate, with reasonable certainty, that existing methods of treatment of criminally inclined youths are not solving the problem. A large percentage of those released from our reformatories and penal institutions return to antisocial conduct and ultimately become hardened criminals . . . . S. 2609 is designed to provide methods and means that will effect such rehabilitation and develop normality. It is not experimental. It is based on the principles and procedures provided under what is

96. Testimony of James V. Bennett, Director, Bureau of Prisons, id. at 27.
known as the Borstal system in England, which has been in successful operation since 1794.

The underlying theory of the bill is to substitute for retributive punishment methods of training and treatment designed to correct and prevent antisocial tendencies. It departs from the mere punitive idea of dealing with criminals and looks primarily to the objective idea of rehabilitation.97

By John Ellingston:

The stories that I have told you indicate a little bit how a youth authority—how this program, because of the flexibility of handling—will function. I think I can use the California set-up as an illustration pointing out as I go along, how it will fit into the existing Federal set-up—the highly creditable penal system—under Mr. Bennett.

The first thing you have to do under a treatment approach which is a scientific approach and not a mollycoddle approach, is diagnosis. You have had the nature of this diagnosis explained to you.98

By Donald Counihan:

Father Flanagan of Boy's Town once said, "There is no such thing as a bad boy." There are, no doubt, some social workers and criminologists who would dispute this statement but whether it is correct or not, one thing is certain, proper guidance and wise counseling after a slip by a genuine youth offender, not the real criminal type, can do wonders in salvaging that life. Father Flanagan by his well-planned program has proved this.99

If the Court had followed Keeton's model it would have made a more comprehensive and candid appraisal of this available evidence to resolve the conflict between the policy of providing treatment for youthful offenders and the policy of maintaining judicial discretion. Keeton's fourth step, the "rebuttable presumption that the legislature is ordinarily clear about its considered mandates,"100 would have required the majority to interpret the YCA so as to give preference to the policy of treatment over that of preserving judicial discretion. In so doing, the majority would have

97. Testimony of Chief Judge Orie L. Phillips, U.S. Court of Appeals for the Tenth Circuit, id. at 60.
98. Testimony of John R. Ellingston, Special Adviser on Youth Authority Program, American Law Institute, id. at 74.
100. See Keeton, supra note 76, at 95.
affirmed the Seventh Circuit's decision, which had held that despite his subsequent sentencing as an adult, Robinson had to be treated pursuant to the YCA until the termination of his YCA-imposed sentence.

**CONCLUSION**

The majority's decision in *Ralston v. Robinson* interpreting the YCA is inconsistent with basic principles of statutory construction. In attempting to answer a question which the legislature did not address, the majority tries to apply two inconsistent principles underlying the Act. Its final decision, however, ignores the principle which is most basic of all: the YCA's goal of providing treatment for youth offenders. In addition, the majority's decision arguably raises a number of constitutional problems.

Many, however, will applaud the decision as providing a much needed result. The decision will be welcomed as consistent with both the trend to treat violent juvenile offenders as adults101 and the prevailing correctional philosophy which has rejected the rehabilitative model of diagnosing, treating, and curing offenders.102 The decision also recognizes the practical realities of the administration of the penitentiary system. The Bureau of Prisons no longer maintains separate institutions for younger offenders. Instead, younger offenders are assigned to the same institutions as older offenders under a general policy of assigning each offender to an institution of the lowest security level consistent with adequate supervision.103 Unless they qualify for minimum custody institu-

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101. For example, under legislation recently enacted in Illinois, juveniles under 17 years of age who are charged with committing a number of violent crimes are automatically transferred from juvenile court to adult court. The decision to impose automatic waiver procedures on certain categories of youthful offenders has also been pursued in Connecticut, Florida, Idaho, Louisiana, New York, and Vermont.


tions, offenders sentenced under the Youth Corrections Act are as-
signed to separate residential units within institutions and are as-
signed only to institutions that have such units. While courts
have ruled that a youth offender may not be placed in the general
adult population of a federal penitentiary, they have upheld this
practice, stating that the YCA requirement under section 5011 of
segregation “insofar as practical” allows the Bureau of Prisons to
establish a youth offender facility within the walks of a peniten-
tiary if it otherwise complied with the treatment and segregation
requirements of the YCA.

The reality, however, is that youth offenders are not effectively
segregated from the adult prison population. Moreover, they do
not receive the wide range of educational and vocational programs
envisaged when the Act was passed. Under these conditions, the
Act cannot be regarded as truly rehabilitative. In the words of one
judge:

As for rehabilitation, it is extremely doubtful that two of the cho-
sen means of the Act—§§ 5010(b) and 5010(c)—any longer serve
their purpose, if they ever did. Many, if not most, of the youths
committed to custody under § 5010(b) are in exactly the same
institutions, and under precisely the same conditions, as adults
who have been imprisoned, regardless of whether the principal
aim of the sentencing judge was deterrence, separation, retribu-
tion, or rehabilitation. We do not need scholars to tell us that
rehabilitation is an uncommon product of incarceration in such
large fortresses. An imaginatively designed probation sentence
will usually be far more rehabilitative to a young offender than
confinement for possibly four years under § 5010(b) or eight years
under § 5010(c). To say that a fine or a short jail sentence im-
posed as condition of probation is punitive and retributive in
comparison to youth offender commitment which is “rehabilita-
tive,” strikes me as jurisprudence by label and the height of
unrealism.

104. Id. (citing U.S. Bureau of Prisons, Program Statement 51001.1 § 9, at 3 (1980)).
106. United States v. Dancy, 510 F.2d 779, (D.C. Cir. 1975), vacated and remanded sub
nom. United States ex rel. Dancy v. Arnold, 572 F.2d 107 (3d Cir. 1978) (rejecting the argu-
ment that youth offenders must be segregated from other offenders at all times).
107. The only difference in the YCA residential units and those for adult offenders is
that the YCA units have more staff assigned, including counseling staff. Educational and
vocational training opportunities for YCA inmates do not differ from those offered to other
inmates. See Seminar, Federal Sentencing, supra note 37, at 86.
108. United States v. Marron, 564 F.2d 867, 873 (9th Cir. 1977) (Burns, J., dissenting)
In light of these facts, it is easy to agree that a second judge ought to be able to sentence someone like Robinson to serve an adult sentence. As the Bureau of Prisons argued before the Seventh Circuit, "requiring [Robinson] to be treated according to the terms of the YCA for the duration of the YCA sentence is a futile act" because there was almost no treatment from which he would benefit and because it seemed highly unlikely that he would benefit further from the treatment that was available.

The solution to this problem, however, is not the responsibility of the United States Supreme Court. Its implicit assumptions about the futility of requiring the treatment may be correct, but the data to support these assumptions are not a part of the evidence which is available for the Court to consider. Such data is

(footnotes omitted).

The issue in Marron concerned whether the court could revoke probation in a case where the original YCA sentence was split between time and probation and the offender had violated the terms of probation. The majority found it unnecessary to reach the revocation issue, ruling that the original sentence was illegal and that the court could therefore correct it by imposing a legal sentence under § 5010(b) of the YCA. Judge Burns dissented, agreeing that the first sentence was illegal, but noting that imposing a new sentence under § 5010(b) would result in the defendant serving a longer sentence than originally imposed, thereby violating his constitutional rights under the double jeopardy clause of the fifth amendment.

109. 642 F.2d at 1082 (7th Cir. 1981).

110. In reaching its decision that YCA treatment must be continued, the Seventh Circuit hypothesized that Robinson could benefit in the following ways:

As Judge Adams stated in his persuasive dissent in Thompson v. Carlson,

[I]t may be that a youth who goes through a period of treatment in a youth correction center would be less susceptible to the influences of hardened criminals during his subsequent confinement than one not so treated. This might be so if one accepts the motivating assumption, which was central to the enactment of the statute, than an offender is more susceptible to corrective treatment and rehabilitation as a "youth" than in later years . . . .

(citations omitted).

Additionally, as counsel for petitioner suggested at oral argument, the two judges who subsequently imposed the consecutive adult sentences, presumably knowing that petitioner was currently serving a YCA sentence, might have decided to sentence petitioner as an adult precisely because he was currently YCA prisoner—printer, believing that after the completion of YCA treatment, further treatment would not be needed; or that if petitioner had not benefited from treatment at the conclusion of his YCA sentence, he would not benefit from a second YCA sentence.

We agree with the Eighth Circuit which stated in Mustain v. Pearson, 592 F.2d 1018, 1021 (8th Cir. 1979) (citation omitted) (emphasis added).

While the rehabilitative potential under [the YCA] might be lessened by a consecutively imposed consecutive adult sentence, this consequence stems from the subsequent offence and does not invalidate the subsequent sentence. . . . Nor could it render legally ineffective the [YCA] sentence.

Id.
available to Congress, however, and Congress should consider ei-
ther abolishing the YCA or investing the resources to better ensure
that its objectives are met.\textsuperscript{111} There are many juvenile delinquency
prevention programs which have developed since the YCA was es-
tablished.\textsuperscript{112} Congress should examine the data concerning the effi-
cacy of these programs and decide whether the YCA can be modi-
fied to be more consistent with current theory.\textsuperscript{113}

\textsuperscript{111} The current trend is toward abolishing the YCA. In the process of recodifying the
entire federal criminal code, for example, it has been proposed that the YCA not be reen-
acted. See S. 1437, 95th Cong., 1st Sess. (1977). Such a position is supported by corrections
officials. For example, Norman A. Carlson, Director of the Bureau of Prisons, testified
before the Judicial Subcommittee on Courts, Civil Liberties, and the Administration of Just-
tice, stating:

While the Youth Corrections Act was a landmark at the time of its passage, we
believe that experience and changes which have taken place over the years have
caused the act to outlive its usefulness. We support those provisions of the pro-
posed legislation to revise the Federal Criminal Code which would eliminate the
Youth Corrections Act. In our opinion, sentences for youthful offenders should not
be longer than those given older individuals who commit similar offenses.

Federal Prisons System, \textit{Monday Morning Highlights}, October 13, 1978, at 2. In addition,
legal commentators have also questioned the YCA's efficacy. See Ritz, \textit{Federal Youth Cor-
Sentencing, \textit{supra} note 37, at 83-84.

\textsuperscript{112} The available programs include juvenile diversion, earlier education programs,
in-home family support services, and peer teaching. For a description of the programs which
have been funded by the federal government, see \textit{Office of Juvenile Justice & Delin-
quency Prevention}, U.S. Dept of Justice, Law Enforcement Assistance Admin., \textit{Reports
of the National Juvenile Justice Assessment Centers} (1981).

\textsuperscript{113} \textit{See Delinquency Prevention, supra} note 102, at 93-94; T. Palmer & R. Lewis, \textit{An
Evaluation of Juvenile Diversion} (1980).