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Sentencing under the Federal Youth Corrections Act: The Interpretive Conflict Concerning Judicial Discretion

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The Interpretive Conflict Concerning Judicial Discretion

Introduction

The responsibility and power inherent in the sentencing procedures of most courts in this country is awesome. A sentencing judge must balance diverse societal objectives of fairness, firmness and deterrence in dealing with those convicted of crime. The problem of converting theoretical objectives into practical solutions is a difficult one. More troublesome, perhaps, than any other aspect of the judicial function is the determination and imposition of a proper sentence.\(^1\) Judge Irving R. Kaufman of the Second Circuit captures the import of this process when he states:

"If the hundreds of American judges who sit on criminal cases were polled as to what was the most trying facet of their jobs, the vast majority would almost certainly answer 'Sentencing'. In no other judicial function is the judge more alone; no other act of his carries greater potentialities for good or evil than the determination of how society will treat its transgressors.\(^2\)"

Although the criminal trial judge has a burdensome task in his duty to sentence, guidelines do exist upon which he should rely. Over the years there has evolved, through legislative enactments, a statutory scheme for sentencing criminal offenders. The current provisions of Title 18 of the United States Code delineate four distinct groups of criminal offenders: juveniles,\(^3\) youth offenders,\(^4\) young adult offenders,\(^5\) and adult offenders. These various congressional enactments have numerous provisions relevant

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1. Sentencing has long been recognized as an area of unique judicial discretionary power accompanied by unique judicial problems. In direct reaction to the realization of these problems, 28 U.S.C. § 334 (1970) (originally enacted as Act of Aug. 25, 1958, Pub. L. No. 85-752, § 1, 72 Stat. 845) was passed. This statute provided for the convening of Institutes and Joint Councils for the consideration of sentencing procedures. Excerpts from some of these Institutes may be found at 26 F.R.D. 231; 35 F.R.D. 381 and 37 F.R.D. 111.


4. 18 U.S.C. §§ 5001-26 (1970). This statute applies to offenders over 18 years of age and under 22 years of age.

5. 18 U.S.C. § 4209 (1970). This statute applies to offenders between the ages of 22 and 26 years old.
to the sentencing of criminal offenders which contain alternatives for discretionary implementation by the trial judge, as well as mandatory provisions which prescribe defined parameters to which the judge must adhere when imposing sentence. Unfortunately, the distinction between the discretionary and mandatory nature of sentencing is neither well-defined nor unanimously agreed upon by the legal community. Often, divergent interpretations of statutory language arise, producing a lack of uniformity in the implementation of those controversial sentencing provisions. The sentencing provisions of the Federal Youth Corrections Act (F.Y.C.A.) exemplify just such an interpretative disagreement, and as such, provide the subject matter with which this article shall be concerned.

Within the last several years disagreements have emerged concerning the language of the Youth Corrections Act, specifically with regard to sentencing an offender between the ages of 18 and 22. The controversy centers on the interpretation of section 5010(d) of the Act which states:

If the court shall find that the youth offender will not derive benefit from treatment under subsection (b) or (c), then the court may sentence the youth offender under any other applicable penalty provision.7

7. 18 U.S.C. § 5010(d) (1970). There are included in § 5010 three other sentencing provisions which read as follows:

(a) If the court is of the opinion that the youth offender does not need commitment, it may suspend the imposition of sentence and place the youth offender on probation.

(b) 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 Division as provided in section 5017(c) of this chapter; or

(c) If the court shall find that the youth offender may not be able to derive maximum benefit from treatment by the Division 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 Division as provided in section 5017(d) of this chapter.

The effect of these subsections when read in conjunction with the release provisions of § 5017 to which they respectively refer is that under § 5010(b) the youth shall be conditionally released in four years, and unconditionally released six years from the date of conviction. The youth sentenced under § 5010(c) shall be conditionally released not later than two years before the expiration of the term imposed by the court and unconditionally released not less than one year from the date of his conditional release.

The following chart, updated from that found in Note, The Federal Youth Corrections Acts Past Concern in Need of Legislative Reappraisal, 11 AM. CRIM. L. REV. 229, 244 (1972), indicates the confinement terms for those sentenced under these provisions of the F.Y.C.A.
The question which presents itself in the application of this statutory language concerns what duties and obligations, if any, this subsection imposes upon the trial judge in sentencing an individual otherwise eligible for treatment under the F.Y.C.A.\textsuperscript{8}

The United States Court of Appeals for the District of Columbia has most actively pursued this question. It was the first to suggest that section 5010(d) requires an affirmative finding by the court that the offender will not benefit from Youth Corrections Act treatment before the youth receives an adult sentence under the applicable federal statute.\textsuperscript{9} Initially, the District of Columbia Circuit held that this finding of “no benefit” might be implied. It is now well established, however, that the findings must be explicitly made by the trial judge as a prerequisite to adult sentencing.\textsuperscript{10}

In July 1973, the Seventh Circuit, in \textit{United States v. Dorzynski},\textsuperscript{11} declined to follow the interpretation of the District of Columbia Circuit insofar as it required the trial judge to make an explicit finding that the youth would not benefit from rehabilitation. Viewing the legislative history of the F.Y.C.A., the \textit{Dorzynski} court concluded that the Act’s purpose was “to make available a system for the sentencing and treating of youths to be used in the judge’s discretion.”\textsuperscript{12}

No other court to date has explicitly considered, and subsequently rejected, the District of Columbia Circuit’s holdings. However, this same effect has been achieved by numerous federal courts by employing reasoning similar to that found in \textit{Dorzynski}. The circuit courts advancing this in-

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\* Federal Juvenile Delinquency Act

Compiled from \textit{United States Board of Parole, Annual Reports}, 1955-72

8. The only limitations on eligibility imposed by the statute are that the offender be a “youth offender” which is defined in § 5006(e) as a person under the age of twenty-two at the time of conviction; and that the offense is punishable by imprisonment. For cases which deal, in part, with the question of eligibility see Rogers v. United States, 326 F.2d 56 (10th Cir. 1963) and United States v. Coefield, 476 F.2d 1152 (D.C. Cir. 1973).

9. The District of Columbia Circuit’s landmark holding to this effect was United States v. Waters, 437 F.2d 722 (D.C. Cir. 1970). In addition, the Fourth Circuit in Cox v. United States, 473 F.2d 334 (4th Cir. 1973) cited with approval the \textit{Waters} decision along with another District of Columbia Circuit case, United States v. Ward, 454 F.2d 992 (D.C. Cir. 1971).


11. 484 F.2d 849 (7th Cir. 1973).

12. \textit{Id.} at 851.
interpretation have laced their F.Y.C.A. decisions with language referring to the "great discretion" traditionally granted to trial judges in performing their sentencing function. The conclusion reached by the Ninth Circuit in *United States v. Lane* demonstrates this approach:

[T]he purpose of Congress in passing [the F.Y.C.A.] was to make available for the discretionary use of federal judges a system for the sentencing and treatment of youth offenders by permitting the substitution of correctional rehabilitation rather than retributive punishment.\(^\text{14}\)

Other circuit courts, while not disavowing the discretionary interpretation, have chosen instead to take a somewhat different approach. These courts reason that if an otherwise eligible youth offender is sentenced as an adult, the inference follows that the trial judge made the determination that the defendant would not benefit from treatment under the F.Y.C.A.\(^\text{15}\) These courts consider that such an implicit finding satisfies the dictates of the statutory provisions. They do not consider the explicit determination of "no benefit" required by the District of Columbia Circuit to be a statutory requisite.

There is no question but that a serious conflict exists among the circuits concerning the correct interpretation of the sentencing provisions of the F.Y.C.A. On the one extreme are the District of Columbia Circuit's decisions requiring a specific and affirmative finding of no rehabilitative benefit. In direct contrast to these holdings, the Seventh Circuit specifically repudiates the need for a judicial determination of a youth's amenability to rehabilitation prior to sentencing. The remaining circuits speak of "discretion" and "judicial alternatives," thus, by strong implication, rejecting the District of Columbia's holdings.

On December 10, 1973 the United States Supreme Court granted a writ of certiorari to the case of *United States v. Dorszynski*.\(^\text{16}\) The Court will seek to resolve this precise and narrow issue of statutory interpretation regarding the judicial determinations required prior to sentencing under the Youth Corrections Act. Specifically, the Court will evaluate the conflicting interpretations of the Act as articulated by the Seventh Circuit and the District of Columbia Circuit.

\(^{13}\) 284 F.2d 935 (9th Cir. 1960).

\(^{14}\) *Id.* at 941.

\(^{15}\) Most recently the Ninth Circuit employed this reasoning in *United States v. Jarrett*, 471 F.2d 226, 230 (9th Cir. 1973), the court commenting: "The [trial] court's stated intention to sentence him as an adult was an implicit finding that Jarrett would not derive benefit from treatment under paragraphs (b) or (c) [of § 5010]."

\(^{16}\) 484 F.2d 849 (7th Cir. 1973), *cert. granted*, U.S. —, 42 U.S.L.W. 3352 (Dec. 11, 1973) (No. 73-5284).
An understanding of this interpretative conflict requires a basic understanding of the history, major provisions and objectives of the legislation. The F.Y.C.A. is a uniquely comprehensive and complicated statute. It is impossible to discuss the narrow question presented herein without a working knowledge and understanding of the Act as a whole.

The Federal Youth Corrections Act—Its History and Provisions

The F.Y.C.A., passed in 1950, is designed to improve the administration of criminal justice by providing a system for the treatment and rehabilitation of federal youth offenders. The Act, predicated upon the belief that youthful offenders represent a unique type of criminal, manifests the theory that youthful offenders possess far greater rehabilitative potential than do their older, more criminally sophisticated, counterparts. The legislators responsible for the law hoped to meet crime at its focal point, before the traits of the habitual criminal were allowed to develop. As the vehicle for reversing the criminal lifestyles of young offenders, the legislators chose to substitute an innovative concept of correctional rehabilitation for the traditional theory of retributive punishment. In effectuating this rehabilitative

17. The Act as passed is considered to be the outgrowth of extensive studies undertaken in 1941 by a committee of the Judicial Conference of the United States. Among the eminent jurists appointed by the Supreme Court were: Chief Judge John L. Parker, of the U.S. Court of Appeals for the Fourth Circuit, chairman; Chief Judge Learned Hand, of the Second Circuit; Chief Judge John C. Collet, of the Eighth Circuit; Chief Judge Bolitha Laws, of the District Court for the District of Columbia; Chief Judge Carroll C. Hincks of the District of Connecticut and Chief Judge Paul J. McCormick, of the Southern District of California. A subcommittee of this committee gave particular attention to the problems and treatment of youth offenders. Many of that committee's recommendations are embodied in the Act. See H.R. REP. No. 2979, 81st Cong., 2d Sess., 2 U.S. CODE CONG. & AD. NEWS 3983, 3983-93 (1950).

It is interesting to note that the F.Y.C.A., as originally enacted did not apply to the District of Columbia (Act of Sept. 30, 1950, ch. 1115, § 2, 64 Stat. 1089). The Act was amended in 1952 to render it applicable to those youths convicted of a federal offense in the District, but excluded those convicted of violations of the District of Columbia Criminal Code. On December 27, 1967 Congress amended § 5024 so that the Act, in its entirety, was to apply to the District of Columbia (Pub. L. 90-226, title VIII, § 801(a), 81 Stat. 741).

18. See S. REP. No. 1180, 81st Cong., 1st Sess. (1949) and also H.R. REP. No. 2979, 81st Cong., 2d Sess., 2 U.S. CODE CONG. & AD. NEWS 3983 (1950). These reports, submitted by the Committees on the Judiciary of the respective houses of Congress, are almost identical in substance, Hereinafter they will be referred to as SENATE REPORT (1949) and HOUSE REPORT (1950).


[T]hat existing methods of treatment of criminally inclined youths are not...
concept, novel to the American criminal justice system, Congress elected to fashion its program after the Borstal correctional system, successfully operating in England since 1894.\textsuperscript{21} The Borstal institutions, generally concerned with youths between the ages of 16 and 23, vary greatly in their fundamental approach to rehabilitation. Some operate on authoritarian principles of strict discipline. Others enjoy a substantially more relaxed, informal atmosphere. While appreciating these differences, a common denominator of rehabilitation exists in the primary emphasis on vocational training, hard work and individualized guidance.\textsuperscript{22} The system is based on the theory that criminal youth, given special treatment appropriate to their particular needs and their psychological characteristics, can return to society as productive and social individuals.\textsuperscript{23}

Relying on the Borstal system as a structural and philosophical model, Congress instituted a rehabilitative system for sentencing and treating its youthful offenders. It began its efforts by reorganizing and enlarging the existing Board of Parole and establishing within it a Youth Corrections Division.\textsuperscript{24} This Division provides for classification centers where complete studies of each youth committed under section 5010 are conducted.\textsuperscript{25} These

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\textsuperscript{21} The system draws its name from an English penal institution at Borstal, which in 1902 served as the experimental center for a program of strict discipline and hard work combined with training programs, offering both individual guidance and encouragement.

\textsuperscript{22} \textsc{West, The Young Offender} 225 (1967).

\textsuperscript{23} While the borstal system continues in England it has been said that its "golden age" has passed. It is now being criticized for policies of "leniency, appeasement, and soft treatment." This criticism has perhaps been brought on by the fact that no longer are only the most promising individuals sent to a borstal institution. Rather, the most promising get probation and the toughest youths get sent to borstals. Accordingly, it has been noted: "[S]uccess rates have dwindled, abscondings increased, and optimism about the effectiveness of reformative training on liberal lines has correspondingly decreased." \textit{Id.} at 227-28. For information on the borstal system see generally \textsc{Barman, The English Borstal System} (1934); \textsc{Healy & Alper, Criminal Youth and the Borstal System} (1941); \textsc{Gibbens, Psychiatric Studies of Borstal Lads} (1963). In relation to the F.Y.C.A. see \textsc{House and Senate Reports, supra} note 18 and Note, \textit{The Federal Youth Corrections Act: Past Concern in Need of Legislative Reappraisal}, 11 AM. CRIM. L. REV. 229 (1972).

\textsuperscript{24} 18 U.S.C. § 5005 (1970). The members of this Division will be members of the Board of Parole designated by the Attorney General.

\textsuperscript{25} 18 U.S.C. § 5014 (1970). By the terms of the Act the study shall include:

"[A] mental and physical examination, to ascertain his [committed youth] personal traits, his capabilities, pertinent circumstances of his school, family life, any previous delinquency or criminal experience, and any mental or physical defect or other factor contributing to his delinquency."
studies, done routinely for every youth committed to the division's custody, can also be undertaken at the behest of the trial judge who, prior to sentencing, feels he wants more information regarding the youth in question. Various evaluations and recommendations based upon these studies are then compiled by those individuals who have worked with the youth. Ultimately these reports receive the attention of the sentencing judge to aid him in his determination of whether to sentence the youth under the F.Y.C.A.

Youth Corrections Act Sentencing

Excepting paragraph (a) of section 5010, which permits the judge to "suspend the imposition . . . of sentence and place the youth offender on probation," the sentencing provisions of the F.Y.C.A. have precipitated considerable controversy. There remain three sentencing alternatives, all of which, whether through the utilization of indeterminate sentence provisions or variously interpreted statutory language, have been the subject of much judicial attention. The first of these alternatives allows the judge, "in lieu of the penalty of imprisonment," to place the youth in the charge of the Attorney General until discharged pursuant to section 5017(c). Under section 5017 (c), the youth must be released conditionally within four years of his conviction and discharged unconditionally within six years from that time. The second alternative permits the judge to sentence the defendant

26. 18 U.S.C. § 5010(e) (1970). These reports are also known as "presentence reports."

27. For each youth committed to a classification center a classification committee, composed of an administrator, a parole officer and clinical psychologist, is designated. Each member submits his individual report and evaluations which, together with a joint recommendation for treatment, are sent to the Board of Parole. The Board then makes its own sentencing recommendation which is forwarded, along with the original classification committee information and recommendations, to the sentencing judge.

28. In the past, judges have not made extensive use of these 5010(e) reports. However, there is a marked increase in the utilization of such presentence reports in recent years. See Schuman, Institutional Study of Youth Offenders, 54 F.R.D. 311, 314 (1968).


31. 18 U.S.C. §§ 5010(b) and (c) (1970).

32. 18 U.S.C. § 5010(b) (1970). This language becomes important when examining the constitutional challenges which have been brought against this provision. See, e.g., Carter v. United States, 306 F.2d 283 (D.C. Cir. 1962); Rogers v. United States, 326 F.2d 56 (10th Cir. 1973); Cunningham v. United States, 256 F.2d 467 (5th Cir. 1958). See also note 33 infra.

33. The terms of these provisions make it possible for a youth convicted of a crime carrying a statutory maximum penalty of one year in prison, to face confinement in a youth center for up to six years. In response, convicted persons have repeatedly challenged the statute as violative of various constitutional guarantees such as freedom from cruel and unusual punishment, equal protection of the laws, and due process of the laws. The first case to uphold the constitutionality of the Act was Cunningham v. United States, 256 F.2d 467 (5th Cir. 1958). In this case the defendant pleaded
“for treatment and supervision . . . for any further period that may be authorized by law for the offense . . . of which he stands convicted or until discharged by the Division as provided in section 5017(d). . . .” The corresponding release provision, paragraph (d) of section 5017, states that the youth shall be conditionally released “not later than two years before the expiration of the term imposed by the court” and shall be discharged “unconditionally on or before the expiration of the maximum sentence imposed . . . .” This provision permits the judge to specify the term to be served and is implemented when in the mind of the court doubt exists as to whether six years of confinement and treatment as provided under section 5010 (b) will meet the rehabilitative needs of the youth, as well as the protective needs of society. By the terms of the final sentencing provision, section 5010(d), the court, upon a finding that the youth will not derive benefit from F.Y.C.A. treatment, may sentence him as it would an adult, under the applicable penalty provision.35

In the past, charges of unconstitutionality have frequently been levied against the sentencing provisions of sections 5010(b) and (c). These allegations have for the most part dealt with the length of sentence to be served under the Act, as well as with questions concerning the voluntariness of guilty pleas entered in conjunction with a Youth Act sentence. The consti-
guilty to the misdemeanor offense of theft of property valued at less than $100, a crime carrying a maximum sentence of one year in jail. He was sentenced under § 5010(b) of the F.Y.C.A. and appealed the sentence as a violation of due process. The court upheld the sentence, reasoning that treatment at a youth center under 5010(b) was not punishment and the confinement envisioned under the Youth Corrections Act was not equivalent to imprisonment. In the court's words the Act:

"[A]ffords youthful offenders . . . not heavier penalties and punishment than are imposed upon adult offenders, but the opportunity to escape from the physical and psychological shocks and traumas attendant upon serving an ordinary penal sentence while obtaining the benefits of corrective treatment, looking to rehabilitation and social redemption and restoration." 256 F.2d at 472.

Other courts considering the question have relied on Cunningham and upheld the constitutionality of the provision. See United States v. Dancis, 406 F.2d 729 (2nd Cir. 1969); Johnson v. United States, 374 F.2d 966 (4th Cir. 1967); Connors v. United States, 325 F. Supp. 596 (W.D. Va. 1971); Abernathy v. United States, 418 F.2d 288 (5th Cir. 1969); Guidry v. United States, 433 F.2d 968 (5th Cir. 1970); McGann v. United States, 440 F.2d 1065 (5th Cir. 1971); Rogers v. United States, 326 F.2d 56 (10th Cir. 1963); Eller v. United States, 327 F.2d 639 (9th Cir. 1964); United States v. Rehfield, 416 F.2d 273 (9th Cir. 1969); Foote v. United States, 306 F. Supp. 627 (D. Nev. 1969); Harvin v. United States, 445 F.2d 675 (D.C. Cir. 1971); United States v. Baker, 429 F.2d 1344 (7th Cir. 1970); Standley v. United States, 318 F.2d 700 (9th Cir. 1963); Brisco v. United States, 368 F.2d 214 (3rd Cir. 1966); Chapin v. United States, 341 F.2d 900 (10th Cir. 1965); United States v. Cocklin, 178 F. Supp. 318 (E.D. Ky. 1959); Carter v. United States, 306 F.2d 283 (D.C. Cir. 1962).


35. 18 U.S.C. § 5010(d) (1970). The precise language of this subsection can be found at p. 595 supra.
tutionality of these provisions, however, is now well established and no longer presents a viable legal issue. The focus of the debate on sentencing under the F.Y.C.A. has instead turned to the last mentioned provision, section 5010(d). The issue is no longer constitutionality; challenges now concern statutory interpretation. The disagreement centers upon the precise nature and extent of the duty imposed upon the trial judge to find that a youth will "not derive benefit from treatment" under the Act before he sentences that youth as an adult. Does this statute contemplate the judicial study of empirical data concerning the youth before sentencing, or rather, does it place no additional responsibilities on the judge, serving merely as a vehicle to permit sentencing of "youth offenders" as adults when such is deemed in the court's discretion as the most advisable course? The Court of Appeals for the District of Columbia views the former suggestion as the correct interpretation, while other circuits and authorities consider the latter as the legally preferable position.

Ostensibly the issue considered here may appear as no more than a semantical exercise. In fact, it presents a question which carries with it consequences and repercussions of a most serious nature to the individual of-

36. See note 33 supra, where the constitutional issues of due process, equal protection, and the ban on cruel and unusual punishment are discussed. In addition to these challenges, F.Y.C.A. sentences have been appealed as unconstitutional on several other grounds. Most often it is alleged that the defendant entered a plea of guilty after being given either misleading information or no information at all concerning the possibility of his serving a longer sentence under the Youth Act than if sentenced under the applicable statute. While there is some disagreement among the circuits, it generally has been held that the appellant is entitled to a hearing to determine the voluntariness of his plea. See Pilkington v. United States, 315 F.2d 204 (4th Cir. 1963); Workman v. United States, 337 F.2d 226 (1st Cir. 1964); Stephens v. United States, 383 F.2d 428 (5th Cir. 1967); DeWitt v. United States, 383 F.2d 542 (5th Cir. 1967); James v. United States, 388 F.2d 453 (5th Cir. 1968) (unnecessary to remand for hearing to determine voluntariness of pleas since court affirmatively found that appellant was misled); McCullough v. United States, 231 F. Supp. 740 (N.D. Fla. 1964); United States v. DeMario, 246 F. Supp. 786 (E.D. Mich. 1965); Kotz v. United States, 353 F.2d 312 (8th Cir. 1965); Freeman v. United States, 350 F.2d 940 (9th Cir. 1965); Chapin v. United States, 341 F.2d 900 (10th Cir. 1965) (holding guilty plea not involuntary as a matter of law); Harper v. United States, 368 F.2d 53 (10th Cir. 1966). Contra, Cunningham v. United States, 256 F.2d 467 (5th Cir. 1958) (holding that defendant had tacitly assented to a Youth Act sentence); Rawls v. United States, 330 F.2d 777 (5th Cir. 1964) (citing Cunningham); Carter v. United States, 306 F.2d 283 (D.C. Cir. 1962). For cases concerned with other constitutional questions see United States v. Baker, 429 F.2d 1344 (7th Cir. 1970) (contention that Act was an unconstitutional delegation of legislative power to the judiciary was held invalid); Guidry v. United States, 433 F.2d 968 (5th Cir. 1970) (upheld discretion of sentencing judge); Standley v. United States, 318 F.2d 700 (9th Cir. 1963) (rejected argument that judge's power was unconstitutionally broad); Cherry v. United States, 299 F.2d 325 (9th Cir. 1962) (rejected claim of double jeopardy); See also Annot. 11 A.L.R. FED. 492 (1972).

37. The Fourth Circuit in Cox v. United States, 473 F.2d 334 (4th Cir. 1973) joined the Court of Appeals for the District of Columbia on this question. See note 9 and accompanying text supra.

38. See text accompanying note 15, supra.
F.Y.C.A. Sentencing

By applying the more strict affirmative finding of no benefit standard of the District of Columbia Circuit, a far greater number of young men and women will be committed to youth centers for treatment as provided under the F.Y.C.A.,\(^\text{39}\) rather than serving time in federal penitentiaries as they would were this standard not employed.\(^\text{40}\) Obviously numerous benefits accrue to the offender sentenced to youth centers for treatment which is unavailable to the convict confined to a penitentiary. While “sentencing for treatment . . . contains neither qualitatively nor quantitatively the elements of penalty,”\(^\text{41}\) precisely what constitutes actual “treatment” is unclear. Nonetheless, confinement in a youth center, with the concomitant opportunities for vocational training and individual guidance, must be considered highly preferable to serving time in a penitentiary.\(^\text{42}\) A youth sentenced under the F.Y.C.A. also enjoys, at least in theory, the unique benefit of having his conviction automatically set aside upon his unconditional release.\(^\text{43}\) Therefore, unquestionably important consequences hinge on the interpretation given to section 5010(d) by the court. The District of Columbia Circuit has construed the statute literally, resulting in greater implementation of the Federal Youth Corrections Act.

The District of Columbia Circuit’s Interpretation of Section 5010(d)

The United States Court of Appeals for the District of Columbia made judi-

\(^{39}\) 18 U.S.C. § 5011 provides that committed youth offenders “shall undergo treatment in institutions . . . including training schools, hospitals, farms, forestry and other camps, and other agencies that will provide the essential varieties of treatment.” Treatment, as defined in 18 U.S.C. § 5006(g) means “corrective and preventive guidance and training designed to protect the public by correcting the antisocial tendencies of youth offenders.”

\(^{40}\) While the proposition presented here is basically true, there is some problem in precluding penitentiary confinement under the Youth Act. Under § 5015(b) the Director of the Bureau of Prisons may transfer a youth from one institution to another. The question which then arises is can a youth sentenced under the F.Y.C.A. be confined in a penitentiary as opposed to a youth institution? The courts disagree on this point. The opinion in Harvin v. United States, 445 F.2d 675 (D.C. Cir. 1971) flatly holds that a youth sentenced under the F.Y.C.A. cannot be placed in a penitentiary because such a placement would not be consistent with the rehabilitative purposes of the Act. Contra, United States v. Reef, 268 F. Supp. 1015 (D. Colo. 1967); Coats v. Markley, 200 F. Supp. 686 (S.D. Ind. 1962). See Note, The Federal Youth Corrections Act: Past Concern in Need of Legislative Reappraisal, 11 AM. CRIM. L. REV. 229 (1972).


\(^{42}\) In implementing the legislative goals of individualized treatment and rehabilitation fashioned after the Borstal system, see notes 20-21 supra, the youth centers provide remedial educational programs as well as high school equivalency courses, extensive vocational training and a wide range of recreational programs. In addition, individual treatment is given to the youths by the professional staff at the center, with psychological therapy available when needed. See Schuman, Institutional Study of Youth Offenders, 54 F.R.D. 311 (1972).

\(^{43}\) 18 U.S.C. § 5021 states in part: “(a) Upon the unconditional discharge by the division of a committed youth offender before the expiration of the maximum sentence imposed upon him, the conviction shall be automatically set aside . . . .”
cial history when, in *United States v. Waters*, it interpreted the language, "If the court shall find that the youth offender will not derive benefit from treatment under subsection (b) or (c), then the court may sentence the youth offender under any other applicable penalty provision," to impose unique responsibilities on the sentencing court. Specifically, the court held that a sentencing judge "must affirmatively find that the youth offender will not benefit from rehabilitative treatment before the offender can be sentenced as an adult pursuant to the statute governing the offense for which he was convicted." The court in *Waters* did not dispute the discretionary sentencing powers of the trial judge but held that "this discretion is circumscribed by the findings of fact in the individual case which the District Judge is required to make either explicitly or implicitly." While not questioning the existence of discretionary powers vested in the trial court, the court of appeals did prescribe parameters within which a sentencing court must operate when seeking to deny Youth Act treatment to an otherwise eligible offender. It did this by limiting such a denial to exceptional cases in which the judge determines that rehabilitative efforts would be futile. In upholding this restrictive interpretation of section 5010(d), the court employed a standard referred to in the report of the Senate Committee on the Judiciary. In that report the committee suggested that a judge, convinced that a youth was incorrigible and would derive no help from the Youth Act program, could appropriately impose an adult sentence under the applicable provision of law.

The above-mentioned standard of "incorrigibility" and the declaration that the traditional discretion of the trial judge is "circumscribed by the facts of the individual case" are two of the most noted concepts emerging from the *Waters* decision. Together with the basic holding that a court, before sentencing a youthful offender as an adult, must affirmatively find that the youth will not benefit from treatment under the Act, they form the foundation upon which the growing case law concerning the interpretative issue of section 5010(d) continues to be built.

44. 437 F.2d 722 (D.C. Cir. 1970).
46. 437 F.2d at 724 (emphasis in original). Here, a 19 year old defendant was convicted after pleading guilty to assault with a dangerous weapon and robbery.
47. *Id.* at 725.
48. *Id.* at 724.
49. *Id.* at 724-25; see also *Senate Report* (1949) and *House Report* (1950).
50. See note 47 and accompanying text supra.
51. An interesting collateral matter concerning deterrence was mentioned in *Waters*. The trial court in that case, while not sentencing under the F.Y.C.A., did recommend that the defendant be placed in a youth institution to serve his 4-12 year sentence. The court of appeals saw this combination as an unacceptable attempt to rehabilitate the defendant while having him serve as a deterrent to others. The court stated:
After the *Waters* decision in 1970 the District of Columbia Circuit addressed the basic issue of 5010(d) sentencing on numerous occasions. Two of the more important cases are *United States v. Ward* and *United States v. Howard*. In the *Ward* case the court reaffirmed *Waters* and remanded the case for an illumination of the court's reasoning in denying Youth Act treatment. Significant as a foreshadowing of future decisions, the circuit court referred in a footnote to the possibility that while an adult sentence might be the better sentence for a particular defendant that does not preclude his receiving benefit if sentenced under the F.Y.C.A. Presumably, this finding of benefit would be sufficient to warrant a F.Y.C.A. sentence. The second case, *Howard v. United States*, applied the Youth Act to those youths convicted of murder. The government argued that the conviction of a crime carrying a mandatory penalty of death or life imprisonment precluded sentencing under the Act. The court rejected this reasoning on the basis that the youth was within the 18-22 age bracket and the crime was one punishable by imprisonment, thereby meeting the statutory requisites for Youth Act treatment.

While the preceding cases were important for the reasons mentioned, they do not compare in significance to the decision rendered in *United States v. Coefield* in which the court of appeals greatly expanded its previous holding in *Waters*. Language in *Coefield* effectively dispelled any doubt whether the finding required by 5010(d) as a condition for adult sentencing could be left to implication. The court ruled that the trial court must explicitly make such a finding. In fashioning this rule, the court imposed novel, and to some minds, extreme requirements upon the trial judge. It held that when a trial judge chooses not to sentence a defendant under the

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The objective of deterrence may be taken into account by the trial judge, not by overriding the statute's rehabilitation provisions, but rather by combining them with a sentence exposing the defendant to a maximum term greater than that called for in subsection (b). 437 F.2d at 726.

52. 454 F.2d 992 (D.C. Cir. 1971).
53. 449 F.2d 1086 (D.C. Cir. 1971).
54. 454 F.2d at 992.
55. Id. at 995 n.16.
56. The defendant was a 20 year old youth convicted of, among other crimes, first degree felony murder.
58. In this case the jury concluded that the defendant should be punished by life imprisonment.
59. 476 F.2d 1152 (D.C. Cir. 1973). This was the first instance of the circuit court considering the issue en banc.
60. Id. at 1156.
61. A question had arisen as to whether the finding of no benefit could be made by implication. The Court in *Waters* precipitated this confusion when it referred to the trial court's findings of fact being made "either explicitly or implicitly." 437 F.2d at 725.
F.Y.C.A. and does not avail himself of a 5010(e) classification study report, or, when he imposes a sentence contrary to the recommendation contained in that report, he must state his reasons for doing so. The court deemed this statement of reasons "to be essential to a knowledgeable administration of the Act as intended by Congress." The imposition of this requirement cured the obvious defect in the Waters decision whereby a judge could apparently simply declare he had made an affirmative finding that the defendant would not benefit from F.Y.C.A. treatment without relying upon any empirical data regarding the particular youth other than the facts presented in the adversary context of the trial.

The far-reaching extension of the Waters holding embodied in the court's decision in United States v. Coefield underwent an even more dramatic amplification in United States v. Phillips. The court of appeals in Phillips began with the basic premise announced in Coefield that a judge must state his reasons for denying Youth Act treatment when sentencing contrary to a 5010(e) report recommendation. It then extended this requirement that the judge express his reasoning even to the situation in which he does follow the 5010(e) recommendation. Specifically, the court explained that its holding in Coefield, that the judge need not accompany his denial of Youth Act treatment with reasons independent of a classification report which recommended such a denial, presupposed that the report provided the requisite reasons for such a disposition. Under the facts of Phillips, the court found such a supposition ill-founded. Rather, the court determined that the presentence report, upon which the trial judge had exclusively relied, did not contain reasons which warranted overriding what the court deemed an eligible offender's "presumptive right to Youth Act rehabilitative treatment." In addressing the issue of an appellate court's responsibilities when a presentence report has been adopted by the trial judge the court stated:

62. For a descriptive explanation of a 5010(e) report see notes 25-28 and accompanying text supra.
63. 476 F.2d at 1157.
64. Id. at 1157. The court made clear in imposing this requirement that they were not seeking to elicit any litany or prescribed formula but did consider it essential to insure: 1) that the judge was aware that the Act was applicable to his case and he understood the scope of his discretion under the Act; 2) that the judge was informed of the pertinent facts relating to the defendant; and 3) that the judge has given consideration and related the facts of the individual case to the applicable law.
65. 479 F.2d 1200 (D.C. Cir. 1973).
66. Id. at 1206.
67. See notes 61-64 and accompanying text supra.
68. 479 F.2d at 1202.
69. Id. at 1205. This pronouncement by the Court in Phillips represented one of the most radical statements of the case.
This adoption does not, however, obviate the need for exposure of the 'factors which informed and shaped' the sentencing decision, nor relieve this court of responsibility to determine whether those reasons, from whatever source, demonstrate a 'present and visible' rationality in relation to Congressional objectives.\textsuperscript{70}

The reasons offered by the 5010(e) report and its adoption by the trial court for denying Youth Act sentencing to Phillips did not, in the court of appeal's opinion, meet the present and visible rationality criteria. The report had presented only two reasons in support of its recommendation for adult sentencing. The first being that "[t]he defendant appears to be a street-wise individual."\textsuperscript{71} The classification committee also inferred that because the defendant was arrested while on Youth Act probation, he had failed to prove himself as rehabilitative.\textsuperscript{72} In finding these reasons inadequate for denial of Youth Act treatment, the court of appeals examined and passed judgment not only on the actions of the trial judge, but also, more significantly, on the professional opinion of those individuals employed at the Youth Center who had compiled the 5010(e) report. In choosing to look behind the professional judgments rendered by the classification committees, the court of appeals took an innovative step in assuring that a youth, before being denied rehabilitative treatment, must be found unable to derive benefit from such treatment.\textsuperscript{73}

Through these principal cases, as well as others of somewhat lesser sig-

\textsuperscript{70} Id. The thought that there must be a "present and visible rationality" between the reasons offered and the congressional intent was originally articulated by the District of Columbia Circuit in United States v. Reed, 476 F.2d 1145, 1150 (D.C. Cir. 1973).

\textsuperscript{71} 479 F.2d 1200, 1203-04 (D.C. Cir. 1973). The court objected that the report did not reveal the meaning of the label 'street-wise.' It stated that no court should be left to conjecture about what the term was intended to convey or conceal.

\textsuperscript{72} Id. at 1204. This reasoning was also rejected by the circuit as establishing an inability to be rehabilitated. Thus, the case was remanded for reconsideration of the sentence based on a full statement of reasons. See also United States v. Riley, 481 F.2d 1127 (D.C. Cir. 1973).

\textsuperscript{73} This action of the court in scrutinizing the reasoning of the 5010(e) report was severely criticized by Judge Wilkey in his statement explaining why he would hear the subsequent case, United States v. Tillman, No. 71-1352 (D.C. Cir., June 6, 1973) en banc. As in Phillips, the court in Tillman analyzed a 5010(e) report and found its reasoning too vague and imprecise to permit adult sentencing and therefore remanded for reconsideration of F.Y.C.A. sentencing. Judge Wilkey commented on this decision:

What is done here . . . is in effect an effort to examine the merits of the sentence the District Court has imposed. In fact, Judge Bazelon goes one step further, he goes behind the sentence . . . to inquire in minute detail as to the accuracy of the penological concepts employed by the correctional authorities in making their recommendation to the District Judge. It is a grievous enough distortion of the relationship between the appellate court and the District Court for the appellate court to interject itself into the sentencing process by evaluating the merits of a District Judge's sentence. It is even less defensible to go one step backward in the process to analyze the professional value judgments made by the correctional authorities. Tillman slip op. at 27-28.

The Tillman decision was subsequently vacated on August 10, 1973.
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Significance,\textsuperscript{74} the Court of Appeals for the District of Columbia has established a “presumptive right” to Youth Act treatment.\textsuperscript{75} Impliedly, this right must be considered before the court reaches its determination to sentence a youth as an adult. The legal theory propounded by these decisions has not enjoyed a universal acceptance by other circuits. As noted earlier, only the Fourth Circuit has unreservedly adopted the holdings of \textit{Waters} and \textit{Ward}.\textsuperscript{76} The Third Circuit, while rejecting the totality of the \textit{Coefield} requirements,\textsuperscript{77} has directly addressed the 5010(d) question of interpretation. It concluded that the trial record must demonstrate that the district court made a finding that the defendant would not benefit from treatment under sections 5010(b) or (c) of the Youth Act.\textsuperscript{78} The First Circuit in \textit{United States v. MacDonald}\textsuperscript{79} arrived at a more ambiguous decision. In this opinion the court remanded the case to the district court “to make the findings required by the Federal Youth Corrections Act.”\textsuperscript{80} Lastly, the Ninth Circuit, in \textit{United States v. Jarratt}\textsuperscript{81} held the 5010(d) finding implicit in an adult sentence. However, since it was remanding the case on other grounds, it held the district court should make an express finding that the defendant would not benefit from F.Y.C.A treatment.\textsuperscript{82} With the exception of these decisions, some of which are not extremely definitive, the circuits for the most part have viewed Youth Act sentencing as discretionary, imposing no mandatory duties or considerations on the trial judge.\textsuperscript{83} Maintaining that the F.Y.C.A. provides merely an alternative mode of sentencing, the court in \textit{Guidry v. United States}\textsuperscript{84} construed the Act as providing an additional option to the trial judge when, in a particular instance, the more customary sanctions of imprisonment, fine, probation or suspension appear inadequate.\textsuperscript{85} Similarly, in \textit{United States v. Baker}\textsuperscript{86} the court ascribed


\textsuperscript{75} \textit{United States v. Phillips}, 479 F.2d at 1202.

\textsuperscript{76} See notes 9 and 37 and accompanying text supra.

\textsuperscript{77} See notes 59-64 and accompanying text supra.

\textsuperscript{78} \textit{Williams v. United States}, 476 F.2d 970 (3d Cir. 1973). In that case the judge stated in open court that he had given considerable thought to the sentence and had decided not to sentence the defendant under the F.Y.C.A.

\textsuperscript{79} 455 F.2d 1259 (1st Cir.), \textit{cert. denied}, 406 U.S. 962 (1972).

\textsuperscript{80} \textit{Id}. at 1265.

\textsuperscript{81} 471 F.2d 226 (9th Cir. 1972).

\textsuperscript{82} \textit{Id}. at 230. \textit{See note 15 supra}.


\textsuperscript{84} 317 F. Supp. 1110 (E.D. La.), \textit{aff'd}, 433 F.2d 968 (5th Cir. 1970).

\textsuperscript{85} \textit{Id}. at 1112.

\textsuperscript{86} 429 F.2d 1344 (7th Cir. 1970).
to the 81st Congress the belief that vesting broad discretion "in the sentencing judge was integral to the effective disposition of the post-conviction treatment of offenders."\textsuperscript{87}

The aforementioned cases indicate the considerable disagreement concerning the import and interpretation of section 5010(d) of the Federal Youth Corrections Act. The following pages will explore the arguments favoring the District of Columbia Circuit's interpretation as well as persuasive reasoning contradicting it. The rationale employed by the Court of Appeals for the District of Columbia in supporting its holding that an affirmative finding of "no benefit" must be made will be examined first. Following this, the arguments and evidence relied upon to rebut this position will be analyzed.

\textit{The District of Columbia Circuit's Rationale}

In holding that the terms of section 5010(d) require an affirmative finding of "no benefit" before a youth offender is sentenced as an adult, the court placed primary emphasis upon the literal meaning of the statutory language. It construed the statute to say, in effect, that a condition to sentencing a youth offender as an adult is a finding that he will not receive benefit from rehabilitative treatment. Citing the terms of the statute itself, with emphasis as indicated in the opinion in \textit{United States v. Waters}, most clearly underlined this point: "Subsection (d) requires: 'If the court shall find that the youth offender will not derive benefit from treatment under subsection (b) or (c), then the court may sentence the youth offender under any other applicable penalty provision.'"\textsuperscript{88} In short, the District of Columbia decisions do no more than apply the literal and intended meaning of the statutory language. The words and their import are plain on their face and thus, it is held, so are the judicial considerations mandated by the section.

The court in \textit{Waters} also relied upon a comparison of the statutory language of section 5010(d) and that found in section 4209 of Title 18 of the United States Code\textsuperscript{89} to support its contention that under the former provision a "no benefit" finding must be made. Section 4209 of Title 18 authorizes the application of the F.Y.C.A. sentencing provisions to "young adults," ages 22-26, in those instances where it is reasonable to believe the defendant will benefit from treatment at a youth center. The \textit{Waters} court relied upon language of the report of the Senate Committee on the Judiciary which indicated that section 4209 contemplated application of the F.Y.C.A. to a young adult only upon a special finding by the court that the particular de-

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{87} Id. at 1347.
\item \textsuperscript{88} 437 F.2d at 726 (emphasis added).
\item \textsuperscript{89} 18 U.S.C. § 4209 (1970).
\end{itemize}
\end{footnotesize}
fendant would benefit by treatment prescribed in the Act. In considering this legislative history to section 4209 the District of Columbia Circuit reasoned that the manner in which a trial judge is to exercise his discretion when dealing with "youth offenders" is substantially the converse of the scheme provided for "young adult" offenders. Therefore, the argument suggests that if an affirmative finding of some benefit is needed to apply the Act to a special class of otherwise ineligible offenders, then a corresponding affirmative finding of "no benefit" is needed to deny the fruits of the Act to those for whose advantage it was originally enacted.

In addition to relying upon the language of the subsection in question, the court throughout its opinions frequently referred to the congressional intent which originally motivated passage of the Act. While the legislative history of the Youth Act provided the main thrust of the arguments countering the District of Columbia Circuit's opinions, it nonetheless served also as a main source of reference for the District of Columbia court itself. The court maintained that the legislative history accompanying the Act supported its theory that Congress, having determined that younger criminals have a higher potential for rehabilitation, sought to give priority to the corrective treatment of offenders between the ages of 18 and 22. In support of this proposition, the court in Waters cited the following excerpt from the House Committee on the Judiciary report:

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.

From this language, and other similar passages, the court concluded that the rehabilitation of the greatest number of young offenders is the goal of the Act. It realized, however, that this ultimate purpose does not grant a carte blanche to every youth offender to receive an F.Y.C.A. sentence. As testimony to this realization, the court in Waters cited the report of the Senate Committee on the Judiciary and expressly conceded that if a youth is found "incorrigible" by the judge, and therefore unable to derive help from the Youth Act program, then he may be sentenced as an adult with-

91. 437 F.2d at 723-24.
92. For a detailed discussion of the reliance on legislative history see notes 102-08 and accompanying text, infra.
93. H.R. REP. No. 2179, 81st Cong., 1st Sess. 5 (1949); See notes 49 & 50 and accompanying text, supra.
out further consideration of the Act. The Court of Appeals for the District of Columbia, in citing such language of the Senate report, did so with an awareness of the discretionary grant being vested in the sentencing judge. It, however, in no way saw this as destructive of its basic thesis that before denying Youth Act treatment the judge must reach certain determinations regarding the youth’s amenability to rehabilitation. Rather the court perceived such legislative history as supportive of its interpretation. In so doing, the court reasoned that the Senate Committee, by employing such terms as “incorrigible,” and by suggesting that the judge be “convinced” that the defendant would derive no help from Youth Act treatment, placed a high premium on rehabilitative treatment, with consequent stringent standards for the denial of such treatment. From this emerges the contention that Congress in 1950 sought to provide for the rehabilitation of youths involved in crime and that the construction of 5010(d) advanced by the District of Columbia Circuit’s holdings would necessitate a greater utilization of the Act. Arguably, a consequent higher degree of successful rehabilitation would follow from such a utilization, ultimately resulting in the best possible effectuation of the congressional purpose in passing the Federal Youth Corrections Act.

Combined with the explanatory reasoning set out in the previously discussed opinions, the above concepts comprise the legal theory upon which the Court of Appeals for the District of Columbia based its 5010(d) interpretative holdings. Extensive disagreement prevails concerning the legal cogency of this theory as well as doubt regarding the wisdom of such an interpretation. The audible voice of dissension transverses the spectrum of the legal profession, ranging from court decisions, to practitioner-advocates and even federal legislative proposals.

A bill proposed by Senator J. Glenn Beall (R.-Md.) to amend paragraph (d) of section 5010 is one example of such dissent. The legislation, originally introduced as S.3290 in March of 1972, was not acted upon by Congress, and therefore, was subsequently reintroduced the following year as S.1198. The primary purpose and effect of the legislation is to remove any question as to the discretionary powers of a trial judge in sentencing an eligible youth offender as an adult. After listing a number of factors which the court shall consider in determining whether a youth should be sentenced under the F.Y.C.A., the bill specifically provides that nothing in the Act

94. 437 F.2d at 724-725.
95. See notes 83-85 and accompanying text, supra.
98. Included among the factors to be considered are: 1) any presentence report or any report on the mental, emotional, or physical conditions of the defendant which
should be construed to preclude the trial judge from sentencing a "youth offender" as an adult if he believes the F.Y.C.A. should not apply.

In his March 1971 statement in the Congressional Record pertaining to this bill, Senator Beall expressed the view shared by many opposed to the previously outlined holdings of the District of Columbia Circuit when he stated:

Nowhere in the committee reports, at the committee hearings or in the debates on the floor is there any indication that a judge is precluded from imposing a regular adult sentence unless he first finds that an eligible defendant will not receive any benefit from the Youth Act sentence.

Senator Beall felt that the District of Columbia Circuit has interpreted the law in such a manner so as to pervert the legislation to the point that it "is detrimental to the citizens of the District of Columbia and its environs."

To date, the Committee on the Judiciary has taken no action regarding the bill. However, the mere existence of the proposed legislation indicates the serious discontent with the trend established by the District of Columbia Circuit.

**Opposition to the District of Columbia Circuit's Interpretation**

One school of legal thought rejects in its entirety the District of Columbia Circuit’s interpretation of section 5010(d) of the Youth Corrections Act. The basic premise advanced by those individuals contesting the District of Columbia court’s interpretation is that the F.Y.C.A. provides the trial judge with only another sentencing alternative with no conditional preference over any other alternative. Thus, this school refutes the mandatory nature ascribed to that subsection by the court. In terms of a legal argument, those advocating a discretionary interpretation of section 5010(d) rely almost exclusively upon the legislative history of the Act. As a practical matter, they contemplate great problems with the implementation of the affirmative finding rule—viewing it as ultimately destructive of the original purposes of the Youth Act. Combined with several minor points, these considerations comprise the essence of the dissenters' arguments.

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The legislative history of the F.Y.C.A. reveals numerous references to the discretionary nature of the Act's provisions. The Senate report issued by the Committee on the Judiciary includes commentary to the effect that the bill would not deprive the court of any of its present sentencing functions, but would merely "authorize the court, as another alternative" to sentence a youth to treatment. These statements lend credence to the view that section 5010(d) is a judicial alternative rather than a legislative dictate. While welcoming the Committee Report references to the alternative nature of the bill, those disagreeing with the Court of Appeals for the District of Columbia rely most heavily upon references made during the Senate hearings to the purely discretionary character of the bill. Testifying at the Senate Committee on the Judiciary hearings were many members of the original judicial committee appointed by the Supreme Court to make a study of the criminal correction system in the federal courts, as well as federal correction officials and leading members of the bar. Nowhere, it is argued, in the 121 pages of hearings testimony is there mentioned the requirement that a finding of fact regarding a youth's receptivity to rehabilitation must be made before a judge sentences a youth under a statute other than the F.Y.C.A. Rather, the text is interspersed with comments indicating that "the bill in no way reduces the authority or interferes with the sentencing powers of the judges." The text of the hearings also contains explanatory statements which elucidate the viewpoint of those men who helped create the legislation. The following remarks of Judge Parker, a member of the judicial committee formed to study correctional problems, illustrate the nature of these statements. After discussing a point relating to eligibility under the Act, Judge Parker stated:

It [the Act] does not interfere with the power of the judge even with respect to those [youth] offenders, but gives him merely an alternative method of treatment of those people. . . . All that

103. Id. at 2.
104. See note 17 supra for details concerning this committee and its members.
106. Id. at 13.
107. The original intention of the legislators was to have the bill pertain to offenders up to age 24 years of age. The following quote of Judge Laws reflects some of the thinking concerning the age limitation and provides additional insights into the discretionary nature of the Act envisioned by those testifying at the hearings:
Now, if it were an absolute mandate that a judge must place all of them [youth offenders] under the jurisdiction of the Youth Division, then perhaps we should lower the age limit; but inasmuch as it is purely optional with a judge as to whether this treatment is to be given, we feel that in a given case the judge ought to have the opportunity to go as high as 23 years of age. Id. at 10.
the bill does is to provide that if . . . 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 the existing law. 108

Those who disagree with the decisions of the District of Columbia Circuit conclude that the quotations offered here, in addition to numerous others contained in the legislative history, indicate the contemplation of a purely discretionary implementation of the Act by those instrumental in its creation. To many, this argument in and of itself is convincing, and no further evidence need be presented. Yet others choose to transpose the discussion from one of past legislative intent to present and future application.

The critics of the District of Columbia Circuit claim that the “no benefit” standard has no practical application. They argue that such a vague and amorphous standard invites the destruction of the purpose of the Act because it permits an influx of confirmed criminals into the youth corrections system. Furthermore, they suggest that the standard amounts to no real standard at all since even the most hardened criminal would derive some benefit from treatment under the Youth Act, even if only more pleasant surroundings. 109 Senator Beall made a similar point when he suggested:

To find that an offender cannot benefit from the youth corrections provisions would seem to be almost impossible. . . . In essence it requires the court to find the offender beyond hope and requires the proof of a negative fact about which no one can be certain. 110

The premise above enunciated proceeds to the logical conclusion that the “no benefit” standard would encompass every convicted youth offender and that the youth centers would become so unmanageably overcrowded as to preclude the individualized treatment and vocational guidance requisite to positive rehabilitation. 111 It is additionally contended that such a wholesale

108. Id. at 43.
109. This same argument was expressed in United States v. Riley, 481 F.2d 1127, 1139 (D.C. Cir. 1973) (MacKinnon, J., dissenting).
110. 118 CONG. REC. 3196 (daily ed. March 3, 1972). The same point was made in a recent law review article: “This requirement [of finding no benefit] places an almost impossible demand on the sentencing judge who, without highly sophisticated powers of intuition approaching clairvoyance, would be hard-pressed to say with any finality that any youth, other than an already hardened offender, would not benefit from specialized treatment.” Note, The F.Y.C.A.: Past Concern in Need of Legislative Reappraisal, 11 AM. CRIM. L. REV. 229, 255 (1972).
111. The problem of overcrowding of youth facilities was discussed in detail in United States v. Alsbrook, 336 F. Supp. 973 (D.D.C. 1971). The court held that “[t]here was no legal authority for diverting otherwise eligible youths to adult institutions due solely to lack of space.” Id. at 976. The court then went on to direct an expansive reorganization and enlargement of the District of Columbia youth correc-
utilization of the F.Y.C.A. would jeopardize the public safety by providing for the premature release of dangerous criminals.112

In summation, the thrust of the counter-argument centers upon a perception of the legislative intent in the passage of the F.Y.C.A. Relying upon the available legislative history, the District of Columbia Circuit's critics contend that the clear purpose of the Act was to allow the more permissive Youth Act sentencing only to those youths who are considered rehabilitable. The intent was not to withdraw all discretion from the sentencing judge by imposing unworkable standards and confining parameters upon him. Such a limiting of prerogatives would, according to the dissenters, grant Youth Act treatment to all youthful criminals, irrespective of their amenability to such treatment. Such a result they maintain, would defeat the purpose of the Act and preclude meaningful treatment of any youths.

Conclusion

The controversy concerning the construction of section 5010(d) of the Federal Youth Corrections Act is one of more than little significance. This exceptional piece of legislation offers those sentenced under it a unique opportunity for rehabilitation through vocational training and individualized treatment. The number of youths receiving Youth Act sentences under the interpretation adopted by the Court of Appeals for the District of Columbia would no doubt be considerably greater than in those jurisdictions where the discretionary approach predominates. Because the course of an offender's life is determined, to a very real extent, by the type of incarceration to which he is subjected, the interpretative issue presented is of considerable import. An examination of the debate demonstrates that credible arguments exist on both sides. However, when balancing the weight of all the arguments, it is evident that the view espoused by the Court of Appeals for the District of Columbia emerges as the legally preferable one.

The District of Columbia court presented two extremely convincing arguments. First, it relied on the plain meaning of the words in the Act.113 The subsection under discussion is phrased so as to permit an adult sentence only in the event that the judge first affirmatively finds that the offender will re-

113. See notes 88-90 and accompanying text, supra.
ceive no benefit from treatment under the Act. The words and their intended meaning are specific and unambiguous. Second, the court substantiated its construction of section 5010(d) by maintaining that such an interpretation best effectuated the legislative purposes of the entire Act. The court notes that the primary supposition upon which the Act was created was that young people convicted of crimes generally possess a greater potential for rehabilitation than do older, more experienced criminals. It further notes that Congress went to extreme lengths to formulate, with precise detail, a comprehensive system for effectively channeling this potential in constructive directions. These observations compel the conclusion that Congress, in its desire to redirect the mistaken course of society's young offenders, formulated an elaborate design which extends to these youths a presumptive right to rehabilitative treatment. The District of Columbia Circuit's construction of section 5010(d) goes further than any other in realizing this legislative objective and in so doing best effectuates the purpose of the Federal Youth Corrections Act.

Drawing an analogy between the District of Columbia Circuit's reasoning and the Tenth Circuit's holding in Rogers v. United States lends additional support to the former's interpretation. The court in Rogers was called upon to construe the meaning of section 5010(b) by determining what facts the trial court must establish before sentencing under it. The relevant wording of 5010(b) reads much like that of 5010(d), containing the phrases "if the court shall find" and "then the court may," both of which are included in 5010(d). The court in Rogers held that the subsection "requires and makes mandatory two preliminary findings by the court before a sentence may be imposed under the Act: (1) That the convicted person is a youth offender, and (2) that the offense is punishable by imprisonment . . . ." The court further held there must be evidence that these findings were affirmatively made by the court. Given the identical phraseology and format of sections 5010(b) and 5010(d), a similar holding of an affirmative finding seems appropriate under the latter provision. The statutory language clearly dictates such a preliminary finding.

In determining which of two competing statutory interpretations applies the more convincing analysis, the fundamental strengths and weaknesses of both positions must be probed. Having done so, it is the author's conclusion that the reasoning employed by the District of Columbia Circuit is both logical and convincing. In stark contrast to the cogent arguments advanced

114. United States v. Waters, 437 F.2d at 724.
116. 326 F.2d 56 (10th Cir. 1963).
117. Id. at 58 (emphasis added).
by that court, the position suggested by those taking issue with the District of Columbia court's holdings is subject, point by point, to more persuasive counter-arguments. The rationales employed by those individuals simply cannot withstand close scrutiny.

The accuracy of this statement can be appreciated by an examination of the principal weapon relied upon by those attacking the District of Columbia court's position, namely, the legislative history accompanying the Act. As outlined in the preceding pages, considerable language in the legislative history underlines the discretionary nature of the Act. However, in light of the unambiguous statement of section 5010(d), these references are of minimal significance. It is a well-established legal doctrine that only when the statute's meaning is unclear on its face is it permissible to turn to the legislative history for assistance in implementing the Act's provisions. As also demonstrated earlier, the language in the Senate and House Committee Reports strongly supports the District of Columbia construction. In addition to these references other factors exist which need consideration when seeking to rely on the legislative history of this particular Act. Most notable of these considerations is the paucity of actual legislative history upon which such great reliance is placed. The Senate subcommittee hearings were attended by only two Senators, with substantially all the questioning undertaken by one of them. It is from these hearings that the reasoning concerning the legislative intent to provide an additional discretionary tool for the sentencing judge is extracted. In placing such heavy dependence on these hearings the assumption is apparently being made that the members of Congress voting on the bill were knowledgeable of the views expressed at those hearings. This seems to be a fallacious assumption. The more reasonable conclusion is that the vast majority of the legislators were unaware of what transpired at these hearings and were instead voting on the content of the Act's language as it appeared before them.

118. See notes 102-108 and accompanying text supra.
120. S. REP. No. 1180, 81st Cong., 1st Sess., 1 (1949).
122. The Senate hearings were held October 5-7, 1949. A total of 12 witnesses testified. Senator Harley M. Kilgore (D.-W.Va.) presided and was responsible for virtually all the questioning. Senator Frank P. Graham (D.-N.C.) was present for the October 6th session, for the most part assuming the role of an observer.
In addition to stressing the legislative history, those disagreeing with the District of Columbia Circuit's reasoning attack the "no benefit" standard as vague and unworkable. There are, admittedly, problems with the application of such a standard. No doubt mistakes will be made—both favoring and denying treatment. But certainly it cannot be said that the standard is so vague as to amount to no standard at all. Clearly, when the Act speaks of "benefit from treatment" it is referring to rehabilitative benefit and not merely "more pleasant surroundings." The allegation is made that the District of Columbia court usurps the traditional discretion vested in a sentencing judge by forcing him to implement the nebulous standard which it holds as the law. By its own words the District of Columbia Circuit proves that accusation unfounded. In Coefield the court said:

We note, however, the recognition that the trial judge retains discretion to "deny such rehabilitative treatment of those youths in the exceptional case where the judge determines that the special youth treatment afforded by the Act would be of no value."

Expressed succinctly, the trial judge retains his discretionary powers, subject only to the restriction that he make certain affirmative findings before exercising that discretion. Ultimately, what the District of Columbia Circuit is requiring of its federal trial judges is not overly taxing or unreasonable. The court, in seeking to realize the rehabilitative goals of the legislation, demands only that the judge make a knowledgeable and well-considered decision regarding the sentence applied to a youth. To aid the judge in his deliberations the court requires that he make use of certain professional evaluations and recommendations provided for in the Act. Finally, to properly perform its appellate responsibility, the court requires a statement of reasons upon which the trial judge relied.

None of these requirements usurp the traditional discretion of a trial judge. They simply serve to insure that such discretion is knowingly and properly exercised in accordance with the legislative dictates of the Act. Only through such an implementation of section 5010(d) will the potential embodied in today's youthful offender, and appreciated by those responsible for the Federal Youth Corrections Act over twenty years ago, be fully realized.

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123. 476 F.2d at 1155, quoting United States v. Waters, 437 F.2d at 724.