Department of Justice

ADDRESS

OF

ARNOLD I. BURNS
DEPUTY ATTORNEY GENERAL

NATIONAL CONFERENCE OF STATE
LEGISLATORS NATIONAL SEMINAR ON CRIMINAL JUSTICE

TUESDAY, DECEMBER 2, 1986
WASHINGTON, D.C.
12:00 P.M.

Thank you and welcome to Washington.

As you can tell from the weather today, winter comes even to the Nation's Capitol. Even in winter, however, the business of government goes on. This January the 100th Congress will convene. At about the same time, new governors will be inaugurated and new legislators sworn in in state houses all around America. The continuity of the American plan of government, its success against great odds, is something we can and should be thankful for, particularly at this time of year. It is also something we should begin to celebrate in earnest as we approach 1987, the 200th anniversary of our remarkable Constitution.

Unquestionably, our Founding Fathers did not anticipate a world of computers, automobiles, and instant global communications. They could not have envisioned a gathering of state legislators where the delegates arrived by plane rather than horseback. But they were shrewd enough to craft a plan of government that allowed their posterity to grapple with whatever came along.

Central to that plan was the idea of federalism, the notion of divided yet shared responsibility. As a result of sad experience under the articles of confederation, the framers understood that there are some things, such as national defense, that are properly the responsibility of the federal government. But they also knew that state governments were closer to the people, and should remain the proper forum for addressing most issues.

As I say, there was clearly a division. But the Framers also realized that certain problems would present common challenges to both the states and the national government.

Today I would like to talk about one such common challenge, an issue especially important to legislative leaders like yourselves, who are deeply concerned about questions of criminal justice.

The issue is prisons -- and the questions are several. Do we have enough space? What are the purposes of imprisonment? How do we plan today for the penology problems of tomorrow? And, how can states, localities, and the federal government work together to solve prison problems?

These questions are as old as the republic and as new as today's newspaper headlines. Yet they are complicated in our time by the fact that theories of what prisons are for and what they should accomplish seem to go in and out of fashion faster than skinny ties and short skirts. But despite passing theoretical fancies, the problems remain and we need to think

seriously about prisons in order to develop intelligent policies that will carry us into the next century.

First of all, we have to understand the magnitude of the problem we face. Of course, you are the real experts on the criminal justice issues facing the particular states you represent. But let me frame things in a national perspective.

As of June 30, 1986 our nation's combined federal and state prison population had exceeded one-half million inmates -- an increase of more than 25,000 in just 6 months. The federal prison population alone topped 41,115 as of mid-November of this year, another record.

Put another way, the department's bureau of justice statistics points out that the rapidly increasing prison population is creating a demand for 1,000 new beds per week.

This is not a short-run phenomenon. The Bureau reports that between 1980 and the middle of this year the Nation's prison population has increased by 60 percent.

I believe the reason for this jump is neither hard to find nor to fathom. After a long slump, incarceration is finally starting to catch up with crime. For too long our willingness to put criminals behind bars did not keep pace with the willingness of criminals to commit crimes. Between 1960 and 1980 the number of serious crimes committed in the United States increased a frightening 322 percent. The number of arrests also climbed, up 271 percent. During this period, however, our state prison populations grew by only 61 percent. Clearly, a lot of bad

actors were not behind bars. A major reason for the discrepancy between crime and punishment is told by another figure. Over this same 20 year period the capacity of our state prisons increased by a meager 27 percent.

Fortunately, things have started to change for the better. There is a new commitment to putting serious offenders behind bars. And there is a new awareness on the part of both the states and the federal government that there must be spaces to put the criminals we confine.

Much of the credit for this change must go to people like yourselves. Since 1978 the states have spent more than 5 billion dollars on prison construction, and have added in excess of 100 thousand new beds. On the drawing board for the next ten years are plans for a substantial increase in prison space.

My message today is a simple one: We must build on this progress. We must understand the necessary place of prisons in the system of criminal justice. We must work hard to ensure that prisons don't merely keep criminals off the streets -- we must also ensure that they don't return criminals to the streets, either. Prisons, afterall, do have the task of rehabilitation.

I know that many people of good will say that prisons are not the answer. That keeping felons behind bars is no solution to the problem of crime. Well, these critics have a point. Jail time is not a panacea. It addresses crime after the fact, not before. But it is foolish to say, as many did during the 60s, that the better course is to leave dangerous felons at large. We

can recognize our prison problems and still affirm one crucial fact: The felon behind bars is off the streets. Time in prison is time that cannot be spent preying upon the community.

Simply put, prisons are a sound social investment. Rand Institute studies estimate that the average prisoner would commit approximately 10 crimes per year if free. National Institute of Justice research has found that high-rate drug using offenders averaged an astounding 187 crimes per year when free. Given the total cost of crime to our society, that figures out in dollars and cents terms to social damage of $430 thousand per year. Certainly, prison is expensive. It costs about $15 thousand a year to house an inmate including allowances for prison depreciation, unemployment and welfare claims, and lost income taxes. But compared to the price of leaving him free, it may be one of the best criminal justice bargains around.

Of course, it is impossible to put a price tag on the suffering of crime victims. And adequate prison space is essential for non-quantifiable moral reasons -- to keep violent offenders behind bars for sentences proportionate to their evil deeds.

By this measure, sad to say, we are not doing very well.

According to the Bureau of Justice statistics, half of all convicted murderers in state prisons serve less than 7 years. Half of all rapists serve less than 4 years. Robbers 2 and one-half years, arsonists less than two. Early releases have

consequences. About 70 percent of those released from prison have been re-arrested within 4 years.

Unfortunately, because we still don't have enough prison space, the premature release of hardened criminals has become a serious problem.

It is alarming to discover that last year alone 19 states reported 18,617 early releases due to prison overcrowding.

More disturbing is the fact that many serious felons don't get behind bars in the first place. A recent study of felony sentencing in 18 metropolitan areas discovered that about 30 percent of convicted rapists, 35 percent of convicted robbers, and between 50 and 60 percent of those convicted for burglary or aggravated assault are not sentenced to prison at all. BJS Director Steven Schlesinger has noted that "every year during this decade more offenders were sentenced to probation than to prison terms."

In the face of these facts I can only urge that you, as legislative leaders with special interests in the health of our criminal justice system, look long and hard at the prison situation in your states, and spearhead the effort to make sure that you have the resources and the facilities that justice requires.

At the federal level we are working to insure that you have the information to expand your prison capacity as economically as possible. The National Institute of Justice is publishing a series of construction bulletins describing new construction

methods which have saved both time and money in bringing new prisons and jails on line. At its national criminal justice reference service the Institute has initiated a construction information exchange where you, your staff, or the correctional administration in your state can call and get immediate and detailed information on new facilities throughout the country. In February N.I.J. will publish a new national corrections directory with over 128 information items on each of 400 prisons and jails. Our purpose in all of this is not to promote any one type of prison or construction techniques as the model. Rather, it is to give you the information your state needs to build prisons as efficiently as possible.

Naturally, the question of space is only one aspect of corrections policy. It just isn't enough to lock criminals up and throw away the key. Instead, we must work to make our correctional institutions just that -- places that work real reform, and return citizens, not criminals, to the outside world.

Former Chief Justice Warren Burger has provided exceptional leadership on this issue. He has repeatedly stated that our goal should be making our prisons "factories with fences" rather than "warehouses with walls." Prison jobs and activities should not just make time, they should make skills. On this point, I'm proud that education and training is now a top priority within the federal prison system.

The Bureau of Prisons provides academic and occupational training in a variety of areas, ranging from adult basic

education to college education courses. In 1983 the Bureau implemented a mandatory literacy policy that requires all inmates with less than an 8th grade education to enroll in basic education during fiscal year 1986 more than 8,000 inmates were enrolled, and 3,000 certificates of completion awarded.

We are also working hard to make the federal prison industries program, which bears the trade name "UNICOR", a model for the nation 75 industrial operations in 40 federal institutions employ inmates in the kinds of jobs that we hope will provide some real skills and training that will help them find employment upon release. Right now almost 30 percent of all federal inmates are employed in UNICOR, whose sales to other federal agencies passed the 250 million dollar mark.

I have personally visited a number of the UNICOR facilities. I am impressed, and believe strongly that this is something we should build upon in the years ahead.

At the state level, I realize that there are many similar creative approaches underway. Yet it remains true that at many facilities idleness and the absence of real training and education programs remains a pressing problem. Here again I would encourage all states to see such programs as cost-effective investment in their future. At the Department of Justice, we are ready to help. We want to be partners in this project.

Last year the National Institute of Justice completed a national survey on private sector business involvement with prison industry. The prospects are promising. Right now NIJ has

a training and demonstration project underway in this area, designed to encourage and assist state and local governments in developing partnerships with the private sector. Six new private sector prison industries will be developed and will serve as models for similar developments in other jurisdictions.

Finally, let me emphasize again that we are in this together. We face common issues, and should work together to make our prison systems, state and federal alike, the best they can possibly be through the National Institute of Corrections we awarded nearly $11 million in grants last fiscal year for training, technical assistance, research and evaluation, and other worthwhile state and local corrections projects. The National Academy of Corrections and the Federal Bureau of Prisons provide vital training for corrections managers, administrators, and staff, as well as provide assistance through grants and technical assistance to state and local agencies.

Together we are making tremendous progress. With the continued leadership of legislators like yourselves, I am sure that progress will continue.

Let me now touch briefly on a couple of other issues that also highlight the need for federal-state cooperation on criminal justice issues.

In the general field of law enforcement we have made great strides in recent years in enhancing cooperation between agencies at the state and federal levels. Through our law enforcement coordinating committees and similar programs we have established

real teamwork in the fight against organized crime, narcotics, and other justice issues of equal importance to federal and state government. We can all be proud of this record. And we should work hard to cooperate even more effectively for the future.

Specifically, there is no area where we need that kind of teamwork more than in the area of drug abuse. Again, I think in most cases we are working together very well. But by its very nature this is a problem that cannot be tackled by any one level or agency of government alone. The FBI and DEA concentrate on going after the large scale traffickers and suppliers. We need state and local help there, and we need tough enforcement against dealers and users on the local level.

The President and Mrs. Reagan have provided real leadership in this area of grave public crisis. With the new federal drug act which was recently signed, we now have new tools and resources to fight every aspect of this problem. But we will be fully effective only if that commitment is matched in every state, every community, every school and every family in our country.

Through programs like the asset forfeiture provisions of the 1984 Comprehensive Crime Control Act, we are sharing the proceeds of drug traffickers and other criminals with the state and local agencies who helped bring them to justice. We can help provide the resources -- you must help provide the essential leadership. Together, there is no challenge we cannot conquer.

In closing, I wish you every success in your conference this week. More than 100 years ago Chief Justice Salmon P. Chase said that ours was "an indestructible union, composed of indestructible states." His words ring as true today as ever. With your dedication and efforts on behalf of justice, it will remain true for generations to come.

Thank you.