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Arlen Specter

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Overview: Children and the State

Senator Arlen Specter*

Today's children are vulnerable. They are society's victims, plagued by physical and sexual abuse, pornography, kidnapping, suicide, and drug abuse. Poverty and unemployment affect children disproportionately. In the Senate, it has been my task to address many of the problems facing children in our society and to consider some legislative solutions to these problems. Much remains to be done, but much progress has been made. This issue of the *Yale Law & Policy Review* focuses not only on areas in which children need help, but also on ways in which government action has succeeded in providing that help. The potential for success—the assurance that sometimes government can make a significant difference—has motivated many of us in Congress to continue to struggle to solve the daunting problems facing young Americans.

I believe that the government has many responsibilities to children, two of which are of primary importance. For children who are victimized, abused, or troubled, it must offer protection and aid. For all children, government must meet certain fundamental needs, such as quality education. Fulfillment of these responsibilities requires new legislation, continuous oversight of ongoing programs, and a willingness to work with social service agencies, state courts, and educators who face daily the problems of our troubled youth.

Much of my own work in Congress has centered on helping child victims. I have seen dramatic indications that we have the ability to help prevent their problems and mitigate their pain. Our nation's

* B.A. 1951, University of Pennsylvania; LL.B. 1956, Yale Law School. Senator Specter is a Republican from Pennsylvania currently serving his second term. He was Chairman of the Subcommittee on Juvenile Justice of the Senate Judiciary Committee from 1981 through 1986. He is currently Co-chairman of the Senate Children's Caucus.

many missing children, for example, have gained public attention only in the past 10 years, yet already much has been done. In 1984, Congress passed the Missing Children's Assistance Act.¹ The Act established a national clearinghouse for information on missing and exploited children and a national toll-free hotline. In addition, 82 Senators joined me in urging the major television broadcasting companies to air photographs of missing children during their regular programming as part of a concerted national effort to find such children; the broadcasters agreed. Pursuant to legislation that I cosponsored,² the federal government has joined this effort by placing pictures of missing children on most federal government mailings.

Similar progress has been made regarding another problem that menaces children. To help address the needs of runaway and homeless youth, Congress reauthorized the Runaway and Homeless Youth Act,³ which provides \$23.2 million for runaway and homeless youth centers throughout the United States. My colleagues and I have worked to ensure full funding of this Act.

Tragically, many of the most serious threats to children arise not on the streets, but in their own homes. Congressional action alone cannot fully reach these children; cooperation with other government branches is essential. Child abuse, parental kidnapping, and custody battles, for example, must be dealt with on the local level by social service agencies and the courts. In 1985, the Juvenile Justice Subcommittee held hearings on the special problems of child victim witnesses.⁴ Testimony revealed that court procedures for handling such cases often are inadequate to meet the needs of the child witness and are potentially damaging to the child. Federal initiatives in this area can help. In one such effort, the Justice Department is funding a National Center for the Prosecution of Child Abuse. The Center supports district attorneys and prosecutors nationwide in developing both the expertise and the procedures to bring these sensitive cases to trial, without further harming child victims or abridging the constitutional rights of the accused.

1. Pub. L. No. 98-473, tit. II, div. II, subdiv. D, § 660 et seq., 98 Stat. 2125 (1984). The Missing Children's Assistance Act was introduced by Senator Specter. S. 2041, 98th Cong., 1st Sess., 129 Cong. Rec. S14787 (daily ed. Oct. 27, 1983).

2. Act of Aug. 9, 1985, Pub. L. No. 99-87, 99 Stat. 290.

3. Pub. L. No. 98-473, tit. II, div. II, subdiv. C, § 650, 98 Stat. 2122 (1984).

4. Child Victim Witness Protection Act of 1985: Hearings on S. 1156 Before the Subcomm. on Juvenile Justice of the Senate Judiciary Comm., 99th Cong., 1st Sess. (1985).

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Some changes, however, must be implemented by state legislatures and state courts. As Professor Andrea Charlow points out in her article, "Awarding Custody: The Best Interests of the Child and Other Fictions," the legal standard used in awarding disputed custody—the best interests of the child—as applied, may not always serve the child's best interests. Charlow finds that use of this standard often amounts to awarding custody on the basis of the judge's own opinions about the relative fitness of the parents. Charlow suggests that the best interests of the child would be furthered better if the custody decision were based on the parents' ability to place the child's concerns above their own personal needs. She argues that while research has not shown that any particular model of parenting will result in healthier children, there is evidence that reducing conflict dramatically improves a child's ability to cope with the stresses of divorce. Charlow's analysis demonstrates the kind of reevaluation and creativity that is essential in responding to all children's issues. We should not simply accept old solutions and standards without examining their relevance and purpose in the face of new evidence and a rapidly changing world.

Constant reevaluation of society's actions on behalf of children is particularly important in the second major area of government responsibility to children: meeting their fundamental needs. The federal government has a longer history of providing basic services to children than of protecting child victims. We cannot be complacent regarding our duty to meet the needs of today's children, simply because local public schools provide many essential services. We must seek ways to expand and improve children's programs and services and examine areas in which current programs no longer meet the needs of children in order to develop alternatives. We also must consider, however, the areas in which we have done well and the programs that have succeeded, and ask, "How can we apply the lessons of these successful programs to other areas?" Many of the articles in this issue of the *Yale Law & Policy Review* make important contributions to this fundamental inquiry.

Any inquiry into the troubled lives of our children must include an examination of the ability of our schools to cope with many of the problems facing children today. Few schools, for example, are equipped to deal with poverty, drug addiction, teen suicide, and continuing racial segregation and animosity. We therefore must consider alternatives. One such alternative to the traditional school program is the magnet school discussed by Jane Stern and Janet

Price, formerly of Advocates for Children, in their article, "Magnet Schools as a Strategy for Integration and School Reform." Magnet schools are designed to address school segregation and the flight of top students from the public schools by offering especially attractive programs to students throughout the school district, often on a selective basis. The authors, who have studied public education in New York City, examine the magnet system's strengths and weaknesses. They suggest that nonselective magnet schools, when used as part of a districtwide plan, can be effective; however, in many school systems, magnet schools drain resources and motivated students from the neighborhood schools, creating a two-tiered educational system in which the already disadvantaged fare least well. In considering alternatives such as the magnet school, we must not create new problems by sacrificing the basic educational needs of the majority of our children.

The Head Start program, which began in 1965, has been one of the most popular supplements to our traditional system of primary and secondary education. As described in the article by Laura Miller, former Deputy Commissioner of the Federal Administration for Children, Youth, and Families, Head Start is more than an educational program for children; it offers vital health, welfare, and training services for children, parents, and communities. In "Head Start: A Moving Target," Miller analyzes Head Start's surprising longevity and concludes that the program's comprehensive multifaceted design has been crucial in eliciting support from groups of widely differing interests and ideologies. We should consider similar program designs if we want to ensure that programs for children remain a top priority in times of fiscal austerity. The most heartening lesson of Miller's article and of the Head Start program is that government intervention on behalf of children can work and work well.

In some areas, when the federal government refuses to intervene, there is no one left to look out for the particular needs of children. "Improving Educational and Informational Television for Children: When the Marketplace Fails," by Professor Bruce Watkins of the University of Michigan, dramatically illustrates problems in the regulation of children's television programming. Watkins claims that government deregulation in this area has allowed children's television to become a wasteland, completely unresponsive to the needs of children. He points out that our traditional notions of education must change to keep pace with the developing media influences on

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children. Television teaches children about society, its values, and its expectations. If the lessons are not those we want our children to learn, we must work with the media to ensure that there is sufficient children's programming and that its content is appropriate.

I long have been interested in another area of the government's responsibility for children: the rehabilitation of juvenile offenders. As a former district attorney, I believe that when it is necessary to detain juveniles, we must ensure that the experience is rehabilitative rather than detrimental. In this area, however, there is much need for improvement. Many prisons subject juveniles to a significant risk of sexual, emotional, or physical abuse. Most have proven to be disturbingly effective schools for crime. For these reasons, it is essential that youthful offenders be separated from adults in the penal system. I have supported the Juvenile Incarceration Protection Act,⁵ which would require removal of all juveniles from adult jails and lockups in this country. The frightening abuses at juvenile detention facilities also make it imperative that we do not incarcerate status offenders—truants or runaways—whose actions would not be criminal if committed by an adult. I have supported the Dependent Children's Protection Act,⁶ which would prohibit detention of such status offenders in secure, locked facilities. Finally, we must devote to the juvenile justice system the resources necessary to transform juvenile detention facilities from the institutions of criminal education they now are to schools for reading, writing, and vocational skills. Congress must continue to support full funding for the federal juvenile justice program.

In addition to improving the traditional detention system for youthful offenders, it is important to consider innovative approaches to juvenile justice. As Anne Schneider and Jean Warner of Oklahoma State University point out in their article, "The Role of Restitution in Juvenile Justice Systems," restitution programs are an alternative to traditional probation or incarceration. These programs hold juveniles accountable for their offenses by making them repay their victims. According to the authors, when implemented properly, restitution programs have been effective at reducing recidivism rates among juvenile offenders. Here, too, government action can initiate new and more responsive answers to the problems facing our nation's youth.

5. S. 1186, 99th Cong., 1st Sess., 131 Cong. Rec. S6851 (daily ed. May 22, 1985).

6. S. 1184, 99th Cong., 1st Sess., 131 Cong. Rec. S6848 (daily ed. May 22, 1985).

The articles included in this issue of the *Yale Law & Policy Review* make a significant contribution to our understanding of many of the needs of children today and of the role government must play in meeting these needs. Much remains to be done, and real change requires creativity and cooperation. These pieces should be useful guides for shaping policy in the coming years. The message of the articles in this Overview on Children and the State is inspiring: government action to improve children's lives can work.