



**REMARKS OF ROBERT L. LISTENBEE
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REMARKS AS PREPARED FOR DELIVERY**

Hello, everyone.

Thank you, Susan [Broderick], for inviting me to join all of you today. It's an honor to be here.

It's difficult to overstate the importance of this kind of roundtable discussion.

Susan, as you so cogently pointed out in your article in the *Juvenile Justice Information Exchange* last year, juvenile prosecutors in a very real sense are the gatekeepers to our juvenile justice system.

As the gatekeepers, prosecutors should be seen as absolutely critical participants in any discussion about juvenile justice reform.

But too often, reformers pass over the wisdom and experience that the perspective of the juvenile prosecutor can bring.

That's why the leadership that all of you around this table provide is so vital.

I look forward to hearing your thoughts and perspectives. I'll talk briefly, and then it is my hope that we can open things up for a wide-ranging discussion.

Traditionally, the focus of the juvenile justice system has been on seeking justice for the victims and accountability for the offenders.

But the juvenile justice community has begun to rethink its response to youthful offending.

States and communities are reconsidering their youth crime suppression policies and practices.

Local jurisdictions are beginning to look more closely at factors that are associated with a higher risk of entering the juvenile justice system.

Factors like childhood exposure to violence, crime and abuse. We know that this kind of traumatic exposure over time can derail brain function and make it difficult for children to do well in school, develop normal relationships, and stay on a path to prosocial behavior.

Others factors that increase the risk of juvenile justice system involvement include substance abuse, mental health problems, and cognitive disabilities.

And, yes, the normal risk-taking behavior of adolescence increases the chances of a child entering the system as well.

A lot of kids exhibiting normal adolescent behavior are being inappropriately bounced out of our schools and into the court room.

Local jurisdictions are responding to what the science is telling us about the often-negative consequences of detention and incarceration to a young person's health and well-being. And incarceration also negatively impacts their chances of rehabilitation and desistance from crime.

Some jurisdictions are beginning to move away from a reliance on incarceration and instead focus on community-based programs and services that more effectively address the multiple needs of young people who are at risk or who are involved in the system.

The Office of Juvenile Justice and Delinquency Prevention embraces this rising tide of system reform and transformation at the state and local levels.

Our Office embraces this kind of reform because it works. It is evidence-based. It is more effective at promoting public safety. And it is more effective at promoting positive outcomes for youth.

My colleague George [Mosee] has been ahead of the curve on this one. For years, he has been using the Models for Change approach to improve outcomes for young

people while enhancing public safety. And he sees the role of the juvenile prosecutor as critical to achieving these goals.

Here is George's eloquent statement in Pennsylvania's May 2010 *Interbranch Commission on Juvenile Justice Report*:

“A prosecutor has a special ethical obligation to be a minister of justice, and this solemn responsibility is enhanced in the context of juvenile delinquency proceedings under the principles of balanced and restorative justice. While prosecutors must assure the safety of the community and protect the rights of victims, prosecutors must go further in juvenile cases. A prosecutor must also weigh the needs of the juvenile offender—not with an eye toward punishment—but toward rehabilitation through the least restrictive means necessary.”

The balanced and restorative justice model, which our Office has been championing for many years, is an effective tool for achieving youth accountability and enhancing community safety. The three priorities of this model—public safety, accountability, and positive youth development—recognize both victim and offender restoration as critical goals of community justice.

These three goals bring into a common focus the definition of what it means to be a minister of justice. With this common focus, juvenile defenders and prosecutors, while they remain adversarial in certain respects, can begin to view themselves as pursuing justice in a fuller and more robust sense. Pursuing justice together.

I've seen prosecutors embracing these three goals go on to develop alternative strategies to address juvenile justice issues and to demonstrate a willingness to seek legal solutions beyond traditional law enforcement responses.

But we have a long way to go before that model George so eloquently describes becomes part of the daily operation of our juvenile justice system.

Here is a disturbing fact:

About two-thirds of youth in confinement are there for nonviolent offenses like drug offenses, disorderly conduct (and that includes children with behavior management problems at school), and status offenses like running away or breaking curfew, as well as technical violations of probation, parole, and the valid court order.

Bottom line: They shouldn't be there. Most of these children do not pose a public safety threat.

Our system doesn't have the time or resources to be processing kids who don't need to be there through the system. We need to be bringing only the kids who definitely need juvenile justice intervention into the system.

And the juvenile justice system on the whole is not good for kids.

These kids are often sent to facilities far away from their families, friends, and communities, a particularly serious problem in Indian country and rural areas.

Their education is interrupted.

I don't need to tell this group that, in adult facilities, they run a significantly higher risk of suicide, physical assault, and rape. Kids in adult facilities are often put in solitary confinement, where they can languish for years with virtually no contact with other people, receiving their meals through a slot in the door.

When I spoke with you last August, I mentioned that our Office commissioned a study by the National Academy of Sciences, and the Academy last year released its findings in a report called *Reforming Juvenile Justice: A Developmental Approach*. The report emphasizes the importance of positive youth development.

Whether it's in the courts or in facilities that confine youth, this report says that we keep forgetting that kids are different than adults.

They point out repeatedly that kids are not mini-adults.

Research has shown that neurobiological processes in the developing brain play a large role in the impulsiveness, susceptibility to peer pressure, and difficulty in assessing long-term consequences that characterize adolescence.

These behaviors generally are transient and recede as individuals mature into adulthood. The findings have significant implications for the juvenile justice system.

Because of what the science has shown us about brain development, adolescent offenders are by definition less culpable than adult offenders, and they are more

capable of changing their behavior because they're still growing, they're still developing.

The report emphasizes that the three most important components of healthy psychological development for adolescents are the involvement of a supportive adult authority figure, association with prosocial peers, and activities that encourage autonomous decisionmaking. These three necessities are lacking in most facilities that confine youth.

The report says unequivocally that a developmental approach that emphasizes positive youth development rather than a reliance on detention and incarceration and other harsh forms of punishment is compatible with the juvenile justice system's goals of holding youth accountable for their actions, preventing further offending, and treating youth fairly.

So confinement is not only bad for kids and bad for public safety. It's a waste of taxpayer dollars.

According to the American Correctional Association, states spend an average of about \$240 per day—around \$88,000 a year—for every young person in a juvenile facility.

While there is no perfect formula that will guarantee reductions in all crime, we do know that policies that include prevention and intervention in the community for nonviolent offenders bring better outcomes for youth and for public safety than placing these young people in locked facilities.

Services and treatment in the community are a fraction of that cost, and these services are more effective at preventing recidivism than is incarceration.

The MacArthur Foundation's Models for Change Initiative has been an important and successful player in efforts to improve the juvenile justice system for decades. George, you know firsthand that their extensive work in Pennsylvania was invaluable.

Their Juvenile Diversion Handbook provides a detailed roadmap for jurisdictions in their efforts to establish or improve diversion programs. From points of referral to the level of intervention provided, there are many decisions to be made.

I understand that the newly created National Resource Center for Juvenile Prosecutors is already working on several education programs, including a certificate program on juvenile diversion practices for prosecutors, probation officers, and police leaders, based on the Models for Change Guidebook. Education efforts like these, as well as strong collaborations, are essential to our reform efforts.

States are beginning to see that community-based programs really do help them more effectively achieve their goal of positive outcomes for young people. Placing these young people in detention and incarceration is wasting valuable taxpayer dollars on ineffective strategies that do not make our neighborhoods safer and are often, in fact, harmful to youth.

We're seeing efficient and effective statewide policies being enacted across the country, and some of the states that stand out in this regard include California, Connecticut, Georgia, Illinois, Kentucky, Louisiana, Mississippi, New York, Ohio, Texas, Washington, and Wisconsin.

Among other innovative approaches, these states are:

- Using evidence-based alternatives to incarceration.
- Establishing policies and program options that divert youth from secure detention.
- Closing state-run facilities.
- Engaging in statewide realignment and reinvestment strategies.

It's important to emphasize that this commitment to reducing incarceration crosses all geographical and political boundaries. We've got blue states, we've got red states, and we've got "battleground" states in the mix.

What this means is that a national consensus on this issue is emerging.

Here are just a few examples of the success stories in states that are using these innovative approaches:

Ohio

RECLAIM Ohio is a funding initiative that encourages juvenile courts to use community-based options. By diverting youth from Ohio's Department of Youth

Services institutions, courts can increase the level of funds available for these community-based options.

Between 1992 and 2012, Ohio's Department of Youth Services population dropped from 2,600 to less than 550.

For every dollar spent on the RECLAIM Ohio program, the state saves from \$11 to \$45 in commitment and processing costs, depending on the risk level of the youth.

Illinois

Redeploy Illinois modeled its fiscal incentives for juvenile justice reform after those of RECLAIM Ohio.

Since 2005, counties participating in Redeploy Illinois achieved a 56 percent average reduction in commitments.

Preliminary results of a cost-effectiveness study among four Redeploy sites point to a 14.2 percent reincarceration rate for Redeploy Illinois participants, compared to 57.4 percent among nonparticipants.

Texas

In 2007, the Texas legislature opted to reinvest a portion of the saved funds proposed for new prison construction in alternative strategies to encourage the development of community-based programming.

That same year, a new law prohibited state incarceration of youth who commit misdemeanors. To address the needs of those youth, the state provided funding for the counties to make available more community-based programming.

Between 2001 and 2010, Texas saw a 37-percent decline in the number of youth confined in public and private facilities.

I've just mentioned three states, but there are similar transformations going on in states throughout the nation.

However, while there are many success stories, we have a long road ahead of us.

Many jurisdictions don't have the necessary political support for reforms or the readiness to take the first necessary steps.

Even among jurisdictions already predisposed to reform, many have not yet undertaken improvements systemwide; reforms are taking place in some areas of the system, but not in others.

Moreover, jurisdictions are moving slowly, or not at all, in two key areas: racial/ethnic disparities and improving access to counsel.

The National Academy of Sciences report recommends that every state “undertake a comprehensive, sustained and transparent process for achieving juvenile justice reform.”

What does this mean? This means reform that is data-driven. Reform that includes a wide range of stakeholders in the juvenile justice system. Reform that includes elected or appointed state officials. Reform that includes legislative change and policy modifications. Reform that includes racial and ethnic disparities as a central focus.

The first essential step in this process is establishing a bipartisan state commission composed of policymakers as well as representatives from across the spectrum of the juvenile justice system.

The National Academy’s report lays out point by point what this first step consists of:

“State and tribal governments should establish a bipartisan, multi-stakeholder task force or commission, under the auspices of the governor, the legislature, or the highest state court, charged with designing and overseeing a long-term process of juvenile justice reform. This body should:

- “Undertake a formal, authoritative, and transparent review of its juvenile justice system aiming to align laws, policies, and practices at every stage of the process with evolving knowledge regarding adolescent development and the effects of specific juvenile justice interventions and programs.”
- “Develop a strategy for modifying current laws, policies, and practices, for implementing and evaluating necessary changes on an ongoing basis, and for reviewing any proposed juvenile justice legislation.”

- “Intensify efforts to identify and then modify policies and practices that tend to disadvantage racial/ethnic minorities at various stages of the juvenile justice process and publish periodic reports on the nature and extent of disparities and the effects of specific interventions undertaken to reduce them.”

This has already begun to happen in the criminal justice system, through the Justice Reinvestment Initiative, which just got off the ground a few years ago.

In 2010, Congress appropriated funds to our Office’s sister agency, the Bureau of Justice Assistance, to launch the Justice Reinvestment Initiative in partnership with the Pew Charitable Trusts.

The initiative brings together states’ justice system stakeholders and policy leaders to develop data-driven approaches to criminal justice reform. The reform result in cost reductions, and funds can be reinvested in evidence-based strategies for promoting public safety.

As a first step, participating states establish bipartisan, multistakeholder teams of state and local officials to work with researchers and justice policy experts. Statewide data analyses are conducted to identify the major causes of correctional costs, pathways into the system, and the primary challenges to public safety.

Judges, prosecutors, defense attorneys, victims’ advocates, corrections staff, law enforcement officials, and service providers are also a key part of the discussion.

The final step is legislation and policy modification that impacts the state’s criminal justice operations.

Training and technical assistance are provided to help states implement and monitor these changes.

And the Justice Reinvestment Initiative is working.

Just last month, the Urban Institute released a report showing that the 17 Justice Reinvestment Initiative states are projected to save as much as \$4.6 billion through these reforms.

Eight states that had Justice Reinvestment Initiative policies in effect for at least one year—Arkansas, Hawaii, Louisiana, Kentucky, New Hampshire, North

Carolina, Ohio, and South Carolina—have already reduced their prison populations.

What I envision in the coming months and years is a model that resembles the Justice Reinvestment Initiative within the juvenile justice system.

Before I close, I wanted to share some thoughts I have about the challenges juvenile prosecutors face, as well as opportunities before us. And I'm going to throw out some questions that I hope might be the basis for at least part of our discussion.

I think a major challenge is how prosecutors are viewed in the juvenile justice system.

More often than not, the job of juvenile prosecutor is given to people fresh out of law school. And, more often than not, these individuals view the job as a mere stepping stone as they climb up the hierarchy to the next stage of their career.

This means there's a lot of turnover and that we generally don't get people in those positions with decades of experience and the perspective and wisdom that come with that.

The question I'd like to throw out to you all for discussion is: "How can we change that?" Another question is on my mind as well . . .

Coming back to all-important role of the juvenile prosecutor as a gatekeeper to our juvenile justice system, what might we be able to accomplish in the way of training and technical assistance that would support juvenile prosecutors in diverting kids who really don't need to be in detention and incarceration away from the system and into the community-based programs that have shown to be more effective at promoting public safety and ensuring positive youth outcomes?

I really am looking forward to this discussion, and to your input on these issues and your own ideas for putting the role of the juvenile prosecutor front and center in the efforts to improve our juvenile justice system.

Thank you.