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FEDERAL LAW AND THE JUVENILE DELINQUENT

An Address

by

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NOON

I count it a distinct honor to address this, the first convention of the American Association of Juvenile Court Judges--an organization which is entitled to the support and good will of all thoughtful citizens. The cause you serve is close to my heart and one which has caused me much concern.

In my study of the juvenile court movement, I have been impressed by the fact that we have come so far in so short a time. What was regarded by many at the turn of the century as merely a well-intentioned scheme to pamper wayward boys and girls has ripened into an almost universally acclaimed method of dealing with a perplexing national problem. The pioneer efforts in this matter, originating in Chicago and Denver, have brought rich returns. Juvenile courts have been established in a large number of communities, from one end of the country to the other. To many persons this method of dealing with juvenile delinquents seemed to offer a satisfactory solution of the complex problem of crime prevention. It was reasoned, and not without apparent justification, that if we could eradicate juvenile delinquency, the crime problem would gradually disappear. "Stop crime at its source," was a taking phrase. The source was the oncoming generation. The proposal was the essence of simplicity. It captured popular imigination. It was a cure-all.

That the juvenile court was never regarded by its most discerning exponents as more than a partial answer to the crime problem is quite beside the point. The fact is that many people looked upon it as such. Consequently, when Professor Sheldon Glueck and Dr. Eleanor Glueck, of

Harvard, demonstrated through a most careful statistical analysis and case study that eighty-five per cent of the youngsters who passed through one of our better juvenile courts continued their delinquencies for at least five years thereafter, many socially minded people were disillusioned and discouraged. The cure-all had cured only fifteen per cent. By some, the results of the study were resented, questioned, and even denounced. But the reminder, even for those of us who needed no reminder, was a blessing. It brought us back again more sharply than ever to the realization that any single device in the baffling work of preventing crime has its necessary limitations.

When I entered upon my duties as Attorney General five years ago, I determined that I would strike every blow that I could in the fight against crime. In the Department of Justice we have naturally devoted our principal efforts to the traditional fields of Departmental activity--investigation, prosecution, and imprisonment. We have sought to be effective in all three. We have developed new techniques and we have secured the passage of laws calculated to strengthen our hands. That these efforts have met with widespread popular approval I make no doubt. But I must confess quite frankly to you that I have been troubled by the comparatively inconsequential advances in the basic matter of crime prevention. What can the Department of Justice--the National Government's law office--do about it? What contribution can we make? What responsibility should we assume? Such questions are disturbing.

The origins of crime are primarily local, and the sources many. There will ever remain thousands of problems for thousands of separate

communities. At the same time, I am convinced that the Federal Government has a definite responsibility which it cannot afford to shirk. It was this conviction that led me to advocate, over and over again, the creation of a crime prevention unit in the Department of Justice which would serve as a nerve center of helpful impulses and a clearing house of useful information. The Congress has not as yet seen fit to provide us with the necessary funds. The urgency of the problem does not seem to be fully realized. Nevertheless we have made an informal beginning with our present staff. It is a relatively feeble effort but, at least, it is a beginning. Some day the plan will materialize into something definitely worth while. Ultimately such a unit will be created and, in years to come, some person reviewing the struggle will make a vigorous speech expressing a well-warranted indignation that the step was not taken sooner. But we must not be too impatient. These things take time.

In still another field I have felt that we have not discharged our responsibility. I refer to the juvenile delinquent in the Federal system. It was not until 1931 that the Federal Government even recognized juvenile delinquency as a status calling for specialized treatment. Apparently we had learned but little from those sordid pages of history which record that children of eight and ten years of age were put to death for minor infractions of the law. As late as 1833 a death sentence was pronounced upon a child of nine who broke a glass and stole two pennyworth of paint. While it is true that American courts were not chargeable with such brutality, it is nevertheless amazing that we had profited so little from innumerable instances of the

glaring inadequacy of our criminal procedure. In 1931, however, a statute was enacted which permitted the Federal Government to turn over to the State courts certain cases of Federal juvenile offenders. The program was launched with optimism. The Department of Justice set out to perform its delicate task. It secured the assistance of the Children's Bureau of the Department of Labor in interpreting the policy and evaluating the local resources.

But after several years had passed we were faced with the fact that only about five per cent of our juveniles under nineteen years of age were being diverted to local authorities. Manifestly, the system was not working. There were a number of reasons for this. We found in some localities that means for the care of juveniles were either inadequate or completely lacking. We found, also, that as our Federal probation service improved, it was preferable to the probation methods open to us in certain of the States, especially in the matter of institutional treatment. Even in advanced States where the facilities were adequate, we found that they were not permitted for the older offenders, particularly those eighteen years of age. While these were very compelling reasons why, in so many instances, Federal juveniles could not be turned over to State juvenile courts, they were not reasons for subjecting these youngsters to indictment, trial, and imprisonment in the Federal system. To persist in that process involved a complete abandonment of the whole theory upon which the juvenile courts were created. Juveniles had to be handled in one jurisdiction or the other. The State system was not working out and the Federal system had no juvenile court. This experimental period was not, however, a complete loss. We learned much and

some progress was made. For example, we found that as the Federal probation service improved and the number of probation officers increased, juvenile offenders against Federal laws received more intelligent supervision than had been possible in earlier years. Federal judges made increasing use of probation in juvenile cases. In the year 1932 only eighteen per cent of such cases were handled through probation, whereas by June 30, 1937, the number had increased to thirty-two per cent. Nevertheless, these cases were handled as criminal rather than chancery cases. The very structure of the Federal courts made it impossible to provide the type and variety of treatment available in the better juvenile courts in the various States. The necessity of grand jury indictments, infrequent terms of court, the resort to detention in local jails pending trial, and other conditions imposed by an inflexible criminal procedure, made it impossible to initiate reconstructive processes. It is not necessary for me, in this presence, to stress the damaging results which come from the detention of juveniles in the average county jail.

We were faced with two alternatives. First, we might establish a system of Federal juvenile courts with separate judges and separate procedures; or, on the other hand, we might, by legislation, replace the old system of criminal trials with a flexible chancery proceeding. For practical reasons, which I do not pause to discuss, we decided upon the latter course as the only feasible alternative.

I caused such a measure to be drafted, and it was transmitted to the Congress on May 12, 1938. In almost record-breaking time it had become law. The principal features are as follows:

1. It applies to all persons under eighteen years of age.

2. It applies to all Federal offenses committed by juveniles, other than offenses punishable by death or life imprisonment. However, the Attorney General is to be granted the option of prosecuting a juvenile on a charge of juvenile delinquency or for the substantive offense of which he is accused. The purpose of this provision is to make it possible, if it appears desirable, to prosecute the more serious juvenile offenders in the same manner as adults.

3. Juvenile delinquents are to be prosecuted by information and tried before a district judge, without a jury, who may hold court for that purpose at any time and place within the district, in chambers or otherwise. Informal procedure of this kind has been found in many of the States conducive to attaining the humane and beneficent objects of such legislation. The consent of the juvenile is, however, to be required to a prosecution for juvenile delinquency under the Act, instead of for the substantive offense. It has been held that minors may waive the constitutional right to a trial by jury, in the same manner as adults.

4. It is proposed that in the event the juvenile is found guilty of juvenile delinquency, he may be placed on probation or may be committed to the custody of the Attorney General for a period not exceeding his minority, but in no event exceeding the term for which he could have been sentenced if he had been convicted of the substantive offense. The Attorney General is to be empowered to designate any agency for the custody and care of such juveniles. The purpose of this provision is to make possible the use of such State and local institutions and quasi-public homes, as may appear to be suitable.

5. The Attorney General is to be notified of the arrest of any juvenile and may provide for his detention in a juvenile home. The purpose of this provision is to reduce the detention of juveniles in jails to a minimum.

6. The Parole Board is to be given power to parole a juvenile at any time.

7. A saving clause is contained as to the District of Columbia, in view of the fact that the District has its own juvenile delinquency statute.

In making any appraisal of the new act, let me urge you not to place too much emphasis upon its terminology. For example, in the statute we speak of such matters as offenses, trial, prosecution. The reason for this, which may not be apparent at first, is that while State legislation establishing a juvenile court system is based on the theory that the State should act as parens patriae, the Federal Government, under its limited powers, is not in any sense a guardian of juveniles, save in the event of a violation of Federal criminal law. Another explanation lies in the fact that it was not deemed advisable to depart too far from strictly legalistic language, in view of possible opposition that might otherwise have developed, thereby imperilling the passage of the act.

It is extremely interesting to note that throughout the country in the last few years there has been a distinct lessening of the number of juveniles appearing before the juvenile courts. The statistics of the Children's Bureau of the Department of Labor reflect a reduction in delinquency in the years from 1930 to 1936 of approximately twenty-eight per cent. This same condition is reflected in recently published findings of the New Jersey Juvenile Delinquency Commission. I think you will agree with me that these statistics should not be interpreted as necessarily indicating a reduction in the total amount of delinquency or in the number of actual offenders. The explanation probably lies in the fact that other social agencies, such as committees, clinics, community councils, children's bureaus, and similar organizations, are handling an increasing number of cases in an unofficial and informal manner.

Another development of recent years is reflected in the statistics which show that youth contributes more than its share to arrests for such crimes as homicide, robbery, burglary, auto theft, and aggravated assault. As the social agencies of a community become more active, there is left for the juvenile court the more difficult problem of coping with those youthful offenders who have committed the aggravated offenses.

I think that probably this latter trend will be especially observable in the Federal courts. Federal offenses are, for the most part, more serious and call for heavier penalties than the average run of violations of State laws or local ordinances. Kidnaping, extortion, bank robbery, interstate transportation of stolen property, white slave violations--these are the matters which will come before our Federal courts.

The task of the Federal judges will not be an easy one. Moreover, there is presented a challenge to the resourcefulness of Federal officials and a strenuous test of the new Juvenile Delinquency Act.

It has been a privilege for me to discuss these matters with you. What you are doing is worthy of all praise. I do not doubt that its beneficial effects will be increasingly apparent as the years move on; and I salute you as men and women engaged in a great and noble work.