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THE WHITE HOUSE

WASHINGTON

March 5, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM:

JOHN G. ROBERTS 

SUBJECT:

Statement of Stephen S. Trott
Concerning Examination of
Prospective Jurors

We have been provided with a copy of testimony Assistant Attorney General Stephen Trott proposes to deliver before the Subcommittee on Courts of the Senate Judiciary Committee on March 7. The testimony opposes S. 386 and S. 677, bills that would amend the Federal Rules of Criminal and Civil Procedure, respectively, to require that voir dire of prospective jurors be conducted by counsel rather than the court alone. Trott points out that the trend both in the States and in the Federal system (in which participation of counsel in voir dire is at the discretion of the trial judge) is away from counsel participation, because of the unseemly gamesmanship and inordinate delays accompanying direct counsel participation. Trott points out that the Constitution ensures defendants a fair and impartial jury in criminal cases, and that there is no evidence that court conducted voir dire does not achieve this goal. He also stresses the evidence of abuse and delay from those jurisdictions, most notably New York and California, that have counsel conducted voir dire.

I have reviewed the proposed testimony, and have no objections.

Attachment

THE WHITE HOUSE

WASHINGTON

March 5, 1984

MEMORANDUM FOR GREGORY JONES
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET
FROM: FRED F. FIELDING Orig. signed by M.
COUNSEL TO THE PRESIDENT
SUBJECT: Statement of Stephen S. Trott
Concerning Examination of
Prospective Jurors

Counsel's Office has reviewed the above-referenced testimony, and finds no objection to it from a legal perspective.

FFF:JGR:aea 3/5/84
cc: FFFielding/JGRoberts/Subj/Chron

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Name of Correspondent: Greg Jones☐ MI Mail Report

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Subject: Statement of Stephen S. Trott
Concerning examination of prospective
jurors**ROUTE TO:****ACTION****DISPOSITION**

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
<u>CV Holland</u>	ORIGINATOR	<u>84103101</u>			<u>1 1</u>
<u>CV AT 18</u>	Referral Note: <u>D</u>	<u>84103102</u>			<u>584103106</u>
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DRAFT

STATEMENT

OF

STEPHEN S. TROTT
ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION

BEFORE

THE

SUBCOMMITTEE ON COURTS
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

CONCERNING

EXAMINATION OF PROSPECTIVE JURORS

ON

MARCH 7, 1984

Mr. Chairman and members of the Subcommittee, I am pleased to be here today to express the views of the Department of Justice with respect to parallel bills, S. 386 and S. 677, which would amend the Federal Rules of Criminal (S. 386) and Civil (S. 677) Procedure dealing with the examination of prospective jurors in civil and criminal cases in the federal court system. The Department of Justice strongly opposes enactment of these bills. Our reasons have largely been communicated to the Subcommittee in prior comments on these and predecessor measures, but I am glad to have the opportunity to reiterate and elaborate upon our position in person in light of the dramatic --and in our view unwarranted -- change in federal practice that these bills would bring about. My remarks will focus on the effect of the proposed change in criminal cases, but are equally applicable to the parallel proposal for a change in the civil rules as well.

Currently, Rule 24(a) of the Federal Rules of Criminal Procedure provides that the court may conduct the examination of prospective jurors (the "voir dire"), or may permit the government attorney and the defense counsel to do so. If the court conducts the voir dire, the government and the defense attorneys may perform such supplemental examination as the court deems proper, or submit additional questions to the court for the court to consider asking the jurors. Thus, at present, the extent of the government's and the defense's participation in the voir dire is controlled by the court in the exercise of its discretion. A similar civil rule (Rule 47(a), Federal Rules of Civil Procedure) governs the conduct of the voir dire in civil cases.

S. 386 would amend Rule 24(a), F.R.Crim.P., to require the court to permit the defendant or his attorney, and the attorney for the government, to conduct the voir dire. The court could then conduct additional examination. The court would be authorized to impose such reasonable limitations as it deemed proper on the examinations by the defense and the government, except that each side would be entitled to not less than thirty minutes for the voir dire. In cases involving multiple defendants, the attorneys for the defendants would be allowed an additional ten minutes for each additional party, except that the total minimum time allowed each side could not exceed one hour.

At present, although the Rules permit federal judges to allow counsel for the parties to conduct voir dire examinations, the vast majority of federal judges have for years preferred to conduct the voir dire themselves. We believe that this prevailing practice has proven to be fair and economical. Moreover, based on the problems of certain States, in particular that of my native California, which operates under a rule (like that proposed in S. 386 and S. 677) placing counsel in charge of conducting voir dire examinations, the Department of Justice is seriously concerned that adoption of this approach within the federal justice system would be a grave and costly mistake.

Central to our position with regard to the pending bills S. 386 and S. 677 is our belief that the present system works well and provides wholly adequate assurances against juror bias. As former Assistant Attorney General Rose pointed out, in

testifying before this Subcommittee on this issue in 1981, such assurances are especially important in criminal cases. The federal courts, however, have long interpreted Rule 24(a) so as to recognize the right of a federal criminal defendant to an impartial jury. The Supreme Court has noted that the trial judge's exercise of its traditionally broad discretion over the voir dire, and the restriction of examination by or at the request of counsel, are subject to "the essential demands of fairness,"¹ and has further held that trial judges must conduct or permit sufficient examination to provide a reasonable opportunity for counsel to exercise peremptory challenges in a meaningful way.² The courts of appeals have also held that the voir dire must be conducted in such a way as to afford a "reasonable assurance that [a prospective juror's] prejudice would be discovered if present."³ Thus in our view the current system provides the essential guarantees of fairness. Moreover, while we are aware of the claims of proponents of an attorney-controlled voir dire process that attorneys are more suited to discover bias than judges, because of their familiarity with the case and because as adversaries they are likely to probe more deeply than

¹ Aldridge v. United States, 283 U.S. 308, 310 (1931).

² Rosales-Lopez v. United States, 451 U.S. 182, 188 (1981) (plurality opinion).

³ United States v. Magana-Arevalo, 639 F.2d 226, 229 (5th Cir. 1981).

judges, we are unaware of any serious allegation or evidence that the prevailing federal practice fails adequately to elicit bias or denies the parties the right to an impartial jury.

On the other hand, attorney-conducted voir dire suffers from many actual and potential pitfalls. Attorneys may and do abuse voir dire in a variety of ways, for example by using it to question jurors beyond the proper limits of privacy,⁴ to engage in personality contests with opposing counsel, or to subtly influence jurors. In addition, and of primary concern at a time when swollen dockets and court delays are a major problem in virtually every jurisdiction, including the federal sphere, it seems clear that the federal method of conducting voir dire yields substantial savings in time when compared with a system in which counsel control the process. As pointed out previously in our testimony in 1981, this has been the conclusion of many empirical studies and commentators,⁵ and recent experience in two States, New York and California, amply attests to this proposition. Indeed, we see in the experience in these jurisdictions the realization of the fear we share that a counsel-controlled process of voir dire examination may well run rampant.

A November 1982 study of the New York State Executive Advisory Commission on the Administration of Justice found that jury selection in New York City's over-clogged courts, under a

⁴ See United States v. Barnes, 604 F.2d 121, 143 (2d Cir. 1979).

⁵ E.g., Levit, Nelson, Ball & Chernick, Expediting Voir Dire: An Empirical Study, 44 S. Cal. L. Rev. 916 (1971).

rule entitling lawyers, rather than the judge, to control the voir dire process, consumed up to a third of total trial time in New York City. The Commission concluded that switching to the present federal rule "could create trial time savings equivalent to the work product of 26 additional judges", noting that its survey found that the average time spent in jury selection under the federal rule was approximately one-fifth that consumed under the present New York State rule.⁶ Significantly bills, supported by Governor Carey and the Mayor of New York City, to adopt the federal concept of judge-controlled voir dire, are currently pending in the New York State legislature.

This New York initiative is reflective of a recent trend away from attorney-conducted and toward judge-conducted voir dire. Whereas traditionally the questioning of jurors during voir dire was left to attorneys, as of 1980 only nineteen States allowed attorneys to exercise primary control over the voir dire in civil and criminal cases.⁷ The same trend is evident in the federal system. Whereas in 1970 a report revealed that under the discretionary provisions of the Federal Rules only 56% of the federal judges indicated that they conducted the voir dire without participation by counsel, a 1977 Federal Judicial Center study (the most recent available according to our information) showed that "approximately three-fourths of federal judges

⁶ Recommendations to Governor Hugh L. Carey Regarding Proposals for Jury Selection Reform 1-7 (1982).

⁷ Suggs & Sales, Juror Self-Disclosure in the Voir Dire: A Social Science Analysis, 56 Ind. L. J. 245, 250-251 (1981).

conduct voir dire without oral participation by counsel."⁸ Thus the bills before the Subcommittee would point the federal system in a direction opposite from that in which, on the basis of recent experience, most jurisdictions are moving.

The experience in California with counsel-controlled voir dire examination is even more illuminating. A Los Angeles Times article of February 14, 1984, reported that it recently took nine months and 129 court days to select a jury in a murder prosecution. Another murder case in 1981 involving the ambush of a sheriff's deputy consumed 82 court days. While these instances may be extreme, the trend they exemplify of excessive use or abuse of the jury selection process in California is, in my experience, real and increasing. Indeed, it is not uncommon in California for jury selection even in misdemeanor cases to consume many days.

In January 1984 the United States Supreme Court decided a case involving a murder prosecution arising from the California State system in which, although unrelated to the question presented for decision, the Court noted, with apparent amazement, that the voir dire "consumed six weeks" (emphasis in original).⁹ This prompted the Court to observe in a later footnote that "a

⁸ Ibid. See also G. Bermant, Conduct of the Voir Dire Examination 6 (Fed. Jud. Center Pub. 1977).

⁹ Press-Enterprise Co. v. Superior Court of California, Riverside County, ___ U.S. ___ (decided January 18, 1984 (slip op. p. 1)).

voir dire process of such length, in and of itself undermines public confidence in the courts and the legal profession."¹⁰ The Court went on to state in the same footnote:

The process is to ensure a fair impartial jury, not a favorable one. Judges, not advocates, must control that process to make sure that privileges are not so abused.***

We concur with the Supreme Court's pronouncement stressing the importance to the administration of justice of a court-controlled voir dire system. While we recognize that S. 386 and S. 677 allow the court to impose reasonable limitations with respect to the examination of prospective jurors, the same is true as a matter of law under those States like New York and California presently operating under comparable rules. The experience in many of those States is that judges often decline to exercise their powers to restrain the conduct of the voir dire by counsel within reasonable bounds for fear of committing error that may lead to reversal, or for other reasons. We are apprehensive that a similar phenomenon, leading to abuses and unrestrained exploitation of the jury selection process, would occur in the federal court system if legislation like S. 386 and S. 677 were enacted.

Any such importation of the California or New York experience with counsel-controlled voir dire into the federal system would be disastrous. We are informed by the Administrative Office of United States Courts that for the year ending June 30,

¹⁰ Id. at p. 8, fn. 9.

1983, a total of 316,821 jurors were present in federal court for selection or orientation, and a total of 9769 juries were selected.¹¹ The already strained federal judicial system clearly cannot cope with massive delays in the selection process such as might well be occasioned by a change in practice to a counsel-controlled examination of prospective jurors. Even if these dangers were thought to exist only with respect to so-called "big" cases, it should be remembered that the federal system, at least in litigation involving the United States as a party, probably includes a far higher percentage of major cases than are filed in most State jurisdictions. While we cannot predict that enactment of bills such as S. 386 and S.677 would inevitably produce the worst sort of consequences, we do not believe either that their enactment holds the promise of substantial improvement in the voir dire system sufficient to assume that formidable risk.

In sum, the Department of Justice is cognizant of the concerns of some segments of the defense bar regarding the importance of voir dire and of their belief that permitting counsel to conduct examination of prospective jurors would result in a more thorough examination and could help to assure maximum guarantees against juror bias. However, for the reasons indicated and based on the experience of States which follow such a

¹¹ Actual jury trials in the same period numbered 8629, of which 5064 were in civil cases and 3565 were in criminal cases. About 1100 cases appear to have been disposed of by plea or settlement following jury selection.

practice, we have concluded that changing the current federal rules so as to mandate a counsel-controlled voir dire process would be counterproductive and unwise. Such a change would undoubtedly make trials substantially longer, greatly increase the cost to the taxpayer in civil and criminal cases in which the government is a party (particularly criminal cases in which defense counsel is appointed), and further burden the judicial system. These costs and effects would be incurred despite the fact that the present system works well and includes adequate assurances against juror bias. Accordingly, we oppose the enactment of S. 386 and S. 677.

Mr. Chairman, that completes my prepared statement and I would be happy to try to answer any of the Subcommittee's questions.

THE WHITE HOUSE

WASHINGTON

March 5, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Statement of Alfred S. Regnery Concerning
Missing Children Assistance Act and
Reauthorization of OJJDP - S. 2014, on
March 8, 1984

We have been provided with a copy of testimony Al Regnery, Administrator of the Office of Juvenile Justice and Delinquency Prevention (OJJDP), proposes to deliver on March 8 before the Subcommittee on Juvenile Justice of the Senate Judiciary Committee. The testimony will not please the Subcommittee's chairman, Senator Specter. Regnery supports the proposed Missing Children's Act, which would establish a National Center for Missing and Exploited Children. Regnery opposes, however, reauthorization of the Juvenile Justice and Delinquency Prevention Act, and the office he heads. Regnery argues that the Act has had little positive impact in reducing juvenile delinquency, and has in fact had unintended adverse consequences. For example, the emphasis on deinstitutionalization of juvenile status offenders has forced such juveniles out into the streets and a life of exploitation and crime, rather than, as intended, to alternative facilities. Regnery presents the Administration view that the beneficial programs of OJJDP can be carried out in the Office of Justice Assistance, and that the states should be free to pursue their own agendas in this area rather than have approaches imposed on them through the JJDP Act.

I have no objections to the testimony, although, as noted, it will not be well received by the Subcommittee.

Attachment

THE WHITE HOUSE

WASHINGTON

March 7, 1984

MEMORANDUM FOR GREGORY JONES
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING Orig. signed by FFF
COUNSEL TO THE PRESIDENT

SUBJECT: Statement of Alfred S. Regnery Concerning
Missing Children Assistance Act and
Reauthorization of OJJDP - S. 2014, on
March 8, 1984

Counsel's Office has reviewed the above-referenced testimony, and finds no objection to it from a legal perspective. Note, however, that I believe this policy decision and proposal not to reauthorize the Act will be very controversial.

cc: Richard G. Darman

FFF:JGR:dgh

cc: FFFielding
JGRoberts
Subject
Chron

JV

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

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Subject: Statement Alfred S. Regnery concerning
Missing Children Assistance Act and
reauthorization of OJJDP-S. 2014, on
March 8, 1984

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DRAFT

STATEMENT

OF

**ALFRED S. REGNERY
ADMINISTRATOR
OFFICE OF JUVENILE JUSTICE AND
DELINQUENCY PREVENTION
DEPARTMENT OF JUSTICE**

BEFORE

THE

**COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON JUVENILE JUSTICE
UNITED STATES SENATE**

CONCERNING

**MISSING CHILDREN ASSISTANCE ACT AND
REAUTHORIZATION OF OJJDP - S. 2014**

ON

MARCH 8, 1984

1984 MAR -2 PM 12:10

TESTIMONY BEFORE SENATE SUBCOMMITTEE ON JUVENILE JUSTICE
SENATE JUDICIARY COMMITTEE

Missing Children's Act and Reauthorization of the
Juvenile Justice and Delinquency Prevention Act

Thank you very much, Mr. Chairman, for inviting the Department of Justice to testify this morning on the Missing Children's Act and on the reauthorization of the Juvenile Justice and Delinquency Prevention (JJDP) Act. I am here, as the Administrator of the Office of Juvenile Justice and Delinquency Prevention (OJJDP), on behalf of the Department of Justice and the Administration.

Missing Children

The Department supports the portions of the proposed Missing Children's Act which would establish a National Center for Missing Children and which would provide other services to missing children. This Committee has heard, as has the House of Representatives, considerable testimony regarding the missing children issue and what can be done about it. We believe that the federal government can be of greatest assistance in dealing with the problem through the establishment of a National Center for Missing and Exploited Children.

My office is now in the process of developing a plan for a National Center for Missing and Exploited Children which we hope to fund and have operating soon. That project is designed to accomplish most of the things envisioned by S.2014. We hope to provide first-year funding of \$1.5 million, which we believe will be adequate to establish the Center, hire a competent and sufficient staff, fund a hotline, prepare and distribute materials, information, and data to the public, assist law enforcement, the

public, and citizen groups concerned with missing children, and orchestrate a prevention campaign. After the Center has been functioning for several months, we will know better, of course, whether that budget is sufficient.

Although data and statistics are not definitive, estimates indicate that as many as a million-and-a-half children are missing from their homes each year. Approximately one million of these children are runaways or throwaways — children forced out of their homes. Additionally, thousands of children are kidnapped by unknown individuals or non-custodial parents. The results of a three-year study by the Missing and Exploited Child Unit of Louisville, Kentucky, revealed that as many as 85% of the exploited children they encountered were missing from their homes when they were subject to exploitation.

The most critical point is this: any child who has lost his or her home is in significant danger from emotional, physical, sexual, or criminal exploitation. The existence of a national resource center will help identify the relationship between missing and exploited children and the link between exploited children and later delinquency.

A federal response to these issues is both critical and appropriate. The striking mobility of our society means that the case of a missing child or an investigation into child pornography quickly moves beyond local law enforcement jurisdictions. There is a definite need for national coordination and dissemination of information in cases of missing and exploited children. Furthermore, we have learned that the search for a missing child is often a lonely search — conducted by the parents and relatives themselves. These dedicated individuals have expressed, even before this Subcommittee, their critical need for help. A National Center for Missing and Exploited Children will provide the active assistance

needed in dealing with this national problem.

S.2014 calls for an authorization of \$10 million with which to fund Missing Children's activities. Although we do not know that such a sum is necessary, the Administration has no objection to an appropriate amendment to the authorization for the Office of Justice Assistance, where we recommend that this new authority be placed. We also suggest that the actual funding level be established as "such sums as may be necessary" rather than specified at \$10 million, inasmuch as we do not yet know what level of expenditure will be required for such functions.

Reauthorization

As you know, Mr. Chairman, the Administration does not support reauthorization of the JJDP Act. Those functions of the office which have proven to be worthwhile and successful, in addition to the missing children aspects of the bill before you, would be carried forth instead by the Office of Justice Assistance. Other functions of the JJDP Act have been adequately tested, we believe, to indicate whether they either work or do not; those activities that have demonstrated their effectiveness can be continued and funded by state and local governments, if they so desire. Other functions of the office which have proven to be counterproductive should no longer be funded by the federal government. In all cases, we believe that the programs of the sort required by the JJDP Act should not be mandated to the states.

Deinstitutionalization of Status Offenders

One of the primary purposes of the Act was to deinstitutionalize status offenders (those juveniles whose offenses would not be offenses were they adults), diverting them from the judicial system and out of secure detention facilities and into community-based, non-judicial settings.

Deinstitutionalization of status offenders has largely been accomplished as a result of the JJDP Act, at least to the extent that juvenile status offenders are now only rarely held in secure detention facilities. The effects of deinstitutionalization, as I will indicate later in my testimony, are not as positive.

Forty-six states and the District of Columbia now participate in the JJDP Act by, among other things, deinstitutionalizing their status offenders in order to get JJDP Act money, in accordance with Section 223 (a)(12)(A) and (B) of the Act. Each of these states has submitted a plan and submits annual reports to my office containing a review of its progress made to achieve deinstitutionalization. (Cite compliance statistics.) The other four states, North Dakota, South Dakota, Wyoming, and Nevada, indicate at the present time no desire to participate in the Act.

We believe that the states which now participate in the program will continue to deinstitutionalize without the federal government's money, and will be able to do so more successfully without the unyielding and strict requirements of federal law. Each state has a different set of circumstances and, without the need to comply with federal mandates, will be able to adjust its programs to meet its own local problems and conditions. Since the funds OJJDP provides to states are insufficient to cover the full cost of deinstitutionalization, the individual states must have shown a commitment to deinstitutionalize status offenders in order to participate in the program. More than federal money, in other words, was required for the states to join the program; with the relatively small amount of OJJDP money going to each state, there is no reason to believe that the states will now retreat from their commitment, with the exception of perhaps amending the statutes to more nearly conform to local

conditions.

The JJDP Act also provides that in order to participate in the program, delinquent juveniles shall not be held in institutions in which they have regular contact with adults. Section 223 (a)(13). Those states participating in the program have made sufficient progress under this section to deem these separation requirements an almost total success.

In 1980, the JJDP Act was amended to mandate that, beginning in 1985, no state participating in the program may detain juveniles in jails or lock-ups for adults. Section 223 (a) (14). Because this mandate is not fully in place, it is not possible to report precisely what each state has done. However, OJJDP, through its state representatives, does monitor the states' progress and is generally aware of whether each state would be able to be in compliance by 1985 in the event the Act were reauthorized. See Appendices A and B for a summary of states' compliance with Section 223 (a) (12), (13) and (14).

Again, because of the relatively small amount of federal money involved, the states are not undertaking the jail removal requirements because of federal money, but because they believe it is the right thing to do. Those that have adopted the philosophy of the Act will continue this mandate without the federal government telling them to do so; those which cannot, or do not, wish to carry out this mandate may cease participation in the program. We believe that the states will be able to perform these functions better, in fact, without the federal mandates, because the state legislatures will be able to respond more creatively to their own individual problems.

Impact of Deinstitutionalization

Because the Act places such emphasis on deinstitutionalization, and

because one of the purposes of the mandate, when the statute was passed, was to reduce criminality among juveniles, it is worthwhile to examine the impact deinstitutionalization has had on recidivism. We have done that by reviewing virtually all existing empirical studies on deinstitutionalization.

Our findings are startling. Comparisons of deinstitutionalized status offenders and non-deinstitutionalized status offenders generally show no differences in recidivism. Of the fourteen programs in which recidivism rates could be compared, no differences were found in eight, in three, the deinstitutionalized status offenders did better, and in three, they did worse.

Further, although commitment of status offenders to public correctional institutions has declined since the beginning of the federal effort in 1974, it has not been ended, and there has been a substantial increase in commitments to private correctional institutions.

We have found that both of the major strategies for reducing or eliminating the secure confinement of status offenders (developing alternative programs or issuing absolute prohibitions against confinement) produced unintended side effects. Many jurisdictions that developed alternatives without prohibiting confinement experienced "net widening" effects in which the alternative programs were used mainly for juveniles who previously had been handled on an informal basis and the status offenders who previously had been detained continued to be held in secure facilities. Additionally, the absolute prohibitions against confinement produced changes in the use of discretion (popularly termed "relabeling") which resulted in many of the cases that previously might have been treated as status offenses being handled as minor offenses. Worse, in some of the jurisdictions which prohibited confinement, we have found that law enforcement officers and the agencies responsible for delivery of services

on a voluntary basis simply were not dealing with these youths at all and that those most in need of services were not receiving them.

What has been the impact of the removal of services, and the removal of the ability of local jurisdictions to hold certain status offenders in secure facilities? Although hard data is scanty and difficult to find, in at least one area it appears the Act may have done more harm than good. That area involves runaways — one of the most frequently committed of the status offenses.

In 1975, the year after the JJDP Act was passed, the Opinion Research Corporation concluded that some 700,000 children ran away from home each year. Today, however, nine years later, the Health and Human Resources Department estimates that number to be 1.8 million, more than twice as high. Yet in 1975 there were 29.5 million teenagers, and today there are 3.5 million fewer, or 26 million.

The effect of the JJDP Act on runaway youth has been to effectively emancipate them, or to allow those who would leave home a free hand. It has inhibited, for all intents and purposes, the law enforcement system from dealing with and attempting to control runaway youth — a law enforcement system which may have had some faults, but also provided troubled youth with services and assistance.

In many jurisdictions, deinstitutionalization has encouraged and even forced authorities to neglect runaway and homeless children. In this country's toughest urban centers, deinstitutionalization has meant, not transferring youths from reform schools to caring environments, but releasing them to the exploitation of the street.

The 1974 Act and its amendments make it virtually impossible for state and local authorities to detain status offenders in secure facilities for

more than a few days, or in some instances, hours. In the case of runaways, that prohibition is too extreme. In some situations, secure settings - not jails - are necessary to protect these children from an environment they cannot control and often are unable to resist. The costs of such a policy to those children - and to society generally - are too great to continue.

A study recently conducted in Florida on runaways concluded that of those children who stay away from home for more than two weeks, 75% will be supporting themselves within that two week period, by theft, drugs, prostitution, and pornography — in other words, by crime. Many are arrested and enter the judicial system no longer as status offenders, but as criminal offenders — often for crimes that they were virtually forced to commit in order to survive. In many cases by providing services to them at an early stage, the law enforcement system could help these children return home, thereby preventing subsequent criminality.

By no means do all runaway or homeless children need closed programs. We fully endorse the views of such experts as Father Bruce Ritter who runs the Covenant House in New York City, who believe that those children living on the street most likely to be helped are those who recognize they need help and who turn to and remain at voluntary facilities.

But what do we do for the thirteen year old runaway girl, living on the street, selling her body, who is repeatedly returned to her parents or a voluntary foster setting, and who repeatedly runs back to the street? In some cases, according to many experts who have dealt with the problem at first hand, the only answer is being able to use secure confinement, again not for punishment, but for treatment. As Father Ritter who has probably had more experience with runaway children than virtually anyone else in

the country, says:

"A thirteen year old girl is pimp bait. She'll be lucky if she survives to her fifteenth year. If she does survive to her fifteenth year, she'll be no good to anyone, including herself. I don't think you can let a fifteen year old girl wander loose and I don't think the state has the right to say 'we're going to wash our hands'. . . .

"Sometimes kids are so out of control and incapable of making an informed, mature decision in their best interest that adults have to make that decision for them. It is criminal not to. But once you make that decision to place a child in a closed program, you have got to make the equally difficult decision to make sure it is a good one."

The 1974 Act and its amendments erred by specifying too strictly the ways in which state and local authorities could handle the status offender problem. By imposing the same standard in every state, we may have helped the states begin the process of deinstitutionalizing, but in a manner sufficiently unyielding as to make matters worse. By now lifting federal restrictions, we believe that state law will be adjusted to meet the specific problems of each state, but without returning to the old system of jailing status offenders.

Delinquency Prevention

OJJDP has, in the past years, directed a considerable amount of its resources to delinquency prevention. Delinquency prevention is a process that involves schools, families, communities, neighborhoods, churches, and community-based organizations — areas where it is difficult for the Department of Justice in particular, and the federal government generally, to make a difference. Delinquency prevention is made up of those things which are good for youth in general — things which the federal government will do in any case, under names other than delinquency prevention. Accordingly, we find more than thirty different bureaus and offices in the federal government which engage in, as they are broadly defined,

delinquency prevention activities with expenditures of billions of dollars.

The delinquency prevention programs OJJDP has supported in the past have done little to prevent delinquency. In a major evaluation of the Office's delinquency prevention activity, the National Council on Crime and Delinquency, in The National Evaluation of Delinquency Prevention: Final Report (1981), came to this discouraging conclusion after looking at over sixty different programs that the Office had funded:

"Data from this national study together with past research suggest that the idea of preventing delinquency remains excessively ambitious if not pretentious. There is a large gap between policy makers' hopes and what can be accomplished by prevention programs funded under this broad notion. As yet, social scientists have not isolated the causes of juvenile delinquency, but even if they were known it is not obvious that anything could be done about them. Many writers would agree that delinquency is generally associated with the growth of industrialism and social trends (e.g., poverty and racism) of such scope and complexity that they cannot easily be sorted out and remedied Given this perspective on delinquency it becomes fruitless or even naive to believe that highly generalized and often unclear directives to introduce prevention programs into heterogeneous target areas can curtail delinquency."

We believe that federal delinquency prevention programs based on social service activities should be housed in departments other than the Department of Justice, such as the Department of Health and Human Services, the Department of Education, the Department of Housing and Urban Development, and the ACTION agency. Those aspects of juvenile delinquency appropriately addressed by the criminal justice system, and therefore suited to the Department of Justice, should be funded through the Office of Justice Assistance.

Serious Juvenile Crime

Juveniles commit some 35% of all serious crime in the United States, and some 20% of all violent crime. Although the percentage is slightly lower than it was ten years ago, arrest rates for juveniles, as a percentage of the juvenile population, remains about the same.

Juvenile crime is, and is increasingly treated by the states as, a criminal justice issue. Accordingly, programs to assist juvenile courts, as well as criminal courts, in dealing with the issue of juvenile crime could be more efficiently sponsored through the Office of Justice Assistance, as part of its consolidated criminal justice assistance responsibilities, than through a separate office which deals only with juveniles.

Most serious and chronic juvenile offenders go on to become adult criminals, and most adult chronic offenders were offenders when they were juveniles. The states now treat chronic offenders, whether they be juveniles or adults, in a similar manner much more than heretofore. The result is that such offenders are increasingly in the same law enforcement system, the same court system, and even the same correctional system. Having a separate juvenile justice office within the Department of Justice to address only those parts of the system which deal with juveniles is an artificial distinction which often duplicates services that are provided by other offices within the Department and forces the Department to act in a less efficient manner than it otherwise might.

Some may argue that it is wrong for the states to treat juvenile offenders as adults. We believe that is an argument which should be made and resolved in the state legislatures. Each state is different; each state has a different set of problems, different statutes, and different legislatures and constituencies which see things in different ways. We believe that the genius of the federal system is reflected by the states' ability to be able to handle their problems in their own way. The development and implementations of criminal justice policy, outside of the federal justice system, is one of those state prerogatives which may be assisted by the federal government but without federal interference.

Assistance which is rendered by the federal government, such as by the Office of Justice Assistance, can be beneficial, but should be done without specific mandates and without the imposition of requirements that state laws be changed.

In conclusion, we do not dispute that OJJDP has done many good things during existence, and recognize that it continues to fund many excellent programs. Nevertheless, we do not believe its programs warrant continuation of a separate office and the expenditure of \$70 million, particularly in times of restricted federal budgets. OJJDP, for all of its good programs, has had little impact on crime. OJJDP has brought a new awareness to the world of juvenile justice, but that new awareness should now be carried forth in state and local governments, in the communities, volunteer groups, and neighborhoods throughout the country.

Finally, some of the projects which transcend both the juvenile and criminal justice systems, and which are sufficiently within the federal province, can be assisted through the Office of Justice Assistance.

Appendix A

Summary of Compliance with Section 223 (a) (12), (13), and (14) of the Juvenile Justice and Delinquency Prevention Act

There are 57 states and territories eligible to participate in the Juvenile Justice and Delinquency Prevention Formula Grant Program. Currently 53 are participating; the four not participating are Nevada, North Dakota, South Dakota, and Wyoming. According to the most recently submitted and reviewed State Monitoring Report, the following is a summary of compliance with Section 223 (a) (12), (13), and (14).

SECTION 223 (a) (12) (A)

Deinstitutionalization of Status Offenders and Non-Offenders

- A. Of the 53 participating states, 47 have participated for five or more years and are thus required to achieve full compliance with Section 223 (a) (12) (A) of the Act to maintain eligibility for FY 84 Formula Grant funds. Of these 47 states, a determination has been made that the following 44 states and territories are in full compliance pursuant to the policy and criteria for full compliance with de minimis exceptions.

Alabama	Michigan
Alaska	Minnesota
American Samoa	Mississippi
Arizona	Missouri
Arkansas	Montana
California	New Hampshire
Colorado	New Jersey
Connecticut	New Mexico
Delaware	New York
District of Columbia	Oregon
Florida	Pennsylvania
Georgia	Puerto Rico
Guam	Rhode Island
Illinois	South Carolina
Indiana	Tennessee
Iowa	Texas
Kansas	Trust Territories
Kentucky	Vermont
Louisiana	Virginia
Maine	Virgin Islands
Maryland	Washington
Massachusetts	Wisconsin

Three of these 47 states have not to date been found to be in full compliance with the deinstitutionalization requirement. Those states are Hawaii, Idaho, and Ohio.

- B. Of the 53 participating states, four must achieve substantial or better compliance to be eligible for FY 84 Formula Grant funds. Those states are North Carolina, Northern Marianas, Utah, and West Virginia. All four have been found in full compliance.
- C. Two of the 53 participating states, Nebraska and Oklahoma, must demonstrate progress to maintain eligibility for FY 84 funds and each have done so.

SECTION 223 (a) (13)

Separation of Juveniles and Adult Offenders

There are 39 states which have demonstrated compliance with Section 223 (a) (13) of the Act. Fourteen other states have reported progress. Those 39 states which have been found in compliance with the separation requirements are:

Alabama	Nebraska
American Samoa	New Hampshire
Arizona	New Jersey
Arkansas	New Mexico
Connecticut	New York
Delaware	North Carolina
District of Columbia	Northern Marianas
Florida	Ohio
Georgia	Pennsylvania
Guam	Puerto Rico
Hawaii	Rhode Island
Illinois	South Carolina
Iowa	Texas
Kansas	Utah
Louisiana	Vermont
Maine	Virginia
Maryland	Virgin Islands
Massachusetts	Washington
Michigan	Wisconsin
Minnesota	

The 14 states reporting progress are:

Alaska	Missouri
California	Montana
Colorado	Oklahoma
Kentucky	Oregon
Idaho	Tennessee
Indiana	Trust Territories
Mississippi	West Virginia

SECTION 223 (a) (14)

Removal of Juveniles from Adult Jails and Lockups

All participating states and territories must demonstrate full compliance or substantial compliance (i.e., 75% reduction) with the jail removal requirement by December 1985. Eligibility for FY 1984 Formula Grant funds is not dependent upon the states' level of compliance with the jail removal requirement of Section 223(a)(14). Refer to "Appendix B" (attached) for information on the number of juveniles held in adult jails and lockups.

APPENDIX B

The summary of state participation in the Juvenile Justice and Delinquency Prevention (JJDP) Act and compliance with the deinstitutionalization and separation requirements of Sections 223 (a) (12) and (13) of the Act is based upon the 1982 monitoring reports which determined states' eligibility for FY 1984 formula funds (10/1/83 - 9/30/84).

Attached are two fact sheets showing the number of status offenders and non-offenders held in secure detention and correctional facilities and the number of juveniles held in regular contact with incarcerated adult persons. The data presented represents a twelve-month period and was actual data for some states and projected to cover a twelve-month period for other states. All current data is that provided as "current data" in the 1982 monitoring reports. The baseline data for the number of status offenders and non-offenders held in secure detention and correctional facilities is that provided as "baseline data" in the 1979 reports. The baseline data for the number of juveniles held in regular contact with adult offenders is that provided as "baseline data" in the 1981 reports. Only participating states are included in the figures. A fact sheet showing the number of juveniles held in jails and lock-ups is attached. However, this data is not projected to cover a twelve-month period.

The nationwide baseline data for the number of status offenders and non-offenders held in secure detention and correctional facilities was determined to be 199,341. The nationwide current data showed 22,833 status offenders and non-offenders held in secure detention and correctional facilities. Thus, by comparing baseline and current data, the number of status offenders and non-offenders held in secure facilities has been reduced by 88.5% over the past 5 to 7 years. According to the 1980 census, approximately 62,132,000 juveniles under the age of eighteen reside in the participating states. Thus, the number of status offenders and non-offenders currently held computes to a national ratio of 36.7 status offenders and non-offenders securely held per 100,000 juvenile population under age 18. This national ratio is in excess of the maximum rate which an individual state must achieve to be eligible for a finding of full compliance with the deinstitutionalization requirements of Section 223 (a) (12) (A) of the JJDP Act, pursuant to OJJDP's policy and criteria for de minimis exceptions to full compliance. It should also be noted that these figures do not include those status offenders and non-offenders held less than 24 hours during weekdays and those held up to an additional 48 hours (i.e., a maximum of 72 total hours) over the weekend.

The number of juveniles held in regular contact with incarcerated adults has reduced from 97,847 to 27,552. This computes to a 71.8% reduction over approximately a five-year period.

Based upon the number of status offenders and non-offenders currently held in secure facilities, which is a 88.5% reduction in the number held five or more years ago, and based upon the fact that 48 states and territories have been found in full compliance with de minimis exceptions, it is evident that substantial progress has been made in attaining the

Number of Status Offenders and Non-Offenders Held in Secure Facilities*

	Baseline*B	Current*C	
ALABAMA	4,836	412	
ALASKA	485	14	
ARIZONA	4,410	632	TOTALS
ARKANSAS	3,702	0	Baseline Current
CALIFORNIA	34,216	238	
COLORADO	6,123	370	199,341 22,833
CONNECTICUT	699	0	
DELAWARE	374	2	
DIST. OF COLUMBIA	178	4	
FLORIDA	9,188	22	
GEORGIA	4,047	432	*A - All Data is 12 month
HAWAII	681	629	actual or projected to
ILLINOIS	4,188	1,272	cover a 12 month period
INDIANA	5,391	136	
IOWA	7,494	438	*B - Baseline data is that
KANSAS	1,204	8	provided as baseline data
KENTUCKY	3,826	576	in 1979 report.
LOUISIANA	4,849	1,104	
MAINE	3,179	111	*C - Current data is that
MARYLAND	41	0	provided as current data
MASSACHUSETTS	857	4	in 1982 report.
MICHIGAN	37	0	
MINNESOTA	14,344	35	*D - Nebraska baseline data is
MISSISSIPPI	6,309	7	that provided as baseline
MISSOURI	1,170	244	data in 1981 report.
MONTANA	4,786	366	
NEBRASKA	1,224	85	
NEVADA	546*D	624	
NEW HAMPSHIRE	Not Participating		
NEW JERSEY	200	0	
NEW MEXICO	217	29	
NEW YORK	2,376	48	
NORTH CAROLINA	7,933	2	
NORTH DAKOTA	2,678	580	
OHIO	Not Participating		
OKLAHOMA	16,552	3,099	
OREGON	No data required		
PENNSYLVANIA	4,110	71	
PUERTO RICO	3,634	45	
RHODE ISLAND	1,572	17	
SOUTH CAROLINA	1,568	184	
SOUTH DAKOTA	Not Participating		
TENNESSEE	4,078	2,940	
TEXAS	4,722	976	
UTAH	2,448	689	
VERMONT	218	36	
VIRGINIA	6,558	328	
WASHINGTON	9,600	0	
WEST VIRGINIA	627	7	
WISCONSIN	2,847	136	
WYOMING	Not Participating		
AMERICAN SAMOA	961	0	
GUAM	4	0	
NORTHERN MARIANAS	228	39	
WEST TERRITORIES	0	0	
GREENLAND	178	0	
MARIANAS	0	0	

deinstitutionalization objective of the Act. However, considering, as stated above, that status offenders held less than 24 hours are not included and considering that states can securely hold status offenders at a level acceptable for a finding of full compliance pursuant to the de minimis policy, it is also evident that the deinstitutionalization objectives have not been fully met. It is also noted that OJJDP determines compliance a statewide aggregate data, thus cities, counties, regions or districts may not have achieved local compliance in their efforts to deinstitutionalize.

The efforts to deinstitutionalize status offenders and non-offenders and to separate juveniles from incarcerated adults is a continual effort to achieve the objective of the Act in all aspects and in all localities. Once achieved, the same diligent effort must be provided by the federal, state and local agencies to ensure compliance is maintained. The impetus to achieve and maintain compliance must continue at all levels or gradually there will be lessening of the thrust and progress will slowly dwindle.

JJDP Act legislation does not require states to be in either substantial or full compliance to be eligible for FY '84 dollars. The attached fact sheet on Section 223 (a) (14) shows progress being made at the national level but not necessarily at the state level. Based upon individual state reporting periods varying from one month to twelve months, there appears to be an overall 18.9% reduction in the number of juveniles held in adult jails and lock-ups. This data does not include those juveniles who are waived or those for which criminal charges have been filed in a court having criminal jurisdiction. This data, also does not include those juveniles held in adult jails or lock-ups for less than six hours.

Attachments

SECTION 223(a)(13)

Number of Juveniles Held in Regular Contact With Adults^{*A}

	Baseline ^{*B}	Current ^{*B}		
ALABAMA	3,300	1,104		
ALASKA	824	349	TOTALS	
ARIZONA	25	0		
ARKANSAS	8,724	36	Baseline	Current
CALIFORNIA	3,041	2,612		
COLORADO	4,750	1,537	97,847	27,552
CONNECTICUT	3	2		
DELAWARE	0	0		
DIST. OF COLUMBIA	0	0		
FLORIDA	1,996	104		
GEORGIA	1,769	10		
HAWAII	1	0		
IDAHO	2,011	?		
ILLINOIS	777	3		
INDIANA	8,580	235		
IOWA	1,993	194		
KANSAS	1,716	168		
KENTUCKY	5,702	5,874		
LOUISIANA	3,523	180		
MAINE	1,186	0		
MARYLAND	229	0		
MASSACHUSETTS	0	0		
MICHIGAN	0	0		
MINNESOTA	3	0		
MISSISSIPPI	2,280	108		
MISSOURI	3,278	348		
MONTANA	1,878	213		
NEBRASKA	0	0		
NEVADA	Not Participating			
NEW HAMPSHIRE	74	0		
NEW JERSEY	42	17		
NEW MEXICO	6,696	0		
NEW YORK	27	0		
NORTH CAROLINA	0	0		
NORTH DAKOTA	Not Participating			
OHIO	5,751	480		
OKLAHOMA	Not Participating			
OREGON	1,798	10		
PENNSYLVANIA	3,196 ^{*C}	14 ^{*C}		
RHODE ISLAND	176	0		
SOUTH CAROLINA	3,984	0		
SOUTH DAKOTA	Not Participating			
TENNESSEE	7,574	9,806		
TEXAS	370	0		
UTAH	22	449		
VERMONT	0	12		
VIRGINIA	5,624	0		
WASHINGTON	2,088	0		
WEST VIRGINIA	940	12		
WISCONSIN	1,857	0		
WYOMING	Not Participating			
PUERTO RICO	3	0		
AMERICAN SAMOA	0	0		
PANAMA	0	0		
UNITED TERRITORIES	3	2		
MARSHALL ISLANDS	13	0		
MICRONESIA	20	0		

*A - All data is 12 month actual or projected to cover a 12 month period.

*B - Baseline and Current data is that provided as baseline and current in 1982 report.

*C - Pennsylvania data is that provided in 1980 report.

	YR.	Baseline Period	Current Period	VIOLATIONS		Per Cent
				Baseline	Current	
ALABAMA	82	1/82 - 3/82	1/83 - 3/83	295	198	32.8%
ALASKA	83	1/76 - 12/76	1/81 - 12/81	864	787	9 %
ARIZONA	82	1/82 - 8/82	1/82 - 8/82	29	29	0 %
ARKANSAS	83	8/82	8/83			
CALIFORNIA	82	7/81 - 6/82	1/82 - 12/82	4365	5552	No Progress
COLORADO	83	1/80 - 12/80	1/82 - 12/82	6112	2070	66 %
CONNECTICUT	83	7/81 - 6/82	7/82 - 6/83	0	0	In Compliance
DELAWARE	83	12/81 - 9/82	12/82 - 12/83	0	0	In Compliance
DIST. OF COLUMBIA		1/75 - 12/75	1/83 - 12/83	0	0	In Compliance
FLORIDA	83	1/82 - 12/82	7/82 - 6/83	117	45	61.5%
GEORGIA	82	9/81 - 8/82	9/81 - 8/81	130	130	0 %
HAWAII	83	10/82 - 10/83	10/82 - 10/83	0	0	Questionable
IDaho	82		No Date Now			
ILLINOIS	82	4/80 - 6/80	4/82 - 6/82	618	399	35%
INDIANA	82	-	7/82 - 9/82	-	1,782	?
IOWA	82	7/81 - 6/82	7/81 - 6/82	1886	1886	0
KANSAS	83	2/83	2/83	101	101	0%
KENTUCKY	82	1/82 - 6/82	1/82 - 6/82	509	509	0%
LOUISIANA	83	9/80 - 8/81	9/82 - 8/83	336	154	54.17%
MAINE	83	1983	1983	0	0	In Compliance
MARYLAND	82	1/75 - 12/75	1/82 - 12/82	229	0	In Compliance
MASSACHUSETTS	83			0	0	In Compliance
MICHIGAN	82	1/82 - 12/82	1/82 - 12/82	23	23	0
MINNESOTA	82	1/81 - 12/81	1/82 - 12/82	1639	533	67%
MISSISSIPPI	83	7/83 - 12/83	7/83 - 12/83	167	167	0%
MISSOURI	82	1/82 - 12/82	1/82 - 12/82	768	768	0%
MONTANA	82	1/80 - 12/80	1/81 - 12/81	934	766	18%
NEBRASKA	83	1/80 - 12/80	1/82 - 12/82	3566	2804	21%
NEVADA	NP					
NEW HAMPSHIRE	83	10/81 - 11/82	10/82 - 9/83	0	0	In Compliance
NEW JERSEY	83	1/82 - 12/82	1/83 - 12/83	0	0	In Compliance
NEW MEXICO	82	8/75	2/57 - 8/82		2015	N/A
NEW YORK	82	1/75 - 12/75	1/82 - 11/82	?	0	In Compliance
NORTH CAROLINA	83	8/82 - 10/82	8/83 - 10/83	266	132	50.04%
NORTH DAKOTA						
OHIO	82	1/82 - 12/82	1/83 - 12/83	3741	2657	29%
OKLAHOMA		- Not Required -				
OREGON		1/75 - 12/75	10/82 - 9/83	1618	10	99%
PENNSYLVANIA	82	No Information available (exempt)				
RHODE ISLAND	82	7/75 - 6/76	12/81 - 11/82	0	0	In Compliance
SOUTH CAROLINA	83	1/82 - 9/82	1/83 - 9/83	1303	1232	5.4%
SOUTH DAKOTA	NP					
TENNESSEE	82	1/82 - 6/82	1/82 - 6/82	1854	1854	0%
TEXAS	83	Data Not Available				
UTAH	83		1/83 - 12/83		64	0%
VERMONT	82	7/76	7/82	0	0	In Compliance
VIRGINIA	83	7/79 - 6/80	7/82 - 6/83	3578	2075	42%
WASHINGTON	83	1/83 - 6/83	1/83 - 6/83	237	237	0%
WEST VIRGINIA	83	1/80 - 12/80	1/82 - 12/83	189	78	39%
WISCONSIN	82	1/80 - 12/80	1/82 - 12/82	3741	2657	29%
WYOMING	NP					
PUERTO RICO	83	12/81 - 12/82	12/82 - 12/83	38	11	71%
AMERICAN SAMOA	83	1/81 - 12/81	1/82 - 12/82	0	0	In Compliance
GUAM	83	9/81 - 9/82	9/82 - 9/83	0	0	In Compliance
TRUST TERRITORIES	83	Not available		351	351	0%
MARSHALL ISLANDS	82	7/81 - 12/81	1/82 - 12/82	0	0	In Compliance
MICRONESIA	83		1/83 - 12/83		19	In Complete