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ADDRESS

OF

THE HONORABLE ARNOLD I. BURNS
ASSOCIATE ATTORNEY GENERAL

BEFORE

THE NATIONAL COUNCIL OF JUVENILE AND
FAMILY COURT JUDGES ANNUAL CONFERENCE

9:00 A.M.
MONDAY, JULY 14, 1986
PROVIDENCE, RHODE ISLAND

NCJRS
JUL 14 1986
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DISTINGUISHED MEMBERS OF THE BENCH AND BAR--LADIES AND GENTLEMEN:

It is a pleasure to be with you today. I come to salute your good efforts toward promoting professionalism and enlightened concern among juvenile and family court judges, and to congratulate you on your approaching golden anniversary. That makes you, I understand, the oldest judicial membership organization in the country. Such a special anniversary offers an excellent occasion not only to celebrate fifty good years of public service but to plan for the future.

Today I would like to anticipate that anniversary just a bit and suggest some of the challenges and opportunities that lie ahead for each of you as a judge and for the National Council, as it supports your efforts.

In glancing over one of your recent annual reports, a statement by Judge John Stekeetee caught my attention. "Preserving the family," he wrote, "is the foremost goal of the National Council's membership." And in the Overview I found this sentence: "The National Council recognizes that children and families form the core of society, and future generations depend on a firm foundation of families and youth."

Let me assure you that your concerns resonate in this administration. President Reagan has called the family "the moral core of our society." Since his California days, the family has figured prominently in his thinking and in his policies. In his most recent State of the Union address, for example, President Reagan called the decline of the American

family a "terrible truth that we can ignore no longer." And he instructed the White House Domestic Policy Council, which Attorney General Meese chairs, to study the plight of the American family in America and to report back by December 1, 1986 with a strategy for taking immediate action.

Attorney General Meese has wasted no time in assembling a Working Group on the Family to complete that task. He has instructed its members to suggest changes in policies, programs and practices that would enable us to do all that we can to support the family.

The decline of the American Family is a relatively recent phenomenon, occurring in the last two decades. "It was once taken for granted," as the Attorney General has said,

Nothing could be more important to our national well-being than the well-being of our families. Our social and political institutions supported family well-being or, at the very least, were careful not to threaten it. Our social norms, our cultural values, and a host of intermediating institutions nurtured and promoted -- and were in turn nurtured and promoted by -- strong families. But in recent years, we have lost sight of the central importance of the family. Changes in laws, policy, and values have, often inadvertently, tended to undermine the family.

When families break down, or fail to form, we Americans suffer. Our country suffers.

It's kind of like the old lady's comment on the Great Depression. "What a pity this old depression had to come along just when times are so bad."

Well, one by-product of this process of family degeneration is the creation of victims of crime. And among the most heart-wrenching are the victims of child exploitation. Recently, the attention of this country has been focused upon the exploitation of our children. Child victimization is not a new issue, but it has finally been brought to the forefront of our collective conscience. The protection of our youngest citizens has assumed the highest priority in the efforts of this Administration.

When I studied law at Cornell Law School, I heard nothing about things like child abuse, child molestation, child exploitation. I venture to say your law school experiences paralleled mine. Judges, especially Juvenile and Family Court Judges, need special training on how to handle kids who have been abused.

There is so much to be done. Just this past March, the Attorney General's Advisory Board on Missing and Exploited Children called for steps "to reduce the heartbreaking problem of abducted, abandoned and runaway children."

You'll like their main recommendation. It's your Council's own number one goal. "The first step," the Board wrote in its report to the President and Congress, "is to bolster family values and to stop the continued disintegration of the family." They also found "caring parents or legal guardians who give children love, discipline, and support" to be the key to preventing children from being out of their homes unlawfully.

Now, there is nothing new or earth-shaking in that assessment. But I wonder how well we in the federal government -- and, for that matter, you in the state courts -- have done by it in practice.

I can't speak for you but, frankly, I'm not sure we've done too well at the federal level. In fact, I have some doubts about how well-suited federal intervention is to juvenile and family court matters. Well, to judge from its report, the Attorney General's Advisory Board -- a non-partisan, non-political group, by the way -- has qualms, too, about the effect of government policies on the problems of missing and exploited children.

Certainly, our present situation is not ideal. In the words of the Advisory Board:

Currently we have more questions than answers, more problems than solutions. Misunderstanding and misplaced emphasis have warped both family priorities and public policies about the family. Misperceptions are perpetuated by a lack of credible information and data.

I do not think the answers lie in more federal intervention. On the contrary, now is the time, it seems to me, for the federal government to ease out of the picture and allow states and localities to take whatever corrective steps are needed. Their juvenile justice agencies are in a much better position to make fine-grained judgments. They are simply much closer to the problems and to the people involved.

But with that restoration of authority to state agencies should go a corresponding responsibility. We must not remain passive in the face of crimes against children. "Society," the Advisory Board has said, "must assist families in those instances where the necessary support systems for building a strong family do not exist."

But society, of course, is not synonymous with government. Society is you and me and our families and our friends, our neighborhoods and communities, our churches and PTAs, our Boys Clubs, and Kiwanis Clubs. It's the private sphere, where we live, work and play. By contrast, government action, action in the public sphere -- however well-intentioned -- will always be further removed from the problem.

I would like to discuss with you four principle areas of concern which have a significant impact on the criminal justice system and its treatment of children -- the child victim, the adult offender, the child witness and the potential child victim.

I see a great deal of hope for the future -- hope that these positive changes can be enacted through legislation, citizen action, and caring professionals whose challenge is to make our institutions more responsive to the needs of victimized children.

First the child victim. To help the child victim, restraints to prompt protective and corrective responses must be removed. This may mean amending state laws to improve the investigation and reporting of missing and abused children. Every state -- I repeat, every state -- should establish a clearinghouse to collect and disseminate this information, to its city agencies and to the FBI.

Unfortunately, our understanding of crimes against children has not kept pace with the realities behind the threats to our children's safety. Efforts are currently underway to better understand and more effectively deal with the acts of kidnapping, sexual exploitation and child pornography. Accurate information from the federal government has not always been clearly and effectively interpreted and reported. It is discouraging to see regular news accounts which suggest that less than 100 children are the victims of the crime of kidnapping by an unknown person in each calendar year. Actually, as you all know, the threat to our children and the threat of kidnapping is much larger in scope.

The Department of Justice is working with the National Center for Missing and Exploited Children to develop reliable statistics. We must begin to understand that the problem of missing children includes those kids who have voluntarily left their homes or who have been kicked out of their living situations, children who are the victims of non-custodial parental abductions and those children who have suffered the tragic fate of being kidnapped at the hands of an unknown perpetrator. If our commitment to our children is strong, each of these categories deserves our attention, our care, our understanding and, most importantly, our effective action to reduce their victimization.

Of course, kids running away from home is not a new phenomenon. They've been doing that, I would guess, for as long as there have been homes. Mark Twain's tale of Huckleberry Finn even romanticizes it. You'll remember, Huck's worthless daddy was in the habit of locking Huck up in the shanty, but one day Huck made a break for it, and so begins a classic piece of American literature. Huck survived, and fortunately, today most runaways -- the largest category of missing children -- return home unharmed.

But some do not. Living on the streets is tough, rough, and dangerous. Without money and shelter, kids become easy prey for pimps, pornographers, and pushers. I feel sure that even in Sam Clemens' day, a runaway's life was full of peril.

My point is, today many of our laws are as fanciful as the Huck Finn fable, and equally unsuited to the harsh reality of life on American streets. They leave our children in danger.

As more and more children are placed outside of parental control, they become victims of crime, drugs, and sexual abuse.

Second, the adult offender. We must strengthen and enforce sanctions aimed at the adult offender. Simply alerting the parents and children to the possibility of victimization is not enough. Child victims are no match for adult perpetrators.

In many cases, an unconscionable disparity exists between the public's outrage over crimes against children and the actual treatment of adult offenders in the courtroom. Multiple offenders are let off as "first offenders". Others are not even prosecuted. These are abuses of prosecutorial and judicial discretion.

This Administration believes that if a criminal justice system is to have any integrity it must be based on the twin concepts of individual responsibility and system accountability. These are our watchwords. Individual responsibility. System accountability. Integrity.

Unfortunately, the division of jurisdiction between adult criminal courts and juvenile courts often means that not enough concern is shown for the child victim when the time comes to sentence the adult offender in criminal court. One solution may

be to recognize a so-called "next friend" of the child victim -- whether the parent, a guardian or a Court Appointed Special Advocate -- to protect the child and family's interests during the criminal proceedings. Another possibility is to give family courts jurisdiction over crimes against children. How would you feel about this? I'd like to know if you want this jurisdiction.

Still other reforms are directed at adult offenders. One change states should consider is making felonies of certain types of family abductions -- for example, where a custody order has been violated. Another is extending their statutes of limitations on prosecutions of child sexual abuse crimes. As you know, such crimes may go undiscovered for years because the child is either unwilling or unable to disclose the offense.

Third, the child witness. We must ensure that the child does not suffer additional trauma at the hands of the justice system. I know that your Council is sensitive to this problem and I commend you for your work toward reform.

But there is more to do. Judges, go ahead, take those steps that you can take in your own courtrooms. Do that much now. Then work for reform in judicial procedures to reconcile conflicts between the strictures of justice and compassion for the child. When prosecutions have to be watered down,

plea-bargained away, dismissed in order to avoid damaging and humiliating a child whose testimony is essential, it's time to change the rules. Judges, I challenge you. Work for a system that assures both that justice is done and that the child victim is protected. We shouldn't have to choose between the two.

I also challenge you to improve the techniques for getting child victim testimony. Be innovative, be creative. There's a lot you can do within the scope of the Constitution. You can remove the need for repeated testimony by using audio or videotape in pretrial proceedings and even video depositions in the trial itself. If your state doesn't have a law that permits it, work for one.

Get that hearsay rule changed if you have to. Get a law passed that permits one investigator to interview the child on behalf of all agencies involved. Try new methods of getting testimony from children. Explore the use of leading questions where there are proper assurances of reliability. Let the child draw a picture to show what happened or to point to an anatomical doll. And don't deny yourself the opportunity in an appropriate case to leave the bench, discard your robes and talk to little Jimmy or Jane in a setting that doesn't scare the dickens out of them. A judge should never let the trappings of justice frustrate justice itself.

Fourth, the potential child victim. We must work harder to protect America's children. Despite the increase in publicity about child exploitation, most Americans, including many in the profession of serving children, are poorly informed. And that ignorance sometimes shows up in our public policies.

Our public awareness programs should aim at creating a balanced understanding of the problems, not fear. Many Americans are not aware, for example, that acquaintances, not strangers, commit most crimes against children. Or that the great majority of missing children are runaways, not victims of abduction by strangers.

Finally, criminal justice professionals need better training to help them handle missing child and child victimization cases. This is a need that the National Council understands well. The Department of Justice is proud to have played a role in funding your training programs. In May, for example, our Office of Juvenile Justice and Delinquency Prevention authorized continued funding of the National Technical Assistance Project for Judges. We recognize the value of this training and of your national organization!

Our Department has also continued funding the National Center for Missing and Exploited Children, new CASA programs, and the National Crime Prevention Council. And we have given seed money to the President's National Child Safety Partnership, which we hope will increase private sector participation. Your own Judge Grossman from Ohio was one of the key witnesses before this partnership last month in Denver.

In conclusion, let me state the obvious -- my thoughts merely scratch the surface and do not by any means exhaust the possibilities for improvement. The National Center for Missing and Exploited Children has also recently published A Guide for Effective State Laws to Protect Children. This analysis and summary of some one hundred selected state statutes deserves your attention. Read it, study it, and ask your own state governors and legislators to do the same.

Well, I've covered a lot of ground today. To sum up: as juvenile and family court judges, you have a job that is special even among other judicial jobs. The health and safety of many American children depend on your work in the courts. Give those kids the best you can give them. After all, as Herbert Hoover put it, "Children are our most valuable resource."

Our responsibility toward the next generation of Americans is truly awe-inspiring. James Agee has captured that feeling well, I believe. He wrote, "In every child who is born, under no matter what circumstances, and no matter what parents, the potentiality of the human race is born again; and in him, too, once more, and of each of us, our terrific responsibility towards human life; towards the utmost idea of goodness, of the horror of error, and of God."

Let's work together and make the best of that potential. I look forward to working with Lou McHardy, Arne Scghoeller, Judges Yeaman and Young, and the rest of you to help make this nation a better and safer place for all of our children.

Thank you.