



Department of Justice

ADDRESS

OF

THE HONORABLE BENJAMIN R. CIVILETTI
ATTORNEY GENERAL OF THE UNITED STATES

BEFORE THE

JUVENILE JUSTICE REFORM CONFERENCE

FRIDAY, OCTOBER 12, 1979
12:00 NOON
JERSEY CITY STATE COLLEGE
JERSEY CITY, NEW JERSEY

I am pleased to have the opportunity to address this conference, because the very distinguished people here today are considering a grave subject. It is a self-evident truth that a nation which fails its children cannot long survive. My own association with the Department of Justice in the last several years, commencing with my position as head of the Criminal Division, has convinced me of how critical it is that conferences such as this one be held, that they involve those people who are responsible for the making of the laws and their execution on both a national and local level.

In surveying the current state of affairs, several facts present themselves which, in this International Year of the Child, are sobering indeed.

In 1974, Congress passed the Juvenile Justice and Delinquency Prevention Act, to which I shall return later in my remarks. Section 101(a) of that legislation summarizes the initial findings which motivated the enactment of the Bill and which are as valid, if not more so, today. It reads, in part, as follows:

1. Juveniles account for almost half the arrests for serious crimes throughout the United States today;
2. Understaffed, overcrowded juvenile courts, probation services, and correctional facilities are not able to provide individualized justice or effective help;

3. Present juvenile courts, foster and protective care programs, and shelter facilities are inadequate to meet the needs of the countless abandoned and dependent children, who, because of this failure to provide effective services, may become delinquents.

The three points covered here, namely the high incidence of juvenile crime, the problems surrounding detention, and the failure of the juvenile justice system itself, are still the major moral and legal issues facing us today. Let me elaborate.

First, we have not only the figure of 50 percent given in the 1974 Act, but a whole host of alarming statistics to support the impression which most of us get that our young people are responsible for a disproportionately high percentage of the crimes which are committed in the United States. To be sure, I think that the picture may be exaggerated to some extent. For example, the 98 percent rise in arrests of juveniles for violent crimes exhibited in the decade from 1967 to 1976 has been slowed considerably, and in the case of some crimes, may actually have been reversed since then. Recent figures show that violent crime arrests account for roughly only 10 percent of all juvenile arrests. Nevertheless, it would be both wrong and foolhardy to take much comfort from these slowing trends.

I would therefore strenuously maintain that, irrespective of what figures you choose to cite, there is a serious and continuing problem to be confronted by prosecutors, judges, and

correctional officers with respect to the high incidence of crime committed by adolescents.

The second observation in the 1974 Act concerned the abysmal conditions under which juvenile offenders are incarcerated. Behind this general observation lurks a number of specific ills which cry out for attention.

I need not rehearse here the many difficulties besetting correctional institutions throughout the United States. With respect to juveniles, the difficulties are the most troublesome.

Status offenders are a major part of these difficulties. It should be pointed out that, according to the Children's Defense Fund, 18 percent of the juveniles currently being held in jails in this country have not been accused or convicted of a crime for which an adult would be held criminally accountable. Four percent have not even committed any offense whatsoever.

Although a study done by LEAA has shown that the population of public juvenile facilities has declined somewhat in recent years, it is also estimated that as many as 500,000 juveniles may be admitted to adult facilities each year. There they may be molested, assaulted, or tragically led to take their own lives. Principally, it is highly probable that any criminal inclinations they have may be heightened and solidified. Add to this the fact that blacks and Hispanics are represented among juvenile criminals far in excess of general population

percentages, and it is evident that the systems for detaining problem youths, far from serving the interests of the nation, are likely to undercut them.

The third observation in the 1974 Act was directed at the juvenile justice system itself, at the procedures followed in family courts and other judicial bodies which hear cases involving minors. In the past, it was widely assumed that juvenile delinquency was a social disorder which required appropriate treatment rather than punishment. The practice of keeping juvenile cases away from regular prosecutorial channels, and entrusting them instead to social workers in a nonadversarial process was largely based on this assessment and outlook. As we now know, however, this system, despite its good intentions did not work very well. Curiously, it came under attack increasingly from all sides and persuasions. The system was considered overly paternalistic at the expense of some of the basic rights accorded those accused under our legal system. The juvenile justice system seemed to have become another instance of an institution designed to protect a certain class of people which unexpectedly worked against their interest.

As a result, changes began to appear. In the last few years several states have "recriminalized" juvenile delinquency, redefining it as a crime rather than a social disorder. Prosecutors have been given more authority to deal with juvenile cases, and the adult courts are playing a larger role as well.

The problem is that the system still lacks uniformity of purpose and outlook and is therefore as unpredictable, if not more so, than it was several years ago. Different states may have procedures which bear no resemblance to each other. Needless to say, it is far from clear that this situation will provide a greater deterrent effect. At any rate, the present lack of predictability and uniformity undermines our ability to inculcate in our youth a respect for justice and the legal system.

These are formidable problems, and perhaps the point which emerges most clearly is that they are not susceptible to facile solutions. We will have to look afresh at our outlook on the legal system and our expectations from our system of criminal justice. We will need to balance the very real needs and rights of society to security, against the interests of the juvenile offenders, which are, in the final analysis, the interest of us all. We will need to come up with programs which can be applied uniformly and consistently, without arbitrariness or caprice. None of this will be easy to accomplish, but it is clear that all attempts at piecemeal or reflex solutions have failed.

Good starts have already been made on many levels. Many local task forces have been formed around the country to consider courses of action in the communities. I am also pleased that private foundations have taken an interest in this field and have provided sorely needed supplements to public

funding of projects in delinquency prevention. Most to the point is the 1974 Juvenile Justice and Delinquency Prevention Act, to which I have been referring. That Act created within the LEAA the Office of Juvenile Justice and Delinquency Prevention (OJJDP) which has for five years assisted state and local governments in this area, and done the kind of first class research which is essential for an understanding of the hurdles confronting us. The three year authorization of OJJDP was renewed by amendment of the Act in 1977, and the further renewal will be required next year. In fact, the Department of Justice is proposing a set of amendments to the Act for passage in 1980, which will not only extend the authorization for OJJDP until 1984 but will also facilitate the tackling of the three knotty problems which I have noted.

I would like to share with you my reflections on what should and will be done to improve the current state of affairs, and I will address the problems in reverse order. First, the difficulties resident in the juvenile justice system itself: The OJJDP is committed to develop training programs for judicial and juvenile facilities personnel in order to ensure that the judicial process from start to finish considers carefully the interests of all segments of society and does not lead to the unintended consequences which have plagued the system up until now. Recognizing the validity of many of the criticisms of the

juvenile courts, the Justice Department will be doing its part to facilitate dialogue on what our objectives should be, and the development of a system which will accomplish those objectives. Let me state unequivocally that this is not and should not be a partisan or ideological issue. As a nation, we must come to grips with a process which has not only failed to protect us from disruptive youths, but has hampered us from developing the energies and talents of even the noncriminal juveniles. OJJDP is committed to cooperating with people like you across the country to correct this malady. Better state representation on the National Advisory Committee for Juvenile Justice and Delinquency Prevention, provided by the proposed amendments for 1980, will further this cooperative spirit and will hopefully lead to greater uniformity of philosophy and practice in different regions of the country.

With respect to correctional facilities, there is much to be addressed. OJJDP will do a considerable amount of research to determine whether, and to what extent, racial discrimination operates indirectly in the criminal justice system, so as to account in part for the disproportionate appearance of minority youths in houses of detention. Most important, the Department of Justice will reaffirm its goal of deinstitutionalizing juvenile offenders, particularly status offenders, to the fullest possible degree. Despite some unfortunate local moves to allow the

detention of some juveniles in adult prisons, a major objective will be the removal of all juveniles from those institutions, and the diversion of criminal minors, whenever possible, to community-based residences near their homes. An LEAA study has already shown an increase in the number of group homes, shelters, and other noninstitutional settings. These "open" facilities now represent some 40 percent of all juvenile facilities, and that is a very encouraging sign.

A very important provision of the 1980 amendments would clarify Section 223(a)(12)(A), so as to clearly prohibit the placement of juveniles who have not been charged with or adjudicated for offenses that would be criminal if committed by an adult in facilities that are secure or that are used for the lawful custody of adult offenders. This change in the Act should permit states to continue their progress toward full deinstitutionalization of noncriminal juveniles. In those cases where the practices of states and localities are in violation of the law, the Department will take action to enforce its provisions.

Finally, the Department has been actively supporting the passage of S.10 and H.R.10 in the United States Congress, which would give standing to the Attorney General to sue state institutions which are not providing inmates with treatment, rehabilitation, and sanitary conditions which are their constitutional rights. If enacted, this Bill would do a great

deal for the improvement of the lot of juveniles confined to state facilities.

I have deliberately saved for the last the most difficult problem of all, which is the unacceptably high incidence of criminal acts by juveniles in the first place. In a sense, all the other problems I have discussed are derivative of this one; yet it is so vast and elusive as to seem nearly insoluble. Nevertheless, there is much that we can do and much that the Department of Justice can provide leadership for.

The reauthorization of OJJDP proposed in the 1980 amendments will allow that Agency to continue and to expand its research into types of juvenile crimes, including violent assaults, sexual crimes, and drug abuse. Such studies have proved valuable in determining casual links between behavior and other factors, but important as they are, they are unlikely to lead to any solutions by themselves. Nor are attempts to attack isolated parts of the problem likely to be fruitful. We will need a concerted and holistic approach which respects the extremely complex nature of the present crisis.

It will be necessary to reshape even the community-based facilities being advocated for juvenile offenders so as to provide effective education and treatment and thereby lessen the likelihood that correctional facilities will breed repeat offenders. OJJDP stands ready to work with all parties involved

to accomplish this goal. Obviously, the control of narcotics trafficking is another crucial element in the attempt to address juvenile crime, and both the Drug Enforcement Administration and the Criminal Division will be actively pursuing that goal.

Above all, however, the assertion of the inviolability of every child's right to quality education will do more than anything else to guarantee that youths will perceive their own stake in society, in its discipline, in its orderliness. Children who need an equal start in life, and who are at the age when perceptions of society and government are formed for a lifetime must be given that fair opportunity.

These are just some of the ways in which we can intelligently and creatively come to grips with the problems of juvenile crime. I am proud that the Justice Department has been taking a leadership role in this field. Twenty-five hundred years ago, in another democracy, Socrates paid his accuser this great compliment: "Of all our political men, he is the only one who seems to me to begin in the right way, with the cultivation of virtue in youth; he is a good husbandman, and takes care of the shoots first ... that is the first step; he will afterwards attend to the elder branches; and if he goes on as he has begun, he will be a very great public benefactor."

I am pleased to affirm the commitment of the Justice Department to that concept, to ask you to join in that commitment and to invite you to call upon our assistance in your efforts.

Thank you.