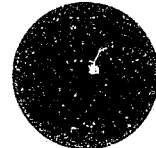


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TESTIMONY OF  
Honorable Gerald S. Radcliffe  
for the  
National Council of Juvenile and Family Court Judges  
Before the  
Subcommittee on Juvenile Justice  
Senate Committee on the Judiciary  
on  
Reauthorization of the Juvenile Justice and  
Delinquency Prevention Act of 1974

NCJRS  
AUG 7 1992  
ACQUISITIONS

July 2, 1992

Mr. Chairman, members of the subcommittee, The National Council is pleased to have been asked to testify before you today. I am Chairman of the Council's Legislative and Governmental Regulations Committee and for many years have served as a Juvenile Court Judge in Ross County, Chillicothe, Ohio.

The National Council of Juvenile and Family Court Judges ("the Council") was founded in 1937 and is the oldest national judicial membership organization in the United States. The Council serves as the only national organization comprised of members of state juvenile and family courts. Its current membership is about 2,500 juvenile and family court judges and related court professionals. All states are represented.

One of the primary goals of the Council is to offer continuing education for the nation's judiciary. In 1969, the National College for Juvenile and Family Law was established as the Council's continuing education division. Both the Council and the College are headquartered in the new Midby-Byron

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**U.S. Department of Justice  
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National Center for Judicial Education on the University of Nevada campus in Reno, Nevada. The research division of the Council is the National Center for Juvenile Justice, located in Pittsburgh, Pennsylvania. Our staff numbers about 60 and the yearly budget is about \$5 million.

No other societal institution has such awesome power over the lives of our youth as does the juvenile court. It is as a result of this position that the Court has been subject over the years to the impingement of numerous and constantly varying forces . . . legal, political, and sociological. The history of the juvenile court has been marked by responses to these strong currents, attempting to adjust its philosophy and operations to meet societal trends. In the midst of such frequent change, it has endeavored to fulfill its paramount responsibility in maintaining the delicate balance between serving the needs of troubled youth while at the same time serving the self-protective needs of an orderly society as a whole.

By both design and default, the juvenile court has been placed in the position of discharging its legal responsibilities while serving as a primary vehicle in the delivery of social-rehabilitative services to a large segment of our population.

There is a substance abuse crisis in America, it is pervasive, it is destroying millions of our nation's families, and it is

the key underlying factor in the great majority of all the cases in our juvenile and family court for dealing in drugs or stealing for drugs. That is just the tip of the iceberg. We are talking about drug and alcohol addicted babies, 13-year old dropouts, 15-year old prostitutes -- 'throwaway kids,' 'runaway kids,' abused kids, neglected kids, kids whose fathers won't support them. These are the kids we see in our courts every day.

The National Council surveyed the judges two years ago and they came back and told us what we all suspected all along -- drug and alcohol abuse is the underlying factor in 60 to 90 percent of all the cases we see. This is not just in Atlanta, New York, Miami, Los Angeles, or Chicago, but all across the country.

Judge Romae T. Powell, President of the National County of Juvenile and Family Court Judges 1988-1989.

Juvenile and family court jurisdictions number over 3,000 and require more than 7,000 judges and referees, and more than 100,000 administrative service and support personnel. Each year they hear more than 400,000 child abuse or neglect cases, review an estimated 700,000 continuing protective service orders, and determine the custody of almost 3.0 million children.

To the juvenile judge court on the bench, the delivery of social rehabilitative services becomes almost academic and without meaning when he is confronted with the momentous decisions he must render each day, affecting the lives of many people. As these youngsters and families pass before him, the

judge cannot debate the fine points of judicial or social philosophy. He only knows that he must discharge his responsibilities to society and to the individual child in the best way he can, with whatever resources are at the communities disposal.

The juvenile court system represents only one facet of child care: its function is integrally bound upon with the values and the institutions by which that care is administered. Thorough reform of the juvenile justice system of our nation can occur only through a re-evaluation of our commitment to the young. Judge David Bazelon has said,

[T]he law increasingly recognizes that every man has certain entitlements as a citizen. It is difficult to think what more basic entitlements there could be than a child's right to a fair start in life. If indeed this is a right, and I believe it is, then thousands of our children never experience full citizenship. The price we as a society pay for denying this right can be measured in one dimension by the constant increase in juvenile court caseloads and the mounting difficulty of finding adequate rehabilitative services.

The National Council continues to support provisions of the current Juvenile Justice and Delinquency Prevention Act that provide for separation of adults and juveniles in jails, encourage all states to provide for separate facilities for juveniles charged with criminal violations, require removal of all non-offenders from state training schools and other secure facilities, and maintain Constitutional authority of judges to enforce court orders.

The National Council believes it is very important that Congress reauthorizes the Juvenile Justice and Delinquency Prevention Act. We testified to this effect three months ago before the House oversight committee and, at its request, have worked with the House Subcommittee staff. The National Council supports House Bill, H.R. 5194, and urges the Senate to support the Bill. H.R. 5194, if enacted into law, provides for the sound continuance of this vital effort which provides for several necessary national programs and assists the states to improve their response to juvenile crime and to develop more effective delinquency prevention programs. We urge speedy action so that the reauthorization can be assured.

Since the advent in the late eighties of the federal war on drugs, and despite the sharp increase in serious and violent drug-related youth crime as shown in FBI statistics starting in 1988, virtually no federal resources have been devoted to juvenile justice. Spending of federal drug war funds for State and local criminal justice has been devoted primarily to law enforcement. Meanwhile, massive funds have flowed into the whole federal system, for prosecution, courts and corrections, as well as for law enforcement. This mirrors closely the experience of the federal war on crime which commenced in 1968 as strictly a State and local law enforcement program, which quickly expanded to corrections, eventually to prosecution, and only in its most later states to criminal

courts, upon the belated recognition that they were a necessary element between arrest and prison. Under LEAA very little was done for the juvenile justice system, then as now a perennial stepchild.

So far as "juvenile justice" and the federal government is concerned, since 1974, the OJJDP Program has been the program with strong continuity dealing with the needs of the troubled youth of our nation.

It was the National Council of Juvenile and Family Court Judges which successfully urged the Congress in 1980 to amend the Act to add serious and violent juvenile crime as a priority area for attention. Since the seventies, the Office had devoted little concern or resources to juvenile crime. That change in the Act has proven salutary, we believe, and has resulted in the development of several effective programs, utilizing both "formula" or State funds or discretionary special emphasis funds or a combination of both. An outstanding example, now replicated in Florida and elsewhere, is the Paint Creek Youth Center program in Bainbridge, Ohio. It has dealt more successfully with serious, violent juvenile offenders, than state training schools.

Despite the most recent and disturbing increase in serious and violent juvenile crime, much drug related, it remains true that a relatively small percentage of juveniles, approximately 7%, are responsible for at least two-thirds of

serious, violent youth crime. These youth are usually chronic, repeat offenders, and the system needs to deal more effectively with them.

At the other end of the spectrum, "early intervention", "identification", "assessment" and "prevention" programs have proven successful. Basically, it is development, mobilization and coordination of resources at the community level that help troubled kids and their families. Our goal is and should continue to be to keep children out of the kind of trouble that can lead to serious crime further down the road.

When the needs of the child require a foster home and none are available, the community fails the child.

When the community and the child would benefit from the child being educated and the parents fail to cause the child to be educated, both the community and the child fail.

When the needs of the community require a child to be institutionalized and no institutional service are available, the community fails the community.

As we collectively address the plague of drugs and alcohol that has befallen our nation and its children, we must renew our efforts to produce constructive and positive relationships that will enhance and strengthen the future of the most valuable asset of our community--our youth.

The National Council supported and worked for the initial passage of the OJJDP Act in 1974, and has worked



closely with oversight subcommittees of both bodies on the reauthorization of the Act ever since. We have also played a leadership role in continuing to urge Congress to provide uninterrupted yearly appropriations for the Office of Juvenile Justice. In that connection we would urge you to increase the prior level by at least \$100 million for the basic Title II program which is a modest increase of the actual approximate appropriation level twelve years ago in 1980.

We urge you to reauthorize the Act and to retain the basic structure of State or "formula," special emphasis, training and technical assistance grants as last revised in 1988. We support peer review for special emphasis grants, and we support establishment of additional areas for possible funding under the special emphasis program, provided additional resources for them are authorized. Community alternatives are the heartbeat of the juvenile justice system. We only wish there were more of them!

Child abuse and neglect, including family violence, sexual abuse, crack and HIV babies, establishing parent/child support are an even faster growth area in our courts than delinquency. These cases are most difficult to deal with in part because they are continuing cases requiring the court to periodically review the status of each in a meaningful way. As is true in delinquency, the options available to the court are usually too limited. It is clear that, if intensive home based

services were available for many of these children and their families, removing a child from his/her home to foster care or a group home, would often not be necessary for the child's safety. Furthermore, if quick and effective treatment and other services can be provided, keeping the family together usually results in a better outcome for the child and family, and usually at lower taxpayer cost.

Without intervention, an abused child from a seriously dysfunctional family will often become a seriously delinquent child. It is with neglected and abused children, minor delinquents, runaways, truants and "out of control" children that "early intervention" proves most effective.

Intervention through a comprehensive network of private and public community services need to be available to serve the needs of the child under an order of a juvenile court, if necessary. Juvenile and family court judges work with their communities, often in leadership positions, to see that the needed resource networks are developed, that they are effective, that they actually do the job, and that every dollar of public expenditure is needed and justifiable.

With respect to Title VI of S.2792, purportedly dealing with the abuse and neglect of children, this proposal appears to direct its major attention to the adult criminal justice system. If the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, is broadened to include the

prosecution of adults in adult criminal court or the proceedings in adult divorce court, the cost of the proposal will be great. We fear that the small amount that children receive under the Juvenile Justice and Delinquency Prevention Act would be lost.

It is not unusual where children are severely beaten or injured to have a case brought against the adult in adult criminal court also to have the case of the child brought to the attention of the juvenile and family court.

The juvenile and family court judge must then deal with the needs of the "child victim" - before, during and after the court hearing. Services the court orders to be provided for the child and his family can enhance and improve the prospects for severely abused and neglected children and make a vital difference in the future mental and physical development of the child.

There is no objection to improving adult criminal prosecution for crimes committed by adults against children, but if this program is undertaken it is expensive and, by the very nature of the proceeding, does not address protection of the child.

In the area of abuse and neglect, the Subcommittee may wish to assess the provisions of Public Law 101-647 (104 Stat. 4797), the Victims of Child Abuse act of 1990, in terms of a more modest approach addressing this important concern within

the juvenile justice system. Were the programs provided for therein funded and implemented within OJJDP, much progress could be made in the next four years.

From its very inception, the judicial process for juveniles was conceived of as a hybrid between the criminal justice system and the rehabilitative mental health process. Juveniles who were to be brought before a court of law would be given benevolent, adult supervision for the purpose of reforming their behavior. While the protection to society afforded by the judicial process was clearly applicable, punishment inflicted on adult criminals was deemed cruel and inappropriate in the handling of juvenile offenders.

While there have been efforts to reform the process, we have failed thus far to guarantee that juveniles be given the humanitarian care that was the original objective of the juvenile justice system. In response to legislative inaction, the courts have extended the developing right to treatment of institutionalized juveniles. Legislatures and communities need to rethink their commitment to the young so that the promise of treatment might be made a reality.

Parens Patriae -- the theoretical justification for the intervention of the state into the lives of children -- manifests itself in the continuing debate that has become exacerbated in recent years, as a result of the rapidly increasing levels of juvenile crime, neglect and abuse. This

debate is one which presents the fundamental issue of how we, as a society, should react to the needs of our children.

Important as reform of court proceedings may be, I am deeply concerned that focusing efforts exclusively on court procedures will allow another crucial issue -- how we care for children once the court makes its recommendation for their treatment -- to recede into the background. In the absence of coordinated efforts by legislatures on all aspects of juvenile reform, the courts will be unable to unilaterally transform statements of principle into reality. For children, quality care and an adequate judicial system cannot be established independently of one another.

Perhaps original concepts of juvenile court movement may now appear too unworkable, and perhaps even too naive, to provide substantive justice and adequate care. The growing body of decisions indicates that the principle of flexibility through benevolent discretion and sympathy has often lead to punitiveness, arbitrary decisions, and serous violations of children's fundamental rights.

The courts' real purpose in establishing a right to care and treatment for juveniles is to try to convince legislatures, communities and service agencies to provide adequate services for deprived and troubled children and their caretakers. This can occur only through a comprehensive analysis of the types of support suited to the kinds of

children and families who are likely to come before the court, followed by action on the part of governmental agencies. Whether or not community efforts in this respect are forthcoming, legislative action must provide the crucial initiative.

The National Council of Juvenile and Family Court Judges commends the Final Report of the National Commission on Children, "Beyond Rhetoric, A New American Agenda for Children and Families" to your attention.

The National Council urges you and your subcommittee, Mr. Chairman, to provide for the swift reauthorization of the Juvenile Justice and Delinquency Prevention Act. We have previously provided your staff with information on the National Council and our College, on the many faceted educations, technical assistance and demonstration programs we carry on, and on the ongoing research and statistical analysis and other programs of our National Center for Juvenile Justice. Please call on us if we may be of assistance. We appreciate the opportunity to testify before you here today.

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