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PANEL ONE

JUVENILE JUSTICE OR INJUSTICE?

THE DEBATE OVER REFORM

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The debate over juvenile justice or injustice, as many contend, is as ancient as the saga of Cain and Abel. Is disciplining children the best way to rear them, as commentators over the ages and even today suggest? What of the competing view, that

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so long as we protect society in some measure we spare the child and ourselves when we spare the rod? The controversy over how to handle errant children takes on special significance not merely when we consider how, whether and to what extent parents should discipline, but especially when we consider how, whether, and to what extent the state should or may discipline children.

There is no debate that children are our most precious commodities. Less accepted is what the state should do with children accused of acts that would be crimes if committed by adults. What of adjudication? Much has happened since the United States Supreme Court decided the far-reaching *In re Galt*¹ in 1967, the Court's first exploration into federal due process rights for juveniles.² We still continue the experiment with many exceptions of granting juveniles many, though not all, adjudication rights in the perceived hope that juveniles can be rehabilitated in a less formal, seemingly quasi-criminal, setting.

Reformers continue to argue passionately, however, on all sides of the question. Some advocate full adult protections for juveniles in fact-finding proceedings.³ Others, at a different end of the spectrum, advocate moving more and more juvenile cases to adult courts, not so much to assure due process, but rather to permit dispositions and sentencing fit for adults.⁴

Moreover, what do we do about dispositions?⁵ What should be

¹ 387 U.S.1, 30-31 (1967) (holding Due Process Clause of Fourteenth Amendment requires juvenile court delinquency hearings to measure up to essentials of due process and fair treatment, specifically that juveniles are entitled to notice of charges, right to counsel, right to remain silent and right to confront and cross-examine witnesses).

² See generally Janet L. Dolgin, *The Fate of Childhood: Legal Models of Children and the Parent-Child Relationship*, 61 ALB. L. REV. 345, 366 (1997) (discussing how Justice Fortas, writing for Court in *Gault*, framed decision as necessary reaction to pervasive failure of juvenile court system to safeguard children's interests).

³ See generally Janet E. Ainsworth, *Re-Imagining Childhood and Reconstructing the Legal Order: The Case for Abolishing the Juvenile Court*, 69 N.C. L. REV. 1083, 1120 (1991) ("Treating juveniles differently from adults—by denying them jury trials, for example—violates the consistency norm of equal treatment for all and reminds the young that they do not have all of the rights assigned to full-fledged members of the society").

⁴ See, e.g., George Bundy Smith & Gloria M. Dabiri, *The Judicial Role in the Treatment of Juvenile Delinquents*, 3 J.L. & POL'Y, 347, 364 (1995) (illustrating how generally held public perceptions concerning extent and nature of juvenile crime have resulted in get-tough public sentiment toward delinquency that has led to new laws and policies, including prosecuting younger children as adults for certain crimes).

⁵ See, e.g., N.Y. FAMILY CT. ACT § 350.3 (McKinney 1998). Dispositional hearing is similar to sentencing in adult criminal trial. *Id.* After child has been adjudicated delinquent, dispositional hearing is held to decide whether case should be dismissed, child should be placed on probation, or child should be placed in an out-of-home placement. *Id.*

done following a fact-finding adverse to the juvenile?⁶ Reformers argue over the fundamental issues of rehabilitation, protecting society, and punishment. The future of countless thousands of our youths, as well as our own, rests on how this national debate is resolved.

The four speakers who will address these issues are an illustrious quartet. Our first speaker is New York State Supreme Court Justice Michael Corriero, who will provide a proposed model of juvenile justice in the 21st Century. An alumnus of St. John's University and this great law school, Justice Corriero was a prosecutor and criminal defense counsel before taking the bench in 1980. As the justice presiding over the Youth Part in New York County, he hears felony prosecutions of youths in adult court. Speaker, author, and Chair of the Juvenile Justice Committee of the Association of the Bar of the City of New York, he also decided the first case I ever handled in court. His impartiality and demeanor have defined for me ever since what it means to be a great judge.

⁶ See, e.g., N.Y. FAMILY CT. ACT § 342.1 (McKinney 1998). Fact-finding is similar to trial in adult criminal court. *Id.* Child will be adjudicated delinquent if court finds that allegations in petition (paper charging delinquency offense) are supported by evidence beyond reasonable doubt. *Id.*

