

# DRIVE FOR RIGHTS OF CHILDREN

- To Hire a Lawyer
- To Sue Parents
- To Choose a Guardian
- To Leave School
- To Handle Own Finances

ON THE RISE across the U.S. is a "children's liberation" movement that is forcing the nation's elders to sit up and take notice—often in disbelief.

At least four national organizations of attorneys and countless public-welfare groups have joined the fray in behalf of the 68 million Americans under 18 years old—whom some libertarians call the country's "most oppressed minority."

At times, the movement resembles a pint-sized version of the youth revolt that shook campuses in the past decade.

One underground pamphlet, which the National Association of Secondary School Principals says has been distributed at many high schools, mixes current concerns about students' rights with warmed-over rhetoric against defoliation in the Vietnam War. This "school-stoppers textbook" tells disgruntled students 61 ways to shut down their schools—including burglary and arson.

**Young pickets.** In Washington, D.C., there were echoes of the 1960s' protest marches recently when children aged 8 to 13—some of whom have been veterans of antiwar parades since the age of 4 or 5—picketed a dime store that barred all minors, unless accompanied by an adult, because of growing shoplifting and rowdiness.

Mostly, however, the new campaign is being waged through legal channels with help from professional activists, liberal parents and other interested adults.

As children get lawyers, lobbyists and political sympathizers, the growing trend is to view them as at least semi-independent persons with their own rights—not automatically subservient to parental or official authority.

Keystone of this new "kid power," say leaders, is the U.S. Supreme Court's so-called Gault decision seven years ago.

In that case, the Justices ruled that a young suspect tried in juvenile court is entitled to have a lawyer, to cross-examine witnesses and to enjoy other safeguards guaranteed to adult defendants by the Constitution. Bena R. Uviller, head of the Juvenile Rights Project of the American Civil Liberties Union, summed up the impact this way:

"That was really the first time the

Court recognized that children were human beings and that the Constitution is not for adults only. Since then, everything has been aimed at expanding that concept and seeing how far it can be taken."

**Full court rights.** Today, it has been taken far enough that at least one advocate believes any child can tackle an adult in court if he has a sound case and a good lawyer. Gabe Kaimowitz, a public-service attorney who has successfully handled cases in behalf of children in Detroit, said:

"Theoretically, I can win anything for a child in court where an adult has a comparable right—but whether or not the law is enforced is another question."

A series of court decisions has eroded the traditional doctrine that minors can't sue their parents, raising the possibility of damage claims by children who feel they have been abused—or simply neglected.

F. Raymond Marks, a lawyer with the

Childhood and Government Project at the University of California, Berkeley, said:

"A trend away from immunity [for parents] altogether—even in negligence cases—can be discerned. By eliminating the immunity rule, courts recognized a degree of intrafamilial autonomy for the child."

As the precedents pile up, parents find they are no longer guaranteed complete sway over their offspring just because they provide financial support.

New laws and court decisions in some States, for example, give minors—even those living at home—the right to get medical help without their parents' knowledge or consent in certain cases. At least 48 States grant such freedom when a teen-ager has venereal disease. Other States extend it to pregnancy, abortion, contraception, drug addiction, mental disorders or severely contagious diseases.

On July 22, Planned Parenthood of



"Peter Doe" meets with attorneys of the Youth Law Center, which is pressing his 1-million-dollar "malpractice" suit against San Francisco schools. The youth has accused his high school of graduating him with only a fifth-grade reading capability.

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"Kid power" surfaces as grade schoolers picket Washington, D.C., store that excluded unaccompanied minors. Some picketers had marched with their parents in antiwar campaigns.

New York City announced a 4-million-dollar effort to make contraceptive devices available to every teen-ager in that city within two years. Among the tactics: distributing birth-control devices to adolescents at birth without requiring them to notify their parents.

The Maryland Court of Appeals has upheld the right of a 16-year-old girl to refuse to have an abortion ordered by her parent. Mississippi allows any child to make all medical decisions as long as he or she is "of sufficient intelligence to understand and appreciate the consequences."

In Michigan, a 16-year-old youth who was expelled from school for long hair won his lawsuit over the opposition of both the school and his parents.

After years of compromise, educators are making further concessions on students' dress, extracurricular activities, smoking and disciplinary procedures. Much of the pressure for these changes developed after a U.S. Supreme Court decision in 1969 upholding an antiwar protest at a Des Moines, Ia., school. The High Court ruled that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."

**No censorship.** In Illinois and elsewhere, school officials have published new freedoms in booklets of "rights and responsibilities" which often end hair and dress rules, except for safety reasons, and prohibit disciplinary action over the contents of student publications. As a result, young journalists in public schools from Columbia, Md., to

Berkeley have been putting out special issues on sex and drugs, with features ranging from a review of the X-rated movie "Deep Throat" to an illustrated article on how to use birth-control devices.

In Los Angeles, the school board decided in April—by one vote—to retain principals' power to censor school newspapers. But the journalists' teachers' association, which sided with the students, threatened to sue unless the policy is reversed.

Because of court rulings, some of the educators hesitate to search students or their lockers for drugs, weapons or stolen money. One faculty member at a New York City school for problem children said:

"A search happens very seldom today because we are so conscious of the youngsters' rights. We have been made aware of them."

**Paddlings banned.** Spankings by teachers and principals are also a thing of the past in many school districts—especially without parental permission.

This autumn, Illinois will become the third State, after New Jersey and Maryland, to impose an antisparking rule on all schools.

Houston, Tex., on the other hand, has reinstated corporal punishment by teachers—after much debate over disciplinary problems.

California reported more than 46,000 paddlings last year. But 7 per cent of the State's districts forbid them, and most of the others urge restraint.

Suspensions are being curbed, too.

Litigation has made formal hearings the rule before students are suspended for long periods as a disciplinary move.

Even so, some libertarians want to end suspensions and expulsions altogether. In North Carolina, a suit has already been filed claiming government has no authority to remove unruly children from school without providing an alternative means of education.

Similar attacks are being made on educators who try to keep retarded youngsters out of school or to group children into "slow" and "fast" classes.

**System abolished.** In the District of Columbia, judges abolished the traditional "track" system and ordered reinstatement of all students excluded because of mental or physical handicaps. A Pennsylvania court ordered "due process" hearings before a child is judged "uneducably retarded."

Most attempts to establish absolute right to an education have failed. But, in Illinois, the new State constitution gives children the right to be "educated to the extent of their capacity."

And a San Francisco high-school graduate has filed an "education malpractice suit"—demanding 1 million dollars from the school district for failing to teach him to read properly.

Use of amphetamines to quiet hyperactive children in schools and other institutions is also under review.

The U.S. Department of Health, Education and Welfare is still embroiled in a storm of controversy that greeted its suggested regulations on the subject last autumn. Among other things, the draft rules would require personal permission from all children aged 7 years and older before they could be used in federally funded drug testing programs.

William C. Smith, a lawyer with a new advocacy group called the Children's Defense Fund, said:

"I don't think even a parent should have the right to deliver a child up to a nontherapeutic drug experiment."

Fund Director Marian Wright Edelman, in an interview with "The Harvard Educational Review," added:

"It is a sad fact that there is a better government policy to protect animals than children from experimentation."

**Disclosure move.** Latest targets in the drive for parents' rights are school files containing potentially damaging medical or psychological information on students. In July, a congressional conference (continued on next page)

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ence committee approved legislation to make these confidential records available for inspection at the demand of parents, who could challenge the contents at a hearing and prohibit their distribution to police, prospective employers, banks or credit bureaus.

The advent of computerized data banks compounds the threat to children's privacy, said the Defense Fund's Mr. Smith. He cited a Maryland program where teachers, psychologists and other "instant experts" put defamatory labels on students, choosing from a list of computer codes for characterizations such as "sexual deviation" or "paranoid." The information is stored in a data bank to help government agencies looking for ways to aid children. Mr. Smith continued:

"Only certain officials are supposed to see the reports. But the codes can be cracked, and the information is practically useless compared to the danger of it falling into the wrong hands. A kid could be branded for life because a teacher thought he acted out of weird back when he was 7 years old."

For the same reason, legal fights are being mounted against programs that give public-school pupils psychological tests and ask personal questions about their family lives in an attempt to identify those who might turn into drug abusers or delinquents.

**"Worst of both worlds."** The informal manner in which juvenile trials have been handled stirred controversy even before the celebrated case of Gerald F. Gault, a 15-year-old boy sentenced in Gila County, Ariz., to a six-

year term in reform school for allegedly making an obscene telephone call.

In an earlier decision, then-U.S. Supreme Court Justice Abe Fortas wrote:

"There may be grounds for concern that the child gets the worst of both worlds; that he gets neither the protection accorded to adults nor the solicitude and care and regenerative treatment postulated for children."

Today the American Civil Liberties Union is challenging a Georgia law that allows juvenile-court judges to send chronic offenders to adult prisons without the safeguards of grand-jury indictment or jury trial.

In Washington, D.C., a judge has ruled it unconstitutional to incarcerate juveniles who have committed no crime but who have been declared too unruly for their parents to control.

Similar laws allowing the detention of "unmanageable" children have come under fire in various States—especially where runaways or rebellious youngsters are jailed with young robbers and drug addicts because there isn't enough space in more humane institutions.

**Custody rights.** Children's rights are also being asserted in custody cases.

Activists are pushing a model State law to require courts to consider the child's best interests and personal wishes in divorce cases—even when they are uncontested. In the past, the activists say, courts usually rubber-stamped agreements between the mother and father, allowing children to be parceled out the same as the couple's furniture.

Neither do all parents who turn their children over to foster homes any longer have inalienable rights to reclaim them.

A March court ruling in Georgia gives judges what Juvenile Court Judge Tom Dillon calls "an almost

frightening amount of discretion" in terminating the parental rights of adults for the psychological well-being of the child. Before, say officials, such children were denied permanent adoption unless their natural parents had physically abused them.

More authorities are agreeing with the Georgia adoption worker who said: "We feel children have the right to be members of a stable family."

Mr. Marks, of the Berkeley children's project, points out that teen-agers actually had much of the social and legal independence they are now seeking until juvenile courts,

compulsory school attendance and child labor laws were instituted around the turn of the last century to protect them from the new threats of the industrial revolution.

The result, he says, is an artificial strain on parents and society—as well as adolescents—because youngsters are kept in legal childhood long after physical maturity.

Mr. Marks suggests granting formal independence at an earlier age for the good of both children and adults—provided child-labor laws and customs are also changed so adolescents can get along in the outside world.

The National Commission on the Reform of Secondary Education, reasoning along the same lines, recently recommended lowering the top compulsory school age to 14.

**Picking guardians.** One former educator, John Holt, has come out with a new book saying children should even have the right to choose their guardians and open special bank accounts to handle their own finances.

As an experimental step in that direction, Montgomery Ward & Company gave children aged 10 and older temporary authority to use parents' credit cards to buy Mother's Day and Father's Day presents—with the bill going to the parents. Elders had only to give written authorization and set a credit limit. But few took the opportunity, and the company said it is unlikely that the experiment will be repeated.

On the whole, controversy over children's rights has been peaceful compared with the violent wars across the "generation gap" of the 1960s.

Government still generally upholds the right of parents to dictate to children on questions ranging from what they receive in the mail to whether they get a driver's license. The Court of Appeals of New York allowed a father to stop supporting his college-age daughter unless she agreed to live in a dormitory instead of an apartment.

The new interstate compact on runaway juveniles is so strict on requiring their summary return to parents that one activist compares it to the fugitive-slave laws of the 1800s.

Ms. Edelman, head of the Children's Defense Fund, conceded that a balance must be struck between treating children as human beings and giving them the protection needed because of their immaturity. She said:

"The narrow legal approach of merely extending adult rights to children is not the answer. Children do have, in my view, special needs and require special protections in certain regards. Defining the working medium between the extremes must be done carefully."



Key to new student freedoms was forged when Mary Beth Tinker and brother John won right in U.S. Supreme Court to wear antiwar armbands at school in Des Moines, Ia.

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