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Children and the Law - Foreword

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FOREWARD*

*Birch Bayh***

As a parent, legislator, and former Chairman of the United States Senate Judiciary Subcommittee to Investigate Juvenile Delinquency, the problems of the youth of our nation are very close to my heart. I think that raising a young person is one of the most difficult and important challenges that a person can ever face. Our collective success or failure in raising young people actually determines the future of the country. Happy, secure and well-educated youth will be effective, productive and useful citizens. Young people who have been beaten, starved, or deprived of love have accounted for the major portion of the population of our juvenile and adult institutions.

When the average citizen hears the words "children and the law" he or she believes that it means we will give new rights to young people, without, at the same time, imposing new responsibilities. But, in fact, when young people first confront the American system of juvenile justice, the net result is often more injustice than equity. Our present system of juvenile justice is failing miserably. The time for accepting responsibility, and re-ordering our approach to juvenile justice is now. While theoreticians, practitioners, correctional

* Portions of this forward were previously published in STAFF OF SENATE COMM. ON THE JUDICIARY, 95TH CONG., 2D SESS., REPORT ON CONSTITUTIONAL RIGHTS OF CHILDREN (Comm. Print 1978) (prepared for the Subcommittee on the Constitution).

** Member, United States Senate (D-Ind.); Chairman, U.S. Senate Judiciary Subcommittee on the Constitution; Chairman, U.S. Senate Select Committee on Intelligence; former Chairman of the U.S. Senate Judiciary Subcommittee to Investigate Juvenile Delinquency, 1970-77.

authorities, law enforcement officials, rehabilitation specialists, politicians, and others argue about solutions, the intensity of the problems grow, in some communities to epidemic proportions. As the arguments continue, the lives and potential of millions of young Americans fall between the cracks of our justice system.

Seven years of hearings in Washington and throughout the country by my Subcommittee on Juvenile Delinquency have led me to two important conclusions. First, our present system of juvenile justice is geared primarily to react to youthful offenders rather than to prevent the offense. Second, the evidence is overwhelming that the system fails at the crucial point when a youngster first gets into trouble. The juvenile who takes a car for a joy ride, vandalizes school property, or views shoplifting as a lark, is frequently confronted by a system of justice that is completely incapable of responding in a constructive manner.

Nearly forty percent of all children involved in the juvenile justice system have committed no criminal act in adult terms. Yet these children, nearly one-half million each year, often end up in institutions with hardened juvenile offenders and adult criminals. Instead of receiving counseling and rehabilitation outside the depersonalizing environment of a jail, these youngsters are commingled with youthful and adult criminals. There should be little wonder that three of every four youthful offenders commit subsequent crimes.

There are few alternatives available to juvenile judges who must decide what to do with a juvenile involved in an initial, relatively minor offense. In many instances the judge has but two choices—send the juvenile back to the environment that created these problems in the first place with nothing more than a stern lecture, or incarcerate the juvenile in a system structured for serious offenders, from which the youth will almost invariably emerge prepared to escalate his or her level of law violations into more serious criminal behavior. Each year an excessive number of juveniles are unnecessarily incarcerated in crowded juvenile or adult institutions simply because a workable alternative is lacking. The need is evident for alternatives to essentially ignoring a youth's problems or adopting a course which can only make them worse.

To assist state and local governments as well as individual and private organizations in their effort to provide the alternative, the

Congress in 1974 overwhelmingly approved and the President signed into law my Juvenile Justice and Delinquency Prevention Act.¹ This legislation is designed to prevent young people from entering our failing juvenile justice system, and to assist communities in developing more sensible and economical approaches for youngsters already in the juvenile justice system. In 1977, President Carter signed into law a three-year extension of the Juvenile Justice Act² which announced to the youth of our nation that they have an advocate in the federal government for their constitutional, legal and human rights.

Federal efforts in the past have been inadequate. We have not recognized that the best way to combat juvenile delinquency is to prevent it. The Act represents a significant federal commitment to provide leadership, resources, and financial assistance to state and local governments in order to confront all aspects of the delinquency problem.

I will not assert that the Juvenile Justice Act, even if it is fully funded, will be a magical cure. It does, however, mark a creative beginning.

Congress has taken an initial step forward. Furthermore, Congress has called upon all levels of government to reassess the child-saver rationale that has led officials to prefer institutionalization, especially of the female delinquent, for children who are merely abandoned and homeless, as well as for those who seriously threaten public safety.

Over ten years ago, the Supreme Court declared that children are "persons" under the Constitution and that the Bill of Rights is not for adults alone.³ The 1960's and 1970's saw unusual activity in the Supreme Court in the area of children's rights. Legal questions brought to the attention of the Supreme Court had a profound impact on the cultural and political norms of our country.

The Supreme Court, however, has not been alone in providing the

1. Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. No. 93-415, 88 Stat. 1109 (codified at 42 U.S.C. § 5601 *et seq* (1976) (amended 1977)).

2. Juvenile Justice Amendments of 1977, Pub. L. No. 95-115, 91 Stat. 1048 (codified at 42 U.S.C.A. § 5601 *et seq* (Cum. Supp. 1979)).

3. *In re Gault*, 387 U.S. 1, 13 (1967).

opportunity for children and young people to claim numerous federal and state rights. A large step was taken by the 26th amendment to the Constitution of the United States, which I am proud to have introduced. That amendment lowered the voting age to 18 years. The states responded, generally, in kind by lowering voting and other age standards.

That children should be protected by the Bill of Rights is a new area of social, philosophical and legal thought. The children's rights movement is aimed at establishing clearcut constitutional rights for America's children. The aim of its leaders is not to let children determine their own destiny; adults must ultimately be responsible for children. We hope, however, to establish that a child has a right to a safe, stable home, to a reasonable education, to due process of law and to freedom from abuse and neglect. Adults and institutions have obligations to the young as well as powers over them.

We in Congress have forged ahead in the area of civil rights and women's rights. Yet, we have still not secured the fundamental rights of institutionalized persons, especially children. Whether they be mentally ill, retarded, chronically disabled, or incarcerated in private and public detention or correctional facilities, our responsibility is to see that they too are guaranteed the constitutional protection to which citizens of this country are entitled. These have not yet been made available. This is the last great frontier of civil rights legislation. Congress should move swiftly to enact the "Civil Rights of Institutionalized Persons" bill,⁴ which will be a step in the direction of protecting the fundamental constitutional rights of institutionalized children and adults.

We also must not lose sight of the conditions of the billions of children in other countries. In this regard, I want to take the opportunity to note that we as a nation are celebrating the twentieth anniversary of the 1959 United Nations Declaration of the Rights of the Child. On December 21, 1976, the General Assembly of the United Nations passed a Resolution declaring 1979 the International Year of the Child. The United Nations, by placing the child in the center of world attention, invites the world community to

4. S. 10, 96th Cong., 1st Sess., 125 CONG. REC. S105 (daily ed. Jan. 15, 1979).

renew and reaffirm its concern for the present condition and the future of its children.

The rights and problems of the child are in many instances intimately related to the family. I am especially pleased that the International Year of the Child activities sponsored by the federal government will focus specifically on the child as an individual rather than as an appendage of others. Yet, I also want to emphasize that the United States participation in the Year of the Child is not just an endeavor of the federal government alone. Over 200 national voluntary labor, industrial, civic, professional, and local groups within the United States have endorsed the International Year of the Child and have requested to work with the United States National Commission during the Year.

It is often said, with much validity, that the young people of this country are our future. How we cope with youth in trouble, whether we are vindictive or considerate, will measure our success and it will measure the depth of our conscience. It will determine the type of society we convey to future generations.

We in the federal government know all too well that, to paraphrase Abraham Lincoln, we cannot escape the responsibility of tomorrow by evading it today. We acknowledge our part in seeking to improve our nation's juvenile justice system today. Not everything that is faced can be changed, but nothing can be changed until it is faced.

I am proud to be associated with the children's rights movement. We must never lose sight of the principle that when the rights of one are suppressed, the freedoms of all are jeopardized.

This symposium on "Children and the Law" can greatly assist those of us who strive to correct the injustices leveled against our young people. Together we acknowledge our collective duty to protect the right of our young people to develop physically, mentally, and spiritually to their maximum potential. It is with much pride that I congratulate the staff of the University of Richmond Law Review on the publication of its Summer, 1979 issue on "Children and the Law."

