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SUBCOMMITTEE ON HUMAN RESOURCES
COMMITTEE ON EDUCATION AND LABOR
FEBRUARY 5, 1992

TESTIMONY ON THE REAUTHORIZATION OF THE
FEDERAL JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT

SUBMITTED BY
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ACQUISITIONS

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INTRODUCTION

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

MY NAME IS IRA M. SCHWARTZ. I AM PROFESSOR AND DIRECTOR OF THE CENTER FOR THE STUDY OF YOUTH POLICY AT THE UNIVERSITY OF MICHIGAN'S SCHOOL OF SOCIAL WORK. DURING 1979 AND 1980, I SERVED AS ADMINISTRATOR OF THE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION IN THE UNITED STATES DEPARTMENT OF JUSTICE.

I WANT TO THANK YOU AND THE MEMBERS OF THE SUBCOMMITTEE FOR INVITING ME TO TESTIFY THIS MORNING. THE JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT (JJDP) OF 1974 IS A LANDMARK PIECE OF LEGISLATION. IT CONTRIBUTED SIGNIFICANTLY TO THE REDUCTION IN THE RATE OF INCARCERATION OF STATUS OFFENDERS. ALSO, WHAT PROGRESS HAS BEEN MADE IN REMOVING JUVENILES FROM ADULT JAILS CAN BE ATTRIBUTED TO THE ACT AS WELL.

THE JUVENILE JUSTICE ISSUES OF THE 90s ARE DIFFERENT FROM THE CHALLENGES OF THE 70s AND THE 80s. IT IS THESE NEW CHALLENGES I WOULD LIKE TO ADDRESS TODAY.

THE FUTURE OF THE JUVENILE COURT

THE PARENS PATRIAE MODEL OF THE JUVENILE COURT IS FINISHED. THE JUVENILE COURTS ARE BECOMING MORE PUNISHMENT ORIENTED. JUVENILE COURT DELINQUENCY PROCEEDINGS ESSENTIALLY MIRROR THOSE IN THE ADULT CRIMINAL COURTS, ALTHOUGH THERE IS EVIDENCE THAT LARGE NUMBERS OF YOUNG PEOPLE ARE STILL NOT BEING REPRESENTED BY LEGAL COUNSEL

(FELD, 1989). IN ADDITION, POLICY CHANGES IN THE STATES ARE RESULTING IN A LARGE AND INCREASING NUMBER OF JUVENILES BEING TRIED AS ADULTS.

THE PUBLIC SUPPORTS CHANGES IN THE LEGAL PROCESSING OF DELINQUENTS. A 1991 NATIONAL JUVENILE CRIME SURVEY CONDUCTED BY THE SURVEY RESEARCH CENTER AT THE UNIVERSITY OF MICHIGAN REVEALED 83% OF THE RESPONDENTS BELIEVE JUVENILES SHOULD RECEIVE THE SAME DUE PROCESS PROTECTIONS ACCORDED ADULTS. FIFTY-PERCENT BELIEVE JUVENILES WHO COMMIT SERIOUS PROPERTY CRIMES SHOULD BE TRIED IN THE ADULT CRIMINAL COURTS. SIXTY-TWO PERCENT THINK JUVENILES CHARGED WITH SELLING LARGE AMOUNTS OF DRUGS SHOULD BE TRIED IN THE ADULT COURTS AND 68% THINK JUVENILES CHARGED WITH SERIOUS VIOLENT CRIMES SHOULD BE TRIED AS ADULTS.

THERE ARE MANY POSSIBLE EXPLANATIONS FOR THE PUBLIC VIEWS ON THIS CRITICAL ISSUE. JUVENILE COURT PROCEEDINGS ARE CLOSED TO THE PUBLIC AND THE MEDIA IN MOST JURISDICTIONS. THE PUBLIC MAY BE SKEPTICAL ABOUT AN INSTITUTION THAT OPERATES BEHIND CLOSED DOORS. THEY CERTAINLY KNOW HOW THE ADULT CRIMINAL COURTS OPERATE, BUT THEY MAY NOT HAVE A CLUE AS WHAT TRANSPIRES IN THE JUVENILE COURT. ALSO, THE PUBLIC MAY SIMPLY FEEL THE JUVENILE COURTS ARE NOT THE APPROPRIATE PLACE TO DEAL WITH JUVENILES ACCUSED OF FELONIES.

IN ANY EVENT, IF JUVENILES ACCUSED OF FELONIES WERE TRIED IN THE ADULT CRIMINAL COURTS, THE ONLY DELINQUENCY AND DELINQUENCY-RELATED MATTERS LEFT FOR THE JUVENILE COURTS

WOULD BE MISDEMEANORS AND STATUS OFFENSES. ONE CAN HARDLY JUSTIFY A SEPARATE DELINQUENCY COURT FOR CHILDREN THAT WOULD BE RESTRICTED TO HANDLING THOSE KINDS OF CASES. MOREOVER, MANY, IF NOT MOST, OF THESE MINOR DELINQUENCY AND STATUS OFFENSE CASES COULD BE HANDLED WITH SUCH INTERVENTIONS AS MEDIATION, ARBITRATION, RESTITUTION AND COMMUNITY SERVICES.

IN LIGHT OF THESE DEVELOPMENTS, I BELIEVE THE JJDPA SHOULD BE RESTRUCTURED TO:

1. ENCOURAGE STATE POLICYMAKERS AND JUVENILE JUSTICE PROFESSIONALS TO DEVELOP AND TEST ALTERNATIVES TO THE JUVENILE COURT. OFFICIALS IN A NUMBER OF STATES ARE INTERESTED IN THE POTENTIAL BENEFITS OF A FAMILY COURT SYSTEM (E.G., THE ONE JUDGE ONE FAMILY CONCEPT BEING CONSIDERED BY THE FLORIDA SUPREME COURT). OTHER MODELS ARE BEING DISCUSSED AS WELL. THE JJDPA COULD ACT AS A CATALYST FOR CREATIVE THINKING AND KNOWLEDGE DEVELOPMENT ON THIS IMPORTANT TOPIC.

2. ENCOURAGE ELECTED PUBLIC OFFICIALS AND OTHERS TO IMPLEMENT STRATEGIES AIMED AT ENSURING JUVENILES ARE REPRESENTED BY COMPETENT COUNSEL. DESPITE THE GAULT DECISION, RECENT RESEARCH INDICATES A SUBSTANTIAL PROPORTION OF THE YOUNG PEOPLE APPEARING BEFORE THE JUVENILE COURTS FOR DELINQUENCY AND STATUS OFFENSES ARE NOT REPRESENTED BY COUNSEL (FELD). MANY JUVENILES WAIVE THEIR RIGHT TO AN ATTORNEY WITHOUT FULLY UNDERSTANDING THE SIGNIFICANCE AND IMPLICATIONS OF THEIR DECISION. ALSO, MANY OF THOSE YOUTH

WHO ARE FORTUNATE TO HAVE THE BENEFIT OF COUNSEL ARE OFTEN REPRESENTED BY LESS THAN FULLY COMPETENT COUNSEL.

THE FUTURE OF JUVENILE CORRECTIONS

WHILE THERE IS SUPPORT FOR TRYING JUVENILES WHO COMMIT SERIOUS CRIMES (FELONIES) IN THE ADULT CRIMINAL COURTS, THE PUBLIC PREFERS JUVENILE OFFENDERS BE MANAGED AND PROVIDED WITH SERVICES IN THE YOUTH CORRECTION SYSTEM. THE PUBLIC DOES NOT FAVOR GIVING JUVENILES THE SAME SENTENCES AS ADULTS NOR DO THEY WANT JUVENILES IMPRISONED. FOR EXAMPLE, EIGHTY-THREE PERCENT DO NOT WANT JUVENILES IMPRISONED FOR SERIOUS PROPERTY CRIMES AND 68% DO NOT WANT JUVENILES IMPRISONED FOR SELLING LARGE AMOUNTS OF DRUGS. FIFTY-FIVE PERCENT, A MUCH SMALLER PROPORTION BUT STILL A MAJORITY, DO NOT WANT JUVENILES SENTENCED TO ADULT PRISON FOR COMMITTING SERIOUS VIOLENT CRIMES.

IN ADDITION, THE PUBLIC FEELS IT IS FAR MORE IMPORTANT TO SPEND THEIR TAX DOLLARS ON COMMUNITY-BASED PROGRAMS THAN TRAINING SCHOOLS AND OTHER RESIDENTIAL SERVICES. TABLE 1 BELOW LISTS VARIOUS JUVENILE CORRECTIONAL INTERVENTIONS AND THE PROPORTION OF RESPONDENTS WHO INDICATED IT WAS VERY IMPORTANT TO SPEND STATE JUVENILE CRIME CONTROL FUNDS ON THEM.

TABLE 1

HOW STATE JUVENILE CRIME CONTROL FUNDS SHOULD BE SPENT

ITEM	VERY IMPORTANT*
1. PROGRAMS WHERE YOUNG OFFENDERS CAN REPAY THEIR VICTIMS OR THE COMMUNITY	81%
2. JOB TRAINING AND YOUTH EMPLOYMENT OPPORTUNITIES FOR YOUNG OFFENDERS	70%
3. COMMUNITY-BASED PROGRAMS EMPHASIZING EDUCATION	69%
4. COMMUNITY-BASED COUNSELING	57%
5. VERY CLOSE SUPERVISION WHILE THE YOUNG PERSON LIVES AT HOME OR IN THE COMMUNITY	47%
6. SPECIAL FOSTER HOMES AND SMALL GROUP HOMES	36%
7. BUILDING MORE TRAINING SCHOOLS	36%

*DENOTES PERCENTAGE OF RESPONDENTS WHO FELT IT WAS VERY IMPORTANT TO SPEND MONEY ON THAT PARTICULAR JUVENILE CORRECTION PROGRAM.

IN LIGHT OF THE FISCAL PROBLEMS IN THE STATES AND THE PUBLIC'S PREFERENCES FOR THE FUNDING OF COMMUNITY-BASED PROGRAMS, THE JJDPA;

1. SHOULD INCLUDE STRATEGIES TO INFORM AND EDUCATE STATE AND LOCAL ELECTED PUBLIC OFFICIALS, JUVENILE JUSTICE PROFESSIONALS, YOUTH WORKERS, CHILD ADVOCATES, PUBLIC INTEREST GROUPS AND THE PUBLIC AT LARGE ABOUT THE YOUTH CORRECTION POLICIES AND PROGRAMS IMPLEMENTED IN SUCH STATES AS MASSACHUSETTS, UTAH AND MISSOURI. THESE ARE STATES THAT RELY HEAVILY ON THE USE OF COMMUNITY-BASED PROGRAMS AND RESERVE INCARCERATION FOR SERIOUS VIOLENT OFFENDERS AND CHRONIC REPEATERS.

2. SHOULD PROVIDE INCENTIVES TO ENCOURAGE STATE AND LOCAL POLICY MAKERS AND JUVENILE JUSTICE OFFICIALS TO REDUCE THEIR RELIANCE ON PRE-ADJUDICATION DETENTION. THE ACT SHOULD ENCOURAGE THE REPLICATION OF DETENTION POPULATION CONTROL POLICIES AND PROGRAMS IMPLEMENTED IN SUCH JURISDICTIONS AS BROWARD COUNTY (FT. LAUDERDALE) FLORIDA AND EL PASO, TEXAS. EACH YEAR, THERE ARE APPROXIMATELY 500,000 ADMISSIONS TO SECURE JUVENILE DETENTION CENTERS. APPROXIMATELY 60% OF THE YOUTH CONFINED IN THESE FACILITIES ON ANY ONE GIVEN DAY ARE HOUSED IN OVERCROWDED INSTITUTIONS. ALSO, THE BEST AVAILABLE DATA INDICATES A MORE THAN 50% OF THE YOUTH DETAINED ON A GIVEN DAY ARE NOT EVEN ACCUSED OF A PART I OFFENSE. THIS SUGGESTS THE USE OF SECURE DETENTION IN THE UNITED STATES CAN BE REDUCED SIGNIFICANTLY, WITHOUT

COMPROMISING PUBLIC SAFETY AND AT CONSIDERABLE LONG RANGE COST SAVINGS.

RESTRUCTURING THE FEDERAL JUVENILE JUSTICE PROGRAM

THE FEDERAL JUVENILE JUSTICE PROGRAM NEEDS TO BE OVERHAULED. UNLESS THIS HAPPENS, THE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION (OJJDP) WILL NOT BE ABLE TO REGAIN A MAJOR AND RESPECTED LEADERSHIP ROLE IN THE DEVELOPMENT OF JUVENILE JUSTICE POLICY IN THE UNITED STATES.

THE FEDERAL JUVENILE JUSTICE PROGRAM, AND THE OJJDP IN PARTICULAR, HAS BEEN MISMANAGED AND SUBJECT TO POLITICAL INTERVENTION ALMOST FROM THE DAY IT WAS CREATED. I AM NOT INTERESTED IN TAKING UP THE SUBCOMMITTEE'S VALUABLE TIME DISCUSSING THE PAST AND CURRENT PROBLEMS CONFRONTING THE OJJDP. INSTEAD, I WOULD LIKE TO RECOMMEND:

1. THE SUBCOMMITTEE CONSIDER MAKING THE OJJDP A SEMI-AUTONOMOUS UNIT WITHIN THE U.S. DEPARTMENT OF JUSTICE WITH A 21-PERSON POLICY MAKING BOARD. THE PRESIDENT, THE MAJORITY LEADER OF THE SENATE AND THE SPEAKER OF THE HOUSE SHOULD EACH APPOINT SEVEN MEMBERS WHO WOULD SERVE FOR 3-YEAR STAGGERED TERMS. ANOTHER ALTERNATIVE WOULD BE FOR THE PRESIDENT TO MAKE THE APPOINTMENTS WITH THE ADVICE AND CONSENT OF THE SENATE. AGAIN, THE MEMBERS SHOULD BE APPOINTED FOR 3-YEAR STAGGERED TERMS. MAKING OJJDP A SEMI-AUTONOMOUS UNIT WITHIN THE DOJ WITH A POLICYMAKING BOARD WILL HELP INSULATE IT FROM POLITICS AND IMPROVE THE AGENCY'S POLICY MAKING PROCESS.

2. THE INTEGRITY OF THE OJJDP DISCRETIONARY GRANT PROGRAM MUST BE RESTORED. AT PRESENT, DISCRETIONARY GRANT FUNDS ARE OFTEN "EARMARKED" OR TARGETED BY CONGRESS OR THE JUSTICE DEPARTMENT FOR SPECIFIC PROGRAMS AND TO SPECIFIC ORGANIZATIONS. WHILE MANY OF THE PROGRAMS AND AGENCIES THAT RECEIVE THESE FUNDS ARE WORTHWHILE, THIS NON-COMPETITIVE PRACTICE SHOULD BE PROHIBITED. DISCRETIONARY DEMONSTRATION AND RESEARCH FUNDS SHOULD BE USED TO ADDRESS ISSUES OF NATIONAL SIGNIFICANCE AND TO ADVANCE AND DISSEMINATE KNOWLEDGE IN PREVENTING AND CONTROLLING YOUTH CRIME.

THE PROBLEM OF JUVENILE VIOLENCE

JUVENILE VIOLENCE MUST BE MOVED TO THE TOP OF THE PUBLIC POLICY AGENDA. THE PUBLIC IS DEEPLY CONCERNED ABOUT THIS GROWING PROBLEM. AS STATED EARLIER, A LARGE PROPORTION OF THE RESPONDENTS TO THE NATIONAL JUVENILE CRIME SURVEY WANT JUVENILES WHO COMMIT SERIOUS CRIMES OF VIOLENCE TRIED IN THE ADULT COURTS (68%). ALSO, 45% OF THE RESPONDENTS WANT THESE JUVENILE OFFENDERS SENTENCED TO ADULT PRISON. THIS SUGGESTS THE PUBLIC IS LOSING PATIENCE WITH THIS POPULATION AND IT APPEARS THAT MANY CITIZENS DO NOT FEEL THE YOUTH CORRECTION SYSTEM IS AN APPROPRIATE OPTION FOR THEM.

THE SUBCOMMITTEE SHOULD MAKE JUVENILE VIOLENCE A FEDERAL PRIORITY. IN PARTICULAR:

1. THE PREVENTION OF JUVENILE VIOLENCE SHOULD BE A MAJOR THRUST OF THE OJJDP. THE SUBCOMMITTEE SHOULD

REQUIRE THE ADMINISTRATOR AND, HOPEFULLY, THE BOARD OF OJJDP TO DEVELOP A PLAN AND STRATEGY FOR ADDRESSING THIS ISSUE. THE PLAN SHOULD BE DEVELOPED IN COLLABORATION WITH OTHER APPROPRIATE FEDERAL AGENCIES AND IMPLEMENTED AS SOON AS POSSIBLE.

2. STATE AND LOCAL POLICY MAKERS SHOULD BE ENCOURAGED AND PROVIDED WITH INCENTIVES FOR ADDRESSING THIS ISSUE AS WELL.

REFERENCE

FELD, B.C. (1989), THE RIGHT TO COUNSEL IN JUVENILE COURT: FULFILLING CAULT'S PROMISE. CENTER FOR THE STUDY OF YOUTH POLICY, ANN ARBOR, MI.