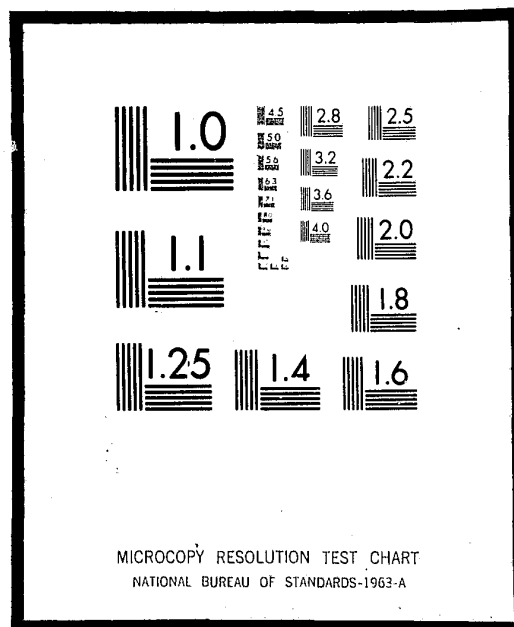


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U.S. DEPARTMENT OF JUSTICE
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION
NATIONAL CRIMINAL JUSTICE REFERENCE SERVICE
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MEMORANDUM

TO: JUVENILE DELINQUENCY SUBCOMMITTEE,
UNITED STATES SENATE

FROM: GOVERNOR'S COMMISSION ON THE
ADMINISTRATION OF JUSTICE
(LEAA State Planning Agency in Vermont)
MICHAEL KRELL and MARIAN CUMMINGS

MAY 20, 1976

In adopting the Juvenile Justice and Delinquency Prevention Act, Congress provided state and local units of government and nonprofit agencies a variety of methods to deal with the phenomenon of juvenile delinquency.

While offering new methods, Congress discouraged or prohibited the use of others which had failed to move this country toward a better relationship with its juvenile population. Focusing on the practice of institutionalization as especially ineffective, Congress proscribed its application in placement of status offenders and discouraged its use with all adjudicated juveniles.

Vermont has demonstrated a firm dedication to deinstitutionalization for all categories of persons committed to its care. The mentally ill, retarded, adult offenders and juveniles of all classifications have been placed over the past few years outside institutional settings. On August 8, 1975, three hundred citizens assembled in a cell block in Windsor, Vermont to celebrate the removal of the last inmate from the oldest operating prison in the United States. As a result, there is no maximum security prison in the State, and Vermont has travelled in a short time from the nineteenth to the twenty-first century in regard to institutionalization. Deinstitutionalization then is the wave of Vermont's recent past, its present and future.

Riding adroitly, however, on the crest of that wave, Vermont's Weeks School still exists as a placement possibility for adjudicated children. Weeks, operated by the

Department of Corrections, is Vermont's only institution for juvenile offenders. Delinquents adjudicated to Corrections as well as status offenders adjudicated to the Department of Social and Rehabilitation Services may be placed there. The school's average daily population ranges around one hundred ten children with approximately forty percent of them adjudicated delinquent and the remainder classified as "without and beyond the control of their parents". That phraseology is "Vermontese" for status offender.

Together these children reside at Weeks which resembles a not quite first rate boarding school. The rooms are attractive. There are no cells as there is no security. No walls surround the school. Author William Nagel characterized Weeks by saying, "If there is such a thing as a good institution for young people, the Weeks School must be that institution".¹

But no one would contend that Weeks is not an institution and it continues to exist as the result of certain unanswered questions. No rational, accountable decision can be made regarding Weeks until the information is available upon which to predicate the answers to those questions.

Vermont has experienced a lack of real knowledge regarding its adjudicated children. By the middle of June, data compiled by the Department of Corrections and funded by a \$30,000 research grant from Law Enforcement Assistance Administration (LEAA) Safe Streets Act monies will allow Vermont finally to know a good deal about its committed children. Persons involved with these children have suspected that there is little

¹William G. Nagel, The New Red Barn: A Critical Look at the Modern American Prison, Walker and Company, New York, 1973, p. 123.

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difference between Vermont's juvenile delinquents and status offenders. Plea bargaining combined with some judges' unwillingness to adjudicate girls "delinquent", it is thought, render the labels meaningless. However, the Governor's Commission on the Administration of Justice and the Department of Corrections have agreed that the State must know, not "think", before some ultimate action is taken regarding the Weeks School.

The need for other information strangely results from the product of deinstitutionalization. Three years of placing some children in alternative situations have returned to Weeks a certain population for whom there apparently was no available appropriate alternative - a population for whom Weeks is at least more appropriate than any existing alternative.

This phenomenon has caused the State to ask certain questions:

- 1) Are alternative settings better than institutions for all children?
- 2) Which of the available alternative care situations are effective and appropriate?
- 3) Are these alternative situations accountable for delivering quality human services and how can the State assure that accountability?
- 4) How can Vermont develop a full range of quality alternatives to institutionalization?

These questions must be answered. Despite Vermont's demonstrated commitment to deinstitutionalization, it has dedicated itself to the higher principle that if all child-

ren are removed from institutions the State must guarantee they will be better off, not worse. Vermont intended to apply PL 93-415 resources toward buying both the time and opportunity to answer those questions and to materialize that guaranty.

The State proposed to allocate the bulk of the funds available under the statute to the Department of Corrections to purchase alternative care for its committed children. This device, labeled Purchase of Services in the vernacular, operates in the immediate sense to place children outside institutions. It also allows the State the opportunity to acquire information that measures the effectiveness of alternative care against that provided by the institution, and the effectiveness of individual alternative care situations against others.

In a broader sense, Purchase of Services creates the atmosphere necessary to the making of rational decisions. No information generated would cause Weeks to be dismantled if it were the only available placement situation for adjudicated children. Creating an institutional alternative seems difficult to many, while institutions are deemed convenient by those who are not compelled to reside within them. The Vermont Legislature, in adopting a community corrections statute, bought the philosophy of deinstitutionalization, but did not pay for it. Vermont's deinstitutionalization efforts have been initiated by the Executive, and are being effected administratively while LEAA, not Vermont's Legislature, has borne a great deal of the cost. Three hundred and fifty thousand dollars

of LEAA funds made possible the closing of Windsor Prison.

Thus, in contrast to states which refused participation in PL 93-415 because they deemed the mandated deinstitutionalization unrealistic or undesirable, Vermont participated to that end, committing itself in good faith, to try.

The Governor's Commission on the Administration of Justice received, on September 2, 1975, notification of a grant award of the FY '75 formula (\$200,000) under PL 93-415. On the fifteenth of September the Vermont Emergency Board, acting on behalf of the legislature, accepted those funds and exercised the State's statutory option for in-kind match.

Predicating its action upon notification of the award and the State's acceptance of funds, the Governor's Commission on the Administration of Justice employed, in October, an additional staff person to implement both the requirement and intent of PL 93-415. LEAA was notified on October 21, that the State had exercised its in-kind match option. It was a month later, on November 20, that the agency received LEAA Guidelines maintaining that there was no such option. The match was to consist of cash. The guidelines were soon followed by a letter from Region I stating that since Vermont had not complied with the cash match provision, no funds awarded might be expended or encumbered. The war of the match has been waged since that time.

The Governor's Commission on the Administration of Justice has prepared for presentation to the Subcommittee an eighty-nine page Exhibit documenting each proceeding

in its difference of opinion with the LEAA Administrator. Unembellished as it is, the Exhibit testifies clearly that the Administrator:

- 1) misconstrued the match provision of PL 93-415;
- 2) violated the intent of Congress in so doing;
- 3) continues to do both of the above;
- 4) acted in less than good faith by allowing grants to be awarded before indicating that LEAA's match requirement would be different from Section 222(d) of the statute.

That these actions were taken, tolerated and continued indicates that those involved in and affected by these actions are experiencing a problem. That problem is of greater magnitude than Vermont's not having received formula funds under this statute. It is even greater than seeing that today, in Vergennes, Vermont, the population of the Weeks School is fifteen percent greater than it was a year ago. The magnitude of the fundamental issue can be seen when one recognizes that the methods employed to operationalize that concept known as the new federalism thwart the results the concept defined as desirable. Those affected by this are all of the people and all of the government in this country.

Fundamental to the principle of the new federalism is the conviction that the states must deal with those phenomena that the nation as a whole finds unacceptable. The principle recognizes certain truths:

- 1) that the phenomena take different forms in different locations;
- 2) that the means to deal with those phenomena must vary in response to local needs;
- 3) that the states, as a result of familiarity with the phenomena and more direct access to the variables which control it, are better able to define the form that action should take, and better able to implement that action.

In adopting the new federalism, Congress attempted, through the block grant concept, to provide the states with the resources and expert assistance by which to take action, and to establish in reality the states' right to do so. A functional right implies the ability to exercise it.

But another principle was overlooked. The right to act, i.e. to do, implies the right to do wrong - to do wrong in good faith but to do wrong. Without the right to do wrong, one cannot do at all. The application of the new federalism has been toward assuring accountability for doing right, and not at all for doing.

Accountability, if it is to have a positive effect upon the administration of a program, must be considered as accountability for doing, and for doing intelligently in good faith. That kind of accountability comes from below and within, and cannot be imposed by administrative guidelines

emanating from a distance. Either intelligent men of good faith will be employed by state government or they will not. Nothing outside the state can affect that.

But State governments have reason to employ intelligent men of good faith. In Vermont, state government is visible and accountable in the most real of senses. Lack of intelligence and good faith is easily identified and rarely excused.

If it can be conceded that intelligent men of good will exist within the states, it follows that they have more reason to do right and less to do wrong than anyone removed from them. They are in a position to assess the nature of the need, to use that assessment in developing a means to alleviate that need, and to observe closely the effect produced by the application of that means.

Assisting those intelligent men of good faith was the Congressional intent in funding, within the Executive, the Law Enforcement Assistance Administration. Its name implies as much. The establishment from Washington through the regions to the states of a decentralized network of human resource and expertise seemingly would create opportunity for that assistance.

Assistance, however, has not been the result. Instead of organizing itself toward that end, LEAA Central directed itself to assuring that those responsible for implementing the program, for the actual doing, should do no wrong. This type of dedication and organization implies that LEAA Central has the authority and knowledge to determine what is right. Two-thirds of all LEAA employees are situated in the Washington office

determining what is right and dedicating themselves to assuring that the states do it.

Although the LEAA Regional office, to which Vermont is assigned, makes a good faith effort to be of assistance, the Boston employees have neither the manpower nor the authority to provide the amount and quality of assistance desirable. It appears, instead, that they are as beleaguered as Vermont employees by the administrative minutia of what LEAA Central establishes as right.

The new federalism has been subject recently to considerable criticism from both Congress and the citizenry. It is said that the block grant has served the nation badly, that it is wasteful, counterproductive and should be abolished. But the principle which is fundamental to producing desired results by means of the block grant never has been applied. Money has been made available to the states, but the authority to expend it in the best interest of the locality has not been transferred. Authority remains in Washington, where LEAA situates the bulk of its employees. Authority is not where the action is, and its inappropriate location frustrates those who are.

Deinstitutionalization has come to be considered as an effective means to deliver human services to status offenders. There is nothing inherent in the principle that prohibits its application to the delivery of governmental services. Deinstitutionalization of the authority vested in LEAA Central would seem necessary to achieving the desired results of the new federalism as applied through the block grant concept,

and its application in this instance would be most appropriate. LEAA Central has committed a status offense by being, in the language of the Vermont Statutes, "without and beyond the control of its parent."

END