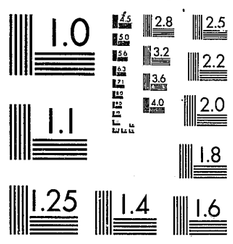

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U.S. Department of Justice

Attorney General's Task Force on Violent Crime

Final Report

August 17, 1981

U.S. Department of Justice

Attorney General's Task Force on Violent Crime

Final Report

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We also wish to express special thanks to Dean C. St. Dennis, Assistant Director of Public Affairs, U.S. Department of Justice; Kenneth L. Pekarek, Inspector, U.S. Marshals Service; and Gary L. Starkman, Counsel to the Governor of Illinois, for their extraordinary contributions to our effort.

Finally, we wish to thank Priscilla Whitehouse of the Justice Publications Service of the U.S. Department of Justice, Marilyn Marbrook of the Bureau of Justice Statistics, and our editor Peter Smith for their contributions in the preparation of this report.

U.S. Department of Justice

Attorney General's Task Force on Violent Crime

Washington, D.C. 20530

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August 17, 1981

The Honorable William French Smith
Attorney General
United States Department of Justice
Washington, D.C. 20530

Dear Mr. Attorney General:

Pursuant to our charter and your mandate we have completed our work within the specified 120 days. The Task Force on Violent Crime herein presents its final recommendations on ways in which the federal government can improve its efforts to combat violent crime without limiting its efforts against organized and white collar crime.

At your direction, we have divided our work into two phases. Our Phase I recommendations, which were presented to you on June 17, 1981, addressed measures the Department of Justice could undertake within the existing statutory framework and existing resources. Those recommendations, as they were originally presented to you, are included in the first section of this final report.

Our Phase II recommendations are contained in the second section of this report. They focus on changes in federal statutes, funding levels, and allocation of resources which we believe would increase the federal government's impact on violent and serious crime consistent with appropriate federal-state relations and the competing needs for federal resources.

The recommendations which follow are offered with due respect to the traditional separation of responsibilities between the federal government and the states. We reaffirm the wisdom of this separation, although we did identify a few areas where the federal government is in a unique position to assist state and local governments in fulfilling their criminal justice responsibilities.

We wish to emphasize that the federal government's first priority should be to provide adequate resources to its own offices which are involved in fighting violent crime and to assure that its policies are clear and sound in all matters which impact on state and local law enforcement. In this way the states and local governments can better deploy their resources to carry out their responsibilities. We do not believe that the federal government should subsidize the ongoing operations of state and local criminal justice systems. But we do believe that, within the context of each level of government exercising its own authority and bearing its unique responsibilities, much can be done to improve the coordinated federal-state-local fight against violent serious crime.

As a final note, we wish to express our deep appreciation to the fine staff that worked long and hard under very short deadlines and that prepared our materials in a highly professional manner. We are also appreciative of the many officials and private citizens who testified at our hearings or who sent us their views in writing. The combined effect of these communications had an important affect on our deliberations.

It was indeed a distinct pleasure for us to have had the opportunity to assist you in this most important work. We wish you all continued success in seeing it to fruition.

Respectively submitted,

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Co-Chairman

James R. Thompson
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Preface

This report presents the final recommendations of the Attorney General's Task Force on Violent Crime.

The Task Force was appointed on April 10, 1981, by Attorney General William French Smith. The Task Force consisted of eight individuals with a wide range of expertise in criminal justice at the federal, state, and local levels of government.

It was co-chaired by former Attorney General Griffin B. Bell and Governor James R. Thompson of Illinois. Griffin B. Bell was a judge of the U.S. Court of Appeals for the Fifth Circuit from October 1961 to March 1976 and was Attorney General from January 1977 to August 1979. Governor Thompson was U.S. Attorney in Chicago from November 1971 until June 1975.

Other members of the Task Force include: James Q. Wilson, professor of government at Harvard University and author of numerous books and articles on criminal justice; David L. Armstrong, Commonwealth Attorney of Louisville and President of the National District Attorneys Association; Frank G. Carrington, Executive Director of the Crime Victims Legal Advocacy Institute, Virginia Beach, Virginia; Robert L. Edwards, Director of the Division of Local Law Enforcement Assistance of the Florida Department of Law Enforcement; William L. Hart, Police Chief of Detroit; and Wilbur F. Littlefield, the Public Defender for Los Angeles County.

The Executive Director was Jeffrey Harris, Assistant Director for Marketing Abuses of the Federal Trade Commission, formerly on the staff of Attorney General Edward H. Levi, and a former Assistant U.S. Attorney for the Southern District of New York. The Task Force was supported by a staff drawn from throughout the Department of Justice.

The overall objective of the Task Force was to make specific recommendations to the Attorney General on ways in which the federal government could do more to combat violent crime. The scope of the Task Force's activities was divided into two phases.

The first phase focused on measures that the Department could undertake within its existing substantive and jurisdictional framework. In that phase the Task Force recommended measures the Department could immediately implement to combat violent crime without the need for additional legislation or funding, and without decreasing the Department's other important offensives against crime such as the white collar and anti-corruption efforts. The Task Force was directed to complete its Phase I report within 60 days of its first meeting which was held on April 17, 1981. On June 17, 1981, 15 Phase I recommendations were presented to the Attorney General. These recommendations, along with supporting commentary, are presented as the first section to this final report.

The second phase of the Task Force's work focused on changes in federal criminal statutes, funding levels, and resources that would increase the federal government's impact on violent crime. The Task Force was directed to complete this phase within 120 days of its first meeting. On August 17, 1981, the Task Force presented 49 Phase II recommendations to the Attorney General. These recommendations, and their supporting commentary, are presented in

the second part of this final report. Because of the large number of Phase II recommendations, they have been organized into the following chapters:

- Federal law and its enforcement
- Criminal procedure
- Federalism in criminal justice
- Juvenile crime
- Victims of crime.

It should be noted that the order in which the recommendations are presented and numbered is not meant to suggest their relative importance or priority for action.

In developing these recommendations the Task Force relied on several sources of information:

- Public testimony provided in seven cities by nearly 80 witnesses representing a broad spectrum of expertise in dealing with a multitude of problems facing federal, state, and local justice systems. These witnesses are listed in the Appendix to this report.
- Written testimony provided by literally thousands of federal, state, and local criminal justice practitioners, scholars, and members of the general public from across the country.
- Staff research into specific issue areas that included literature searches and interviews with experts both within and outside the federal government.
- The members' personal experience and expertise.

In addition to presenting the recommendations and commentary, this report also contains the letters of transmittal and an introduction that describes, in general terms, the Task Force's approach to its mandate and the constraints under which it operated.

Contents

Summary of recommendations

Phase I Recommendations:

1. The Attorney General should examine the feasibility of designating a single federal law enforcement agency to coordinate all federal and state unlawful flight to avoid prosecution and other fugitive activities. Higher priority should be given to locating and apprehending violence-prone offenders, major drug traffickers, and other major violators.
2. The Attorney General should invoke his authority under Title 21 of the United States Code and request the United States Navy to assist in detecting air and sea drug traffic.
3. The Attorney General should work with the appropriate governmental authorities to make available, as needed and where feasible, abandoned military bases for use by states and localities as correctional facilities on an interim and emergency basis only. Further, the Attorney General should work with the appropriate governmental authorities to make available, as needed and where feasible, federal property for use by states and localities as sites for correctional facilities.
4. The Federal Bureau of Investigation should establish the Interstate Identification Index (III).
5. The Federal Bureau of Investigation should examine the feasibility of a separate registry of firearms violators.
6. The Attorney General should mandate the United States Attorneys to establish law enforcement coordinating committees in each federal district.
7. The Attorney General should expand the program of cross-designation of Assistant United States Attorneys and state and/or local prosecutors.
8. The Attorney General should direct the National Institute of Justice and other branches of the Department of Justice to conduct research and development on federal and state career criminal programs, including programs for juvenile offenders with histories of criminal violence.
9. The Attorney General should take all steps necessary to reduce substantially the delay in processing criminal identification applications.
10. The Attorney General should take all steps necessary to reduce substantially the delay in processing requests for technical assistance from state and local criminal justice agencies.
11. The Attorney General should expand, where possible, the training and support programs provided by the federal government to state and local law enforcement personnel.
12. The Attorney General should exercise leadership in informing the American public about the extent of violent crime. In that connection, the Attorney General should seek to build a national consensus that drug abuse, crime, and violence have no rightful place in the schools and, when these conditions are found to exist, vigorous criminal law enforcement should ensue.
13. The Attorney General should take a leadership role in ensuring that the victims of crime are accorded proper status by the criminal justice system.
14. The Attorney General should require, as a matter of sentencing advocacy, that federal prosecutors assure that all relevant information about the crime, the defendant, and, where appropriate, the victim, is brought to the court's attention before sentencing. This will help ensure that judges have a complete picture of the defendant's past conduct before imposing sentence.
15. The Attorney General should direct responsible officials in appropriate branches of the Department of Justice to give high priority to testing systematically programs to reduce violent crime and to inform state and local law enforcement and the public about effective programs.

Phase II Recommendations:

Federal Law and Its Enforcement

Narcotics

16. The Attorney General should support the implementation of a clear, coherent, and consistent enforcement policy with regard to narcotics and dangerous drugs, reflecting an unequivocal commitment to combatting international and domestic drug traffic and including—

    a. A foreign policy to accomplish the interdiction and eradication of illicit drugs wherever cultivated, processed, or transported; including the responsible use of herbicides domestically and internationally.

    b. A border policy designed to effectively detect and intercept the illegal importation of narcotics, including the use of military assistance.

    c. A legislative program, consistent with recommendations set forth elsewhere in this report, to reform the criminal justice process to enhance the ability to prosecute drug-related cases.

Guns

17. The Attorney General should support or propose legislation to require a mandatory sentence for the use of a firearm in the commission of a federal felony.
18. The Attorney General should support or propose legislation to amend the Gun Control Act of 1968 to strengthen its ability to meet two of its major purposes: allowing the trace of firearms used during the commission of an offense and prohibiting dangerous individuals from acquiring firearms. Specifically, the Act should be amended to provide the following:

    a. That, on a prospective basis, individuals be required to report the theft or loss of a handgun to their local law enforcement agency.

    b. That a waiting period be required for the purchase of a handgun to allow for a mandatory records check to ensure that the purchaser is not in one of the categories of persons who are proscribed by existing federal law from possessing a handgun.

19. Title I of the Gun Control Act of 1968 prohibits the importation of certain categories of handguns. However, the Act does not prohibit the importation of unassembled parts of these guns, thereby permitting the circumvention of the intended purpose of this title of the Act. It is therefore recommended that the Act be amended to prohibit the importation of unassembled parts of handguns which would be prohibited if assembled.
20. The Attorney General should support or propose legislation to authorize the Bureau of Alcohol, Tobacco and Firearms to classify semi-automatic weapons that are easily converted into fully automatic weapons as Title II weapons under the Gun Control Act of 1968.
21. The Attorney General should direct the United States Attorneys to develop agreements with state and local prosecutors for increased federal prosecutions of convicted felons apprehended in the possession of a firearm. This proposal would enable federal prosecutions to be brought against felons apprehended in the possession of a firearm under the 1968 Gun Control Act and the Dangerous Special Offender provisions of the Organized Crime Control Act of 1970. Federal penalties under these statutes often are greater than state penalties applicable to firearms possession. Because these cases are matters over which state and local law enforcement have primary jurisdiction, they should be brought in close coordination with state and local prosecutors. The appropriate federal role is to initiate prosecutions in order to bring federal prosecutorial resources and more severe penalties to bear on the most serious offenders in a locality who are apprehended with firearms in their possession.
22. The Attorney General should direct the National Institute of Justice to establish, as a high priority, research and development of methods of detecting and apprehending persons unlawfully carrying guns.

Crimes against federal officials

23. The Attorney General should support or propose legislation to make a federal offense any murder, kidnapping, or assault of a United States official or of a federal public servant who is engaged in the performance of official duties. The term "United States official" should be defined to mean a member of Congress, a member of Congress-elect, a federal judge, a member of the Executive Branch who is the head of a department, or those already covered by the law including the President, the President-elect, the Vice President, and the Vice President-elect. The term "federal public servant" should be defined as any person designated for coverage in regulations issued by the Attorney General and those already covered by law including a federal law enforcement officer.

24. The Attorney General should support or propose legislation to make a federal offense any murder, kidnapping, or assault on a state or local law enforcement officer or on a private citizen committed in the course of a murder, kidnapping, or assault on the President or Vice President.

Arson

25. The Attorney General should conduct a study of the feasibility of transferring the anti-arson training and research functions of the United States Fire Administration to the Bureau of Alcohol, Tobacco and Firearms.

26. Arson should be the subject of a special statistical study on a regular basis by an appropriate agency as determined by the Attorney General.

27. To eliminate problems that often emerge when gasoline or other flammable liquids are used in arson, current law creating federal jurisdiction over arson started by explosion where interstate commerce is involved should be amended to encompass arson started by fire as well as by explosion.

Tax cases

28. The Attorney General should support or propose legislation to amend the Tax Reform Act to balance legitimate law enforcement needs with personal privacy interests by permitting the limited use of Internal Revenue Service records and information by other law enforcement agencies.

29. The Internal Revenue Service should be afforded adequate resources to investigate tax offenses and financial dealings of drug traffickers and other illegal business activities that are associated with violent crime.

30. The Attorney General should review and restructure if necessary the "Dual Prosecution Policy" as it relates to prosecution of tax offenders who have committed other offenses prosecuted by the Department of Justice.

The Freedom of Information Act

31. The Attorney General should order a comprehensive review of all legislation, guidelines, and regulations that may serve to impede the effective performance of federal law enforcement and prosecutorial activities and take whatever appropriate action is necessary within the constitutional framework.

32. The Attorney General should seek amendments to the Freedom of Information Act to correct those aspects that impede criminal investigation and prosecution and to establish a more rational balance among individual privacy considerations, openness in government, and the government's responsibility to protect citizens from criminal activity.

Centralizing federal law enforcement functions

33. The Attorney General should study whether to transfer the firearms, alcohol, and arson law enforcement functions of the Bureau of Alcohol, Tobacco and Firearms to the Department of Justice; to transfer the Border Patrol functions of the Department of Justice to the Department of the Treasury; and to transfer the licensing and compliance functions of the Drug Enforcement Administration to the Food and Drug Administration of the Department of Health and Human Services.

Housing federal detainees in local jails and state prisons

34. The Attorney General should seek a waiver of the requirements of the Federal Procurement Regulations for contracts entered into for temporary housing of federal prisoners in local detention facilities and/or should seek legislation to amend the Grant and Cooperative Agreement Act of 1977 (Public Law 95-224) to establish and authorize the use of intergovernmental agreements with local governments for detention space and services for federal prisoners.

35. The Attorney General should support or propose a legislative appropriation for the implementation of a Cooperative Agreement Program that would allow the United States Marshals Service to assist local governments in acquiring equipment and supplies necessary for jails to meet requirements for housing federal prisoners and should support or propose a legislative appropriation for capital improvements of detention facilities used to house federal prisoners, with priority given to those facilities under litigation or court order for overcrowding.

36. The Attorney General should support or propose legislation to amend 18 U.S.C. 5003 to permit a quid pro quo arrangement whereby the federal government could house state prisoners and the states house a similar number of federal inmates without requiring an exchange of funds.

Adequate personnel resources for federal responsibilities

37. The Attorney General should seek a substantial increase in personnel resources for federal law enforcement and prosecutorial agencies to enable them to effectively perform their present responsibilities and the additional and expanded responsibilities recommended by this Task Force.

Criminal Procedure

Bail

38. The Attorney General should support or propose legislation to amend the Bail Reform Act that would accomplish the following:

a. Permit courts to deny bail to persons who are found by clear and convincing evidence to present a danger to particular persons or the community.

b. Deny bail to a person accused of a serious crime who had previously, while in a pretrial release status, committed a serious crime for which he was convicted.

c. Codify existing case law defining the authority of the courts to detain defendants as to whom no conditions of release are adequate to assure appearance at trial.

d. Abandon, in the case of serious crimes, the current standard presumptively favoring release of convicted persons awaiting imposition or execution of sentence or appealing their convictions.

e. Provide the government with the right to appeal release decisions analogous to the appellate rights now afforded to defendants.

f. Require defendants to refrain from criminal activity as a mandatory condition of release.

g. Make the penalties for bail jumping more closely proportionate to the penalties for the offense with which the defendant was originally charged.

Insanity defense

39. The Attorney General should support or propose legislation that would create an additional verdict in federal criminal cases of "guilty but mentally ill" modeled after the recently passed Illinois statute and establish a federal commitment procedure for defendants found incompetent to stand trial or not guilty by reason of insanity.

Exclusionary rule

40. The fundamental and legitimate purpose of the exclusionary rule—to deter illegal police conduct and promote respect for the rule of law by preventing illegally obtained evidence from being used in a criminal trial—has been eroded by the action of the courts barring evidence of the truth, however important, if there is any investigative error, however unintended or trivial. We believe that any remedy for the violation of a constitutional right should be proportional to the magnitude of the violation. In general, evidence should not be excluded from a criminal proceeding if it has been obtained by an officer acting in the reasonable, good faith belief that it was in conformity to the Fourth Amendment to the Constitution. A showing that evidence was obtained pursuant to and within the scope of a warrant constitutes prima facie evidence of such a good faith belief. We recommend that the Attorney General instruct United States Attorneys and the Solicitor General to urge this rule in appropriate court proceedings, or support federal legislation establishing this rule, or both. If this rule can be established, it will restore the confidence of the public and of law enforcement officers in the integrity of criminal proceedings and the value of constitutional guarantees.

Sentencing and parole

41. The Attorney General should support the enactment into law of the sentencing provisions of the proposed Criminal Code Reform Act of 1979 which provide for greater uniformity and certainty in sentencing through the creation of sentencing guidelines and the abolition of parole.

Habeas corpus

42. The Attorney General should support or propose legislation that would:

a. Require, where evidentiary hearings in habeas corpus cases are necessary in the judgment of the district court, that the district court afford the opportunity to the appropriate state court to hold the evidentiary hearing.

b. Prevent federal district courts from holding evidentiary hearings on facts which were fully expounded and found in the state court proceeding.

c. Impose a 3-year statute of limitations on habeas corpus petitions. The 3-year period would commence on the latest of the following dates:

(1) the date the state court judgment became final,

(2) the date of pronouncement of a federal right which had not existed at the time of trial and which had been determined to be retroactive, or

(3) the date of discovery of new evidence by the petitioner which lays the factual predicate for assertion of a federal right.

d. Codify existing case law barring litigation of issues not properly raised in state court unless "cause and prejudice" is shown, and provide a statutory definition for "cause."

Federalism in Criminal Justice

Fugitives

43. The Attorney General should seek additional resources for use in the apprehension of major federal fugitives and state fugitives who are believed to have crossed state boundaries and who have committed or are accused of having committed serious crimes.

Training of state and local personnel

44. The Attorney General should establish, and where necessary seek additional resources for, specialized training programs to allow state and local law enforcement personnel to enhance their ability to combat serious crime.

45. The Attorney General should seek additional resources to allow state and local prosecutors to participate in training programs for prosecutors.

46. The Attorney General should ensure that the soon-to-be established National Corrections Academy will have adequate resources to enable state and local correctional personnel to receive training necessary to accommodate the demands on their agencies for managing and supervising increased populations of serious offenders.

Exchange of criminal history information

47. a. If the eight-state prototype test of the Interstate Identification Index (III) is successful, the Attorney General should direct the Federal Bureau of Investigation to begin immediately the development of the index and should ensure that adequate computer support and staff are available to develop and maintain it for the federal government, all 50 states, the District of Columbia, and appropriate areas of federal jurisdiction outside of the United States.

b. If the prototype test demonstrates that such an index is not feasible, the Attorney General should direct the FBI to develop alternative proposals for the exchange of federal, state, and local criminal history information, which may include a national data base of such records or message switching.

48. The Attorney General should support or propose legislation to authorize and provide adequate resources for grants to state governments to establish the central state repositories of records and the criminal justice information systems required for participation in the III program, or alternative criminal history exchange programs as discussed in Recommendation 47.

49. The Attorney General should direct the FBI to revise its long-range plan to reduce duplication of criminal history information services between the Identification Division and the National Crime Information Center to take into account the results of the eight-state prototype test of the III.

50. The Attorney General should seek additional resources for the FBI to reduce the backlog of requests for fingerprint and name checks and to enable it to respond to such requests more promptly, including those from non-law enforcement users, and should assign high priority to swift completion of computerizing fingerprint files.

Justice statistics

51. The Attorney General should ensure that adequate resources are available for the collection and analysis of statistics on crime, its victims, its perpetrators, and all parts of the justice system at all levels of government and for the dissemination of these statistics to policymakers in the Department of Justice; other agencies of federal, state, and local government; the Congress; and the general public.

Disaster assistance

52. The Attorney General should support or propose legislation to allow direct financial assistance to supplement the resources and efforts of state and local governments that have demonstrated that they are suffering a criminal justice disaster or emergency of such unusual nature and proportion that their own resources fall short of addressing the need, and he should request adequate funds to support such assistance.

Federal funding for research, demonstration, evaluation, and implementation of innovative programs

53. The Attorney General should ensure that:

a. Adequate resources are available for the research, development, demonstration, and independent evaluation of methods to prevent and reduce serious crime; for disseminating these findings to federal, state, and local justice agencies; and for implementing these programs of proven effectiveness at the state and local level.

b. Grant awards for implementing such demonstrated programs require a reasonable match of state or local funds and be limited to a reasonable time period.

Assisting state and local corrections

54. The Attorney General should seek legislation calling for $2 billion over 4 years to be made available to the states for construction of correctional facilities. Criteria for a state's obtaining federal assistance under this program include (1) demonstration of need for the construction; (2) contribution of 25 percent of the overall cost of the construction; and (3) assurance of the availability of operational funds upon completion of construction. Funds should be allocated by a formula which measures a state's need for prison construction relative to all states.

55. Within 6 months, the National Institute of Corrections (NIC), which would administer the program described in Recommendation 54, would develop models for maximum, medium, and minimum security facilities of 750 and 500 (or fewer) beds, from which states would choose the appropriate model(s) for construction. In addition, over the 4-year period, NIC would complete studies pertaining to the possible establishment of regional prisons, the feasibility of private sector involvement in prison management, and the funding needs of local jails. The Attorney General should review NIC's findings and other relevant information to determine the need for additional funding upon completion of the 4-year assistance program.

56. The Attorney General should support or propose legislation to amend the Federal Property and Administrative Services Act of 1949 to (1) permit the conveyance or lease at no cost of appropriate surplus federal property to state and local governments for correctional purposes and (2) ensure such conveyances or leases be given priority over requests for the same property for other purposes.

57. The Attorney General should support or propose legislation to amend the Vocational Education Act and other applicable statutes to facilitate state and local correctional agencies' ability to gain access to existing funds for the establishment of vocational and educational programs within correctional institutions.

Juvenile Crime

Juvenile fingerprints

58. The Attorney General should direct, and if necessary seek additional resources for, the Federal Bureau of Investigation to accept fingerprint and criminal history information of juveniles convicted of serious crimes in state courts and should support or propose legislation to amend Section 5038 of the Juvenile Justice and Delinquency Prevention Act to provide for fingerprinting and photographing of all juveniles convicted of serious crimes in federal courts.

Federal jurisdiction over juveniles

59. The Attorney General should support or propose legislation to amend Section 5032 of the Juvenile Justice and Delinquency Prevention Act to give original jurisdiction to the federal government over a juvenile who commits a federal offense.

Youth gangs

60. The Attorney General, where appropriate, should expand the use of federal investigative and prosecutorial resources now directed against traditional organized crime activities to the serious criminal activities of youthful street gangs now operating in metropolitan areas of the country.

Federal juvenile justice program

61. Funding of juvenile justice programs should be done according to the criteria set forth in Recommendation 53; such programs should be considered for funds along with all other programs within the administrative framework for general funding.

Victims of Crime

Federal standards for the fair treatment of victims of serious crime

62. The Attorney General should establish and promulgate within the Department of Justice, or support the enactment of legislation to establish, Federal Standards for the Fair Treatment of Victims of Serious Crime.

Third-party accountability

63. The Attorney General should study the principle that would allow for suits against appropriate federal governmental agencies for gross negligence involved in allowing early release or failure to supervise obviously dangerous persons or for failure to warn expected victims of such dangerous persons.

Victim compensation

64. The Attorney General should order that a relatively inexpensive study be conducted of the various crime victim compensation programs and their results.

Introduction

The Attorney General of the United States instructed us to recommend specific ways in which the federal government can do more to assist in controlling violent crime without limiting its efforts against organized crime and white-collar crime. We began our work aware, as every citizen is aware, of the fearful toll that serious, violent crime is exacting in our communities; the evidence we have taken in our hearings in seven cities heightened that awareness and underscored for us the extent to which millions of our fellow citizens are being held hostage by their fear of crime and violence.

Though violent crime can strike anyone, most frequently it affects the poor, the young, the very old, and residents of the inner cities—precisely those persons who are least able to protect themselves. And even those who can afford a suburban residence or a privately guarded city apartment often find themselves defenseless on the streets.

A free society presupposes an orderly community. The Constitution of the United States, in its preamble, announces that among the purposes of the new union was to "insure domestic tranquility," but nowhere in that document is there any provision for the federal government directly to police its citizens. The Founders sought to combine the advantages of a federal union and the virtue of individual liberty in order to achieve justice and the general welfare. If this delicate balance between a national government and local governments, between the general good and personal freedom, was to survive, the people of this nation would have to display forebearance, show one another mutual respect, and build self-regulating neighborhoods and communities. If order and tranquility could only be achieved by the exercise of governmental power, then a free society would be impossible.

The wave of serious, violent crime we are now experiencing reflects a breakdown of the social order, not of the legal order. The causes of crime are variously said to be found in the weakening of familial and communal bonds, the persistence of unacceptable social disadvantages among some segments of society, and the easy spread of attitudes that favor immediate over deferred gratification. We did not inquire into these matters for several reasons. First, our charge was to make recommendations to the Attorney General as to what policies the Department of Justice might pursue, not what policies the government as a whole might follow. Second, even if our charge had been broader, we are not convinced that a government, by the invention of new programs or the management of existing institutions, can by itself recreate those familial and neighborhood conditions, those social opportunities, and those personal values that in all likelihood are the prerequisites of tranquil communities. Finally, we are mindful of the risks of assuming that the government can solve whatever problem it addresses. The preamble to the Constitution, after all, promises not only domestic tranquility but the "blessings of liberty" as well, and we must not risk losing the latter in order to achieve the former.

We thus present our report mindful of the limits to what government can do and of the risks of allowing our reach to exceed our grasp. These limits, which face all free governments, are especially important in assessing the role of the federal government, since law enforcement in this nation is essentially—and properly—a responsibility of state and local governments. In our deliberations, we have come to identify certain criteria that should serve as the basis for federal action. In general, federal action is appropriate when one or more of the following four conditions are met:

The crime requires the creation and exercise of federal jurisdiction because it—

- Materially affects interstate commerce.

- Occurs on a federal reservation or in the District of Columbia.
- Involves large criminal organizations or conspiracies that can be presumed to operate in several states.
- Is directed at a target of overriding national importance (e.g., an assassination attempt on the life of a high federal official).

There is a need to discover, test, and disseminate strategies for coping with crime and disorder. No local jurisdiction should be expected to pay the costs of research and development in law enforcement when the benefits of such programs will redound to the advantage of citizens everywhere.

The local jurisdiction faces an acute law enforcement emergency because—

- Federal policy or geographic location has placed a heavy burden on some state or locality (as when large numbers of immigrants come to one or a few states as a result of federal policy or federal judges mandate higher prison management standards).
- The locality manifestly lacks the fiscal resources to try, on a demonstration basis, new law enforcement methods that have proven value.
- Natural disasters or manmade emergencies threaten a breakdown of social order beyond the control of local resources.

Provisions of the Federal Constitution or of federal law are interpreted as setting procedural requirements for state and local law enforcement agencies. Most of these procedural requirements reflect decisions by federal judges who are applying constitutional tests to local practice. We believe that Congress should, where appropriate, clarify and modify these requirements in order to maintain the necessary balance between liberty and order and to ensure that the remedy for any violation of a rule is proportional to the magnitude of the violation.

The recommendations that follow are those that, in our eyes, both meet these criteria and have some practical value. In the commentary attached to each, we expand on and interpret these criteria.

How confident are we that these proposals, if adopted, will affect the rate of serious, violent crime? We can offer few general assurances on this score. We think that the provision of more and higher quality correctional facilities will ease the problem faced now by almost all states of dealing swiftly, certainly, and fairly with convicted offenders and that this, in turn, will help to deter some would-be offenders and incapacitate other known offenders. We believe that better efforts at controlling the flow of narcotics into this country by attacking the problem as close to the source as possible will reduce the amount of crime—especially violent crime—attendant upon the distribution of these drugs once they enter the United States. We think the research and development work of the federal government has already been of value to crime control efforts because of the testing of such approaches as career-criminal prosecutorial programs, computerized information systems, and "sting" operations. We are optimistic that there is more yet to learn, but we can make no promises.

Other of our recommendations may have little immediate effect on crime but are important nonetheless. The citizen wants safety and expects justice; too often, he or she gets neither. Citizens will never understand the failure of the criminal justice system to excuse the innocent and punish the guilty. When guilty persons go free because an officer acting in good faith seizes evidence that is thrown out of court on a technicality, when a convicted person evades punishment by countless and often trivial appeals, when judges give sentences that are so disparate as to bear little systematic relation to the magnitude of the offense or the record of the offender, when convicted offenders who have previously abused the privilege of bail are given bail again—when these and other apparent injustices occur, the citizen is not simply fearful, he or she is angry. We must make every effort to assure the integrity of the criminal justice system, and do so without weakening those fundamental rights that are essential to a system of ordered liberty.

Though we were charged with offering recommendations concerning violent crime, we realized quickly that the distinction between violent and nonviolent offenders, clear in principle, is difficult to maintain in practice. A given thief may use violence on one occasion and not on another; drug trafficking may lead to violence under certain circumstances and not others; a person in prison may be a violent offender but be incarcerated for having committed a nonviolent crime. We have therefore adopted the custom of referring in this report to *serious* crime, by which we mean violent crime and those other serious offenses—such as arson, drug trafficking, weapons offenses, and household burglaries—that may or may not lead to injury.

Phase I Recommendations

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U.S. Department of Justice

Attorney General's Task Force on Violent Crime

Washington, D.C. 20530

June 17, 1981

The Honorable William French Smith
Attorney General
Department of Justice
Washington, D.C. 20530

Dear Mr. Attorney General:

Pursuant to your directive of April 10, 1981, the Task Force on Violent Crime presents its Phase I recommendations on ways in which the Federal Government can improve its efforts to control violent crime.

These recommendations are offered in keeping with your requirement that proposals made in Phase I should not require new legislation or additional funding. While we recognize that many other agencies of the Federal Government exercise direct law enforcement responsibilities, our proposals chiefly contemplate those actions that can be taken by or within the Department of Justice.

As you have directed, our efforts during this first phase have been aimed at suggesting steps the Department of Justice could take immediately to enhance efforts at combatting violent crime. Thus, we have not addressed the many social and economic factors that touch upon these matters and may tend to increase or decrease crime rates.

Our own experience teaches, and the testimony we have heard confirms, the fact that the control of crime and the administration of justice are primarily the concern of state and local governments, and of private citizens. The Federal Government should do whatever it reasonably can to assist in these efforts, it should avoid policies that may make matters worse for state and local governments, and it should conduct the investigation and prosecution of violent federal offenders in an exemplary fashion. However, it cannot and should not suppose that the Federal Government can take the place of state, local and citizen efforts.

During its Phase II deliberations, the Task Force will consider programs that require changes in federal law or expenditures. As you are aware, however, there are many areas that cannot be considered exclusively as Phase I or Phase II matter. Therefore, we wish to

emphasize two facts: First, some matters of urgent concern could not be considered in our Phase I report. Second, some matters that are addressed in our Phase I report may also be the subject of further recommendations in our Phase II report. Nothing in this report should be read as precluding further action by the Task Force.

In the short, 60-day Phase I period, we have not attempted to provide detailed blueprints for action. Instead, we have given you concise recommendations followed by discussion of some background of the problems identified. Implementation of some recommendations will require staff work by the Department of Justice; implementation of others will require the cooperation of other government agencies. We believe that all units of government must work together against violent crime. It is our hope that every agency you contact will respond promptly and positively.

To aid in the development of our recommendations, we met in Washington, Atlanta, Los Angeles and Chicago during this first phase of our effort. Public testimony was received from federal, state, and local officials as well as from leading experts in criminal justice operations and representatives of major public interest groups. In each city, we held roundtable discussions on the issues presented and examined methods for resolving problems. During Phase II, we plan to hold similar public hearings in Detroit, Miami, and New York.

The second phase of our work has already begun. We fully expect to have a final series of recommendations ready for your consideration by mid-August.

Respectfully submitted,

Griffin B. Bell
Co-Chairman

James R. Thompson
Co-Chairman

David L. Armstrong

William L. Hart

Frank G. Carrington

Wilbur F. Littlefield

Robert L. Edwards

James Q. Wilson

Jeffrey Harris
Executive Director

Recommendation 1

The Attorney General should examine the feasibility of designating a single federal law enforcement agency to coordinate all federal and state unlawful flight to avoid prosecution and other fugitive activities. Higher priority should be given to locating and apprehending violence-prone offenders, major drug traffickers, and other major violators.[1]

Commentary

Only a small fraction of all crimes known to the police are solved by an arrest. At the same time, a small number of repeat offenders commit a large share of all serious crimes. While improving the ability of law enforcement agencies to solve crimes reported to them is obviously of great importance, of even greater importance is ensuring that those that are solved by an arrest proceed to prosecution and, if convictions ensue, to punishment.

Unfortunately, a large number of persons accused of, or convicted of, a crime become fugitives from the law, thus defeating the value of the efforts already made to apprehend them. Since we must economize on scarce law enforcement resources, it makes sense to assign a high priority to ensuring the apprehension and punishment of persons already known to be serious offenders.

As of April 24, 1981, the Federal Bureau of Investigation's (FBI) National Crime Information Center listed 180,649 fugitive warrants. Of these, 82 percent were local warrants, 1.4 percent were FBI warrants, and the remainder were military or other federal agency warrants. Of the total warrants, 42,190 were for violent offenders. Of these, 2,571 were FBI, 2,675 were other federal agencies, and 4 were military.

Federal responsibility for apprehending fugitives is divided primarily between two agencies: the FBI and the U.S. Marshals Service.

The FBI is responsible for apprehending fugitives who commit any of a large number of federal crimes or are covered by the Fugitive Felon Act (unlawful flight to avoid prosecution). The latter are fugitives who have felony warrants outstanding with state authorities. In such cases, there is credible evidence the fugitive has crossed state lines and the state authority agrees to extradite if required.

The FBI divides its law enforcement activities into three levels of priority. Apprehension of fugitives covered by the Fugitive Felon Act is a third-level activity. FBI resources used to locate and apprehend federal fugitives are directed primarily at persons wanted for violent crimes, for crimes resulting in the loss or destruction of property valued at more than $25,000, and for crimes involving substantial trafficking in narcotics.

The U.S. Marshals Service, which has been apprehending and investigating fugitive cases throughout its history, was given, in 1979, the added responsibility of escaped federal prisoners and post-conviction parole, probation, and bond default warrants—fugitive matters that had been the responsibility of the FBI. The U.S. Marshals Service gives highest priority to apprehending fugitives who violate parole or probation, who escape from prison, or who fail to appear for processing after conviction. The next highest priority is given to felony warrants from other agencies.

Other federal agencies with law enforcement functions, such as the Drug Enforcement Administration (DEA) and the Internal Revenue Service (IRS), also execute warrants for persons accused of violating laws. In many instances, however, they depend on the U.S. Marshals Service to execute these warrants or on the FBI for assistance.

Linking the efforts of federal, state, and local agencies is the National Crime Information Center, a computerized system which includes federal, state, and local warrants. Use of this system allows agencies to make rapid checks to see if a warrant is pending against a person who, for example, has been stopped for a traffic violation.

With the transfer of several functions relating to fugitives to the U.S. Marshals Service in 1979, the FBI lost some personnel. Given the priority level assigned to fugitive apprehension, the FBI believes it is currently devoting the maximum resources possible to that function. The FBI relies on state and local governments to inform it about fugitives that should be investigated under the Fugitive Felon Act. The FBI also relies on state and local governments to notify it only about the most serious fugitive cases so as to conserve limited investigative manpower. Similarly, other federal agencies notify the U.S. Marshals Service about which fugitive cases the agencies will handle and which cases require the work of the U.S. Marshals Service.

Under the current structure, there is a tremendous potential for overlap of investigations. In some instances this results in interagency cooperation that is helpful; in others, however, it may result in duplication of effort or interference. There are procedures designed to avoid this situation, but the potential exists.

Potentially, any given warrant could be worked on by any one of several federal, state, and local agencies. At the same time, there is a potential for gaps in investigation, with the possibility that no agency would be working on any given warrant.

One area of potential overlap occurs in the separation of functions between the FBI and the U.S. Marshals Service. The U.S. Marshals Service may receive jurisdiction over a case that had previously been investigated by the FBI. The potential for this is clearly illustrated in the area of bail where the FBI has jurisdiction over persons who jump bail prior to conviction and the U.S. Marshals Service has jurisdiction over persons who jump bail after conviction.

In this phase of our work, we are concerned with two primary issues: (1) the low priority given by the FBI to individuals wanted under the Fugitive Felon Act and by other federal law enforcement agencies to the location and apprehension of fugitives; and (2) the lack of coordination and the overlap and competition that exists among all federal, state, and local agencies engaged in locating and apprehending fugitives. We believe that the Attorney General could make a positive impact on violent crime by coordinating efforts to apprehend fugitives and by giving high priority to the apprehension of violence-prone offenders, major drug traffickers, and other major violators.

Note

1. We also address fugitives in Phase II Recommendation 43.

Recommendation 2

The Attorney General should invoke his authority under Title 21 of the United States Code and request the United States Navy to assist in detecting air and sea drug traffic.[1]

Commentary

The military now assists domestic law enforcement activities in various ways. These activities include training and support in explosive ordnance disposal, polygraph training, developing plans and procedures for protecting facilities vital to the national defense, and protecting foreign officials visiting the United States.

The primary area of domestic law enforcement support, however, is in helping the U.S. Customs Service, Drug Enforcement Administration (DEA), and Immigration and Naturalization Service in their attempts to interdict illegal substances entering the United States. This assistance has included loan or transfer of surplus military equipment to these agencies (including fixed- and rotary-wing aircraft and communicational sensor equipment), training in the operation of equipment, use of research and airfield facilities, and provision of intelligence about possible drug smuggling collected in the normal course of military activities. Representatives of DEA and the Coast Guard believe that an extension of these activities in various ways would be extremely helpful. For instance, the Coast Guard contends that, with a substantial increase in the availability of Department of Defense resources such as helicopter-capable ships, patrol vessels, fixed-wing search aircraft, and short-range helicopters, it could interdict or deter 50 to 75 percent of the marijuana smuggled into the United States by sea.

Military assistance to domestic law enforcement is carefully proscribed by the Posse Comitatus Act, 18 U.S.C. 1385, which provides—

> Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the *Army* or *Air Force* as a posse comitatus or otherwise to execute the laws shall be fined not more than $10,000 or imprisoned not more than 2 years, or both. [*emphasis added*]

Originally intended to prevent the interference of federal troops in the South during Reconstruction, the Act is now seen as embodying the extremely important principle that the Armed Forces should be separate from and not interfere with the work of domestic law enforcement, thus minimizing the possibility of a police state and preventing the military from being distracted from its primary task. Although the Navy and Marines are not mentioned in the Act, they have passed their own Posse Comitatus regulations (SECNAVINST 5820.7, May 15, 1974). The Act has been interpreted to mean the *Army* or *Air Force* shall not engage in "direct assistance" to law enforcement including but not limited to arrest, search and seizure, and pursuit or surveillance of a criminal suspect.

Section 873(b) of 21 U.S.C., a provision of the comprehensive Drug Abuse Prevention and Control Act of 1970, 84 Stat. 1242, directs that—

> When requested by the Attorney General, it shall be the duty of any agency or instrumentality of the Federal Government to furnish assistance, including technical advice, to him for carrying out his functions under this subchapter . . .

The Posse Comitatus Act has been interpreted to take precedence over this law, thus constraining the assistance the Army and Air Force can offer. However, this section of the Drug Abuse Prevention and Control Act is interpreted to take precedence over the Navy's Posse Comitatus regulation, therefore permitting the Attorney General to request the assistance of the Navy.

There is disagreement among all parties concerning what can and cannot be done in interdicting drug smuggling without violating the Posse Comitatus Act. The Coast Guard and DEA would like more to be done, including having the Air Force schedule training flights over particular areas at times when drug smuggling is suspected and passing on more information to DEA and the Coast Guard. The Department of Defense has generally believed that its mission does not involve domestic law enforcement and has tended to interpret the Posse Comitatus Act quite strictly. Thus, for instance, the Navy is duty bound to respond to the Attorney General's request for assistance in stopping drug smuggling; however, where the Navy can exercise discretion in how to respond, it is under no statutory duty to assist the Coast Guard. The Navy has refused certain requests for assistance from the Coast Guard. Similarly, the Department of Justice, which has the last word on the form military assistance to law enforcement can take, has tended to construe the Posse Comitatus Act narrowly. Significantly, the Department has stated that, where troops are engaged in an activity serving a primarily military purpose, the Posse Comitatus Act is not violated by any *incidental* benefit to civilian law enforcement. Otherwise, legitimate military activities may not be undertaken for the purpose of providing assistance to civilian law enforcement.

The Coast Guard and DEA would like increased assistance from the military. The Department of Justice has written legal opinions stating that these requests, if granted, would violate the Posse Comitatus Act and the Navy's Posse Comitatus regulations (if the Attorney General does not invoke his authority under Title 21). The Department of Defense has been reluctant to involve itself in activities it sees as outside its basic mission. However, without necessitating any statutory changes, it appears that increased assistance can be given by the Navy to domestic law enforcement. In particular, the Attorney General under the authority vested in him under Title 21 of the United States Code may request additional assistance from the Navy to help stem the flow of illegal drugs into the country, and we recommend that the Attorney General do so.

In making this Phase I recommendation, we do not preclude further recommendations relating to this topic in Phase II of our work, in which we may consider changes in legislation and funding levels.

Note

1. We also address narcotics in Phase II Recommendation 16.

Recommendation 3

The Attorney General should work with the appropriate governmental authorities to make available, as needed and where feasible, abandoned military bases for use by states and localities as correctional facilities on an interim and emergency basis only. Further, the Attorney General should work with the appropriate governmental authorities to make available, as needed and where feasible, federal property for use by states and localities as sites for correctional facilities.[1]

Commentary

As of January 1, 1981, approximately 315,000 individuals were incarcerated in all state and the 51 federal correctional institutions. On any given day, an additional 158,000 persons are being held in over 3,500 local jails. In the states, the percent of prisoners being held for crimes of violence is estimated to be between 47 and 57 percent. Variations in definitions of the term "violent" account for the range.

Given information on the number and types of incarcerated offenders, the issue becomes the capacity of the correctional system to adequately handle the individuals under its jurisdiction. Currently, most states are either under federal court order or involved in litigation related to overcrowding. Correctional practitioners and knowledgeable observers cite overcrowding as the number one problem facing corrections today. As far back as June 1977, a nationwide deficit of more than 20,000 beds was acknowledged. Since that time, correctional populations have increased more rapidly than the creation of new bedspace.[2]

One solution to this problem is to build more facilities. However, assuming building would be done consistent with nationally recognized standards for square footage, more than $10 billion would probably be needed for construction just to accommodate the current inmate population. In addition, building takes considerable time. Given the immediacy of the need, the level of the crisis is too great to delay action.

The federal government is in a unique position to make property available to other governmental entities, at least on a temporary basis. The Armed Forces has a number of military facilities that are currently abandoned or underutilized. In recent years, the Bureau of Prisons, for example, has been able to acquire two surplus military facilities and convert them into minimum security camps. The process took from 6 to 18 months and conversion costs ranged from $500,000 to $2 million.

The Armed Forces should be surveyed to determine the availability of such facilities and their suitability for correctional purposes. In some instances the federal buildings could be taken over almost immediately. However, since many would not meet the nationally-recognized standards for correctional institutions, it is critical that they be used only on an interim and emergency basis. It is clearly not our intention to provide states the alternative of using dilapidated military barracks instead of their building or repairing their own facilities, where needed. Should there be an exceptional case where a federal installation is modern and suitable for conversion into an institution meeting recognized standards, the proscription regarding interim and emergency use only need not apply.

In terms of federal property generally, the government should seek to assist states and localities with the difficult task of locating appropriate sites for correctional facilities. Such assistance may include making suitable federal property readily available to these governmental units. Such property could be either surplus federal property or those portions of active federal entities currently not in use. We recognize that obstacles may exist to full implementation of this suggestion. However, it is likely that they can be overcome with the firm support of the Attorney General, which we so recommend.

Notes

1. We also address prison overcrowding in Phase II Recommendations 54 through 56.

2. We have noted the decision of the U.S. Supreme Court in *Rhodes* v. *Chapman*, No. 80–332 (June 15, 1981), which holds that double-celling of inmates is not per se constitutionally impermissible. However, overcrowding and associated problems remain a serious concern. Efforts to alleviate overcrowding must continue to be a high priority for federal, state, and local governments.

Recommendation 4

The Federal Bureau of Investigation should establish the Interstate Identification Index (III).[1]

Commentary

The need for timely exchange of criminal history information among agencies and jurisdictions has long been recognized. Recommendations to this effect were made by both the 1967 report of The President's Commission on Law Enforcement and Administration of Justice and the 1973 report of the National Advisory Commission on Criminal Justice Standards and Goals. Law enforcement agencies need such information for investigative purposes; prosecutors and judges need it for charging, trial, and sentencing decisions; and correctional agencies need it for selecting appropriate placement and treatment of offenders.

At present, there are a number of methods by which states can exchange criminal history record information. The three major systems are: the National Law Enforcement Telecommunications Systems, Inc. (NLETS), the Computerized Criminal History (CCH) system of the Federal Bureau of Investigation's (FBI) National Crime Information Center (NCIC), and the fingerprint service of the FBI's Identification Division. Each system, with its major strengths and weaknesses, is discussed below.

NLETS is a state supported and operated telecommunications system which began operation in 1966. All states except Hawaii currently use the NLETS system. About 5 million messages are sent over the system monthly, of which 2 percent are estimated to involve the exchange of criminal history information. The bulk of the messages, estimated at 70 to 75 percent, are on motor vehicle registrations, driver's license checks, and similar department of motor vehicles topics. Criminal history information is exchanged in a type of message different from those used for other messages to assist the states in following their individual state policies with regard to such exchange. NLETS is currently operating at about 8 percent of its system capacity.

Under the NLETS system, if State A has reason to believe that a person has a record in State B, it would send an inquiry to State B. If a record existed, State B would transmit the information back to State A. However, the person may have a record in several states; to obtain those records, State A would have to query those states as well. With the exception of a grant from LEAA's National Criminal Justice Information and Statistics Service to upgrade the system in the early 1970's, NLETS is supported solely by the states and federal users at the rate of $1,000 per month per state or federal user.

NLETS has several advantages. First, it is operational and does not require the expenditure of federal funds. It is attractive to those who argue that the best system is one that is owned and operated by those who own the records. This concern has been raised by Congress in the past.

The NLETS system, however, has shortcomings in the exchange of criminal history information. Because it has no index of offender records, inquiries must be made to each state to determine if a record exists. There is a program that allows simultaneous inquiry to all states, but each state must then respond individually to the requester. Some have questioned the level of security possible through NLETS. They believe the logging system is inadequate to provide necessary audit trails, but there is disagreement on this point. Finally, NLETS is not able to enforce national policy governing information exchange.

The FBI operates the Computerized Criminal History (CCH) system containing 1.8 million criminal history records as a part of NCIC. Currently 49 states can access the CCH files, but only 8 states enter criminal history records into the CCH system. It has been estimated by an independent study that slightly less than half of the CCH records disseminated in a recent year were complete with unambiguous disposition data. CCH is the type of system that many consider to be the most efficient, secure, and effective interstate criminal history exchange system. In a truly national CCH system, all available criminal history information could be obtained with one inquiry. Additionally, because it is a national system run by a federal agency, it is possible to adopt and enforce a policy governing security, privacy, accuracy, and completeness of record information. For the same reason, it is possible to require that participating states use standard offense and disposition categories so that users in one state can understand the information they have received without having to know the meaning of the various state statute names and codes.

The CCH data base is not without its weaknesses, however. First, the existing system has records from only eight states. It has been argued that states

are reluctant to participate because they would lose control over the dissemination of records they would submit to the FBI: their records would be given to other states without their knowledge and perhaps in violation of their state policy. Opposition has come also from persons who are concerned that this would be the first step towards a national FBI data base on all citizens.

The third operating national system of criminal history information exchange is the fingerprint file system operated by the FBI's Identification Division, which is organizationally separate from the NCIC's CCH system. It has fingerprint cards for 21 million persons arrested by state and local authorities. In fiscal 1980, the Division received an average of 43,690 pieces of mail each day, of which 25,120 were fingerprint cards and 18,570 were requests for name checks and other correspondence. Only 38 percent of the Division's fiscal 1979 total workload entailed requests from state and local criminal justice agencies, however. The remainder was distributed as follows: federal criminal checks, 5 percent; federal job applicants, 42 percent; state and local job applicants, 15 percent.

When a criminal justice agency makes a request for information from the Identification Division and a record is found for the individual, the FBI returns a "RAP sheet" to the requesting agency. This RAP sheet contains arrest and disposition information that has been submitted to the FBI. It has been estimated by an independent study that only about one-quarter of the records disseminated in a recent year were complete with unambiguous disposition data.

The Identification Division is currently automating its fingerprint files and matching procedures to provide more rapid turnaround time. Turnaround time currently averages about 25 working days according to the FBI. However, a November 1980 evaluation report by the Jet Propulsion Laboratory (JPL), estimated the average response time for requests from criminal justice agencies at 72 days for individuals with an existing criminal record and 55 days for those without one.

The low proportion of records with disposition information and the length of response time are the major weaknesses of the Identification Division's operation as regards the interstate exchange of criminal history information for criminal justice purposes. One to three months is an intolerable delay for criminal justice processing purposes.

Each of these three major systems has strengths and weaknesses. To provide an improved system for the interstate exchange of criminal history information that is acceptable to a wide range of potential participants, the FBI is currently proposing a concept called the "Interstate Identification Index" (III), sometimes called "Triple I." This proposal has received the support of NLETS and the NCIC Advisory Policy Board.

The III would be a decentralized system under which the states would retain criminal history records for persons arrested in their states and the FBI's NCIC would maintain an index for these records. Depending on the final design, the FBI may or may not retain the actual records for persons with arrests in more than one state. The index would contain only personal identifiers of the individual, the FBI number, and the identification number of the state where the record is located. The index would be limited to offenders with fingerprint cards on file at the FBI. When an authorized agency in State A made an inquiry to the FBI, and the index indicated that State B had a record on the individual, the FBI would notify the requesting agency of the existence and location of the record. It would then be up to the two states to exchange the criminal history information using NLETS or whatever mechanism they desire; the record information would not be transmitted through the FBI.

In 1979, an estimated 370,000 adult violent crime arrests were made in the United States. Of these, about 30 percent or 111,000 arrestees had a multi-state record. A fully operational III system could have provided the means for the arresting states to learn of the out-of-state criminal history of these arrestees.

The FBI began a pilot test of the III on June 29, 1981. The State of Florida is the initial participant in the test. The other seven states participating in CCH will be added to the prototype index when they meet the III technical requirements; the FBI estimates that this should be accomplished by October 1981.

This type of decentralized system offers the advantage of a single national index which reduces the number of inquiries an agency need make to find a record in another state. Although such an index could be developed and maintained by a consortium of states, placement in the FBI could reduce duplication by eventually merging the III system with the fingerprint function of the Identification Division. Additionally, the FBI has established

procedures for assigning identification numbers to the records, matching fingerprints on records from multiple states, and investigating and approving the legitimacy of requesting agencies. The FBI also is able to develop and enforce national policy governing the use of the system. Finally, this proposal apparently has the support of many of the participants in the acrimonious debates of the past decade. A Jet Propulsion Laboratory study found that personnel in existing state criminal information systems showed "overwhelming preference" for such a national index, and nearly 60 percent favored placement in the FBI.

Arguments against such a system come from those who believe that the federal government has no legitimate role in the interstate exchange of state criminal history information.

It has also been argued that the principal users of criminal history information are (or should be) non-law enforcement agencies such as prosecutors, courts, and correctional agencies—institutions which, for a variety of reasons, may be reluctant to rely on a federal law enforcement agency for information. Another concern is how many states would actually participate in a national III system. Finally, some contend that there are no current plans to merge the III with the activities of the Identification Division, thus resulting in two separate systems that would be duplicative, costly, and inefficient.

We believe that the III is a promising development in the exchange of criminal history information. After reviewing the need for the interstate exchange of criminal history information and the advantages and disadvantages of the various existing systems, we recommend that the FBI establish the III. Our recommendation does not preclude additional Phase II recommendations on this subject, however.

Note

1. We also address the exchange of criminal history information in Phase II Recommendations 47 through 50.

Recommendation 5

The Federal Bureau of Investigation should examine the feasibility of a separate registry of firearms violators.[1]

Commentary

An offender's firearm was present in one-tenth of the rape, robbery, and assault victimizations that occurred in 1979. In more than 350,000 of these victimizations the victim actually suffered a gun-shot wound. Additionally, more than 13,000 murders (63 percent of the total in 1979) were committed with a firearm. How many of the offenders in these crimes had a history of firearms violations or violent offenses involving firearms is not known.

We believe that a separate registry of firearms violators, maintained as a part of the FBI's NCIC system, could serve a number of beneficial purposes. First, such records could be accessed by the Secret Service to determine which persons in an area the President (or other dignitaries) planned to visit had records of firearms violations. Law enforcement officers, in making a routine traffic stop or serving a warrant, could determine, in the same way they now check for outstanding warrants and for stolen property, whether the subject had a history of violent offenses with firearms and exercise due caution in dealing with the individual. Offenders with firearm violation records could be more rapidly identified for arrest, bail, charging, arraignment, and judicial processing than would be possible under the Interstate Identification Index discussed in Recommendation 4.

Because of these potential benefits, we recommend that the FBI examine the feasibility of establishing a separate registry of firearms violators.

Note

1. We also address firearms in Phase II Recommendations 17 through 22.

Recommendation 6

The Attorney General should mandate the United States Attorneys to establish law enforcement coordinating committees in each federal district.

Commentary

Distinctions among federal, state, and local jurisdictions do not hamper criminals. Neither should jurisdictional divisions be allowed to impede unnecessarily criminal investigations and prosecutions. In each area of the country, federal, state, and local resources available for law enforcement are limited. Coordinating the use of these resources to the fullest extent possible will produce the most effective law enforcement at all levels of government. This especially is true regarding the federal response to violent crime. Because most violent crime prosecution is conducted by state and local authorities, it is important that federal officials be as supportive as possible of state and local police and prosecutors.

Our understanding of the present situation reveals that a satisfactory level of cooperation among federal, state, and local law enforcement officials does not now exist in every jurisdiction. Frequently there appears to be a lack of initiative on the part of all officials in opening the requisite channels of communication. We believe that this situation, in which federal, state, and local law enforcement officials often chart separate paths without consulting one another, is not in the best interest of the public.

Relations among federal, state, and local law enforcement also vary greatly in both form and effectiveness among the federal districts. In reviewing present practices, we found that the following mechanisms now are used to coordinate federal, state, and local law enforcement activities:

Federal-state-local law enforcement committees. It is not precisely known how many actively operating federal-state-local law enforcement committees there now are. What is evident, however, is that existing committees vary significantly in scope and effectiveness. Originally conceived as federal-state law enforcement committees headed by the State Attorney General, they have typically evolved into federal district organizations with the county prosecutor most often serving as the chief local official. There appears to be no uniformity in constitution or operation, and a committee's success appears to depend largely on the individual personalities involved. Finally, the Department of Justice in recent years has not accorded high priority to promoting and supporting the committees.

Executive working group. The Executive Working Group for Federal-State-Local Prosecutorial Relations was formed in December 1979 to provide a vehicle for improving intergovernmental law enforcement relations. The members consist of six representatives of the National District Attorneys Association (NDAA), six from the National Association of Attorneys General (NAAG), and six from the Department of Justice (currently four Criminal Division officials and two U.S. Attorneys). Staff support is provided by the newly-formed Office of Law Enforcement Coordination in the Criminal Division. In April 1981, Department of Justice officials in the new Administration met with officers of NDAA and NAAG to reconstitute the Executive Working Group and elect new members. This group provides a national forum for law enforcement coordination efforts. The group's agenda contemplates participation in the effort to structure law enforcement coordination committees throughout the country.

Informal arrangements. In many areas of the country no active, formal arrangements exist for federal, state, and local law enforcement cooperation. Nevertheless, key law enforcement officials often have good working relationships. In such situations, however, communication among law enforcement officials at different levels of government occurs primarily in conjunction with particular problems in specific cases. Routine sharing of intelligence information, joint investigations and prosecutions, or planning for resource allocation or overall law enforcement strategy generally does not result. The success of such arrangements also is highly dependent upon the personalities of the officials involved.

To summarize, federal, state, and local law enforcement cooperation around the country ranges from very good to nonexistent. As a result, the response to crime by all levels of government is less effective than it could be with a coordinated system.

The Department of Justice has given U.S. Attorneys little direction in this area. This lapse is particularly significant because most state and local prosecutors, police, and corrections officials operate autonomously, both within their own jurisdictions and in dealing with the federal government. If substantial progress is to be made in improving federal, state, and local cooperation, the impetus must come from the only nationally organized law enforcement entity—that of the federal government.

We recommend that the Attorney General direct U.S. Attorneys to establish a Law Enforcement Coordinating Committee in each federal district. Federal courts and prosecutorial activities are organized around the federal district, making it the most practical geographical unit on which to base federal, state, and local cooperation. This would not, however, preclude two or more districts within the same state deciding to form a single committee.

The committee membership should include the principal federal, state, and local law enforcement officials in the district. The U.S. Attorney, acting on behalf of the Attorney General, should take the initiative in forming the committee, but state and local participation should be voluntary and cooperative.

Many districts already have some type of federal-state-local committee. In such cases, this proposal is intended to build upon, not replace, such efforts. Each committee should concentrate on the particular law enforcement needs of its district. While committee operations will vary substantially from district to district, certain requirements should be met by all committees. These include—

Membership. Committee memberships should include the heads of the federal, state, and local prosecutorial and other law enforcement agencies and offices with significant criminal jurisdiction in the district, as well as criminal justice experts from the private sector as appropriate. The meetings should be attended by principals only. The Executive Working Group can assist in identifying appropriate state and local prosecutors and encouraging their participation.

District plan. Soon after organizing, each committee should formulate a local law enforcement cooperation plan. The plan should identify law enforcement needs and priorities within the district and pinpoint areas where improved federal, state, and local cooperation is likely to produce the greatest public benefit.

Subcommittees. The full committee ordinarily will be too large to be an effective forum for working out specific problems. Hence, each committee should establish subcommittees on the subjects of significance to the district. For example, subcommittees usually will be appropriate on such subjects as—

Violent crime (certain concurrent jurisdiction offenses, such as firearms violations, may require a separate subcommittee).

Drug enforcement.

Crime prevention.

Economic crime and fraud.

Role of U.S. Attorneys. The Attorney General should direct all U.S. Attorneys to participate in the formation of law enforcement coordination committees in their districts. The U.S. Attorneys should be required to report to the Attorney General on the formation of the committee and its anticipated activities. Periodic progress reports also should be required.

The U.S. Attorney should be responsible for ensuring proper participation by all federal law enforcement agencies. Where a U.S. Attorney cannot obtain adequate cooperation from a federal agency at the district level, the matter should be referred to the Department of Justice for resolution. In addition, the U.S. Attorney should ensure that proper facilities are available for committee meetings.

The Attorney General should impress on the U.S. Attorneys the importance of these committees, mandate the U.S. Attorneys' responsibility and participation, and voice his support for the committees' effective operation.

Recommendation 7

The Attorney General should expand the program of cross-designation of Assistant United States Attorneys and state and/or local prosecutors.

Commentary

One of the main themes of our recommendations is that cooperation and mutual assistance are essential for effective law enforcement. The cross-designation [1] program now operating in several jurisdictions demonstrates the benefit of federal-state-local cooperation. Specifically, the program has ensured that certain criminal activity can be investigated and prosecuted in the most efficient and effective way. The program has enhanced cooperation among federal law enforcement personnel, on the one hand, and state and local law enforcement officials on the other.

The program is relatively simple in concept. Selected prosecutors at the state and local level are designated as special Assistant U.S. Attorneys pursuant to section 543, Title 28, United States Code. Similarly, selected Assistant U.S. Attorneys are designated as assistant state or local prosecutors pursuant to statutory provisions that exist in most states. Generally, the more experienced prosecutors, familiar with both federal and state substantive and procedural law, are selected for the program. These assignments are in addition to their regular duties; consequently, the prosecutors who are designated will ordinarily devote most or all of their time to their own responsibilities.

The cross-designation program generally comes into play when a prosecutor begins to develop a case that includes violations of both state and federal law. A cross-designation prosecutor is assigned, and, as the investigation proceeds, the prosecutor has the option of prosecuting in either a federal court or state court, depending upon the needs of the particular case. Here is an example of how the program works: A cross-designated state prosecutor, while investigating and developing a matter brought to him by local police authorities, determines that federal law as well as state law has been violated. The prosecutor might conclude that a federal prosecution is the best approach. At that point the prosecutor can obtain the assistance of federal investigators and eventually present the case to a federal grand jury and try the case in the federal court. Thus, the prosecutor assures that the case is brought in the jurisdiction which is best for that case. Moreover, continuity is maintained by the presence of a prosecutor empowered to appear and prosecute the case in either court. Where different levels of court congestion exist, or where procedural or substantive law favors one forum over another, or where the sentencing potential is greater in one court than in the other, this program is a very valuable adjunct to routine law enforcement procedures.

It is not expected that this program in itself will involve a large number of cases. For those cases affected, however, efficient and effective processing is a significant and important result. Further, the establishment and effective use of the program will substantially promote cooperation between federal and local law enforcement authorities. That result alone would be enough to establish the need for such programs.

Cross-designation programs presently exist in Milwaukee, Buffalo, and San Diego. The U.S. Attorney and the District Attorney of San Diego testified before us as to the effectiveness of the program. These two witnesses exhibited an impressive spirit of cooperation. They urged, as we do, that the program be expanded to all other jurisdictions where it might operate effectively.

Note

1. For a discussion of the program, see Knoepp and Miller, *Creation of the cross-designation prosecutor concept*, 1 Crim. Just. J. No. 2 (Spring 1977).

Recommendation 8

The Attorney General should direct the National Institute of Justice and other branches of the Department of Justice to conduct research and development on federal and state career criminal programs, including programs for juvenile offenders with histories of criminal violence.[1]

Commentary

In most parts of the United States, a relatively small segment of the criminal population commits a disproportionately large portion of the serious crime. These repeat offenders and recidivists are now generally referred to as "career criminals." Well-organized programs by prosecutors to identify and give special prosecutorial attention to these career criminals can help ensure a speedy trial, a high probability of conviction, and a substantial sentence for such offenders.

A study of the records of 500 juvenile delinquents in New York City found that 6 percent of the delinquents were responsible for 82 percent of the violent offenses committed by the whole group. A Honolulu study of 359 arrests in 1973 for violent offenses revealed that 19 percent of the persons arrested committed more than 80 percent of the offenses. In other jurisdictions, the statistics are less dramatic, but they consistently show that a large portion of the violent crimes are committed by a relatively small number of offenders.

More than 100 prosecutors' offices have adopted special programs to prosecute career criminals. The programs vary substantially from office to office, but they have the common purpose of providing more effective prosecution of the serious, repeat offender. Typically, the programs have some or all of the following characteristics:

Selection criteria. Most programs concentrate on defendants who are charged with a serious or violent felony and have at least one prior felony conviction. Improved case screening also is characteristic of most programs. This includes earlier and more thorough checks on criminal histories and more considered evaluation of the merits of a case before the final charging decision.

Organization. Many prosecutor's offices have established a separate career criminal unit.

Vertical prosecution. In many offices, one prosecutor is assigned to handle a career criminal case from intake through trial. This avoids the case preparation problems that frequently result when different prosecutors are assigned to present the case before the magistrate, the grand jury, and the trial court.

Prosecutor caseload. Prosecutors assigned career criminal cases generally are given smaller caseloads. This allows them to prepare cases more carefully and to bring them to trial more rapidly.

Witness assistance. Most programs emphasize giving full and courteous attention to witnesses. The results are greater willingness by witnesses to appear in court, better prepared testimony by witnesses, and increased cooperation by witnesses (and their friends and neighbors) with police and prosecutors in the future.

Limited plea bargaining. Most programs prohibit or strictly limit the terms of plea agreements. Because cases are well prepared, there is no need to make significant concessions to defendants in exchange for guilty pleas.

Several specialized career criminal programs have been developed by individual prosecutor's offices. In Los Angeles County, a program known as "Operation Hardcore" is devoted to the prosecution of violent crimes committed by gangs. Among its notable features are the inclusion of juvenile offenders for prosecution in both adult and juvenile court, and extra protection for witnesses to prevent witness intimidation by gang members.

In addition to Operation Hardcore, other career criminal programs have begun to focus on the violent habitual juvenile offender. As a recent Rand Corporation report noted—

> many . . . studies have found the characteristics of juvenile criminality to be the most reliable predictor of an adult criminal career. Those who engage in serious crime at an early age are the most likely to continue to commit crimes as adults.

Most juvenile career criminal programs, however, have begun only recently. Early information on their performance is promising but not yet conclusive.

The career criminal problem presents a different issue for federal prosecutors than for state and local prosecutors. With more resources, fewer cases, and a limited violent crime jurisdiction, most federal prosecutors traditionally have given violent offenders close and careful attention. The Speedy Trial Act

ensures that virtually all federal criminal cases proceed as quickly as possible and most U.S. Attorneys' offices are organized for vertical prosecution.

Career criminal programs offer a vehicle for prompt, effective prosecution of the serious habitual offender. Because these offenders, as a group, commit many additional serious offenses if left on the street, career criminal programs are potentially effective in protecting the public from serious crime.

While some career criminal programs are generally successful, others could be more effective with better organization. Such shortcomings appear to result in part because local jurisdictions do not have current information on the best criteria for identifying offenders to prosecute as career criminals. In addition, local prosecutors may not be fully aware of the value of vertical prosecution, witness assistance, or other aspects of the complete career criminal prosecution strategy.

Additional research and development needs to be conducted on career criminal programs, with particular attention given to programs designed for violent, repeat juvenile offenders. Such research should attempt to develop more reliable indicators of future criminal behavior [2] to assist federal, state, and local prosecutors in identifying offenders who should receive special prosecutorial attention. The findings of these research and development efforts should be widely disseminated to federal, state, and local prosecutors to ensure that they are aware of the most effective and efficient methods of prosecuting individuals who pose the greatest threat to society.

Notes

1. We also address research and development in Phase II Recommendation 53.

2. Past methods to predict future criminal behavior have been criticized as being insufficiently accurate. Such predictions usually have been made for use in setting or denying bail or in sentencing. The criticisms of predictions made for those purposes do not apply to the present purpose because a prosecutor is using the prediction only to determine whether the defendant's case warrants routine or special handling. The decision is a management determination wholly within the prosecutor's discretion, and the defendant has no particular rights at stake. The use of a formula that provides a reasonably accurate prediction of probable future criminality is precise enough to be acceptable in this circumstance.

Recommendation 9

The Attorney General should take all steps necessary to reduce substantially the delay in processing criminal identification applications.[1]

Recommendation 10

The Attorney General should take all steps necessary to reduce substantially the delay in processing requests for technical assistance from state and local criminal justice agencies.

Commentary

Every component of the criminal justice system must respond quickly to criminal activity if violent criminal behavior is to be combated effectively. Federal law enforcement must respond rapidly and accurately to requests for information or analysis. A high priority delivery process is essential for successful criminal apprehension and prosecution. Firearms tracing, laboratory analyses, and information processing are the major areas of federal technical support to state and local efforts to control violent or street crime. One important federal assistance area involves criminal identification services provided by the Federal Bureau of Investigation (FBI).

The FBI's Identification Division provides fingerprint and arrest record information to state and local governments. The Division's services are used in a variety of situations ranging from the clearance/identification of suspected fugitives to background checks on persons who apply for work in banks and public safety offices. The Division's workload amounts to roughly 6.5 million requests each year. In fiscal 1979, for example, roughly 38 percent of requests received were from state and local criminal justice agencies and 5 percent were federal criminal checks; some 42 percent were for federal job applicants and 15 percent were for state and local job applicants.

During fiscal 1981, the FBI will spend $61.4 million and employ 3,023 people to support this function. According to the FBI, the average response time for an identification check is 25 working days. Some estimate the response time to be even longer. We believe this service is critical to the criminal justice system and recommend that the Attorney General take all steps necessary to reduce the delay.

To accomplish this end, we believe the FBI should give higher priority in its overall operations to Identification Division activities. We further believe the Division should give priority to criminal applications over checks of job applicants and other noncriminal requests. Further, we believe that the ongoing effort to computerize the fingerprint identification process will do much to improve response time and that, where possible, these efforts should be accelerated.

In addition to priority-setting at the FBI, we suggest that local law enforcement authorities must do all they can to prioritize their identification requests. If local officials present their identification applications in this way we believe the FBI could do a better job of fulfilling this important criminal justice need.

In a separate but related matter, we recommend that the Attorney General take all steps necessary to reduce the delay in processing technical assistance requests to the federal government from state and local criminal justice agencies. We suggest that priority be given to requests for technical services such as laboratory tests on hair and blood samples, chemical analyses of drugs, and handwriting examinations. Requests made by local law enforcement officials frequently require a speedy response. Federal service providers must do all they can to respond in a timely manner.

Note

1. We also address ways to reduce the backlog in processing identification applications in Phase II Recommendation 50.

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Recommendation 11

The Attorney General should expand, where possible, the training and support programs provided by the federal government to state and local law enforcement personnel.[1]

Commentary

Most federal training and technical assistance for state and local law enforcement operations is provided by the Federal Bureau of Investigation (FBI), the Drug Enforcement Administration (DEA), and the Bureau of Alcohol, Tobacco and Firearms (ATF).

FBI training activities are conducted at its National Academy in Quantico, Virginia, and through its 59 field offices. Each year, the Academy trains about 1,000 state and local police officers in four 11-week seminars. Roughly 20 foreign law enforcement officials attend the sessions each year. The Academy offers assistance through the National Executive Institute for top police executives and through a wide variety of specialized schools, special training programs, and symposia on topics such as homicide training, hostage investigation, anti-sniper techniques, and SWAT operations. Agents trained as police instructors teach in every FBI field office.

Some 3,200 domestic and 50 foreign officials received special police school training in fiscal 1980. During fiscal 1981, roughly 109 agent workyears of effort will be engaged in field training activities at a cost of approximately $6 million. Training in such subjects as forensics, criminology, and Uniform Crime Reporting will be delivered to more than 130,000 criminal justice personnel.

During fiscal 1981, DEA will spend close to $3 million to support training activities covering investigative, technical, and managerial topics. Classes are offered in the field at regional sites and at the National Training Institute. More than 9,000 federal, state, and local criminal justice personnel attended the sessions in fiscal 1980. Through its International Training Division, DEA trained some 900 foreign law enforcement personnel during fiscal 1980. Funds for this training, and for the 30 DEA agents who conducted the classes, were provided by the Department of State. DEA also sponsors 3-day training seminars which focus on clandestine laboratory investigations, intelligence, conspiracy, smuggling investigations, regulatory investigations, and forensic chemistry.

ATF training is offered at Glynco, Georgia, and through ATF field offices. Training covers such areas as firearms and arson-for-profit investigation techniques, explosives, and laboratory skills. Some 2,000 law enforcement personnel will have received ATF training by the end of fiscal 1982.

A fourth important federal training resource is the Attorney General's Advocacy Institute. A branch of the Executive Office for U.S. Attorneys, the Institute trains Assistant U.S. Attorneys in trial advocacy. During fiscal 1979, for example, the Institute trained more than 600 attorneys in such subjects as white-collar crime, narcotics, conspiracy, public corruption, and fraud. Recently, the Institute has made space available in its courses for a limited number of state and local prosecutors.

Significant technical assistance activities at the FBI include laboratory examination of evidence, fingerprint and identification services, and the maintenance of criminal justice data and statistical services. At DEA, major technical assistance activities include laboratory services, joint investigative task forces, and drug investigative units which work to reduce retail-level diversion of dangerous drugs. Important technical assistance activities at ATF involve gun tracing, response teams for explosive-related situations, firearms and explosives technology and expertise, and arson control assistance.

We believe that training and technical assistance programs are essential forms of federal support for state and local governments in their efforts to reduce violent crime. This recommendation underscores the need to continue training and technical support efforts and, wherever possible, to expand them.

Increasing the number of slots available for state and local prosecutors in the Attorney General's Advocacy Institute, for example, is one way in which the federal government could enhance the crime-combatting ability of local officials. Similarly, we believe technical services provided by the federal government are extremely valuable tools for state and local law enforcement agencies. The Attorney General should make every effort to continue the federal technical services provided by agencies at the Department of Justice and should encourage other Cabinet officials to maintain and expand related technical services to state and local criminal justice agencies.

Note

1. We also address the training of state and local law enforcement personnel in Phase II Recommendation 44.

Recommendation 12

The Attorney General should exercise leadership in informing the American public about the extent of violent crime. In that connection, the Attorney General should seek to build a national consensus that drug abuse, crime, and violence have no rightful place in the schools and, when these conditions are found to exist, vigorous criminal law enforcement should ensue.

Commentary

The public is well aware that crime has reached alarming proportions in American society. Many, if not most, citizens now take precautions, such as routinely locking doors and avoiding certain areas, that were unheard of in earlier generations. The public, however, is not as aware of one of the hidden substrata of the serious crime epidemic, namely the crime taking place in a substantial number of our schools. Our definition of crime in the schools does not include routine disciplinary problems, pranks, and vandalism that have always been present in public schools in varying degrees. Rather, we refer to those schools that today are confronted with gangs, law-violating youth groups, and individual students and non-students engaged in a wide variety of offenses. Drug-dealing, burglary, robbery, larceny, extortion, and assault are commonplace in many schools and on school grounds. A 1976–77 national survey by the National Institute of Education reported these findings:

The risk of violence to teenage youngsters is greater in school than elsewhere. Two-thirds of all robberies and half of all assaults committed on youths age 12–15 occurred at school.

About 6,700 schools were seriously affected by crime.

An estimated 282,000 students were physically attacked while at school in a typical 1-month period; nearly half the attacks resulted in some injury.

In a typical month an estimated 112,000 students had something taken from them by force, threat of force, or by use of a weapon.

About 5,200 teachers were physically attacked each month.

While it is generally agreed that the high level of drug abuse and crime is a relatively recent phenomenon, there is no clear consensus concerning the factors that have caused it or its widespread and extensive nature. No one doubts, however, that an atmosphere dominated by drugs, extortion, robbery, assault, rape, and other serious crimes is not conducive to academic achievement. Yet the problem persists, and school officials seem either unable or unwilling to deal with it so that education can take place in an atmosphere where both students and teachers do not fear for their physical safety.

Despite the exceptional amount of crime that exists in the public schools, it is not entirely clear that law enforcement and the community are fully aware of the extent of the problem. We believe that, at a minimum, the public must be made aware of the difficulties educators face each day because of the incidence of crime in the public schools. To that end, we recommend that the Attorney General assume the responsibility of informing the American public as to the extent of the problem of drug abuse and violent crime in the public schools. Further, we recommend that the Attorney General seek a national consensus that drug abuse, crime, and violence have no rightful place in the schools, and that vigorous law enforcement is essential when conditions warrant.

In making this recommendation, we are mindful that ensuring an effective public school system is primarily the responsibility of states and local communities. We are not suggesting that the Attorney General attempt to assume responsibility for policing the schools. Rather, because violent crime and narcotics use in the schools is a serious national problem, we believe the Attorney General's leadership in publicizing the problem will encourage local communities and law enforcement personnel to deal directly and effectively with crime in the schools.

Recommendation 13

The Attorney General should take a leadership role in ensuring that the victims of crime are accorded proper status by the criminal justice system.[1]

Commentary

In the past several years, the realization has grown that victims of violent crime all too frequently are twice victimized: first, by the perpetrator of the violent criminal act and, second, by a criminal justice system unresponsive to the particular needs of violent crime victims. Although we recognize that violent crime is primarily a state and local responsibility, we believe the Attorney General has an extremely important leadership role to play in advocating that victims of violent crime, whether at the federal, state, or local level, be afforded proper status in the criminal justice system.

Victims of violent crime are particularly vulnerable because of the physical, emotional, and financial stresses they are subject to as a result of their unique status in the criminal justice system. Our concern in this area extends to witnesses of criminal conduct as well, since they, too, often endure many of the same hardships that victims do. Both victims and witnesses play a crucial role in the criminal justice system, and neither victims nor witnesses should have to suffer as a result of their contribution to the cause of justice in America.

In the past, neglect of victims by the various components of the criminal justice system has taken many forms. First, there has been a lack of assistance to the victim who has suffered emotional trauma as a result of the violent crime. Victims and witnesses have frequently found that police officers, prosecutors, and court personnel have ignored or been insensitive to their needs. Many victims and witnesses know little about the court system and what will be expected of them. Matters that may affect them, such as the return of stolen property or the availability of financial and social services and victim compensation, have not been explained. Timely notification of court dates, continuances, and case dispositions have been spotty. When they have come to court, they have found transportation, parking facilities, child care services, and waiting areas unsatisfactory. Their attendance at court has occasionally caused problems with employers, and witnesses who are not fluent in English have had problems in communicating with court personnel.

Victims of violent crime have also frequently found that the defendant in their case has pled guilty to a lesser offense than the original charge, without opportunity for participation by the victim or explanation as to why the action was taken. Such dispositions can increase the victim's frustration and sense of alienation. When the defendant is sentenced, the crime's full impact on the victim has frequently not been presented to the judge by either the probation officer or the prosecutor, resulting in an imbalance in the sentencing process.

In recent years, many jurisdictions have instituted necessary changes to alleviate these problems. Crisis intervention services and victim/witness assistance units have been created to address many of the victim's needs. Prosecutors have adopted policies to obtain the views of violent crime victims before plea negotiations take place. Although such information does not control the final decision of what plea to offer, the process signifies that the victims' rights are protected. Finally, many prosecutors' offices review information that is routinely provided to judges prior to sentencing and supplement it where necessary, thus ensuring that the full impact of the crime on the victim is presented.

We view these efforts as commendable but note that their adoption has not been universal throughout the country. To ensure that victims of and witnesses to violent crime are protected everywhere, we recommend that the Attorney General play a leadership role in victim advocacy.

Note

1. We also address victims of crime in Phase II Recommendations 62 through 64.

Recommendation 14

The Attorney General should require, as a matter of sentencing advocacy, that federal prosecutors assure that all relevant information about the crime, the defendant, and, where appropriate, the victim, is brought to the court's attention before sentencing. This will help ensure that judges have a complete picture of the defendant's past conduct before imposing sentence.[1]

Commentary

After a person has been convicted, the decision-making process of sentencing begins. Judges must weigh diverse considerations pertaining to deterrence, rehabilitation, incapacitation, and punishment. To arrive at a just sentence, the judge must have access to all available and pertinent information about the defendant, his prior record, the facts of the case, and the full impact of the crime on the victim. While the probation officer may frequently supply all of the relevant information, the federal prosecutor's responsibility as a sentencing advocate (which is spelled out more fully in Part G (pp. 46–56) of the *Principles of Federal Prosecution*[2]) requires that he or she ensure that the judge has all the information necessary for a just sentence that takes into account the interests of the victim and of the community. Prosecutors, by virtue of their thorough knowledge of the case and access to the victim of the crime, witnesses, criminal information records, prison records, and investigative resources of the Federal Bureau of Investigation and other law enforcement agencies, are uniquely situated to obtain and provide this essential information to the judge, and they should actively and forcefully pursue this endeavor.

Notes

1. We also address sentencing in Phase II Recommendation 41.

2. United States Department of Justice, July 1, 1980.

Recommendation 15

The Attorney General should direct responsible officials in appropriate branches of the Department of Justice to give high priority to testing systematically programs to reduce violent crime and to inform state and local law enforcement and the public about effective programs.[1]

Commentary

The federal government has a special and unique responsibility to test the efficacy of alternative methods aimed at reducing violent crime. Further, the Attorney General has a major leadership responsibility to inform the American public and state and local officials about these methods. The Department of Justice, through the National Institute of Justice, the National Institute of Juvenile Justice and Delinquency Prevention, the National Institute of Corrections, the Federal Bureau of Investigation, and other of its branches, conducts basic and applied research related to all areas of the criminal justice system. Findings of the various studies are frequently disseminated directly by the respective agencies and through the National Criminal Justice Reference Service.

The critical need now is to ensure that the Department's research and development activities clearly reflect national priorities. In that regard, reduction of serious crime is of paramount concern.

The federal government is in a unique position to gather the most current and relevant information on problems identified by practitioners throughout the country and create demonstration efforts that can be systematically evaluated. Local jurisdictions can then benefit from the results and apply findings to meet their respective needs.

The research process must be one that has integrity and ensures responsiveness to the problem of serious crime at the local level. Research should be a vehicle for educating the public and the criminal justice community as to the nature of serious crime and the means that can be used to combat it.

Crime will not go down, any more than any national problem will be solved, if we merely throw money at it. It is imperative that we discover what works—and what does not. Much has been learned by research efforts over the last dozen years. We now have a better understanding of the role (and limitations) of random police patrol, the strengths of foot as opposed to motorized patrol, the efficacy (or inefficacy) of various rehabilitation programs, and the characteristics of career criminals. For example, programs designed to speed the prosecution of career criminals grew directly out of basic research on who commits how many offenses, and these programs, in turn, were subjected to objective evaluations to discover which aspects of them were or were not contributing to enhanced public safety.

But much more remains to be done. Though it has been almost 20 years since the current crime wave began in the early 1960's, we still have only the most rudimentary knowledge of what actions by citizens, community organizations, police departments, and criminal justice agencies will best protect our lives and property. Thousands of experiments have been conducted on ways of guarding against disease; only a tiny handful have ever been conducted on ways of guarding against crime.

The Department of Justice should not only establish as a high priority the testing of various methods of reducing violent crime but should place this same emphasis on the dissemination of information resulting from such testing. Thus, it is our intent that technical assistance, training, and technology transfer efforts be used in conjunction with research to ensure the timely availability of findings to those who can translate such knowledge into action at the state and local level.

Note

1. We also address the testing and disseminating of information on programs to reduce violent crime in Phase II Recommendation 53.

Phase II Recommendations

Chapter 1

Federal Law and Its Enforcement

Serious crime is a national problem which should be attacked forcefully by all levels of government. While ordinary street crime falls within the province of state and local governments, certain interstate crimes and criminal activity with national implications are the responsibility of the federal government. This simple statement reflects one of the basic principles on which our system of government was founded.

In this chapter, we discuss ways in which the federal government could do more to combat serious crime that falls or should fall within its jurisdiction. We have examined existing federal criminal laws to see if they need to be changed to render their enforcement more effective. We have looked at certain administrative laws which impact on federal law enforcement, namely the Freedom of Information Act and the Tax Reform Act of 1976, and have examined the balance between the purposes of these Acts and their effects on criminal law enforcement. We have studied areas in which federal jurisdiction over serious crime might be expanded without overstepping traditional federal-state boundaries.

We have also looked at federal law enforcement policies to see if changes need to be made to improve federal effectiveness. We have given attention to the present division of law enforcement responsibilities among several agencies and have developed a proposal for a more logical grouping of law enforcement functions. Finally, we have identified areas in which additional resources are needed in order to effectively carry out federal responsibilities.

The following recommendations involve ways in which the federal government can take direct action to bear its share of the burden of the combined federal-state-local responsibility to combat serious crime.

Narcotics

Recommendation 16

The Attorney General should support the implementation of a clear, coherent, and consistent enforcement policy with regard to narcotics and dangerous drugs, reflecting an unequivocal commitment to combatting international and domestic drug traffic and including—

a. A foreign policy to accomplish the interdiction and eradication of illicit drugs wherever cultivated, processed, or transported; including the responsible use of herbicides domestically and internationally.

b. A border policy designed to effectively detect and intercept the illegal importation of narcotics, including the use of military assistance.

c. A legislative program, consistent with recommendations set forth elsewhere in this report, to reform the criminal justice process to enhance the ability to prosecute drug-related cases.[1]

Commentary

Throughout the course of our hearings, a recurrent theme has been the importance of more effectively combatting narcotics traffic. From Washington to Los Angeles, from Detroit to Miami, we have heard officials and scholars stress the connection between drugs and violent crime. Certain drugs directly cause physical harm and irrational and violent behavior. Other drugs cause addiction which, according to evidence presented to us, is directly related to a staggering amount of crime, much of it violent. Finally, drug trafficking itself, as demonstrated by so-called "cocaine cowboys," is often an extremely violent criminal activity.

We recommend a clear and coherent national enforcement policy with regard to narcotics and dangerous drugs. This policy must be characterized by a commitment to reducing the supply of—and demand for—illegal drugs, and it must be executed consistently.

The seriousness of the drug problem and of the national policy required to combat it must be reflected in the criminal justice system. Many general problems, such as insufficient bail, the suppression of truthful evidence, and the imposition of inconsistent and inadequate sentences, are particularly pronounced in drug cases. Accordingly, the recommendations set forth in Chapter 2 of this report are especially applicable to narcotics cases so that society will be better able to detect, apprehend, detain for trial, convict, and meaningfully sentence drug traffickers.

But the narcotics problem is broader than the criminal justice system. Fully 90 percent of the illegal drugs consumed in the United States come from abroad. Of all the aspects of this nation's violent crime problem, the international nature of drug trafficking most uniquely requires the powers and resources of the federal government. Plainly, state and local authorities are neither equipped nor empowered to conduct foreign relations or control access to this country by land, sea, and air.

So the national drug enforcement strategy must also be reflected in our foreign policy. The Administration must assure that United States diplomatic and economic assistance initiatives overseas are geared, whenever possible, toward the detection, interdiction, and eradication of illicit drugs before they complete (or even commence) their course to this country. Authorities agree that crop destruction is the most (and perhaps only) effective way to significantly disrupt drug traffic. This effort must not be crippled by unnecessary regulations. To this end, we recommend that the Administration assure that restrictions such as the present ban on the use of paraquat be removed unless based on an established and not speculative health risk. In this regard, we note that the Attorney General of Florida testified that 61,000 pounds of paraquat were used last year on his state's agricultural crops.

Nor can the national enforcement policy ignore the significant domestic marijuana crop. Failure to treat this phenomenon with the same seriousness (and the same methods) as we do foreign crops would betray an ambivalence about fighting drugs and would seriously weaken our efforts to persuade foreign governments to suppress drug cultivation.

The national enforcement policy must also find consistent application at our borders. The use of otherwise available military resources to detect and, if necessary, interdict drug smugglers must be authorized. To the extent that the Posse Comitatus Act prevents the military from providing such assistance, the Act should be amended. Inspection programs must be thorough, even if they require that citizens returning to this country be slightly inconvenienced by delays.

The application of scarce federal resources must be selective. The federal effort must be directed at those parts of the drug problem that state and local authorities cannot address. That is why we focus so strongly on international and border control efforts.

A final point is one often made during our hearings—the need for effective coordination. This need is recognized in all areas of law enforcement but is paramount in drug enforcement. Given the magnitude and worldwide scope of drug traffic and the multitude of federal, state, and local agencies with concurrent or overlapping jurisdiction, we recommend that the Attorney General and the Administration assure that the implementation of a national drug enforcement strategy be effectively coordinated at all levels of government. It is particularly important that the federal authorities closely coordinate with state and local law enforcement agencies that have the primary responsibility to investigate drug-related violent crime.

Note

1. We also address narcotics in Phase I Recommendation 2.

Guns

Recommendation 17

The Attorney General should support or propose legislation to require a mandatory sentence for the use of a firearm in the commission of a federal felony.[1]

Recommendation 18

The Attorney General should support or propose legislation to amend the Gun Control Act of 1968 to strengthen its ability to meet two of its major purposes: allowing the trace of firearms used during the commission of an offense and prohibiting dangerous individuals from acquiring firearms. Specifically, the Act should be amended to provide the following:

a. That, on a prospective basis, individuals be required to report the theft or loss of a handgun to their local law enforcement agency.

b. That a waiting period be required for the purchase of a handgun to allow for a mandatory records check to ensure that the purchaser is not in one of the categories of persons who are proscribed by existing federal law from possessing a handgun.[1]

Recommendation 19

Title I of the Gun Control Act of 1968 prohibits the importation of certain categories of handguns. However, the Act does not prohibit the importation of unassembled parts of these guns, thereby permitting the circumvention of the intended purpose of this title of the Act. It is therefore recommended that the Act be amended to prohibit the importation of unassembeld parts of handguns which would be prohibited if assembled.[1]

Recommendation 20

The Attorney General should support or propose legislation to authorize the Bureau of Alcohol, Tobacco and Firearms to classify semi-automatic weapons that are easily converted into fully automatic weapons as Title II weapons under the Gun Control Act of 1968.[1]

Recommendation 21

The Attorney General should direct the United States Attorneys to develop agreements with state and local prosecutors for increased federal prosecutions of convicted felons apprehended in the possession of a firearm. This proposal would enable federal prosecutions to be brought against felons apprehended in the possession of a firearm under the 1968 Gun Control Act and the Dangerous Special Offender provisions of the Organized Crime Control Act of 1970. Federal penalties under these statutes often are greater than state penalties applicable to firearms possession. Because these cases are matters over which state and local law enforcement have primary jurisdiction, they should be brought in close coordination with state and local prosecutors. The appropriate federal role is to initiate prosecutions in order to bring federal prosecutorial resources and more severe penalties to bear on the most serious offenders in a locality who are apprehended with firearms in their possession.[1]

Recommendation 22

The Attorney General should direct the National Institute of Justice to establish, as a high priority, research and development of methods of detecting and apprehending persons unlawfully carrying guns.[1]

Commentary

In the United States in 1978, firearms were used in 307,000 offenses of murder, robbery, and aggravated assault reported to the police;[2] they were present in about one-tenth of all violent victimizations occurring in 1980.[3] In 1978, 77.8 percent of firearm murders involved a handgun.[4] Every year approximately 10,000 Americans are murdered by criminals using handguns.[5] Crimes committed by individuals using handguns represent a serious problem of violence in our nation. Proffered solutions to this problem are myriad, ranging from the practical to the impossible. Positions taken are often highly emotionally charged. Additionally, there is no lack of social science data—of varying quality—to support diametrically opposed views.

However, the plethora of contradictory state gun laws has made their enforcement ineffective,[6] indicating the need for a federal strategy that would provide consistency and uniformity across state boundaries. In addition, federal gun laws have failed in several ways to achieve their intended purposes due to either a lack of adequate enforcement mechanisms or unintended loopholes in existing law.

Despite the problems inherent in examining the issue of guns, it is possible to set forth sensible criteria for the recommendations we are making in this area. First, they should be politically feasible. Second, they should balance the importance of preserving legitimate reasons for owning guns and the costs associated with that ownership. Finally, and most importantly, it should be possible to make at least a prima facie case for the effectiveness of these recommendations in reducing violent crime.

We believe that individuals must be deterred from using handguns in the commission of a crime. We believe that the cost to an individual of committing a crime with a handgun should be made greater than the benefit. This cost, in part, should be manifested in the sentence that is meted out to those convicted of such acts. Current federal law provides for an additional 1 to 10 year sentence for the use of a firearm in the commission of a federal felony. A 2 to 10 year term is provided for second and subsequent offenses (18 U.S.C. 924(c) (1970)). Because these sentences can be suspended or made probationary and, in addition, all offenders who are sentenced to prison are currently eligible for parole, the cost of violation is neither certain nor severe enough.

We recommend legislation to require a mandatory sentence for those convicted of the use of a firearm in the commission of a federal felony. This proposal, supported as it is by the public and the police,[7] would provide an effective deterrent to crimes of this sort. To be effective, the mandatory sentence should be severe enough to have the necessary deterrent force. Further, the power to impose this sentence should not be vitiated by any opportunities on the part of prosecutors to circumvent it through the use of plea bargaining, charge reduction, or other methods.

Several purposes of the existing federal gun laws have not been fulfilled effectively. The 1968 Gun Control Act banned, with some exceptions, the importation of handguns (including so-called "Saturday Night Specials") into the United States (18 U.S.C. 925(d)). However, a loophole allowed the importation of handgun parts which could then be assembled into handguns and sold. We believe that the 1968 Gun Control Act is still worthy of support and that its intent should be carried out by closing this loophole. Therefore, we recommend that the Act be amended to prohibit the importation of unassembled parts of handguns which would be prohibited if assembled.

Another purpose of the Act and of the Omnibus Crime Control and Safe Streets Act, designed to reduce violent crime, is directed at preventing the possession of handguns by proscribed groups of people. However, it has not had its desired effect. Under those Acts certain categories of individuals are ineligible to receive firearms that have been shipped in interstate commerce. These include:

- Fugitives from justice
- Persons under federal or state felony indictment
- Persons convicted of a federal or state felony
- Persons ineligible by state or local law to possess a firearm
- Minors, under 18 years of age for rifles and shotguns, and under 21 years of age for handguns
- Adjudicated mental defectives or persons committed to a mental institution
- Unlawful users of or addicts to any depressant, stimulant, or narcotic drug
- Felons
- Persons dishonorably discharged from the United States Armed Forces
- Mental incompetents
- Former United States citizens
- Illegal aliens.

There is, at present, no effective method to verify a purchaser's eligibility. The dealer must know or have reason to believe that the purchaser is ineligible to receive a firearm in order to make a transaction unlawful. However, this is very difficult to prove. A person purchasing a firearm from a federally licensed dealer is required to sign a form on which he affirms by sworn statement that he is not proscribed from purchasing a firearm. This signature relieves the dealer from any liability for illegal transfer, as long as he requests and examines a form of purchaser identification, other than a social security card, that verifies the purchaser's name, age, and place of residence.

Since drug addicts, felons, mental defectives, and the like are not the best risk for "the honor system," a waiting period between the time of signing the presently required form and delivery of the handgun to the purchaser to verify the purchaser's eligibility is sensible and necessary to effectuate the purposes of the Acts. Dealers should be required to contact law enforcement authorities and verify a purchaser's eligibility, or prospective purchasers should be required to apply for a permit to purchase a handgun at their local police departments, where their eligibility is checked. Such a requirement may also provide a "cooling off" period for individuals who might otherwise purchase and use a handgun in the heat of passion.

As of 1979, 12 states required waiting periods. The usual procedure is for a customer to complete an application for purchase at the dealer's place of business; the dealer forwards the application to the police department, which investigates the information contained in the application during the waiting period (the longest such waiting period is 15 days, required by California and Tennessee); the police department either approves or disapproves the application and notifies the dealer; and if the application is approved, the dealer then contacts the purchaser, who may then come and pick up his firearm. Wisconsin has a waiting period between purchase and delivery of handguns but does not require an application to purchase. This waiting period is designed as a cooling off period.

Eleven states require some form of permit for retail purchase of handguns. Usually, the prospective purchaser applies for a permit at his local police department by filling out a form which requests pertinent information about the prospective purchaser. The police department then conducts an investigation to verify the information. There is an "effective waiting period" which is the time required to process and approve or deny an application. This varies with workload although some states set a statutory maximum (usually 30 days), after which the application is approved or denied. A minimum waiting period between purchase and delivery may also be defined.[8]

We recommend that a waiting period be required for the purchase of a handgun to allow for a mandatory records check to ensure that the purchaser is not proscribed by the Gun Control Act of 1968 or Title VII of the 1968 Omnibus Crime Control and Safe Streets Act from owning a handgun. In order for this waiting period to be effective there should be adequate record check methods available.[9] By making this recommendation, we are endorsing the concept of a waiting period without specifying the actual mechanism that should be employed. That task should be left to those who frame the legislation requiring such a waiting period. We do not believe that this proposal broadens the limitations on handgun ownership contained in existing law; it simply enables the intent of the law to be fulfilled—an intent that has wide public support.[10] Handguns should be kept out of the hands of the wrong people.

Not all handguns that are used in crimes arrive in the hands of perpetrators directly from a firearms dealer. Many of these guns have been resold, given away, lost, or stolen. One study concluded that stolen guns constitute a significant proportion of guns used in the commission of criminal offenses in New York City.[11] It is estimated that between 65,000 and 225,000 handguns are stolen each year in the United States.[12] In investigating crimes committed using handguns, the ability to trace these firearms by law enforcement officials is extremely important. The Gun Control Act of 1968 was intended, in part, to establish this ability by requiring that manufacturers and dealers maintain records of firearms manufactured, transferred, and sold. While this provides a ready ability to trace handguns to the initial purchaser, it does nothing to alert law enforcement officials to the fact that the handguns have been lost or stolen and, thus, are prime candidates for instruments of criminal activity. A number of proposals have been made to ameliorate this situation and improve the national firearms trace capability.

We recommend that individuals be required to report to their local law enforcement officials the loss or theft of any handgun. The police would then enter this information into the National Crime Information Center (NCIC) (this information is routinely entered into the NCIC now by local police departments *when* it is reported to them).

We do not believe it is necessary for individuals to report the resale or gift of a handgun to another individual, since officials of the Bureau of Alcohol, Tobacco and Firearms (ATF) have testified that this type of transaction can be easily traced under existing law. Nor do we believe it necessary to have any kind of national registry of handguns to which dealers would report sales and resales of handguns. Such a registry would be too cumbersome, given the 2 million handguns sold by dealers each year and the many additional transactions between private citizens. In addition, expert testimony before us indicates that the records currently kept by manufacturers and dealers, if enhanced by reporting of thefts and losses to the NCIC, would provide an adequate trace capability.

Another problem that we wish to address is the ease of conversion of semi-automatic guns into more lethal and more strictly regulated fully automatic guns. Title II of the 1968 Gun Control Act (26 U.S.C., chapter 53) prohibits the manufacture, possession, and transfer of weapons that are contraband in nature. These include machine guns and other fully automatic weapons. The Act requires that all such weapons be registered and subsequent transfers be approved by the Secretary of the Treasury or his delegate with an accompanying federal transfer tax paid in connection with such sales. Some manufacturers are producing readily available semi-automatic weapons (these are not Title II weapons) which can easily be converted to fully automatic weapons by simple tool work or the addition of readily available parts. Over an 18-month period, 20 percent of machine guns seized or purchased (slightly less than 1,300) by the ATF had been converted in this way.[13] To deter these dangerous conversions, ATF should be authorized to declare such guns Title II weapons, thus making them subject to Title II regulation.

Federal laws prohibit convicted felons, among other types of individuals, from acquiring firearms. They also contain increased penalties for persons using a firearm in the course of a variety of federal crimes. In some states, these federal firearm laws are significantly more severe than comparable state statutes. In addition, in many federal districts the federal court dockets are not as crowded as county and city court calendars.

For the federal government to contribute more effectively to the reduction of violent crime, U.S. Attorneys should bring more prosecutions under these federal statutes. This will enable the more severe federal sanctions to be applied to the violent offenders who present a great threat to the community, but who face more limited state sanctions. To accomplish this goal, the U.S. Attorneys should develop a working agreement with state and local prosecutors to establish a mechanism for bringing to the attention of the U.S. Attorneys those persons apprehended by state and local authorities in possession of firearms in violation of federal laws. Where the firearm involved was used in the course of a serious felony, the state laws for the principal offense (e.g., homicide, robbery, rape, etc.) may be entirely adequate. However, where a previously convicted felon has committed a relatively minor offense, or has committed no provable offense other than acquisition of a firearm, the U.S. Attorney should review the case for possible federal prosecution. By working together with state and local prosecutors on these firearms violations, the U.S. Attorneys will be able to bring the federal firearms penalties to bear on those violent offenders who persist in violating the law, as evidenced by unlawful firearms possession.

In addition to these substantive proposals, we believe that the federal government should conduct research on methods to detect and apprehend persons unlawfully carrying guns. This could be accomplished by having the National Institute of Justice assign high priority to research into the development of such means of detection and apprehension. There is a need for effective methods of this sort. The ability of law enforcement officials to detect individuals who are carrying guns may provide an important disincentive for the unlawful carrying of such weapons. In addition, it could provide an important means of protection for police officers by enabling them to tell whether a suspect is armed.

Notes

1. We also address guns in Phase I Recommendation 5.

2. Data compiled from U.S. Department of Justice, Federal Bureau of Investigation, *Crime in the United States 1978* (Washington: U.S. Government Printing Office, 1979).

3. Unpublished data supplied by the Bureau of Justice Statistics from the National Crime Survey.

4. Data compiled from U.S. Department of Justice, Federal Bureau of Investigation, *Crime in the United States 1978.*

5. U.S. Department of Justice, Federal Bureau of Investigation, *Crime in the United States 1978*, p. 12.

6. J. Wright and P. H. Rossi, *Weapons and violent crime: Executive summary* (Washington: U.S. Department of Justice, 1981), p. 27.

7. Cambridge Reports, Inc., *An analysis of public attitudes toward handgun control, appendix a—the questionnaire* (Cambridge, Mass.: Cambridge Reports, Inc., 1978). D. Hardy, "Firearm ownership and regulation—tackling an old problem with renewed vigor," *William and Mary Law Review*, 20, n. 2, 1978, pp. 235–290.

8. Edward D. Jones, III and Marta Wilson Ray, *Handgun control—strategies, enforcement, and effectiveness* (Unpublished study, Washington: U.S. Department of Justice, 1980), pp. 18–21.

9. See Philip J. Cook and James Blose, "State programs for screening handgun buyers," *The Annals of the American Academy of Political and Social Science*, May 1981, pp. 80–91, for a discussion of current screening problems encountered by the states.

10. A 1978 survey reported that 88 percent of the respondents favored a waiting period "to allow for a criminal records check." (See Decision Making Information, Inc., "Attitude of the American electorate toward gun control 1978" (Santa Ana, California, 1978).)

11. Steven Brill, "Firearm abuse: A research and policy report" (Washington: Police Foundation, 1977), pp. 106–107.

12. Mark H. Moore, "Keeping handguns from criminal offenders," *The Annals of the American Academy of Political and Social Science*, May 1981, p. 100.

13. Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, *Firearms case summary* (Washington: U.S. Government Printing Office, 1981).

Crimes against federal officials

Recommendation 23

The Attorney General should support or propose legislation to make a federal offense any murder, kidnapping, or assault of a United States official or of a federal public servant who is engaged in the performance of official duties. The term "United States official" should be defined to mean a member of Congress, a member of Congress-elect, a federal judge, a member of the Executive Branch who is the head of a department, or those already covered by the law including the President, the President-elect, the Vice President, and the Vice President-elect. The term "federal public servant" should be defined as any person designated for coverage in regulations issued by the Attorney General and those already covered by law including a federal law enforcement officer.

Recommendation 24

The Attorney General should support or propose legislation to make a federal offense any murder, kidnapping, or assault on a state or local law enforcement officer or on a private citizen committed in the course of a murder, kidnapping, or assault on the President or Vice President.

Commentary

The recent assassination attempt on the President and the shooting of his Press Secretary and a District of Columbia police officer exposed a need for expanded federal jurisdiction over criminal acts of this type. Attacks upon Cabinet members and Presidential and Vice-Presidential aides are not currently defined as federal offenses. Because senior aides and Cabinet members have vital roles in the effective functioning of the Executive Branch, a number of proposals have been made to extend federal jurisdiction to include attacks against them. Similar reasoning calls for federal jurisdiction to be extended to include attacks on federal judges.

The proposed revision of the Federal Criminal Code provides a useful model upon which we base our recommendation to expand federal jurisdiction in this area. It contains provisions to extend federal jurisdiction over violent crimes against federal officials. These include murder, manslaughter, maiming, aggravated and simple assault, kidnapping, and menacing and terrorizing. Each section of the Code defining one of these offenses also defines the jurisdictional basis for the offense. This includes the following:

> (e) JURISDICTION—There is federal jurisdiction over an offense described in this section if—
>
> (2) the offense is committed against—
>
> (A) a United States Official;
>
> (B) a federal public servant who is engaged in the performance of his official duties and who is a judge, a juror, a law enforcement officer, an employee of an official detention facility, an employee of the United States Probation System, or a person designated for coverage under this section in regulations issued by the Attorney General; . . .

The term "United States official" is defined to mean a federal public servant who is the President, the President-elect, the Vice President, the Vice President-elect, a Member of Congress, a member of Congress-elect, a Justice of the Supreme Court, or a member of the Executive Branch who is the head of a department. This definition embraces the categories of persons for whom federal homicide coverage currently exists under 18 U.S.C. 351 and 1751. To such existing coverage have been added Supreme Court Justices and members of the Cabinet.

While the proposed Federal Criminal Code includes Supreme Court Justices within its provisions, we believe that all federal judges should be covered.

Subparagraph (B) is a moderate extension of the present scope of coverage. To provide a workable mechanism for extending federal protection against violent offenses to miscellaneous additional classes of persons whose occupational responsibilities may place them in positions of danger—and for keeping such coverage current with changing needs—it has been proposed that the Attorney General may designate other classes of persons for such coverage in regulations. It should be noted that all categories of persons included in Subparagraph (B) are covered only if the offense occurs while they are engaged in the performance of their official duties.[1]

An additional problem of potential seriousness is the lack of federal jurisdiction over assaults on other individuals that are committed in the course of attacks on the President or Vice President. If the recent shooting of the District of Columbia police officer in the course of the assassination attempt on President Reagan had occurred in any jurisdiction other than the District of Columbia, both federal and state or local authorities would have been investigating and prosecuting what in essence is the same case. This could result in jurisdictional and political disputes; conflicts in investigation and seizing, testing, and maintaining evidence; pretrial publicity problems; much greater pretrial discovery than is afforded under the federal rules; multiple trials; different evidentiary rulings; and ultimately greatly weakened cases. We support extension of federal jurisdiction to be accomplished by the passage of legislation that would make it a federal offense to assault anyone during the commission of an attack on the President or Vice President.

Note

1. United States Senate, *Criminal Code Reform Act of 1979, Report of the Committee on the Judiciary, United States Senate, to Accompany S. 1722*, (Washington: U.S. Government Printing Office, 1980), pp. 536–537.

Arson

Recommendation 25

The Attorney General should conduct a study of the feasibility of transferring the anti-arson training and research functions of the United States Fire Administration to the Bureau of Alcohol, Tobacco and Firearms.

Recommendation 26

Arson should be the subject of a special statistical study on a regular basis by an appropriate agency as determined by the Attorney General.

Recommendation 27

To eliminate problems that often emerge when gasoline or other flammable liquids are used in arson, current law creating federal jurisdiction over arson started by explosion where interstate commerce is involved should be amended to encompass arson started by fire as well as by explosion.[1]

Commentary

In 1979, almost 1,000 people died and 10,000 were injured as a result of arson. Arson has increased approximately 400 percent over the past decade and accounts for roughly 25 percent of all fires.[2] For every 100 fires classified as suspicious or incendiary, there are only 9 arrests, 2 convictions, and 0.7 incarcerations.[3]

Arsonists are investigated and prosecuted under a number of federal statutes by federal agencies including the Federal Bureau of Investigation (FBI), the Bureau of Alcohol, Tobacco and Firearms (ATF), the Internal Revenue Service (IRS), and the United States Postal Service. In addition, training, research, coordination, and funding of state and local programs are carried out by a number of the federal agencies, including the United States Fire Administration (USFA).

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The USFA is part of the Federal Emergency Management Administration (FEMA). In addition to a fire academy and a data center, it contains an Office of Planning and Education that is, in part, concerned with arson. Its activities include the operation of a training academy in Emmitsburg, Maryland, for federal, state, and local personnel who are trained in the management of fire departments and fire scene investigations. Approximately 800 people are trained at the academy each year. The USFA also runs task force training programs in various cities. Arson task forces are comprised of police, fire department personnel, and prosecutors. In addition, insurance, housing, public information, and other representatives may be part of the task force.

The USFA also funds projects in seven cities that investigate arson patterns and study methods of prediction. In addition, it runs a joint program with ATF whereby the USFA supplies a local fire investigator as part of a national response team to aid in investigating major arsons. The USFA works with the insurance industry to improve underwriting practices and claims defense practices and with the American Bar Association on arson case law and defense procedures. It also runs a juvenile fire setter counseling program, works with the FBI in profiling arsonists, and researches ways to predict revenge arson and prosecute the arsonist. The USFA provides grants and funds the National Bureau of Standards to conduct research in arson prevention and investigation. Funds for the task force program were received from the Law Enforcement Assistance Administration (LEAA). With the cutoff of LEAA, the task force and other programs will be terminated.

The USFA's anti-arson training and research activities are closely related to the arson law enforcement responsibilities of the ATF. As noted in a discussion of the reorganization of federal law enforcement agencies elsewhere in this chapter, having related law enforcement responsibilities lodged in separate agencies can result too often in inefficient operations. Because of this we believe the Attorney General, along with the Secretary of the Treasury and the Director of the Federal Emergency Management Administration should examine the feasibility of transferring the anti-arson training and research functions of the USFA to the ATF. In addition, they should examine the degree to which these activities should be expanded. This study should be conducted in conjunction with the study of the feasibility of transferring ATF's law enforcement functions to the Department of Justice—a recommendation we discuss in a later section of this chapter.

We also recommend that the offense of arson become a subject of regular statistical study by the FBI, or the Bureau of Justice Statistics, or another appropriate agency as determined by the Attorney General. Currently, arson is classified as a Part I crime on a temporary basis only as part of annual amendments to the Justice Department authorizations. There are difficulties in making arson a permanent Part I index crime under the Uniform Crime Reports (UCR). Since approximately only 60 percent of the nation's police departments collect arson statistics, efforts would have to be made to factor into the UCR the statistics received directly from fire agencies in localities where police agencies do not gather such data. In addition, arson often does not become known to law enforcement agencies for long periods of time. While the FBI believes that arson statistics can have great utility, it believes that a special study of arson, much in the manner of special studies now conducted of police killings and bombings, would be more useful. It is estimated that the startup costs for such a study would be about $500,000.

We also support a proposal which would minimally expand federal jurisdiction over arson. It is designed to clear up serious problems that often emerge when fires are started by gasoline. Currently, the federal government has jurisdiction over individuals who maliciously damage or destroy or attempt to damage or destroy, ". . . by means of an explosive," property used in or activities affecting interstate or foreign commerce. (18 U.S.C. 844(i)). Gasoline, under proper conditions, is *generally* accepted by the courts as an explosive as defined by statute. However, it is often difficult to demonstrate that at the time an arson occurred gasoline was in the proper state to be classified as an explosive. Federal investigators must often expend a great amount of time and effort to demonstrate that gasoline used in an arson was in this state; a number of cases are terminated because this cannot be established. If the statute were to read, "Whoever maliciously damages or destroys, or attempts to damage or destroy, by means of explosion or fire . . ." then investigators would not need to prove the gasoline was in an explosive state.

Notes

1. We also address the organization of arson enforcement activities in Phase II Recommendation 33.

2. Statement by Senator John Glenn, *Congressional Record*, January 27, 1981, p. 5702.

3. *Arson: Report to the Congress* (Washington: United States Fire Administration, August 1979).

Tax cases

Recommendation 28

The Attorney General should support or propose legislation to amend the Tax Reform Act to balance legitimate law enforcement needs with personal privacy interests by permitting the limited use of Internal Revenue Service records and information by other law enforcement agencies.

Recommendation 29

The Internal Revenue Service should be afforded adequate resources to investigate tax offenses and financial dealings of drug traffickers and other illegal business activities that are associated with violent crime.

Recommendation 30

The Attorney General should review and restructure if necessary the "Dual Prosecution Policy" as it relates to prosecution of tax offenders who have committed other offenses prosecuted by the Department of Justice.

Commentary

Since passage of the Tax Reform Act of 1976, the relationship of the Internal Revenue Service (IRS) to other law enforcement agencies has changed sharply. The Tax Reform Act was designed, in part, to protect private citizens and to prevent frivolous or politically motivated criminal investigations of private citizens through the use of their tax returns or tax-related information. The Tax Reform Act placed restrictions on what information federal law enforcement agencies could request from the IRS. It also tightened and made more cumbersome the procedures by which agencies could obtain such information. As a result, the IRS participation in law enforcement agencies' efforts to investigate, prosecute, or otherwise limit the activities of organized criminals and drug traffickers was reduced. For instance, the number of Organized Crime Strike Force indictments that originated from IRS-developed tax information dropped from 27 in 1978 to 16 in 1980.

The Criminal Investigation Division (CID) is the section of the IRS that, in addition to investigating alleged criminal violations of the Internal Revenue Code and offenses relating to tax evasion and willful failure to file returns, investigates individuals engaged in illegal business activities and organized crime. It is comprised of 1,300 financial criminal investigators whose skills would be of benefit to other federal law enforcement activities. Yet the Tax Reform Act has created a chasm between the CID and other federal law enforcement agencies.

The Tax Reform Act has led to a number of specific problems. In most instances, the IRS cannot advise the Justice Department on which cases it is working. This leads to a lack of cooperation and duplication of effort. It is very difficult for investigators from other agencies to obtain financial information from the IRS to assist in developing prosecutions against major criminals. It is also extremely difficult for the IRS to give other federal agencies evidence concerning non-tax criminal violations that was obtained in the normal course of its investigations. Finally, the requirements of the Tax Reform Act often cause severe time delays in those investigations in which prosecutors are permitted to work with the IRS.

The procedure by which federal prosecutors may seek disclosure, pursuant to court order, of tax return information needed in connection with a non-tax criminal investigation or prosecution is cumbersome and establishes unrealistic requirements. For example, a U.S. Attorney may not apply directly to a court for an order providing for disclosure of tax return information; rather, applications for such court orders must first be approved by the Department of Justice. Moreover, U.S. magistrates, who are empowered to issue search warrants, may not enter court orders for tax return information; such orders must be approved by U.S. district court judges.

The tax disclosure amendments outlined below would balance legitimate law enforcement needs against taxpayer privacy interests:

- Justice Department officials in the field, heads of agencies, and Inspectors General would be authorized to request non-return information from the IRS.
- The IRS would be mandated to report evidence of non-tax crimes to law enforcement authorities.
- Tax information would be admissible in judicial and administrative proceedings in the same manner as other evidence, rather than pursuant to special rules.
- The IRS would be permitted, at its discretion, to report to the appropriate federal law enforcement agency any circumstances involving an imminent danger of flight from prosecution or substantial threat to life or property.
- The IRS would not be precluded or prevented from assisting or working jointly with other federal law enforcement agencies in the investigation of non-tax crimes that may involve violations of federal tax laws.
- State and local law enforcement authorities would be entitled, but limited, to information already obtained by federal law enforcement officials (other than IRS) during a federal non-tax criminal investigation, upon entry of a court order authorizing such disclosure.
- Foreign governments pursuant to mutual assistance treaties and upon entry of a court order would be entitled to information in non-tax criminal matters, such as narcotics trafficking. This provision would make it possible for federal law enforcement officials to obtain reciprocal disclosure of foreign tax information. Such treaties, of course, must be ratified by the Senate.
- Federal agencies, rather than individual federal employees, must be the defendants in civil suits alleging unauthorized disclosures of tax information.
- Court order procedures for obtaining tax return information would be streamlined and made consistent with present judicial practice.

Individuals who are engaged in drug trafficking and organized crime regularly violate the tax laws in addition to laws against drug trafficking and organized crime. They either file no income tax return at all or file a fraudulent return. While it is frequently difficult to build a prosecutable case against such individuals for their activities in drug trafficking and organized crime, a well organized tax investigation conducted by IRS has a much better likelihood of successful prosecution and conviction. This has a twofold benefit: first, it strengthens enforcement of the tax laws and, second, it helps to put drug traffickers and persons engaged in organized crime out of business. The end result is extremely salutary.

To accomplish this goal on a meaningful level, the IRS needs increased investigative resources. Since drug trafficking and organized crime have a great influence on violent crime, we recommend that those additional necessary resources be provided.

Efforts to investigate and prosecute individuals by the Department of Justice for narcotic and organized crime offenses and by the IRS for violations of the tax laws are frequently hampered by application of the Department of Justice's dual prosecution policy. The United States Attorneys Manual (Title 9, Section 2.142) does not allow for prosecution of related offenses unless the offenses are enumerated in the same indictment.

This "dual prosecution" or "*Petite* policy" bars multiple prosecutions (either two or more federal prosecutions or a federal prosecution following a state prosecution) for two or more offenses arising from the same pattern of activity. For example, in the case of *Petite* v. *United States*, 361 U.S. 529 (1960), a federal prosecution for the bribery of jurors was undertaken after the defendant had plead nolo contendere in another district to a charge of conspiracy to bribe the same jurors. On appeal to the Supreme Court, the Department of Justice confessed error and moved to vacate the second conviction, citing its policy against dual prosecution. This policy has been expanded since that time.

Although the basic principle underlying the *Petite* policy is sound and promotes fairness to defendants as well as economical use of prosecutorial and judicial resources, we believe that this policy may be too broadly stated in existing Department of Justice guidelines, particularly as it relates to tax cases. If, for example, an individual has been convicted of a relatively minor offense (perhaps failure to file a federal income tax return), such a conviction bars a second prosecution if, following the original conviction, evidence is obtained indicating that the individual was engaged in a more serious offense or one with a more severe penalty (perhaps participation in a continuing criminal enterprise). This situation arises frequently in connection with organized crime and drug trafficking cases, where cases developed by the FBI and the DEA are referred to the Department for prosecution before criminal tax investigations of the same individuals are developed and referred by the IRS. We recommend, therefore, that the Attorney General review the dual prosecution guidelines to determine whether revisions may be appropriate to ensure that the guidelines do not bar a subsequent prosecution of major criminals.

We recognize, of course, that it is preferable to include all related counts in a single indictment and prosecution. Where new evidence of a serious tax crime is received after a conviction for a related offense, however, the dual prosecution policy should not necessarily prevent a further prosecution.

The Freedom of Information Act

Recommendation 31

The Attorney General should order a comprehensive review of all legislation, guidelines, and regulations that may serve to impede the effective performance of federal law enforcement and prosecutorial activities and take whatever appropriate action is necessary within the constitutional framework.

Recommendation 32

The Attorney General should seek amendments to the Freedom of Information Act to correct those aspects that impede criminal investigation and prosecution and to establish a more rational balance among individual privacy considerations, openness in government, and the government's responsibility to protect citizens from criminal activity.

Commentary

One concern raised by witnesses before the Task Force was the extent to which federal legislation, regulations, and guidelines, however well intended, serve to impede unnecessarily the effective enforcement of law. Within the 120 days allotted for our effort, we were unable to examine all legislation, regulations, and guidelines that may affect law enforcement, but we recommend that the Attorney General order such a comprehensive review.

The Freedom of Information Act (FOIA) was singled out by several witnesses before us as having shown negative consequences for effective law enforcement. Upon examination, we found that it is currently being used in ways that were unforeseen and unintended when it was enacted into law in 1966. When President Johnson signed into law the FOIA, he commented:

> This legislation springs from one of our most essential principles: a democracy works best when the people have all the information that the security of the Nation permits. No one should be able to pull curtains of secrecy around decisions which can be revealed without injury to the public interest.

Today, 15 years later, it is clear that the proportion of requests under the FOIA related to performing this vital function of informing the public may be very small. In recent congressional testimony,[1] the Department of Justice reported that only 7 percent of the 30,000 FOIA requests received annually come from the media or other researchers. Many requests come from persons who are obviously seeking information for improper personal advantage, including convicted offenders, organized crime figures, drug traffickers, and persons in litigation with the United States who are attempting to use the FOIA to circumvent the rules of discovery contained in the rules of criminal or civil procedure. Because requesters do not have to give a reason for the request, it is unknown precisely how great this type of abuse may be; however, the Federal Bureau of Investigation (FBI) reports that 11 percent of its requests are from prisoners and the Drug Enforcement Administration (DEA) reports that 40 percent of its requests are from prisoners and another 20 percent are from persons who are not in prison but are known by DEA to be connected with criminal drug activities.

Most observers agree that the FOIA has had beneficial consequences, including restoring public confidence in government and necessitating that law enforcement agencies scrutinize their need for collecting and maintaining criminal intelligence information. As hearings before the Subcommittee on Criminal Laws and Procedures of the Senate Judiciary Committee[2] (hereinafter referred to as the "Eastland hearings") and witnesses before our Task Force have demonstrated, there is near universal agreement in the law enforcement community that, while the FOIA has had many laudable effects, in many cases it has served to protect the criminally inclined and is in need of modification to restore the delicate balance between openness in government and the government's responsibility to protect citizens from crime.

In support of their conclusions that the FOIA now needs modification, witnesses before the Task Force and the Eastland hearings offered the following examples of how it has affected the ability of federal, state, and local governments to combat crime:

- Decreases in the number of informants have been reported; it is believed by many that potential informants do not come forward out of fear of disclosure through FOIA requests from persons they had helped convict. Even though their informant identities are exempt from disclosure, informants fear that they will become known through agency error or release of ancillary information on details of the informant's role in the investigation.
- In some federal agencies, a considerable number of FOIA requests come from incarcerated offenders, presumably trying to identify informants or from organized crime figures and drug dealers seeking to find out what the government knows about them and their criminal activity.
- It is suspected that some individuals (particularly offenders) are using the FOIA to slow court processing or as a "nuisance device" to harass federal agencies.
- Requests have been received for personnel rosters and investigative and training manuals of investigative agencies presumably to learn the investigation identities and the techniques the federal government uses to capture offenders.
- When an FOIA request is for material in an active investigation file, the government can deny the request but must explain why, alerting the requester that he or she is under investigation.
- Federal, state, and local criminal justice agencies do not share intelligence information as freely as before the FOIA, possibly because of confusion over what is and is not covered by the Act or because of the enactment of similar state laws.
- International law enforcement cooperation has been affected as some foreign agencies are reluctant to share with the United States information that might be disclosed under the FOIA.
- Current estimates indicate that it costs the federal government $45 million a year to administer the FOIA, the bulk of the cost being associated with salaries. The FBI alone employs approximately 300 persons to work on FOIA matters, at an annual cost of $11.5 million. While this might be an acceptable outlay for serving the intended purposes of the Act, it is difficult to justify expenditures of federal funds for requests from those seeking information that is legitimately confidential or which they intend to use to evade criminal investigation or retaliate against informers.
- Government resources are used to fill requests outside the original intent of the Act, which was to ensure an informed electorate. These requests come not only from those seeking investigative information for illicit purposes, but also from foreign nationals who may be intelligence agents and businesses that are seeking trade secrets. While trade secrets and active investigative information are exempt from disclosure, resources must nevertheless be spent to locate relevant records and review them to determine what must be released and what may be withheld under the exemption standards. If these requests could be eliminated, responses to the remaining legitimate requests could be completed more quickly and overall savings to the government could be realized.

The Department of Justice is currently studying the FOIA. On May 4, 1981, Attorney General William French Smith announced ". . . the commencement of a comprehensive review of the Act to assess the need for legislative reform." Details of such a legislative reform have not been worked out but we understand that a complete legislative package is expected by mid-September, incorporating comments that have been solicited from government agencies. Such legislative proposals should include amendments to correct the negative consequences for law enforcement noted in this chapter.

In making this recommendation, we know that some observers, particularly among the media, are concerned that modifications to the FOIA will impede their access, and that of researchers and the general public, to government information. This concern was expressed by several witnesses in recent testimony before congressional committees.[3] We believe it important to stress that what we are recommending is modification that would limit access by persons seeking to use the Act for improper personal advantage, while preserving those provisions that operate in accord with original congressional intent. Drafting such modifications will not be simple, and it is important that drafters of such language avoid the simplistic approach of protecting legitimately confidential information by excepting it along with a large body of information that should be available to the public.

Notes

1. Statement of Jonathan C. Rose, Assistant Attorney General, Office of Legal Policy, U.S. Department of Justice, before the House Subcommittee on Information and Individual Rights of the House Government Operations Committee, July 15, 1981.

2. United States Senate Subcommittee on Criminal Laws and Procedures of the Senate Judiciary Committee, *The erosion of law enforcement intelligence and its impact on the public security*, (Washington: U.S. Government Printing Office, 1978).

3. Such reservations were expressed by the following persons testifying before the Government Information and Individual Rights Subcommittee of the House Government Operations Committee in mid-July 1981: William Cox, representing the American Newspaper Publishers Association and the National Newspaper Association; Edward Cony, representing the American Society of Newspaper Editors; Jack C. Landau, of the Reporters Committee for Freedom of the Press; Tonda Rush, representing the Freedom of Information Service Center; Joseph L. Rauh, Jr., of Americans for Democratic Action; and Paul Hoffman, of the National Committee Against Repressive Legislation. Similar reservations were expressed by Steven R. Dornfeld, representing the Society of Professional Journalists, Sigma Delta Chi, before the Senate Judiciary Subcommittee on the Constitution on July 15, 1981.

Centralizing federal law enforcement functions

Recommendation 33

The Attorney General should study whether to transfer the firearms, alcohol, and arson law enforcement functions of the Bureau of Alcohol, Tobacco and Firearms to the Department of Justice; to transfer the Border Patrol functions of the Department of Justice to the Department of the Treasury; and to transfer the licensing and compliance functions of the Drug Enforcement Administration to the Food and Drug Administration of the Department of Health and Human Services.[1]

Commentary

Strengthening enforcement of federal laws, particularly those related to firearms, narcotics, and arson, is one of the most significant ways in which the federal government could do more to assist in combatting the problem of violent crime. The enforcement of firearms and arson laws, currently lodged in the Department of the Treasury, relates closely to the enforcement of other criminal laws for which the Department of Justice is responsible. While much could be done to improve the coordination of efforts between these departments, we do not believe that attempts of federal law enforcement agencies, working on related problems, to coordinate their activities and share their resources and facilities can be as effective as placing them under a central authority. Having related law enforcement responsibilities in separate agencies can result too often in inefficient operations, duplication of effort, inadequate use of scarce resources, and conflicts over responsibilities, authority, and jurisdiction. Furthermore, the division of responsibilities between the Departments of Justice and Treasury makes it more difficult for state and local law enforcement agencies to work with the federal government in attacking common problems such as firearms trafficking. As Admiral Mahan, the master naval strategist, reasoned, "Granting the same aggregate of force, it is never as great in two hands as in one, because it is not perfectly concentrated."

We believe that reorganization of federal law enforcement functions would improve the efficiency of the federal law enforcement machinery and should receive the serious consideration of the Attorney General. One move that should be considered is a transfer of the firearms, alcohol, and arson law enforcement functions of the ATF to the Department of Justice. This would place the responsibility for fighting one of this country's most pressing and demanding crime problems—trafficking in illegal weapons—in our foremost law enforcement department. Such a transfer would permit more vigorous enforcement of laws governing the import and export of firearms and munitions at ports of entry. In addition, through Department of Justice central management, a larger pool of law enforcement resources could be allocated more effectively to meet law enforcement requirements.

Another area for reorganization consideration is the transfer of the Border Patrol of the Department of Justice to the U.S. Customs Service of the Department of Treasury. This would permit more effective coordination in the effort to reduce the flow of narcotics into this country.

A final organizational issue that should be considered is whether the DEA licensing and compliance function should be transferred to the FDA of the Department of Health and Human Services. We are concerned that including such responsibilities in an agency whose primary mission is the enforcement of narcotics laws may interfere with the effective performance of its major duties.

We regret that our short life span precluded a more detailed study of how these organizational considerations affect the law enforcement function of the federal government. It seems clear to us that the current fragmentation of responsibilities and overlapping jurisdictions create great potential for less than optimal performance by federal law enforcement agencies and that the transfers we propose for study would eliminate substantial jurisdictional overlaps, improve interdepartmental coordination, and eliminate duplication in combatting violent crime. We recommend that the Attorney General study the organizational issues we have raised and determine if centralization will indeed strengthen the law enforcement operations of the federal government.

Note

1. We also address the organization of federal law enforcement functions in Phase I Recommendation 1 and arson in Phase II Recommendations 25 through 27.

Housing federal detainees in local jails and state prisons

Recommendation 34

The Attorney General should seek a waiver of the requirements of the Federal Procurement Regulations for contracts entered into for temporary housing of federal prisoners in local detention facilities and/or should seek legislation to amend the Grant and Cooperative Agreement Act of 1977 (Public Law 95–224) to establish and authorize the use of intergovernmental agreements with local governments for detention space and services for federal prisoners.

Recommendation 35

The Attorney General should support or propose a legislative appropriation for the implementation of a Cooperative Agreement Program that would allow the United States Marshals Service to assist local governments in acquiring equipment and supplies necessary for jails to meet requirements for housing federal prisoners and should support or propose a legislative appropriation for capital improvements of detention facilities used to house federal prisoners, with priority given to those facilities under litigation or court order for overcrowding.

Recommendation 36

The Attorney General should support or propose legislation to amend 18 U.S.C. 5003 to permit a quid pro quo arrangement whereby the federal government could house state prisoners and the states house a similar number of federal inmates without requiring an exchange of funds.

Commentary

Individuals under federal jurisdiction must be transported to federal courts throughout the country for hearings and trials, though frequently there is no federal facility in which to house them near the particular judicial district. On a contractual basis, several federal agencies, but most often the U.S. Marshals Service (USMS), work out arrangements to pay for the cost of holding inmates and detainees in local detention facilities for the required period. Close to 5,000 federal prisoners are in fact held in such facilities. Local governments are the sole providers of jail space for more than 70 percent of USMS prisoners.

Many jails, however, are overcrowded, particularly where they are being used as places to handle overflow of state prisoners. In this regard, the Bureau of Justice Statistics has reported that in 1980, 16 states were holding almost 6,000 state prisoners in local jails because of overcrowding.[1] Thus, local governments are frequently reluctant to accept federal defendants or inmates, regardless of assurance of payment. If they do, it is felt that the threat of violence may increase, as might the potential for inmates to file suits in federal court claiming unconstitutional conditions of confinement.

The extent of the problem is evidenced by the fact that from 1979 to 1981, among the jails with which the federal government contracts, the number under federal court order for such violations increased from 33 to 66; more than two-thirds of these were or are the facilities most frequently used for federal detainees. As a result of these concerns, during the past 2 years over 100 local detention facilities have either placed ceilings on the number of federal prisoners they will accept or have refused to accept any federal prisoners. Consequently, the USMS has been forced in many cases to house prisoners in remote jails or federal institutions and pay enormous sums of money in transportation costs. As an example, if inmates currently detained through contract in New Orleans had to be removed to the nearest federal facility, the USMS estimated annual cost for transportation to and from court would exceed $1 million.

Another problem associated with holding federal prisoners in local jails is the cumbersome contractual process required by Federal Procurement Regulations. Some of the stipulations make it difficult to enter into cooperative arrangements because detention facilities are not economically or physically in a position to comply with imposed requirements. Considering the temporary basis on which federal inmates are detained, contracts are not necessarily appropriate for coverage under Federal Procurement Regulations and should instead be considered intergovernmental agreements. Alternatively, a waiver might be granted to the USMS by the Office of Management and Budget (OMB) to facilitate the contracting of jail space, such waiver being accomplished through an extension of OMB's authority under the Grant and Cooperative Agreement Act of 1977 (Public Law 95–224).

With numbers of arrests for serious federal offenses likely to increase in the coming years, care and confinement, particularly of unsentenced federal prisoners, becomes a significant concern. It is therefore important that cooperation between local jails and the federal government be maintained and that the federal government take steps to ensure this. We believe it necessary to work out special arrangements, including incentives for local jails, for the housing of individuals under federal jurisdiction.

An approach that we endorse is to provide special assistance to jails that house federal inmates. Forms of such assistance might include helping in renovation of these facilities or acquiring materials needed to improve conditions of confinement, or making certain types of training available to correctional officers, which would result in enhanced jail capacity to handle the increased burdens of recent years, including overcrowding. It has been estimated that such cooperative efforts (excluding capital construction) would require approximately $3 million to supplement court compliance, standards, implementation, and training funds now available. An additional $54 million to $58 million would be required for capital construction deemed necessary to adequately accommodate federal inmates. Since these funds would be going to local detention facilities, they must be authorized separately from those recommended under the state construction assistance program described in Chapter 3 of this report.

A second mode of assistance might provide, on a limited basis, that where a jail closest to a federal district court is needed to temporarily house federal detainees, and the jail is overcrowded or otherwise unable to readily accommodate them, violent, sentenced state offenders then residing at such a facility could be transferred to the nearest federal institution or metropolitan correctional center. Such transfers as this one can be accomplished pursuant to 18 U.S.C. 5003. Often, jails are ill-equipped to handle or provide for the needs of these individuals, and through their transfer to other facilities, space would be created for the temporary housing of federal detainees.

A related issue involving 18 U.S.C. 5003 concerns the requirement that the state must provide reimbursement "in full for all costs involved." This stipulation means that states must have cash readily available to cover these costs, and many jurisdictions simply do not operate in a manner which permits this. Similarly, the federal government must pay states to house its inmates and encounters the same kind of procedural obstacles. We believe that it would be mutually beneficial to the states and federal government to amend the statute to permit a quid pro quo arrangement whereby the federal government could house state prisoners in return for the states' agreement to house a similar number of federal prisoners with no exchange of funds.

Additional discussion of the interface among local, state, and federal governments regarding housing of federal prisoners is contained in Chapter 3.

Note

1. U.S. Department of Justice, Bureau of Justice Statistics Bulletin, *Prisoners in 1980* (Washington: U.S. Government Printing Office, May 1981).

Adequate personnel resources for federal responsibilities

Recommendation 37

The Attorney General should seek a substantial increase in personnel resources for federal law enforcement and prosecutorial agencies to enable them to effectively perform their present responsibilities and the additional and expanded responsibilities recommended by this Task Force.

Commentary

To effectively implement many of our recommendations, additional personnel resources will be required. This is particularly so if other areas of law enforcement and prosecution are to continue to receive the level of attention they deserve.

Our recommendation of a policy of increased narcotics detection and interdiction, if implemented, will affect the resource requirements of a number of investigative agencies, including the Drug Enforcement Administration (DEA), Internal Revenue Service (IRS), Federal Bureau of Investigation (FBI), U.S. Customs Service, the Border Patrol, and the U.S. Coast Guard. Our recommendation that arson started by fire be subject to federal jurisdiction can be expected to require additional personnel resources for this activity. Similarly, our call for an increased effort against dangerous fugitives will require additional resources for either or both the U.S. Marshals Service (USMS) and the FBI.

Many more of our recommendations also imply a need for expanded personnel resources for federal agencies. The FBI may require additional manpower to accept the fingerprints and criminal history information of juveniles convicted of violent crimes in state courts as well as to fulfill their responsibilities with respect to juveniles who commit federal offenses and engage in street gang activity.

Our recommendation that the Interstate Identification Index, if shown to be successful, be fully implemented by the FBI may well require additional computer staff, and the FBI will require additional manpower to reduce the fingerprint and name check request backlog as we have recommended they do.

Many of our recommendations, if implemented, will result in an increased number of prosecutions and expenditure of time. The U.S. Attorney's Offices, currently operating at 400 below the congressionally authorized personnel ceiling of 4,400, will certainly require more manpower to implement many of these recommendations if their efforts directed against other unlawful acts such as white-collar crime and public corruption are not to be diminished. The increased effort against narcotics traffic will result in more prosecutions. The imposition of a mandatory sentence for the use of a firearm in the commission of a federal felony will probably result in fewer plea bargains and more trials. Increased federal prosecutions of convicted felons apprehended in the possession of a firearm will, in turn, require an increase in personnel. In addition, hearings to deny bail will require additional prosecutorial resources. More cases for the U.S. Attorney's Offices can also be expected if there is increased federal law enforcement directed at youth gangs. Finally, the recommendations to increase and facilitate the prosecution of those involved in drug trafficking and other violent illegal business activities can be expected to require additional resources, not only for U.S. Attorneys Offices, but also the Criminal and Tax Divisions of the Justice Department.

Similarly, implementation of many of our recommendations, such as mandatory sentences for gun offenses, changes in criminal procedure, and expansion of federal jurisdiction, will require additional resources for the Federal Prison System as it will ultimately have to cope with an increased workload as improved federal law enforcement results in higher conviction rates and longer periods of incarceration. Finally, to be implemented, some of our recommendations relating to federalism will require additional resources. Personnel increases will be necessary to support more training for state and local personnel; administer the state prison construction and related National Institute of Corrections (NIC) study programs; improve justice statistics and allow for development of state and local information systems; and expand the research, testing, demonstration, evaluation, and funding of innovative criminal justice programs.

We did not attempt to estimate precisely the additional resources required to implement our recommendations as the Department of Justice budgetary process exists for this purpose. Our recommendation is designed to draw specific attention to the fact that improved criminal justice systems require resources not currently available.

The fight against violent crime requires not only good ideas but commitment. The strength of this commitment can be measured by the willingness of the federal government to expend the resources needed to make the good ideas work. We believe that this commitment of resources is essential to a successful fight against crime.

Chapter 2

Criminal Procedure

As we have recommended in other chapters of this report, much can be done to reduce the commission of serious crime, apprehend and prosecute offenders who commit it, and provide sufficient space in prison for those who need to be incarcerated for the protection of society. There is another area, however, which needs to be addressed in order to allow for an overall approach to combatting crime: that area, which we have termed "criminal procedure," deals with what happens in court from the initial bail determination through sentencing and finally to collateral attack on the conviction.

Much of the testimony that we have received in hearings throughout the country comports with our view that a number of changes need to be made in criminal procedure in order to adequately protect society, while at the same time protect the rights of individuals accused of crime. These changes are also necessary for another reason: to restore public confidence in our criminal justice system.

People have never been able to understand why the federal bail laws have been structured in such a way as to almost ensure that defendants, no matter how dangerous, charged with crimes no matter how serious, are released back into society, not only before trial but even after conviction while awaiting sentence or appellate resolution. Members of our society have also been frustrated when they see offenders who clearly have committed serious crimes, found not guilty by reason of insanity and then either not committed to a mental institution or committed and then released in a short period of time.

We have also addressed another area that has drawn a great deal of public criticism. Under existing law, evidence seized in good faith by a police officer may not be used at trial if it is later found to have been taken illegally as a result of investigative error, however unintended or trivial. While the goal of the exclusionary rule—to deter illegal police conduct and promote respect for the rule of law—is laudable, the rule has the extremely unfortunate effect of barring evidence of the truth from a trial, which is supposed to be a search for the truth, and in freeing obviously guilty offenders. Our proposal is aimed at preserving the underlying basic purpose of the rule and, at the same time, eliminating this serious drawback in the vast majority of cases.

We are also sensitive to the public's concern when they see great disparity in sentences and release on parole of similarly situated offenders convicted of similar offenses and to their frustration at not being able to determine at the time of sentence how long an offender will actually spend in prison. Our recommendation to replace the present indeterminate sentencing and parole structure in the federal system with the determinate model contained in the proposed Criminal Code Reform Act of 1979 is our response to this problem.

Our last recommendation in this chapter has two principal goals. The first is to limit the presently unending stream of collateral attacks on convictions in order to ensure that at some point convictions will become final, so that the public, and particularly the victims of crime, can rest assured that guilty offenders will have to pay their debt to society. The second goal is to restore the delicate balance of federalism in our system of government by giving due consideration to the interests of the states in their criminal justice system.

These recommendations, if enacted into law, will help protect society from the present totally unacceptable level of serious crime and, at the same time, do much to help restore public confidence in our criminal justice system.

Bail

Recommendation 38

The Attorney General should support or propose legislation to amend the Bail Reform Act that would accomplish the following:

a. Permit courts to deny bail to persons who are found by clear and convincing evidence to present a danger to particular persons or the community.

b. Deny bail to a person accused of a serious crime who had previously, while in a pretrial release status, committed a serious crime for which he was convicted.

c. Codify existing case law defining the authority of the courts to detain defendants as to whom no conditions of release are adequate to assure appearance at trial.

d. Abandon, in the case of serious crimes, the current standard presumptively favoring release of convicted persons awaiting imposition or execution of sentence or appealing their convictions.

e. Provide the government with the right to appeal release decisions analogous to the appellate rights now afforded to defendants.

f. Require defendants to refrain from criminal activity as a mandatory condition of release.

g. Make the penalties for bail jumping more closely proportionate to the penalties for the offense with which the defendant was originally charged.

Commentary

Federal bail practices are for the most part now governed by the Bail Reform Act of 1966 (18 U.S.C. 3146 et seq.). The primary purpose of the Act was to deemphasize the use of money bonds in the federal courts, a practice which was perceived as resulting in disproportionate and unnecessary pretrial incarceration of poor defendants, and to provide a range of alternative forms of release. These goals of the Act—cutting back on the excessive use of money bonds and providing for flexibility in setting conditions of release appropriate to the characteristics of individual defendants—are ones which are worthy of support. However, 15 years of experience with the Act have demonstrated that, in some respects, it does not provide for appropriate release decisions.

Increasingly, the Act has come under criticism as too liberally allowing release and as providing too little flexibility to judges in making appropriate release decisions regarding defendants who pose serious risks of flight or danger to the community.

Denying bail to persons who are found by clear and convincing evidence to be dangerous. Under the present provisions of the Bail Reform Act, the only issue that may be considered by the court in making a pretrial release decision is the likelihood that the defendant will appear for trial if released. Consideration of the danger the defendant may pose to particular individuals or to the community is not permitted. Although a defendant seeking release may pose a significant risk to the safety of others, the courts are now without authority to deny release on the ground that the defendant will likely commit dangerous or violent acts while on bail.

The concept of permitting consideration of dangerousness in the pretrial release decision has been widely supported. It is incorporated in the release provisions of the District of Columbia Code which was passed by Congress in 1970 [1] and has been endorsed in the American Bar Association (ABA) Standards Relating to the Administration of Justice [2] and by the National Conference of Commissioners on Uniform State Laws.[3] In addition, in his annual address to the ABA in February of this year, the Chief Justice stressed the need to provide for greater flexibility in our bail laws to permit judges, in making determinations, to give adequate consideration to the issue of a defendant's dangerousness.

The wide and growing support for permitting consideration of a defendant's dangerousness in the pretrial release decision is simply a recognition that the courts must have authority to make responsible decisions regarding defendants who pose significant dangers to the community. The state of current federal law, which deprives the courts of this authority, is in our view no longer tolerable.

To provide an adequate means for dealing with dangerous defendants who are seeking release pending trial, the Bail Reform Act must be amended. It is obvious that there are defendants as to whom no conditions of release will reasonably assure the safety of particular persons or the community. With respect to such defendants, the courts must be given the authority to deny bail.

The Act currently makes no provision for denial of bail on the ground of dangerousness. This does not mean, however, that there are no situations in which pretrial detention may be ordered. For example, it is recognized that a defendant who has threatened witnesses may be ordered detained [4] and, in some circumstances, detention may be ordered for defendants who appear likely to flee regardless of what release conditions are imposed.[5] Furthermore, there is a widespread practice of detaining particularly dangerous defendants by the setting of high money bonds to assure appearance.

Amending the Act to permit the denial of bail to defendants who pose a serious danger to community safety would not only constitute a sound policy, but also would represent a more honest way of dealing with the issue of potential misconduct by those released pending trial. It is widely believed that under the present system, despite the lack of statutory authority to consider dangerousness in the release decision, many courts nonetheless do detain dangerous defendants (even though they pose little or no risk of flight) by requiring the posting of high money bonds—a phenomenon which has cast doubt on the fairness of federal release practices. Providing a statutory mechanism for the denial of bail to dangerous defendants would permit the courts to address squarely the issue of dangerousness. It would also afford defendants faced with detention a hearing where the government would be required to establish dangerousness by clear and convincing evidence.

This recommendation is meant to apply to the federal system only. Because of the federal Speedy Trial Act, defendants who are denied bail because of the danger that they pose would be detained only for a relatively short time before the underlying charges are disposed of. In many states, trials are not held until 1 to 2 years have elapsed. We would not wish to see defendants who had not been adjudicated guilty of the underlying charges detained for such a long time, even with the protection of the "clear and convincing" standard.

While a majority of the Task Force favored adoption of this recommendation, two members opposed it on the ground that the ability to predict future criminal behavior has not been developed to the point where it is sufficiently reliable to be used for the purpose of denying bail.

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Offenders who have committed a serious crime while previously on pretrial release. A person who has been convicted of a serious offense committed while on pretrial release has established beyond a reasonable doubt, first, that he is dangerous and, second, that he cannot be trusted to conform to the requirements of the law while on release. He should therefore be presumed to be dangerous and ineligible for release. Such a provision might be a strong deterrent to criminal conduct by those who are in a release status. A possible additional provision would be to limit the period of time during which a person would be ineligible for bail to a set period of time, such as 10 years.

Denial of bail to assure appearance. The Bail Reform Act should be amended to give the courts clear statutory authority to order the detention of defendants who pose such a risk of flight that no conditions of release will assure their appearance. Such an amendment would not be a departure from current law but rather a codification of case law which has recognized the authority of judges to deny release to defendants where there is a substantial likelihood that, if released, they will flee the jurisdiction to avoid prosecution.[6]

Despite the fact that there is case law recognizing the authority to deny release based on a severe risk of flight, many judges continue to be reluctant to exercise this power in light of the absence of any such authority in controlling federal bail statutes. However, as has been the case with extremely dangerous defendants, a practice has developed of requiring extraordinarily high money bonds as a means of accomplishing the detention of defendants who pose serious risks of flight.

The courts should not be required to resort to this practice, but instead should have clear statutory authority to address the problem of flight to avoid prosecution honestly and order detention where it is the only means of assuring appearance. Furthermore, the practice of requiring high money bonds has proven to be an ineffective means of assuring appearance of defendants who are engaged in highly lucrative criminal activity, are able to post huge sums of money to secure release, and are willing to forfeit these funds by fleeing the jurisdiction of the court. The recent case in which a narcotics trafficker was able to meet a $500,000 bond (bond was originally set at $21 million and reduced over the objection of the government) and quickly fled the country illustrates this problem. In such a case, the only means of assuring the defendant's appearance at trial is through detention. The law should make it clear that an order of detention in such circumstances is appropriate.

Post-conviction release. One of the most disturbing aspects of the Bail Reform Act is its standard governing release after conviction. This standard, which is set out in 18 U.S.C. 3148, presumptively favors the release of convicted persons who are awaiting imposition or execution of sentence or who are appealing their convictions. Under this provision of the Act, a person seeking release after conviction is to be treated under 18 U.S.C. 3146 (which provides for pretrial release under the least restrictive conditions necessary to assure appearance) unless the court finds that the person is likely to flee or pose a danger to the community. Only if such a risk of flight or danger to community safety is found to exist, or, in the case where release is sought pending appeal, the appeal is found to be frivolous or taken for delay, may the judge order the person detained.[7]

In our view, there are compelling reasons for abandoning the present standard which presumptively favors release of convicted persons. First, conviction, in which the defendant's guilt is established beyond a reasonable doubt, is presumptively correct at law.[8] Therefore, while a statutory presumption in favor of release prior to an adjudication of guilt may be appropriate, it is not appropriate after conviction. Second, the adoption of a liberal release policy for convicted persons, particularly during the pendency of lengthy appeals, undermines the deterrent effect of conviction and erodes the community's confidence in the criminal justice system by permitting convicted criminals to remain free even though their guilt has been established beyond a reasonable doubt.

It is untenable that the law should generally require release pending appeal. Appropriate recognition should be given to the validity of conviction, to the need to foster the deterrent value of conviction, and to the public's right to expect the criminal justice system to be capable of effectively controlling convicted persons. A sound standard for post-conviction release would provide, as a general rule, that release on bail would not be presumed for convicted persons sentenced to a term of imprisonment and that release would be available, within the discretion of the court, only to those defendants who are able to provide convincing evidence that they will not flee or pose a danger to the community and who are able to demonstrate that their appeals raise substantial questions of law or fact likely to result in reversal of conviction or an order for a new trial.

Government appeal of release decisions. Under current law, defendants have an opportunity to move for reduction of bond and to seek reconsideration and appellate review of release decisions. The government, however, has no opportunity to obtain review of the conditions of release or the release decision itself. Faced with what it believes to be an improper release decision, the government is powerless to seek review of an often hastily made decision which will permit a defendant to flee the jurisdiction or to return to the community to resume his criminal activity. It is simply a matter of fairness and sound policy to provide the government with the same right to appeal release decisions as is given defendants.

Mandatory condition of release that the defendant not commit another crime. We believe that whenever a defendant is ordered released the court should be required to impose a condition that the defendant not commit another crime while on release. This mandatory release condition was included in S. 1722, the Criminal Code revision bill approved by the Senate Judiciary Committee in the past Congress. The Committee's report on the bill described the need for inclusion of such a mandatory condition of release:

> While it may well be self-evident that society expects all of its citizens to be law abiding, it is particularly appropriate, given the problem of crime committed by those on pretrial release, that this requirement be stressed to all defendants at the time of their release.[9]

Penalties for bail jumping should be proportionate to the severity of the penalties applicable to the offense charged. Under current law, the maximum penalty for the offense of bail jumping (18 U.S.C. 3150) is 5 years imprisonment if the offense charged was a felony and imprisonment of up to 1 year if the offense with which the defendant was charged when he was released was a misdemeanor. While the prospect of a 5-year penalty for bail jumping may dissuade a defendant charged with an offense punishable by 5 or 10 years imprisonment from fleeing, it may be ineffective in the case of a defendant facing 20 years or life imprisonment who will be tempted to go into hiding until the government's case becomes stale or witnesses are unavailable and then surface at a later time to face only the limited liability for bail jumping.

Notes

1. 23 D.C. Code 1321 and 1322.

2. American Bar Association Standards on Pretrial Release, 10–5.2 (1978).

3. National Conference of Commissioners on Uniform State Laws, Uniform Rules of Criminal Procedure, Rule 341 (1974).

4. See, *e.g.*, *United States* v. *Wind*, 527 F.2d 672 (6th Cir. 1975); *United States* v. *Gilbert*, 425 F.2d 490 (D.C. Cir. 1969).

5. See, *e.g.*, *United States* v. *Abrahams*, 575 F.2d 3 (1st Cir. 1978).

6. See, *supra;* and *United States* v. *Meinster*, 481 F. Supp. 1121 (S.D. Fla. 1979).

7. Of course, where release pending appeal is denied, the judge is simply ordering that the defendant be taken into custody to commence serving his sentence.

8. The presumptive validity of conviction is borne out by the low reversal rate of federal convictions. The reversal rate by the courts of appeals of criminal cases terminated after hearing was 10.9 percent for the 12-month period ending in June 1978, and was 10.4 percent for the period ending in June 1979. (*Annual report of the Director of the Administrative Office of United States Courts*, 1979, p. 107.)

9. United States Senate, S. Rep. No. 96–553, 96th Cong., 2d Sess., 1075. Footnotes to this passage refer to statistics in the *Report of Institute for Law and Social Research on Pretrial Release and Misconduct in the District of Columbia*, Nov. 27, 1978, which indicated that 13 percent of all felony defendants released pretrial and 25 percent of all felony defendants released on cash bond were rearrested.

Insanity defense

Recommendation 39

The Attorney General should support or propose legislation that would create an additional verdict in federal criminal cases of "guilty but mentally ill" modeled after the recently passed Illinois statute and establish a federal commitment procedure for defendants found incompetent to stand trial or not guilty by reason of insanity.

Commentary

Defendants suffering from a mental illness or abnormality have long been a problem for the criminal courts. The primary function of the criminal law is to establish legal norms to which all members of society are expected to adhere. The insanity defense is intended to avoid punishing persons who, because of mental illness, are unable to conform to the requirements of the criminal law. They are thought to be neither deserving of punishment nor subject to deterrence.

The line between sanity and insanity, however, often is not clear. Consequently, there are defendants who appear to be suffering from mental illness but from a type of mental illness that may not significantly affect their ability to obey the law. Such a person presents juries with the difficult choice of either making a finding of guilty, even though the jury may feel compassion because of the defendant's mental problems, or not guilty by reason of insanity, even though the person appears to be able to appreciate the criminal nature of his conduct and conform his conduct to the requirements of the law, notwithstanding the mental illness.

At least three states, Illinois, Indiana, and Michigan, have developed an alternative verdict of "guilty but mentally ill" to enable juries to respond better to this situation. Under these laws, a jury may recognize a defendant as being mentally ill, but nevertheless hold him responsible for his criminal actions, provided the mental illness does not negate the defendant's ability to understand the unlawful nature of his conduct and his ability to conform his actions to the requirements of the law. The foregoing proviso reflects the usual standards of the insanity defense. Under these state laws, defendants found guilty but mentally ill are sentenced under the criminal laws. During the department of corrections' intake procedures they are evaluated psychiatrically. If they are found to be indeed mentally ill, they are sent to the state department of mental health for treatment. If they are considered to be fit once again within the period of the sentence, they are returned to the department of corrections for completion of their sentence. If they are not considered to be fit through the entire period of the sentence, at the end of the sentence they are released from the custody of the department of corrections. However, a new civil commitment hearing may be held to provide continued custody in the department of mental health.

A similar statute should be adopted by the federal government that would enable federal juries to recognize that some defendants are mentally ill but that their mental illness is not related to the crime they committed or their culpability for it. It also would enable a jury to be confident that a defendant who is incarcerated as a result of its verdict will receive treatment for that illness while confined.

We also recommend that the Attorney General support legislation to establish a federal commitment procedure for persons found incompetent to stand trial or not guilty by reason of insanity in federal court. At present, these persons become the responsibility of the state in which the federal court is located, if the state is willing to assume that responsibility. Otherwise, they are released into the community, even though still mentally ill. This has resulted in mixed responses by the states, principally because some states do not have adequate treatment facilities and because federal defendants often are not citizens of or otherwise connected with the state in which their federal trials take place.

Legislation has been proposed that would allow federal commitment to an appropriate mental health facility of a person who is found incompetent to stand trial or not guilty by reason of insanity and who is found to be presently dangerous to himself or the community. Before such individuals could be released into society, they would have to be returned by the mental health facility to the committing court for a determination of their mental condition and present dangerousness.

Exclusionary rule

Recommendation 40

The fundamental and legitimate purpose of the exclusionary rule—to deter illegal police conduct and promote respect for the rule of law by preventing illegally obtained evidence from being used in a criminal trial—has been eroded by the action of the courts barring evidence of the truth, however important, if there is any investigative error, however unintended or trivial. We believe that any remedy for the violation of a constitutional right should be proportional to the magnitude of the violation. In general, evidence should not be excluded from a criminal proceeding if it has been obtained by an officer acting in the reasonable, good faith belief that it was in conformity to the Fourth Amendment to the Constitution. A showing that evidence was obtained pursuant to and within the scope of a warrant constitutes prima facie evidence of such a good faith belief. We recommend that the Attorney General instruct United States Attorneys and the Solicitor General to urge this rule in appropriate court proceedings, or support federal legislation establishing this rule, or both. If this rule can be established, it will restore the confidence of the public and of law enforcement officers in the integrity of criminal proceedings and the value of constitutional guarantees.

Commentary

The purpose of the exclusionary rule, as applied to search and seizure issues, "is to deter—to compel respect for the constitutional guaranty in the only effectively available way—by removing the incentive to disregard it." *Mapp* v. *Ohio*, 367 U.S. 643, 656 (1961). Application of the rule has been carried to the point where it is applied to situations where police officers make reasonable, good faith efforts to comply with the law, but unwittingly fail to do so. In such circumstances, the rule necessarily fails in its deterrent purpose.

For example, an officer may in good faith rely on a duly authorized search or arrest warrant or on a statute that is later found to be unconstitutional; or an officer may make a reasonable interpretation of a statute which a court later determines to be inconsistent with the legislative intent; or an officer may reasonably and in good faith conclude that a particular set of facts and circumstances gives rise to probable cause, but a court later concludes otherwise. In such circumstances, we do not comprehend how the deterrent purpose of the exclusionary rule is served by exclusion of the evidence seized.

The example cited above in which an officer relies on a duly authorized search or arrest warrant is a particularly compelling example of good faith. A warrant is a judicial mandate to an officer to conduct a search or make an arrest, and the officer has a sworn duty to carry out its provisions. Accordingly, we believe that there should be a rule which states that evidence obtained pursuant to and within the scope of a warrant is prima facie the result of good faith on the part of the officer seizing the evidence. This is not to say that good faith is limited to this example, or even that this is the only case in which a prima facie rule of evidence should operate. The ultimate issue under this proposal would be whether a police officer was acting in good faith at the time that he conducted a search and seized certain evidence. The showing of good faith would be determined from all of the facts and circumstances of the search.

Recently the Fifth Circuit Court of Appeals came to the same conclusion. In an en banc decision it ruled evidence obtained pursuant to a search and seizure that was based on a reasonable, bona fide belief by an officer in the legality of his actions will not be excluded from a criminal trial, even though the evidence is later found, in fact, to be the fruit of an unlawful search. *United States* v. *Williams*, 622 F.2d 830 (5th Cir. 1980), cert. denied, 101 S. Ct. 946 (1981).

The present application of the exclusionary rule not only depresses police morale and allows criminals to go free when constables unwittingly blunder, but it diminishes public respect for the courts and our judicial process.

If the rule is redefined to limit its application to circumstances in which an officer did not act either reasonably, or in good faith, or both, it will have an important purpose that will be served by its application. Moreover, it will gain the support of the public and the respect of responsible law enforcement officials.

The Attorney General therefore should support legislatively and in court the position that evidence obtained in the course of a reasonable, good faith search should not be excluded from criminal trials.

The following statutory language would accomplish this purpose:

> Except as specifically provided by statute, evidence which is obtained as a result of a search or seizure and which is otherwise admissible shall not be excluded in a criminal proceeding brought by the United States unless:
>
> (1) the defendant makes a timely objection to the introduction of the evidence;
>
> (2) the defendant establishes by a preponderance of the evidence that the search or seizure was in violation of the Fourth Amendment to the Constitution of the United States; and,
>
> (3) the prosecution fails to show by a preponderance of the evidence that the search or seizure was undertaken in a reasonable, good faith belief that it was in conformity with the Fourth Amendment to the Constitution of the United States. A showing that evidence was obtained pursuant to and within the scope of a warrant constitutes prima facie evidence of such a good faith belief.

To achieve the objective of this recommendation, the Attorney General should either urge this rule in appropriate court proceedings, or support federal legislation that would establish this rule, or both. While the final decision on this issue would be within the province of the Supreme Court, it may be some time before an appropriate case is accepted for decision. Meanwhile, it might well be appropriate for Congress to consider this issue in the form of proposed legislation. However, we wish to leave to the Attorney General the decision as to the best method of accomplishing this objective.

Sentencing and parole

Recommendation 41

The Attorney General should support the enactment into law of the sentencing provisions of the proposed Criminal Code Reform Act of 1979 which provide for greater uniformity and certainty in sentencing through the creation of sentencing guidelines and the abolition of parole.[1]

Commentary

There is widespread agreement that the present federal approach to sentencing is outmoded and unfair to both the public and persons convicted of crime. It is based on an outmoded rehabilitation model in which the judge is supposed to set the maximum term of imprisonment and the Parole Commission is to determine when to release the prisoner because he is "rehabilitated." Yet almost everyone involved in the criminal justice system now doubts that rehabilitation can be induced reliably in a prison setting and now is quite certain that no one can really detect when a prisoner does become rehabilitated. Since the sentencing laws have not been revised to take this into account, each judge is left to apply his own notions of the purposes of sentencing.

Federal judges now have essentially unlimited and unguided discretion in imposing sentences. As a result, offenders with similar backgrounds who commit similar crimes often receive very different sentences in the federal courts. Thus, some defendants receive a sentence that may be too lenient for the proper protection of the public, and others may be given sentences that are unnecessarily harsh.

This problem has been examined with great care in recent years, initially by the National Commission on Reform of Federal Criminal Law, later by the Department of Justice under recent administrations, and by the Judiciary Committees of the 93rd through the 96th Congresses. The Senate Report on the Criminal Code Reform Act of 1979 concluded that federal "criminal sentencing today is in desperate need of reform."

Under the present sentencing structure, the length of time that a prisoner actually spends in prison is determined by the U.S. Parole Commission. The Parole Commission, as now constituted, is an independent, nine-member body appointed by the President, with jurisdiction over federal inmates eligible for parole or released on parole or mandatory release. In 1973, the then U.S. Parole Board accepted the concept of parole guidelines, with a matrix model focusing on risk and severity.

While the operations of the guideline system have resulted in reduced disparity and increased equity in decisionmaking, there continue to be criticisms of the ability of the Parole Commission to achieve its stated objectives. These include—

- Prisoners and the public remain uncertain of the true length of the sentence at the time of sentencing.
- The trial judge is the official with the best information to be used in the determination of the sentence to be imposed.
- The parole commissioners and federal district court judges continue to second guess each other's intentions, leading to distorted decisionmaking and uncertainty in actual sentences.
- The closed proceedings of the Parole Commission diminish public respect for the correctional system.

An alternative structure has been developed as a part of the proposed Federal Criminal Code of the 96th Congress. It is based on four purposes of sentencing:

- The need to afford adequate deterrence to criminal conduct.
- The need to protect the public from further crimes of the defendant.
- The need to reflect the seriousness of the offense, to promote respect for law, and to provide just punishment.
- The need to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.[2]

The sentencing provisions of the Code create a Sentencing Commission within the Judicial Branch of the federal government that is directed to establish sentencing guidelines to govern the imposition of sentences for all federal offenses. The guidelines will treat in a consistent manner all classes of offenses committed by all categories of offenders. They will recommend to the sentencing judge an appropriate kind and range of sentence for a given category of offense committed by a given category of offender. In addition, sentences under the Code are fully determinate. The sentence imposed by the judge is the sentence that will actually be served by the defendant, subject only to modest "good time" credits. The Code provisions thus constitute a "truth-in-sentencing" package that will inform both the public and offenders of the real penalty being imposed on each defendant.

It should be noted, however, that the sentencing guidelines system will not remove the judge's sentencing discretion. Instead, it will guide the judge in making his decision as to the appropriate sentence. If the judge finds that an aggravating or mitigating circumstance is present in the case that was not adequately considered in the guidelines and that should result in a sentence different from that recommended in the guidelines, the judge may sentence the defendant outside the guidelines. A sentence that is above the guidelines may be appealed by the defendant; a sentence below the guidelines may be appealed by the government. The case law that is developed from these appeals may, in turn, be used to further refine the guidelines.

Based on all of the foregoing considerations, we believe that the United States Parole Commission no longer serves a publicly beneficial purpose. The Criminal Code Reform Act proposal to phase out the Commission over a period of years as a part of the implementation of determinate sentencing is the best approach to take.

In supporting enactment of the Criminal Code sentencing provisions, we note that it would be clearly preferable for such adoption to be a part of the passage of a comprehensive reform of the federal criminal law. However, if it appears that passage of the Code as a whole will be delayed in the present Congress, the sentencing provisions should be considered separately because of their overriding importance.

Notes

1. We also address sentencing in Phase I Recommendation 14.

2. United States Senate, Committee on the Judiciary, Report on Criminal Code Reform Act of 1979, S. Rep. No. 96553, 96th Congress, 2d Sess., page 923 (1980).

Habeas corpus

Recommendation 42

The Attorney General should support or propose legislation that would:

a. Require, where evidentiary hearings in habeas corpus cases are necessary in the judgment of the district court, that the district court afford the opportunity to the appropriate state court to hold the evidentiary hearing.

b. Prevent federal district courts from holding evidentiary hearings on facts which were fully expounded and found in the state court proceeding.

c. Impose a 3-year statute of limitations on habeas corpus petitions. The 3-year period would commence on the latest of the following dates:

(1) the date the state court judgment became final,

(2) the date of pronouncement of a federal right which had not existed at the time of trial and which had been determined to be retroactive, or

(3) the date of discovery of new evidence by the petitioner which lays the factual predicate for assertion of a federal right.

d. Codify existing case law barring litigation of issues not properly raised in state court unless "cause and prejudice" is shown, and provide a statutory definition for "cause."

Commentary

Most people agree that the greatest single deterrent to crime is swift and sure punishment for guilty offenders. Even though the vast majority of crimes are not followed by arrests and convictions, when that does occur, public confidence in the criminal justice system tends to be eroded by a perception that the law allows a virtually endless stream of attacks on the conviction, first, by direct appeal and, second, by easy accessibility of the federal writ of habeas corpus. Not only does this consume a large amount of prosecutorial and judicial resources, it occasionally results in the reversal of a conviction many years later, long after essential witnesses have died or disappeared. Retrial under these circumstances is extremely difficult at best; in some cases, it is impossible. As Chief Justice Burger pointed out in his speech to the American Bar Association, there must be—at some point—finality of judgment.

In the present state of criminal procedure in this country, the formerly extraordinary remedy of collateral attack on a criminal judgment and sentence has become not only ordinary but commonplace. Indeed, some members of the criminal defense bar now fear that failure to seek collateral review may subject them to claims of incompetence or to suits for malpractice. The normal course of a criminal action, formerly limited to charge, trial, and appeal, now includes one or more state collateral attacks (where allowed) and one or more federal habeas corpus petitions, often on the very same claims previously litigated. The length of the process is inordinate and its expense is multiplied. There is no longer a recognition that at some point there must be an end to litigation. While it is certainly important that we take great care to be sure that persons who are convicted in criminal matters are, in some absolute sense, guilty of the crime with which they are charged, the present system in practice goes well beyond this point and endlessly prolongs the process as to persons whose guilt is not in doubt. *Schneckloth* v. *Bustamonte*, 412 U.S. 218, 257 (Powell, J. dissenting) (1972); *Lefkowitz* v. *Newsome*, 420 U.S. 283, 302 (Powell, J. dissenting) (1975).

Not only does this lengthy process go well beyond the bounds of reasonable certainty as to guilt, and thus bears little relationship to our view of the criminal trial as a search for truth, but it also does damage to any hope that a prison sentence will have some rehabilitative effect since acknowledgement of the crime and its wrongfulness is viewed as the first step toward rehabilitation. But why should a criminally convicted person concede this when, by its postconviction procedures, society apparently is not certain of it either? As long as collateral attacks are pending, the person seeking relief may have the reasonable expectation of being freed by a court without regard to the question of his readiness to be returned to society. In such circumstances, the already hard task of rehabilitation is made nearly impossible.

Excessive opportunity for collateral review also undermines other sentencing goals. For instance, it has been noted that "[t]he idea of just condemnation lies at the heart of the criminal law, and we should not lightly create processes which implicitly belie its possibility" (Bator, *Finality in criminal law and federal habeas corpus for state prisoners*, 76 Harv. L. Rev. 441, 452 (1963)). In sum, as Justice Harlan put it, "[n]o one, not criminal defendants, not the judicial system, not society as a whole is benefited by a judgment providing that a man shall tentatively go to jail today, but tomorrow and every day thereafter shall be subject to fresh litigation on issues already resolved." (*Mackey* v. *United States*, 401 U.S. 667, 691 (1971)).

In addition to burdening an already failing sentencing process, other problems are caused, or exacerbated, by the present state of collateral attacks on criminal judgments. Courts are overburdened with prisoner petitions.

The large number of petitions are only the surface of the problem. Title 28 U.S.C. 2254(b) contains a requirement that state prisoners exhaust their state remedies before filing a federal petition. It is apparent that the exhaustion requirement places a burden not only on federal but state judiciaries as well. The total expenditure of judicial time and effort in this area is incalculable.

Finally, state habeas petitions create a delicate problem in federalism. State courts, no less than federal, exist to protect the rights of persons accused of crimes. However, the present collateral attack procedure has resulted in the anomaly of issues which have been presented to state courts of last resort, and having been there fully briefed, argued, decided on the merits, and as to which certiorari has been denied by the Supreme Court, being relitigated by the lowest tier of the federal judiciary in habeas corpus proceedings. Certainly, it was not intended to so demean the ability or attention to duty of the state judiciary. While it is true that federal courts are, and should be, the final guardians of the Constitution, they are not the *only* guardians of it.

We have made recommendations to change four aspects of the law with respect to the writ of habeas corpus. The overall purpose of these recommendations is not to diminish the "great writ," but rather to promote respect for it, by limiting the writ to situations where it is truly needed.

A particular problem from the point of view of the states is the present practice in the federal habeas corpus procedures of U.S. magistrates and district court judges conducting evidentiary hearings and making findings of fact that in effect overrule decisions reached by state trial and appellate courts.

To remedy this problem, we recommend that the Attorney General support or propose legislation that would require, where evidentiary hearings are necessary in the judgment of the district court, that the district court afford the opportunity to the appropriate state court to hold the evidentiary hearing. The case would in effect be remitted to the state court, where the evidentiary hearing would be held, unless the state court was unable, due to court congestion, or unwilling to conduct the hearing. After the hearing, the state court would transmit its findings of fact to the district court, which would not be able to substitute its own findings for those of the state court. The district court would then make conclusions of law, based on the evidentiary findings of the state court. This procedure would fully protect the rights of prisoners and, at the same time, eliminate a source of severe friction between state and federal courts.

Our second recommendation in this area would modify 28 U.S.C. 2254(d) by preventing federal district court judges from holding evidentiary hearings on issues where the facts were fully expounded and found in the state court proceeding, as long as the state proceeding was open to a full and fair development of the facts. Under present law, there is a presumption against a second hearing in federal court if the facts were fully and fairly developed, but federal judges still have the discretion to conduct such a hearing. This recommendation would take away that discretion. There appears to be no rational reason why issues of fact should be relitigated.

Our third recommendation directly addresses the issue of finality. It would impose a 3-year statute of limitations on habeas corpus petitions brought by state prisoners. The 3-year period would commence on the latest of the following dates: the date the state court judgment became final; the date of pronouncement of a federal right which had not existed at the time of trial and which had been determined to be retroactive; or the date of discovery of new evidence by the petitioner which lays the factual predicate for assertion of a federal right.

We are mindful of the constitutional implications contained in our recommendations. The Constitution requires that "the privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it."[1] However, there was no right for state prisoners to the federal writ of habeas corpus at the time that the Constitution was adopted. It was not until 1867 that Congress created a *statutory* right to the writ for state prisoners. Moreover, as Chief Justice Burger, joined by Justices Blackmun and Rehnquist, in his concurring opinion in *Swain* v. *Pressley*, 430 U.S. 372, 385 (1977), stated "I do not believe that the Suspension Clause requires

Congress to provide a federal remedy for collateral review of a conviction entered by a court of competent jurisdiction." It is partly as a result of this issue that our recommendation is limited in its application to state prisoners. While questions undoubtedly remain, and the law in this area is unsettled, we believe that the need for a statute of limitations is so pressing that we should not hesitate to make such a recommendation, ever mindful that the ultimate resolution of the constitutionality of a statute of limitations will be left to the courts.

Our final recommendation in this area would bar litigation in federal habeas corpus suits of issues not properly raised in state court unless "cause and prejudice" is shown for failing to comply with those state procedures and would provide a statutory definition for "cause." The Supreme Court has already ruled in *Wainwright* v. *Sykes*, 433 U.S. 72 (1977), that issues may not be raised in habeas corpus petitions if they were not properly raised in state court, unless cause is shown for failure to raise them and prejudice is proven to have resulted. This recommendation would codify that ruling.

The Supreme Court did not define "cause" in the *Sykes* opinion, however. Our recommendation would provide a statutory definition of "cause" or those circumstances under which a prisoner would be excused for failure to raise an issue in the state proceedings. They would be that—

- The federal right asserted did not exist at the time of the trial and that right has been determined to be retroactive in its application;
- the state court procedures precluded the petitioner from asserting the right sought to be litigated;
- the prosecutorial authorities or a judicial officer suppressed evidence from the petitioner or his attorney which prevented the claim from being raised and disposed of; *or*
- material and controlling facts upon which the claim is predicated were not known to petitioner or his attorney and could not have been ascertained by the exercise of reasonable diligence.

This statutory definition is particularly important. A number of federal courts now are defining "cause" to include ineffective assistance of counsel that falls short of a Sixth Amendment violation.[2] We are of the opinion that this is too broad a definition and that it should be narrowed along the lines that we have suggested. Federal courts would still be able to reach truly fundamental issues and, at the same time, the interests of the state criminal justice systems would be protected.

Notes

1. Article III, Section 9, Clause 2, Constitution of the United States.

2. *Tyler* v. *Phelps*, 622 F.2d 172 (5th Cir. 1980); *Collins* v. *Auger*, 577 F.2d 1107, 1110 n.2 (8th Cir. 1978) (dictum), *cert. denied*, 439 U.S. 1133 (1979); *Cooper* v. *Fitzharris*, 586 F.2d 1325 (9th Cir. 1978) (*en banc*), *cert. denied*, 440 U.S. 974 (1979); *Jiminez* v. *Estelle*, 557 F.2d 506, 511 (5th Cir. 1977) (dictum). See, however: *Cole* v. *Stevenson*, 620 F.2d 1055 (5th Cir. 1980), *cert. denied*, 66 L.Ed. 2d 301 (1980) reaching an opposite conclusion.

Chapter 3

Federalism in Criminal Justice

Under our system of government, the states and local governments have the major responsibility for investigating and prosecuting crimes and for taking corrective action against those found guilty. In Chapter 1, we discussed ways in which the federal government can participate *directly* in the fight against serious crime by establishing and exercising jurisdiction over certain crimes of national import. We now turn our attention to ways in which the federal government can participate *indirectly* by providing services and assistance to state and local governments to enhance their ability to deal with serious crime.

We have looked at technical services the federal government has traditionally provided to state and local agencies, such as laboratory analysis and fingerprint identification, to see if these services could be improved. We have looked at interstate services the federal government is in the best position to provide to state and local agencies, such as tracking down persons who have fled a state to avoid prosecution and establishing means by which state and local agencies can learn about a person's past criminal conduct in another state. We have looked at the possibility of enhancing the skills of state and local criminal justice personnel by permitting them to take advantage of federal training programs. We have also looked at activities that are most useful when undertaken on a national basis, such as the collection of statistics on crime and the criminal justice process throughout the country, or that are most cost-effective when sponsored by the federal government, such as research and development of innovative approaches to combatting crime more effectively. Finally, we have examined the need for federal financial assistance to state and local governments to help them undertake such innovative approaches, to help them deal with unusual situations which are clearly beyond their ability to handle, and to help them build the correctional facilities that are essential to providing credible sanction for serious wrongdoing.

We do not believe that the federal government should direct or subsidize the ongoing operations of state and local criminal justice systems or should supersede those systems with a national police or court or correctional system. But we do believe that by providing useful services, national perspectives, and financial assistance for specific important purposes, the federal government can do much to improve the coordinated federal-state-local fight against serious crime.

Fugitives

Recommendation 43

The Attorney General should seek additional resources for use in the apprehension of major federal fugitives and state fugitives who are believed to have crossed state boundaries and who have committed or are accused of having committed serious crimes.

Commentary

As we indicated in our Phase I Recommendation 1, there is a need for improved management and coordination in the apprehension of federal fugitives and of state fugitives who have crossed state lines in order to avoid prosecution or punishment, and higher priority should be given to the apprehension of dangerous fugitives.

In many instances, state and local authorities are selective about which warrants they refer to the Federal Bureau of Investigation (FBI) to investigate under the Fugitive Felon Act, mindful of the scarce resources the FBI has to devote to the execution of such fugitive warrants. With the transfer of several fugitive functions from the FBI to the U.S. Marshals Service in 1979, the FBI underwent a loss of manpower that substantially weakened its ability to carry out important fugitive functions for which it still has responsibility. These functions center on the apprehension of fugitives wanted for the commission of a large number of federal crimes and fugitives who have felony warrants outstanding from state authorities and for whom there is evidence that they have crossed state lines to avoid apprehension, prosecution, and punishment where the state authority is willing to extradite.

Even if the FBI were to give higher priority to the apprehension of such fugitives, as recommended in Phase I of this report, the scarcity of available resources combined with the need to carry out the other important responsibilities assigned to the FBI create a situation where many potentially dangerous fugitives cannot presently be investigated by the FBI.

It would constitute a relatively effective use of scarce law enforcement resources to make a substantial effort to apprehend fugitives, who are individuals already identified as offenders and charged with or convicted of particular crimes. In addition, public confidence in law enforcement is eroded by news reports that a serious crime has been committed by an individual who is supposed to be in jail or prison for an earlier offense but who has been able to evade law enforcement authorities.

Therefore, we recommend that the Attorney General seek a significantly increased level of funding for this important activity. In recommending such additional resources, we believe that the Attorney General should ensure that the fugitive apprehension activities of the Department of Justice are managed as effectively as possible. This includes more effective coordination among federal law enforcement agencies and between federal and state authorities. Finally, the Attorney General should direct that the highest priority be given to the apprehension of violence-prone fugitives, major drug traffickers, and others who have committed similarly serious offenses.

Training of state and local personnel

Recommendation 44

The Attorney General should establish, and where necessary seek additional resources for, specialized training programs to allow state and local law enforcement personnel to enhance their ability to combat serious crime.[1]

Recommendation 45

The Attorney General should seek additional resources to allow state and local prosecutors to participate in training programs for prosecutors.[1]

Recommendation 46

The Attorney General should ensure that the soon-to-be established National Corrections Academy will have adequate resources to enable state and local correctional personnel to receive training necessary to accommodate the demands on their agencies for managing and supervising increased populations of serious offenders.[1]

Commentary

It is clear that in order to implement an effective national program to combat serious crime, the various components of the criminal justice system must have personnel who are highly skilled and specially trained. Currently, a number of federal agencies provide training to state and local law enforcement and corrections officials and prosecutors. However, these efforts have typically been limited in scope and availability. We believe it imperative to enhance the state and local capability to carry out the serious crime initiatives proposed in this report and therefore recommend expansion of cooperative training programs.

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Training law enforcement personnel. The federal government has the responsibility of accepting a leadership role in this nation's efforts to combat serious crime. The first line in this fight against crime is, of course, state and local enforcement agencies. The law enforcement training programs of the Federal Bureau of Investigation (FBI), the Drug Enforcement Administration (DEA), the Bureau of Alcohol, Tobacco and Firearms (ATF), and the U.S. Marshals Service (USMS) are important vehicles through which the federal government can enhance the professional status and capabilities of state and local law enforcement officers.

The FBI Academy in Quantico, Virginia, is the focal point of all the Bureau's training programs. The Bureau offers field training programs throughout the country.

During 1980, 996 state and local law enforcement officers received advanced instruction at the Academy, while approximately 123,000 received some type of training from the FBI in their state or local jurisdiction. During fiscal 1981, approximately 109 FBI agent work years of effort will be engaged in field training activities. The Academy will conduct specialized schools and courses dealing with a broad range of police-related topics, such as terrorism and counter-terrorism, death investigations, interpersonal violence, and firearms and related subjects. The cost for food and lodging at the Academy per officer is $70 per day, not including transportation to and from the Academy.

The Federal Law Enforcement Training Center (FLETC) in Glynco, Georgia, was established in 1970 to serve as an interagency training facility for federal police officers and criminal investigators.

The concept of consolidating federal law enforcement training was developed as a result of two studies. The first was made in 1967 by the then Bureau of the Budget. This study showed a need for quality training for federal law enforcement officers. Generally speaking, this training was not being conducted in many agencies because adequate training facilities were not available. The study also revealed that the training that was being done varied in content and length. Furthermore, it was not cost-effective due to sporadic scheduling and duplication.

The second study was made by an interagency task force representing ten executive departments and independent agencies of the federal government. This study identified the kind of facility that was needed, based on training requirements of numerous federal agencies. It analyzed the requirements for criminal investigators and police officers at both the recruit level and the advanced and specialized level.

A prospectus based on these studies was approved by Congress in 1969, which authorized the construction of a consolidated training facility. Congress expressed its intent that the personnel of all federal law enforcement agencies would participate in training at the Center. The FBI was excluded because it has the collateral function of training state and local officers as well as its own agents. In addition, it had a modern training facility and was already providing adequate training for its own personnel.

ATF, DEA, and USMS are among the agencies that conduct training at FLETC. DEA is mandated by Public Law 91–513 to conduct training programs on drug enforcement for state and local personnel. In 1980, DEA trained approximately 8,000 state and local law enforcement officers and 900 foreign officials. DEA will spend approximately $3 million this fiscal year to support training activities covering investigative, technical, and managerial topics.

ATF provides significant violent crime assistance to state and local law enforcement officials through training at FLETC and at ATF field offices. These programs include courses on firearms and arson-for-profit investigation techniques, explosives, and laboratory skills. Some 2,000 law enforcement personnel will have received ATF training by the end of fiscal 1982.

The USMS has trained approximately 500 state and local law enforcement officers in the areas of fugitive apprehension and witness security. It assists other federal agencies, such as the DEA Conspiracy School, in their training programs.

By allocating more resources to training efforts at FLETC and Quantico, existing specialized courses could be expanded to allow the participation of more state and local law enforcement officers. Examples of these existing specialized courses are fugitive apprehension, explosives and arson-for-profit investigative techniques, witness security and relocation, and drug investigative techniques.

We believe that giving state and local law enforcement personnel increased access to these specialized training programs is an essential form of federal support for state and local governments. This recommendation is consistent with our Phase I Recommendation 11 and underscores our belief in a strong national commitment to assist state and local governments in their efforts to reduce violent crime through effective law enforcement.

Training prosecutors. The training of state and local prosecutors is extremely important to effective violent crime enforcement. With the termination of operations of the Law Enforcement Assistance Administration (LEAA), training support for state and local prosecutors has been reduced. There is a definite need to support and expand this legal training function.

By extending to state and local prosecutors the training programs now offered to Department of Justice prosecutors by the Attorney General's Advocacy Institute (AGAI) and the Criminal Division, the federal government would enhance the crime-combatting ability of state and local prosecutors in much the same way as the law enforcement training programs offered by the FBI at Quantico, Virginia, enhance the crime combatting ability of state and local police. Such programs would prepare state and local prosecutors for cross-designation in federal courts as the need arises as discussed in our Phase I Recommendation 7. This would put federal, state, and local prosecutors in a better position to ensure that violent criminal activity can be investigated and prosecuted in the most efficient way. In addition, such training would provide state and local prosecutors with models for establishing their own training programs in their respective jurisdictions. Finally, through such joint training programs, federal, state, and local prosecutors could establish contacts, develop compatible priorities, and improve cooperation.

The Attorney General's Advocacy Institute strongly emphasizes courses dealing with trial advocacy in which prosecutors practice trial exercises such as direct and cross examination, opening statements, and closing arguments. In addition, it offers specialized courses which concentrate on special problems of federal practice and which examine in depth the special areas of law handled by the Department of Justice. State and local prosecutors who participate in these courses would develop better trial skills and would be better able to evaluate their cases to determine whether they should be tried in the federal court, the state court, or both.

The Criminal Division sponsors specialized courses in narcotics conspiracy, organized crime, public corruption and fraud, and the exercise of prosecutorial discretion. These courses would prepare state and local prosecutors to handle complex cases.

Additional courses being developed by the Department of Justice, such as arson-for-profit, tracing illegal narcotics profits, legal aspects of drug investigations, and street crime patterns, would benefit state and local prosecutors as well as federal prosecutors in preparing their cases for trial.

In addition to the training programs sponsored by the federal government, there are programs sponsored by state and local governments as well as private institutions such as the Northwestern University School of Law, the National College of District Attorneys, and the National Institute for Trial Advocacy. These programs should be available to prosecutors who can demonstrate a need for financial assistance.

Personnel from different agencies attending the same training program benefit not only from the program's content but also from the opportunity to discuss mutual problems with others in the same field who share the same frustrations. We believe that the federal government would enhance the prosecution of violent crime by extending its training programs at all levels to a significant number of state and local prosecutors.

Training correctional personnel. Serious crises and challenges currently face corrections, among them overcrowding, outmoded facilities, insufficient resources to adequately improve conditions, and high staff attrition. Public funding has historically neglected the needs of corrections and relatively few administrators have been trained to handle the increased pressures and burdens placed on their ever-expanding correctional systems; nor have many had the opportunity to keep abreast of national trends and standards promulgated by the field. Training for line staff, mid-level managers, and trainers, particularly at the local level, has been especially limited.

In recent years, the outbreak of serious disturbances or riots in several states has highlighted the need for government officials to take a closer look at causal factors in prison unrest. While overcrowding has frequently been cited as a major factor in many acts of violence, it has now been recognized that poor training and inadequate supervision of correctional staff have contributed to the problem.

Given the emphasis being placed on incarcerating more violent offenders for longer periods of time, the difficulties of operating safe and humane institutions are magnified. Even if prisons and jails were all modern and not overcrowded, they nonetheless would be inadequate if not staffed by competent, well-trained personnel. Given the fact that prisons are presently overcrowded and are expected to remain so for the near future, proper training of correctional staff is essential for the operation of viable, safe, humane institutions.

In terms of the federal role in training state and local corrections personnel, we found several approaches to have promise, based on the experiences of the two Department of Justice agencies that currently provide correctional training programs.

The National Institute of Corrections (NIC), consistent with its legislative mandate, currently offers basic and advanced management training for state and local correctional administrators, supervisors, and mid-level managers; conducts training for agency trainers; provides jail and correctional officer correspondence courses; offers special courses in areas such as labor relations, legal issues, and fire safety; and develops a wide range of staff training materials.

NIC's training resources are targeted primarily on those above the line staff level. The main reasons for this focus are, first, it would be impractical to provide direct training to the more than 150,000 state and local nonadministrative correctional personnel,[2] particularly given their high attrition rate,[3] and, second, it would be inappropriate and undesirable for the federal government to assume the state and local training responsibility. With access to data on national trends and standards and innovations throughout the country, however, we believe the federal government is in a unique position to (1) provide state and local managers with the tools needed for improved policy and program development; (2) give trainers the knowledge and skills concerning advanced practices, so that they can more effectively train their respective staffs; and (3) provide a segment of line staff with specialized training related to managing serious offenders in a correctional setting.

As of October 1, 1981, NIC will centralize its training activities, thereby establishing a National Corrections Academy for state and local corrections personnel. Close to 2,500 individuals will be trained during the first year.

With an estimated 30,000 trainers and managers, mid-level and above, and the increasing demand being placed on them, enhancement of NIC's capacity to provide training to this group is warranted.

The Federal Prison System (FPS) also operates an extensive training program, the target audience being FPS staff. Beginning in fiscal 1982, at the Federal Law Enforcement Training Center (FLETC), every new employee will receive 104 hours of basic training, most of which focuses on areas related to daily prison operation, such as firearms, self-defense, contraband, and security. After the first year, all institutional employees receive additional training in correctional subjects and individual specialty areas.

While the FPS training program is geared toward the policies and procedures of the federal system, some of the basic training, such as self-defense or use of firearms, is sufficiently generic to be of use to state and local corrections. In addition, various institutions within the FPS offer special programs in areas such as disturbance control and interpersonal communications, which would be of benefit to many line staff. In these situations, the FPS training materials could be adapted for use by state and local personnel, and FPS personnel could be used to train state and local employees. Similarly, much of NIC's training program could be adapted to the needs of these line staff.

Thus, it is clear that within the Department of Justice, the expertise and facilities are available to provide the kind of training that is necessary to handle the increased demands on state and local correctional agencies. However, the practical reality is that centralized training for all line staff would be difficult at best. In addition, states and many localities have training academies, and it is important for state and local corrections to maintain their own identity and avoid duplicative efforts.

Taking this and other suggestions into account, we believe that state and local correctional agencies can be best assisted in training line staff through a combination of approaches, using the resources of NIC and the FPS coordinated through the National Corrections Academy. NIC should be responsible for managing the overall state and local training program as its authorizing legislation mandates. The effort should focus on issues related to prison violence and disturbances and on working with the violent offender.

Notes

1. We also address training of state and local personnel in Phase I Recommendation 11.

2. Projection based on U.S. Department of Justice, National Institute of Justice, *American prisons and jails*, v. III (Washington: U.S. Government Printing Office, 1980).

3. Testimony of the Attorney General of the State of Florida indicated a 91-percent turnover of correctional officers at the major state penitentiary.

Exchange of criminal history information

Recommendation 47

a. If the eight-state prototype test of the Interstate Identification Index (III) is successful, the Attorney General should direct the Federal Bureau of Investigation to begin immediately the development of the index and should ensure that adequate computer support and staff are available to develop and maintain it for the federal government, all 50 states, the District of Columbia, and appropriate areas of federal jurisdiction outside of the United States.

b. If the prototype test demonstrates that such an index is not feasible, the Attorney General should direct the FBI to develop alternative proposals for the exchange of federal, state, and local criminal history information, which may include a national data base of such records or message switching.[1]

Recommendation 48

The Attorney General should support or propose legislation to authorize and provide adequate resources for grants to state governments to establish the central state repositories of records and the criminal justice information systems required for participation in the III program, or alternative criminal history exchange programs as discussed in Recommendation 47.[1]

Recommendation 49

The Attorney General should direct the FBI to revise its long-range plan to reduce duplication of criminal history information services between the Identification Division and the National Crime Information Center to take into account the results of the eight-state prototype test of the III.[1]

Recommendation 50

The Attorney General should seek additional resources for the FBI to reduce the backlog of requests for fingerprint and name checks and to enable it to respond to such requests more promptly, including those from non-law enforcement users, and should assign high priority to swift completion of computerizing fingerprint files.[2]

Commentary

Criminal history information is vital to optimum performance of the criminal justice system. The police need adequate, accurate information for the prevention and investigation of criminal activity and for the apprehension of criminal offenders; prosecutors and the judiciary need such information for bringing offenders to justice; courts need additional information to determine appropriate sentences; and correctional agencies need it to select proper correctional programs.

In Phase I of our work, we recommended that the FBI "should establish the Interstate Identification Index (III)." We believe that an operational III would facilitate the interstate exchange of criminal history information. (For a discussion of III and other current exchange systems, see Phase I Recommendation 4.)

As noted in Phase I Recommendation 4, a III prototype test began on June 29, 1981, covering requests to the FBI's Computerized Criminal History (CCH) system for criminal history record information for the State of Florida, and is being expanded to include the other seven states that actively participate in CCH. Final assessment of the test will not be possible until several months after we conclude our work, but early results appear promising. We hope that the test will prove that the III is a feasible, practical, effective, and efficient method of federal, state, and local exchange of criminal history information. In that event, we would recommend that the Attorney General direct the FBI to begin immediate development of the index and seek funding to ensure that adequate computer support and staff are available to develop and support the index for the federal government, all 50 states, the District of Columbia, and appropriate areas of federal jurisdiction outside of the United States.

For a state to participate in the III, it must have a central repository of criminal history record information for offenders throughout the state and, for all but the smallest states, a computerized system to allow quick retrieval of information to respond to an interstate request. At this time, it is unknown how many states have fully adequate information systems for this purpose, nor how many other states have systems that need upgrading to take advantage of the III. The FBI will be surveying the states this fall to determine the state-of-the-art in this regard.

The cost of developing information systems and central state repositories containing record information on all offenders throughout the state is so high as to preclude III participation by many states that are under budgetary constraints. While we are generally reluctant to recommend federal support for activities that are the province of the states, we believe that because of the high cost and interstate nature of the III, funding should be made available to the states to allow them to fully participate in the III. Applicable to the assistance should be the general conditions set forth elsewhere in this report for direct grants to state and local governments: that there should be reasonable match provisions and adherence to reasonable time limits.

We recognize that state participation in developing and maintaining the III would be necessarily voluntary and that many states may elect not to participate, particularly in the early months of its operation. However, grants to assist the states in developing the necessary state repositories and information systems should encourage state participation. This, coupled with our belief that such an index is conceptually sound and would greatly facilitate the interstate exchange of criminal history information if fully implemented, leads us to urge that the FBI be prepared to accommodate nationwide participation.

We further recognize that in the past critics have questioned whether the federal government has a legitimate role in the exchange of state and local criminal history information. We believe that the federal government, because it has a criminal justice system apart from the states and because of existing fingerprint records and NCIC telecommunication lines resident in the FBI, is in a unique position to assist the states in this vital area of criminal justice information exchange. We doubt that such an index would be developed without federal stewardship.

We wish to make clear, however, that we, and many throughout the criminal justice system, believe that a national data base of criminal history records (or its equivalent through message switching capabilities) is by far the most efficient, secure, and effective method of criminal history record information exchange. We did not recommend the establishment of such a system at this time because the III prototype test was in the development stage and the III concept itself has a great deal of promise for meeting needs in this area.

The results of the eight-state III test will indicate which of the alternatives of Recommendation 47 is appropriate. At that time, the FBI should revise its long-range plans to reduce the current duplication of services between its Identification Division and its National Crime Information Center (NCIC) which operates the III prototype and has in the past operated the Computerized Criminal History (CCH) system.

Both organizations collect and disseminate essentially the same criminal history information to federal, state, and local users. A 1979 General Accounting Office report found that 44 percent of the CCH records were duplicated in the Identification Division's computerized files (AIDS), and that 16 percent of the AIDS records were duplicated in the CCH.[3]

There are a number of reasons why the duplication has persisted since the establishment of CCH in 1971. These include uncertainty over the future of the CCH program, necessitating continuation of the Identification Division activities to ensure the availability of criminal history record information. Additionally, a maximum of only 15 states have participated in CCH at any one time, making the criminal history activities of the Identification Division necessary for the remaining states. Finally, the Identification Division does not have computer network capabilities that would allow fast turnaround on requests for criminal history information, whereas the preexisting NCIC lines were used for the CCH system.

However understandable the past and current duplication may be, many critics have charged that the FBI has no current plans, or that its existing plans are out of date, for merging the activities of CCH (or the proposed III) with those of the Identification Division. We recommend that new plans be developed to take into account the results of the eight-state III test. We do not feel it appropriate to recommend specific details for such a long-range plan in view of the ongoing III prototype test, the results of which may influence the direction such a plan should take.

Another area in which we wish to strengthen a Phase I recommendation through the provision of additional resources is the backlog of requests for fingerprint and name checks in the FBI. In Phase I we recommended that "The Attorney General should take all steps necessary to reduce substantially the delay in processing criminal identification applications." We have been informed that as much progress as is possible with existing resources has been made in this area but that no additional reduction is possible within the constraints of existing resources. However, as we noted in our Phase I Recommendation 9, the FBI reports that the average response time for a request is 25 days, although some independent studies have estimated it to be even longer. This is unacceptable; information provided too late to be of use is no better than information that is not provided at all. Thus, we recommend that additional resources be made available to the FBI to reduce the backlog and the average response time for fingerprint and name checks. We have been advised that one way to reduce the backlog and to shorten response time is swift completion of computerizing fingerprint files, which we so recommend.

It has been proposed by some that requiring reimbursement from non-law enforcement users of this service would allow the addition of staff and the ultimate reductions in backlog and response time that we recommend. It has also been argued that additional staff should not be hired until such reimbursements are received by the FBI. We believe, however, that the situation is so critical to the criminal justice community that additional staff resources should be made available immediately. As reimbursements are received prospectively, they can be used to offset the cost to the government for the additional personnel costs.

Notes

1. We also address the exchange of criminal history information in Phase I Recommendation 4.

2. We also address the backlog of fingerprint and name check requests in Phase I Recommendation 9.

3. United States General Accounting Office, *The FBI operates two computerized criminal history information systems* (Washington: U.S. Government Printing Office, 1979).

Justice statistics

Recommendation 51

The Attorney General should ensure that adequate resources are available for the collection and analysis of statistics on crime, its victims, its perpetrators, and all parts of the justice system at all levels of government and for the dissemination of these statistics to policymakers in the Department of Justice; other agencies of federal, state, and local government; the Congress; and the general public.

Commentary

In making this recommendation, we join with every major crime commission since Wickersham in 1931 [1] in drawing attention to the need for objective, reliable, and accurate statistics on crime, its victims, its perpetrators, and the activities of the criminal justice system itself. We were more fortunate than our predecessors in that a larger body of adequate statistics was available to inform and guide us in our deliberations than heretofore was the case. We did find, however, many areas where reliable information was simply not available indicating that increased attention must be devoted to the development of methodologies to collect such data, particularly in the areas of the judiciary (including the courts, prosecution, and public defense), juvenile crime and juvenile career criminals, drug use and its effect on crime, persons on probation, and more detailed information about the federal justice system.

These data gaps exist, in part, due to the recentness of the federal government's involvement in the collection of justice statistics. While some current statistical programs have their roots in efforts dating back decades,[2] it was only 12 years ago that the federal government first attempted to establish, on a limited basis, a single office for justice statistics within the Department of Justice [3] and only 2 years ago that statutory authorization for a Bureau of Justice Statistics (BJS) was enacted in Part C of the Justice System Improvement Act (JSIA). That Act, through very specific language, mandates the development of the comprehensive justice statistics program that we believe is necessary to provide data for informed policy decisions and program development at all levels of government and for continuous indicators of the state of the nation with regard to crime.

Although the Act authorizes $25 million for statistical activities, and the Administration has requested amounts close to that for the past 2 fiscal years, Congress has approved amounts far below what is required to maintain the ongoing statistical programs, let alone allow the development of statistics in the areas we noted above as deficient. In fiscal 1981 Congress initially held the statistical program to $7.5 million, increased this to $12.3 million through supplemental action, and appears likely to hold the 1982 appropriation to $15 million.

In this regard, we urge the Attorney General to give serious consideration to enhancing the budget requests for statistics in the future and to oppose strongly any attempts on the part of Congress to make cuts in the appropriation similar to those that have occurred in the past 2 years.

On a related issue we note that one provision of Part C of the JSIA has never been funded, and that is in the area of financial assistance to state and local governments for the development of criminal justice information systems. The Act authorizes the Bureau of Justice Statistics to—

> . . . support the development of information and statistical systems at Federal, State, and local levels to improve the efforts of these levels of government to measure and understand the levels of crime (including crimes against the elderly, white-collar crime, and public corruption), juvenile delinquency, and the operation of the criminal justice system and related aspects of the civil justice system.

The legislative history surrounding passage of the Act made it clear that grants for such purposes were to be made by the Law Enforcement Assistance Administration (LEAA), not the Bureau of Justice Statistics. With the demise of LEAA, and consistent with our recommendation that funds should be provided for programs of proven effectiveness, we believe that additional resources should be made available to BJS to fund the design and development of state and local statistical information systems. This will require a legislative amendment to increase the authorized level of funding because the currently authorized $25 million is absorbed for statistical activities and the cost of information systems is great. By comparison, when LEAA was funding such systems development, it was spending in the neighborhood of $40 million each year, with matching requirements that are not mandated by Part C of the Act, although provision is made to allow for such match.

We make this recommendation precisely because information systems are so costly that they are beyond the resources of state and local governments in this time of budgetary constraints. We believe it appropriate for the federal government to fund such systems not only for this reason but also because they produce the statistics that can be aggregated to provide the national data we believe are necessary. The information needs of all levels of government would be supported by making the production of a small core of standardized information for national purposes a condition of the award, while allowing the recipients to tailor the remainder of the information system to their own particular requirements.

Notes

1. Officially known as the U.S. National Commission on Law Observance and Enforcement.

2. For example, prisoner statistics were first gathered in the decennial census of 1850 and justice expenditure data in 1902; the Uniform Crime Reports were begun in 1931.

3. The National Criminal Justice Information and Statistics Service of the Law Enforcement Assistance Administration.

Disaster assistance

Recommendation 52

The Attorney General should support or propose legislation to allow direct financial assistance to supplement the resources and efforts of state and local governments that have demonstrated that they are suffering a criminal justice disaster or emergency of such unusual nature and proportion that their own resources fall short of addressing the need, and he should request adequate funds to support such assistance.

Commentary

Some criminal justice disasters and emergencies, man-made and natural, are of such magnitude and severity that they overwhelm available state and local resources. Examples of such situations are the child murders in Atlanta, Georgia, and Oakland County, Michigan; political conventions that strain local law enforcement security and crowd control resources; and natural disasters such as floods, earthquakes, and volcanic eruptions that create potential for or result in looting and lawlessness while disabling state and local criminal justice operations.

Emergency or disaster situations which exceed the ability of states and localities to combat crime successfully can also develop as a result of such influences as the establishment of certain federal policies or merely the geographic proximity of a jurisdiction to the source of a serious crime problem.

During our meetings in Miami, we learned of the many pressures created for that city and the entire state of Florida by federal immigration policies which enabled tens of thousands of Cuban and Haitian citizens to enter the United States in a short period of time during 1980. Testimony presented to us indicated that federal policy failed to distinguish between criminal aliens and those who legitimately sought political asylum in the United States. Significantly, violent crime in metropolitan Miami rose 18.5 percent in 1980, rapes increased 36 percent, and murders rose 89 percent. Cuban entrants from Mariel comprise 13 percent of the Dade County jail population; the majority of these individuals have been charged with serious felonies.

We also heard that, due to Florida's location and geography, the state has become a nexus for international drug trade operations. Florida officials linked sharp statewide increases in homicide rates along with those of rape, robbery, aggravated assault, and burglary to heavy drug trafficking activity. Governor Graham explained that due to "... a 1,000-mile peaceful coastline and extensive areas of isolated interior, Florida has gained the reputation as a Mecca for drug traffickers." [1]

The federal government is not specifically authorized to assist state and local governments experiencing such emergencies. During the past 12 years, the Law Enforcement Assistance Administration (LEAA) and its sister agencies have provided a wide variety of emergency or disaster assistance—such as technical assistance, discretionary grant awards, or the reprogramming of previously awarded state funds—to state and local governments through general statutory authorization. Assistance was provided in response to specific, identified needs in emergency situations where the provision of assistance could meet the requirements of the LEAA statute.

Major LEAA emergency or disaster assistance was provided to Miami, Detroit, Kansas City, and New York to plan for and support security activities at major national political conventions. Other assistance was provided to help law enforcement agencies contend with the aftermath of natural disasters such as the Mount Saint Helens volcano eruption; the New York blackout; floods in Colorado and Idaho; and Hurricanes Agnes and Frederick. LEAA assistance also was delivered following prison riots in Florida, New Mexico, and Illinois. In addition, LEAA funds along with the funds from the Office of Juvenile Justice and Delinquency Prevention were sent to Atlanta to help automate criminal investigative information as well as to develop and implement juvenile programs aimed at helping Atlanta youths deal with the trauma created by child murders in the city.

With the demise of LEAA, the federal government no longer has available to it a source of funding that can be used to assist state and local governments in meeting criminal justice emergencies such as those mentioned above. We believe that, when conditions warrant, the federal government must provide such assistance to state and local law enforcement to ensure that criminal justice services are maintained and law and order are preserved. To this end, we recommend that the Attorney General seek legislation that would specifically authorize the Department of Justice to provide such assistance and that adequate funds be made available for such purposes.

Circumstances in emergencies differ in degree and kind. It is not our intention to engage the federal government in providing assistance to every city that is experiencing a high crime rate, continuing difficult problems, or losses from a hurricane or tornado. We do feel, however, that crisis situations can develop that are so extreme and unique in nature that they threaten a breakdown of local criminal justice facilities and resources and are beyond the local ability to respond adequately.

We recommend that assistance be provided to help communities deal with serious criminal justice problems that surface in the aftermath of such crises as prison riots, severe natural disasters, and unique crime problems (like the child murders in Atlanta), to prepare for potential crises such as those that can occur at national political conventions or other anticipated emergencies, and to assist those states and localities which, as a consequence of geography or federal policy, carry the burden of a national problem that is beyond their ability to combat alone. It is in these kinds of situations that federal aid may be needed and is, we believe, justifiable. There are a number of ways in which this form of assistance can be delivered. We do not presume the role of determining the best method to follow but leave this decision to the Attorney General and his staff.

Note

1. Testimony presented to the Task Force by Governor Bob Graham of Florida, July 22, 1981.

Federal funding for the research, demonstration, evaluation, and implementation of innovative programs

Recommendation 53

The Attorney General should ensure that:

a. Adequate resources are available for the research, development, demonstration, and independent evaluation of methods to prevent and reduce serious crime; for disseminating these findings to federal, state, and local justice agencies; and for implementing these programs of proven effectiveness at the state and local level.

b. Grant awards for implementing such demonstrated programs require a reasonable match of state or local funds and be limited to a reasonable time period.

Commentary

One major mandate in Phase II of our work was to recommend to the Attorney General changes in funding levels through which the federal government could assist in the coordinated federal, state, and local fight against violent crime. This inevitably raised the question of how the federal government can contribute most constructively to helping state and local governments improve the operation of their criminal justice agencies. In this regard, we have considered both the federal government's role as developer of innovative ways to combat criminal justice problems and its role as provider of the resources necessary to undertake such new approaches.

Many programs that have made a constructive contribution to state and local criminal justice activities had their roots in basic research conducted or sponsored by the federal government. The Career Criminal Program and the Prosecutors Management Information System (PROMIS) are but two examples of these. The research that spawned these programs is essentially beyond the resources of state and local government. Even if a locality could find such resources, it is inequitable for one city or state to spend the seed money to develop, test, and evaluate new and innovative programs that could be replicated at reasonable cost across the country. Further, research can result in blind alleys; not all research should be expected to result invariably in new and innovative programs of demonstrated success. It is precisely this aspect of the research and development process that makes it too costly to be undertaken to any great extent by single states or local jurisdictions.

We are in unanimous agreement that the federal government has a unique responsibility to conduct research on criminal justice issues, to develop creative programs based on research findings, to test and evaluate these programs rigorously, and to demonstrate them in several jurisdictions with varying characteristics to be sure that the programs would be successful if implemented in other jurisdictions. At present, research directly applicable to the problems of state and local criminal justice systems is performed by the National Institute of Justice (NIJ), the National Institute of Corrections (NIC), and the National Institute of Juvenile Justice and Delinquency Prevention (NIJJDP). NIJ and NIC do not have the funds needed to support the substantial testing, demonstration, and independent evaluation that we believe are necessary. The Attorney General should ensure that adequate funds are available for these agencies to bring research ideas to the stage at which they become demonstrated, independently evaluated programs that can be implemented in state and local jurisdictions.

Most of us also believe that federal funds should be made available to state and local governments to implement those programs that have been demonstrated and proven to be effective through rigorous independent evaluation. These funds should be awarded for the purpose of enabling a jurisdiction to establish demonstrated programs but should continue to support the program implementation process for only a reasonably limited period of time. Before any grants of this kind are made, we suggest that the receiving jurisdiction demonstrate its commitment to continuing the program after the federal funding period has ended. The jurisdiction also should provide a reasonable amount of funds to match those granted by the federal government.

Those who support financial assistance for implementation believe it is a necessary and appropriate federal role. Some view assistance in this area to be equal to or more important than federal funding in other human services areas which continues today. Others believe that American citizens who see billions of dollars sent to fighting enemies in other lands have every right to see substantial federal sums used for fighting crime—an internal enemy. Still others believe that prior federal programs had developed many successful projects that could be used to reduce crime at the local level and were concerned that without federal assistance many of these innovative efforts would not be implemented and would be lost.

Those who oppose direct funding for the implementation of effective programs questioned whether the federal government should pay for programs when state legislatures could appropriate such sums if they gave the effort a high priority; they also feared that the recommendation could lead to the creation of another LEAA.

It was in response to these concerns that we chose to build into our financial assistance recommendation clear requirements on the kind of commitment states and localities must make to receive federal dollars and on the purposes for which these funds can be used.

First, we believe that states and localities should be drawn into partnership with the federal government to support these selected programs and initiatives. We have attempted to ensure that this commitment will be made by proposing that a reasonable match of state or local funds be required. We also recommend limiting the federal funding period to a reasonable amount of time. We do not want to see developed a heavy reliance on the national government for financial support—a reliance which some members felt was created by programs like LEAA. Finally, we believe financial assistance should be given to those jurisdictions that can demonstrate that they will make every effort to assume financial responsibility for the federally supported program when the funding period has expired.

Second, we have serious reservations about any attempt to re-create an LEAA program. That program was heavily laden with bureaucratic rules, regulations, and organizations. It was too expensive, it was too difficult to control, and it scattered funds thinly over a wide variety of initiatives.

Third, we believe that programs of "proven effectiveness" must be determined by careful independent evaluation. We heard much anecdotal evidence on what programs have been effective. We have heard LEAA grant recipients tell us how much more effective their organizations have become because of these programs, but they frequently presented no empirical evidence to support these claims. How the effectiveness of specific innovative programs is determined is the critical element in determining whether implementation funding should be made available. If there is no independent, credible way to evaluate successful programs then there is no way to ensure that the taxpayers' funds are well spent. Any funding program that ignores this element should be rejected.

What we do suggest here, however, is that there are some programs that LEAA supported and developed which have had a direct effect on serious crime. Where these programs have been identified by independent evaluation, they should be instituted in those jurisdictions where the need is greatest and federal funds should be made available to establish them. We also believe that where future research and development activities create programs responding to serious crime, federal implementation funds should be available. It is for purposes of implementation alone that we make this recommendation for direct financial assistance. We are strongly opposed to using federal funds to maintain state and local law enforcement operations. We have no desire to see federal funds used for ordinary operating expenses such as manpower and equipment. These functions fall strictly within the domain of state and local governments and should be financially assisted by the national government only in those kinds of situations which we discuss elsewhere in this report. These jurisdictions know best where needs exist and should shoulder operational burdens themselves. We are convinced, however, that limited federal support should be delivered for implementation of innovative programs that have been tested and proven effective by the National Institute of Justice or other groups.

With limited funding, directed toward supporting only those programs of demonstrated value, we believe the federal government can work with states and localities in an appropriate form to reduce and prevent serious crime in an effective and efficient manner.

In making this recommendation, we do not wish to tie the hands of the Attorney General by prescribing a specific means or method for providing funds. However, as noted elsewhere in this report, we do not believe the public is well served by having a separate bureaucracy to service and artificially separate juvenile crime funding from all other funding.

Assisting state and local corrections

Recommendation 54

The Attorney General should seek legislation calling for $2 billion over 4 years to be made available to the states for construction of correctional facilities. Criteria for a state's obtaining federal assistance under this program include (1) demonstration of need for the construction; (2) contribution of 25 percent of the overall cost of the construction; and (3) assurance of the availability of operational funds upon completion of construction. Funds should be allocated by a formula which measures a state's need for prison construction relative to all states.[1]

Recommendation 55

Within 6 months, the National Institute of Corrections (NIC), which would administer the program described in Recommendation 54, would develop models for maximum, medium, and minimum security facilities of 750 and 500 (or fewer) beds, from which states would choose the appropriate model(s) for construction. In addition, over the 4-year period, NIC would complete studies pertaining to the possible establishment of regional prisons, the feasibility of private sector involvement in prison management, and the funding needs of local jails. The Attorney General should review NIC's findings and other relevant information to determine the need for additional funding upon completion of the 4-year assistance program.[1]

Recommendation 56

The Attorney General should support or propose legislation to amend the Federal Property and Administrative Services Act of 1949 to (1) permit the conveyance or lease at no cost of appropriate surplus federal property to state and local governments for correctional purposes and (2) ensure such conveyances or leases be given priority over requests for the same property for other purposes.[1]

Recommendation 57

The Attorney General should support or propose legislation to amend the Vocational Education Act and other applicable statutes to facilitate state and local correctional agencies' ability to gain access to existing funds for the establishment of vocational and educational programs within correctional institutions.

Commentary

The problem of available space in state prisons to keep dangerous criminals off the street is one of the most important violent crime issues in the nation. Almost all states are in a crisis situation. As has been continuously documented in public testimony and reports, many states are experiencing alarming rates of violent crime. The higher crime rate has produced a higher prosecution and conviction rate, which, combined with the public's demand (frequently via statute) for harsher, longer sentences for the perpetrators of these crimes, has resulted in correctional systems facing unprecedented increases in populations, which they are not prepared to accommodate. One state correctional administrator recently commented that based on that state's current incarceration rate, one 400-bed prison per month could be filled. The crisis for many metropolitan jails is of similar proportion, with one sheriff testifying before his state legislature that he has 300 inmates sleeping on the floor of the county jail.

Between 1978 and 1981, the number of state prisoners increased from 268,189 to 329,122, according to the Bureau of Justice Statistics. Thus, state systems have over the past few years had to accommodate an increase of 60,000 beds. With 39 states involved in litigation or under court order relating to conditions of confinement in state prisons, jails were forced to take 6,000 state prisoners in 1980 as a means of easing overcrowding.[2] However, they too are crowded and face lawsuits similar to those filed by inmates in state institutions. In response to this crisis, by July 1980, state correctional agencies had begun new construction of more than 60 institutions or additions at a projected cost in excess of $700 million.[3]

The problem of overcrowding goes beyond corrections. It leads to a circumvention of the overall public and criminal justice system's intent to deal with the violent offender in a manner consistent with the gravity of the offense. Thus, a substantial number of defendants who should be incarcerated might receive probation instead simply because the judges are aware that there is currently no space available for them in prison. Such action may then have the unintended consequence of endangering the community. Clearly, judges must feel free to use incarceration as a sentencing option; it therefore becomes imperative to better understand the range of issues related to overcrowding and carefully assess proposed means of coping with this problem.

In our Phase I Recommendation 3, we acknowledged the current overpopulation problem in corrections, and now must consider the extent to which the federal government can provide assistance in alleviating crowding. The overriding concern remains the safety of the community, which is secured by ensuring that those offenders. i.e., serious, violent offenders, who need to be incapacitated are incarcerated.

More than two-thirds of the states have proposed to build or have under construction at least one major correctional facility. Some states have found the process so costly that they cannot complete their efforts or have vacant facilities because they cannot afford staffing and operation Between July 1979 and July 1980, 23 new institutions were opened by state correctional systems, at a cost of over $100 million. Fifty million additional dollars were spent on additions to existing buildings. These expenditures resulted in 7,100 new bedspaces.[4]

The cost of building a maximum security facility is over $70,000 per bed in many jurisdictions as diverse as California, Minnesota, or Rhode Island. Alaska reported a staggering $130,000 for the average cost of prison construction per cell. Medium security institutional costs are considerably lower, high estimates being around $50,000 per bed, with several states estimating a range below $30,000. Minimum security housing may be even less. New jail construction similarly is costing $50,000 per cell in metropolitan areas. Expenditures for yearly operating costs are generally cited as being between $10.000 and $20.000 per cell.[5] Precise estimates are not really feasible without addressing the particular facility's locale and purpose. Whatever the figures, it is clear that the financial burden on the states and counties to renovate or construct correctional institutions is extraordinary.

It therefore becomes particularly important to ensure that any decision to build be one that carefully considers the makeup of the inmate population and the security requirements of the correctional system. It has been suggested by national corrections leaders, for example, that perhaps only 15 to 20 percent of inmates in state prisons require costly, maximum security institutions, though 70 percent of the facilities fall into the high security category. A rational classification system to decide what type of confinement is necessary for a given prisoner is of critical importance in freeing up maximum security space and containing costs.

Direct federal assistance for prison construction.[6] Given the fact that 43 percent of prisoners are being housed in facilities built before 1925, 70 percent of prison cells fall short of federal standards for square footage, and over one-half of the state correctional systems have one or more institutions declared to be unconstitutional by federal courts, we are of the opinion that assistance leading to the replacement or renovation of outmoded or substandard correctional facilities is essential. In fact, the Criminal Justice Committee of the National Governors' Association has called federal assistance for capital construction the number-one criminal justice priority. We agree. Clearly, a federal role in this area is necessary; and, in light of the enormity of such an undertaking, we have given special consideration to a number of issues.

The provision of assistance in building or renovating correctional facilities need not necessarily mean that the total capacity of institutions be increased; but rather that there be the most appropriate use of available space. Even if more violent or serious offenders are confined, the number of high security bedspaces need not necessarily rise, as offenders in need of a less secure environment could be moved from maximum to medium security facilities. With resource limitations at all levels of government, any federal grant program should be confined to those criminal justice areas exhibiting greatest need. If this means construction and renovation of detention and corrections facilities, the focus should be on those for the most serious offenders, in maximum security facilities, which are typically the oldest and most in need of replacement or repair. However, in order not to penalize states which have already appropriated funds for maximum security space but do not have sufficient less restrictive space for nonserious offenders, federal dollars could be used for these building/renovation efforts as well, though priority would be given to the needs related to serious offenders.

Another outcome of resource limitations is that the federal government cannot effectively meet the construction needs of both states and local governments. There are simply not enough dollars to go around. Consequently, we have determined that available monies should be given to the states, as we perceive them to exhibit the greatest need. In addition, with the creation of new state facilities, some of the overcrowding at the local level will be alleviated. We do believe, however, that the needs of local correctional agencies should continue to be examined so that the appropriate public officials can continue to make the most appropriate use of resources in this area.

In consideration of the policy decisions described above, and in order to be responsive to the immediate needs of correctional agencies, it is important that any federal support program be carried out in a manner that is both equitable and expeditious. Thus, we believe it would not be desirable to require states to develop long-range comprehensive plans which are updated annually or establish a cumbersome review process requiring a separate administration within the Department of Justice. Such requirements might significantly hamper states and local jurisdictions in their efforts to improve correctional programs and practices, alleviate stress on their corrections systems, or comply with judicial decrees.

Federal requirements should not operate so that they have the unintended effect of keeping jurisdictions from responding to their own needs; and federal dollars need not be so great that jurisdictions merely apply without considering the extent of their actual problem. Thus, the application process should not be so complicated that states are reluctant to take advantage of the assistance, but neither should there be no strings attached, thereby condoning possible inadequately designed facilities both in terms of inmate and staff needs and the needs of the community. Therefore, for purposes of demonstrating this balance and a commitment to accepted standards of correctional planning and practice, we recommend the federal contribution to the proposed construction effort be limited to 75 percent of that effort. In addition, we believe that the federal support program should be limited in time and level of expenditure; there is no need to create a long-term federal operation with states receiving grants for a number of years. We deem an initial 4-year authorization and appropriation to be sufficient. Given differing needs and costs in the various states, we believe that the immediate objectives of the construction program can be met with a $2 billion appropriation.

Monies for construction should be allocated on a formula basis relating to the general population, violent offender population, and corrections expenditures of the state, with demonstrated need being a prerequisite for funding. Included in the total appropriation would be administrative costs and a modest technical assistance effort. The National Institute of Corrections (NIC) would also develop models for correctional facilities from which states would select the one(s) best suited to their respective needs.

With the adoption of any federal effort to provide massive infusion of dollars, with as few strings attached as possible, we believe it would be useful and in the best interest of federal and state governments to offer a technical assistance program along with money for actual construction and related activities. Thus, technical assistance, on the request of correctional agencies, would be available through NIC in the areas of inmate classification, planning for development and operation of new institutions, architectural design considerations, and operation and staffing costs.

Another suggestion we considered for federal assistance was that funds be appropriated for the Federal Prison System (FPS) to construct and operate regional (multipurpose or specialized) correctional centers, with services available to state and local inmates, the costs of such services being borne by the respective state and local authorities. Conceivably at some future time, a facility could be transferred to one or more states or localities at no cost if certain requirements were met. Historically, the Bureau of Prisons (BOP) has made space available to states for special offenders who could not be accommodated by state systems (e.g., 350 inmates from New Mexico were transferred to federal institutions following the riots in 1980). Under a regional concept, a facility could be built to house violent, severely mentally ill or retarded, or otherwise difficult, serious offenders. The location of such an institution would depend on the level of interest and need expressed by states in various regions of the country.

One problem in developing regional prisons, however, involves housing of inmates in distant locations on a more or less permanent basis, thereby restricting visitation by family or friends. A related concern is that of limiting access to counsel due to the institution being placed in another state. It is clear that the numbers of violent offenders being incarcerated is increasing and that state and local correctional institutions are filled to capacity and beyond. However, it cannot be predicted with certainty at this time what the future overflow needs are of a sufficient number of states to move ahead with a regional building program. Thus, while we do not now recommend building federal regional institutions for state and local prisoners, we believe it would nonetheless be useful to further examine the issue, such examination to include an assessment of states' needs and interests, a study of the legal implications for governments at all levels, and an in-depth evaluation of potential implementation and long-term operational problems.

Another proposal that we considered was the involvement of the private sector in the management of prisons. Private contractors have been heavily involved in corrections over the past decade in areas such as provision of direct program and health services, development of prison industry and community work projects, and the operation of community-based programs such as halfway houses, pre-release centers, and drug treatment facilities. However, the private sector has not been involved in the management of medium or maximum security penal institutions.

A variety of concerns have been raised as to the feasibility of such an endeavor. Some of the questions include—

- Whether the responsibility, and concomitant liabilities, for providing a secure and safe environment for violent offenders can be properly delegated from the public to the private sector.
- How the carrying out of statutory and judicial intentions can be assured.
- Whether it would be cost-effective to have to develop a new, highly trained cadre of individuals who understand management in a prison setting.
- How public employee unions and employment generally would be affected.

In addition to these and other concerns, the experience of using the private sector in running community-based programs leaves some cost questions unanswered, at least in terms of potential cost-benefit relative to secure residential facilities. It is not clear that the conventional wisdom is correct that private sector management of correctional facilities would be less expensive than public sector management; we believe this requires further study.

Despite these potential problems, we believe that the concept is deserving of further examination. Thus, as with the regional prison concept, while we are not making a formal recommendation pertaining to the private sector's operating secure penal facilities, we do endorse continued research in this area.

Use of surplus federal property. In addition to direct financial assistance, there exists another significant opportunity for federal involvement in easing state and local correctional facility overcrowding. Section 203k(1) of the Federal Property and Administrative Services Act of 1949, as amended, provides for conveyances of property and buildings by the General Services Administration (GSA) to states and local jurisdictions at up to a 100-percent discount or with no monetary consideration where such properties are to be used as educational or medical facilities, public parks, historical monuments, wildlife refuges, or public airports. The criteria for determining whether a proposed utilization qualifies, for example as an educational facility, are established by the Department of Education; and, in this regard, a model detention facility has been able to qualify where educational rehabilitation was deemed the predominant purpose of the institution.

We recommend an amendment to the Act, permitting a similar arrangement to enable the Administrator of GSA to make property available to the states at no cost for correctional purposes, with criteria for transfer being developed by the Department of Justice, consistent with the intent expressed in Phase I Recommendation 3 that surplus property used for correctional purposes provide safe humane environments for those living and working in those facilities.

In addition to amending the Act to permit these no-cost conveyances, due to the immediacy of the need for adequate bedspace for corrections, we believe that Congress should give requests for such use of surplus property priority over other requests for the same property. Also, in recognition of the fact that some jurisdictions would prefer to lease, rather than have permanent ownership of new property, provisions should be made in the Act to permit such conveyance arrangements.

Vocational education and training. In addition to considering overcrowding vis-a-vis the inmates' physical environment, we recognize, as the Chief Justice has suggested, that with the emphasis on incarcerating more violent offenders, perhaps for longer periods of time, there is a responsibility to provide practical experiences for inmates that will result in their being productive both while incarcerated and upon leaving the institution and returning to society. While a large expansion of vocational and educational training for inmates could prove quite expensive, it is possible, through legislative amendment, to make available substantial resources for this purpose. Seventy programs have been identified within the Department of Education as having funds which could be used by correctional agencies. These programs (mostly coming under legislation on vocational education, adult education, and education for handicapped persons) offer grant monies to Local Education Agencies (LEAs) through the State Education Agencies (SEAs). Some correctional agencies have been able to obtain some of these funds, where states have agreed to classify them as educational agencies. However, the various pieces of legislation are vague as to the means by which correctional institutions can access monies, and programs therefore tend to be uncoordinated and fragmented.

The Department of Education and the Department of Justice have been working on strategies to assist corrections in obtaining monies for educational and vocational programs. We believe these efforts should be enhanced and that the appropriate statutes be amended to specifically designate correctional agencies as qualifying recipients of funds for educating inmates. Some guidelines might be included calling, as an example, for states to require certification of correctional education staff, thus encouraging a higher level of available training.

CONTINUED

1 OF 2

Notes

1. We also address the easing of overcrowding in state and local correctional facilities in Phase I Recommendation 3.

2. U.S. Department of Justice, Bureau of Justice Statistics, *Prisoners in 1980* (Washington: Government Printing Office, 1981).

3. Hicks, *The corrections yearbook* (New York: Criminal Justice Institute, Inc., 1981).

4. *Ibid.*

5. *Ibid.;* National Institute of Corrections National Information Survey, March 1981; and Institute for Economic and Policy Studies (Alexandria, Va., 1981).

6. The term "construction" includes the preparation of drawings and specifications for correctional facilities; erecting, building, acquiring, altering, remodeling, improving, or extending such facilities; and the inspection and supervision of the construction of such facilities.

Juvenile Crime

In 1979, juveniles (up to 18 years of age) accounted for about 20 percent of all violent crime arrests, 44 percent of all serious property crime arrests, and 39 percent of overall serious crime arrests. Youthful offenders (juveniles and those age 18–20) accounted for 38 percent of all violent crime arrests, 62 percent of all serious property arrests, and 57 percent of all serious crime arrests.[1] Only 3 to 15 percent of all delinquent acts result in a police contact.[2] In followup research to a study of 10,000 males born in Philadelphia in 1945, a representative sample of the group admitted having committed from 8 to 11 serious crimes for each time they were arrested.[3] Nationwide surveys of self-reported delinquency show that males age 12 to 18 commit each year: 3.3 million aggravated assaults; 15 million individual participations in gang fights; 4.4 million strikings of teachers; 2.5 million grand thefts; and 6.1 million breakings and enterings.[4]

Juveniles and youthful offenders not only account for the commission of disproportionate amounts of violent and other serious crime, they also are disproportionately the victims of such crime, usually at the hands of other juveniles. Much of these higher victimization rates, however, are accounted for by assaults—not the type of stranger-to-stranger violent street crime [5] that most concerns the American public.

The risk of violence to teenage youngsters is greater in school than elsewhere. Approximately 68 percent of the robberies and 50 percent of the assaults on youth age 12–15 occur at school. An estimated 282,000 students are attacked at school in a typical 1-month period; an estimated 5,200 teachers are physically attacked at school each month.[6]

Notes

1. U.S. Department of Justice, Federal Bureau of Investigation, *Crime in the United States 1979* (Washington: U.S. Government Printing Office, 1980).

2. Joseph G. Weiss and John Sederstrom, *The prevention of serious delinquency: What to do?* (Seattle: University of Washington, 1981), draft report, p. 37.

3. Marvin E. Wolfgang, "From boy to man—from delinquency to crime," in *The serious juvenile offender: Proceedings of a national symposium* (Washington: U.S. Government Printing Office, 1978), p. 171.

4. Weiss, p. 39.

5. U.S. Department of Justice, Bureau of Justice Statistics, *Criminal victimization in the United States, 1978* (Washington: U.S. Government Printing Office, 1980).

6. National Institute of Education, *Violent schools—safe schools: The safe school study report to the Congress* (Washington: U.S. Department of Education, 1978), vol. I, pp. 2–3.

Juvenile fingerprints

Recommendation 58

The Attorney General should direct, and if necessary seek additional resources for, the Federal Bureau of Investigation to accept fingerprint and criminal history information of juveniles convicted of serious crimes in state courts and should support or propose legislation to amend Section 5038 of the Juvenile Justice and Delinquency Prevention Act to provide for fingerprinting and photographing of all juveniles convicted of serious crimes in federal courts.

Commentary

Current statutory restrictions in the procedures pertaining to adult court use of juvenile records may unnecessarily limit the ability of the court to provide appropriate sentences or set bail for juveniles tried as adults or for adults with juvenile criminal histories. Thus, an adult offender having an extensive juvenile felony record, but no prior adult record, may be sentenced as a first offender as a result of legislative mandates or policy expunging or sealing the past record. While this issue is not, per se, a federal issue, the federal system may be affected where juvenile records of individuals being prosecuted on federal crimes cannot be obtained.[1]

In this regard, we urge the Attorney General to encourage states to take appropriate steps to make these criminal histories available.

A related matter involves the policy of the Federal Bureau of Investigation (FBI) not to accept fingerprints of juveniles—a policy that poses an obstacle to effective apprehension and prosecution of many of these individuals. While enlarging the FBI data base may require additional staff or dollar resources, the cost savings to the criminal justice system by having access to criminal history information of juvenile offenders convicted of serious offenses could be enormous. Thus, where state statute or policy does not preclude sending such information to the FBI, we believe the FBI should accept it. Further, Section 5038 of the Juvenile Justice Delinquency and Prevention Act prohibits fingerprints or photographs of juveniles (not prosecuted as adults) alleged to have violated federal law, without the consent of a judge. We believe this section should be amended to permit fingerprints and photographs where there is a conviction for a serious crime.

Note

1. The availability of more extensive criminal history information would facilitate the federal investigation and prosecution of youth gangs, an issue examined later in this chapter.

Federal jurisdiction over juveniles

Recommendation 59

The Attorney General should support or propose legislation to amend Section 5032 of the Juvenile Justice and Delinquency Prevention Act to give original jurisdiction to the federal government over a juvenile who commits a federal offense.[1]

Commentary

Currently, Section 5032 of the Juvenile Justice and Delinquency Prevention Act, as amended, provides that if a juvenile commits a crime against the laws of the United States, he is surrendered to state authorities for prosecution *unless* the state does not have, or refuses, jurisdiction or it does not have appropriate programs for the youth. If the juvenile is not surrendered, he may be proceeded against in U.S. District Court according to special provisions for handling juvenile cases, *unless* he chooses to be prosecuted as an adult; or, the alleged offense was committed after his sixteenth birthday and is a felony punishable by a maximum of at least 10 years, life imprisonment, or death, *and* the district court after a transfer hearing finds criminal prosecution to be in the interests of justice. We believe the federal government should have the opportunity to prosecute those individuals, be they adults or juveniles, who violate federal law, and we recommend that the Juvenile Justice and Delinquency Prevention Act be amended to provide for such original jurisdiction over juveniles who commit federal offenses.

We make this recommendation primarily to allow full implementation of Recommendation 60, which calls for the use of federal investigative and prosecutorial resources to combat youth gangs.

Note

1. We also addressed juvenile crime in Phase I Recommendations 8 and 12.

Youth gangs

Recommendation 60

The Attorney General, where appropriate, should expand the use of federal investigative and prosecutorial resources now directed against traditional organized crime activities to the serious criminal activities of youthful street gangs now operating in metropolitan areas of the country.[1]

Commentary

The most prevalent context of serious and violent juvenile criminality is what has been described as "law-violating groups." It is estimated these disruptive youth groups involve perhaps up to 20 percent of eligible boys in cities of over 10,000 population and that about 71 percent of all serious crimes by youths are the product of law-violating groups. In addition to loosely-formed law-violating groups, there are about 2,200 gangs with 96,000 members located in approximately 300 U.S. cities and towns. Killings play a major role in the criminal activities of gangs. In 60 of these cities alone, approximately 3,400 gang-related homicides were recorded during the period 1967–1980.[2]

In public testimony given by a former youth gang member and others, we frequently heard gang activities described in terms of an organized crime effort. Many youth gangs operate across state lines to facilitate, for example, the interstate transportation of narcotics or weapons for use by gang members. Often youth gangs are modeled after traditional organized crime operations and as a result become involved in the full range of illegal activities associated with them. Law enforcement officials, however, have typically dealt with gangs in terms associated with "juvenile delinquency." Thus, the federal law enforcement apparatus has tended to view gangs as state and local problems. We can no longer afford to do this, as it has become increasingly clear that the level of gang activities involving violent crime and drug-related offenses is enormous, the similarity between gangs and organized crime is undeniable, and much gang activity can and should itself be characterized as organized crime. In recognition of these facts, we urge the Attorney General to take those steps necessary to ensure that federal law enforcement and prosecutorial agencies will be able to effectively investigate and prosecute serious organized youth gang activities.

Notes

1. We also address juvenile crime in Phase I Recommendations 8 and 12.

2. Walter B. Miller, *Crime by youth gangs and groups in the United States*, draft report submitted to the Office of Juvenile Justice and Delinquency Prevention, 1981, chap. 4, p. 30ff.

Federal juvenile justice program

Recommendation 61

Funding of juvenile justice programs should be done according to the criteria set forth in Recommendation 53; such programs should be considered for funds along with all other programs within the administrative framework for general funding.[1]

Commentary

It is clear from all of the data that the level of violent crime committed by juveniles is a national problem. Additionally, based on our own observations and the testimony of juvenile justice experts around the country, we believe the federal government can play an important and cost-beneficial role as a program catalyst to state and local jurisdictions in their attempts to alleviate this problem.

In the current federal effort to combat juvenile crime, the major impetus has come from the Office of Juvenile Justice and Delinquency Prevention (OJJDP). That Office's enabling legislation, the Juvenile Justice and Delinquency Prevention Act, has 3 more years of authorization. The program was placed in the Department of Justice in 1974 because of the Congressional determination that the Act's goals could best be achieved by working through the criminal and juvenile justice systems rather than outside the system as had been the case through 7 years of HEW funding in the social services framework.

The primary focus of the Office of Juvenile Justice and Delinquency Prevention had been on removal of status offenders and nonoffenders from secure detention and correctional facilities, separation of adult offenders and juveniles in secure institutions, and, as of the 1980 Amendments to the Act, the removal of juveniles from adult jails and lockups. Most of OJJDP's resources and those provided to the states under the program have been directed at these statutory goals. While such activities do not directly impact on violent crime, they do free up the resources of the criminal and juvenile justice systems to deal with violent and other serious offenders in a cost-effective manner and provide a significant but unmeasurable preventive aspect to the extent that they keep juveniles out of the system and away from delinquency or criminal contacts and activity. The deinstitutionalization goal has largely been met (about 80 percent).[2]

The Office directly and indirectly placed 28 percent of the $400 million in grants which it funded over the past 4 years into programs focusing on violent and other serious crimes. Since fiscal 1977, approximately $10.3 million, or about 40 percent of the total research budget, has been allocated to serious juvenile crime. Through national data collection and analysis activities, the National Institute of Juvenile Justice and Delinquency Prevention (NIJJDP) has developed estimates of the extent of juvenile violence in the United States. Studies of delinquent career patterns have increased the knowledge of the characteristics of serious juvenile offenders and factors associated with involvement in serious crime. National assessments of youth gangs and of school crime have developed information on serious crime in particular contexts to guide program development efforts. Other research has looked at nationwide data on juvenile court handling of juveniles and strategies for rehabilitating serious juvenile offenders more effectively and efficiently.[3]

The findings of these studies have been used in the development of special emphasis programs aimed at reducing serious juvenile crime. For the period fiscal 1978–1981, approximately $39 million (about 34 percent) of the total "Special Emphasis" program funds were allocated to the serious crime area.[4]

Under the formula grant program, the states have used approximately $72.6 million of their funds for serious juvenile crime initiatives for fiscal 1978–1981. These efforts include a complete range of police, court, prosecution, and corrections programs aimed at the serious offender.[5]

In terms of the federal role in combatting serious juvenile crime, we believe it critical to view such criminal activity as part of an overall problem. Thus, strategies to reduce serious offenses committed by juveniles should be integrated with strategies to reduce serious crime generally, and funding for juvenile programs should be considered along with all other programs in this area. Such a holistic approach is imperative if we are to reverse the trends of criminal violence. We note, for example, as many others have, that prosecution of the juvenile career criminal has been limited because the justice system operates under a two-track system where prosecutors are encouraged to gear their efforts toward adults only. The issue becomes more complicated by the fact that juvenile justice information systems are often inadequate and juvenile criminal history data are frequently not readily available to adult sentencing courts.

We feel strongly that any resources which are made available be directed toward the reduction of serious crime committed by juveniles, with a particular emphasis on the serious, repeat offender. Furthermore, the funding strategy should be consistent with that which we propose for a federal financial assistance program generally under Recommendation 53. Thus, resources should be made available for research, development, independent evaluation, and demonstration efforts and for dissemination of findings to state and local agencies, where federal monies can be used for implementation of programs of proven effectiveness.

In general, then, we believe the federal government should change its organizational framework vis-a-vis combatting serious juvenile crime to eliminate the separate bureaucracy which services and artificially separates juvenile crime funding from all other funding.

As an additional comment on serious juvenile crime, we note that while it was not the mandate of this Task Force to examine the root causes of crime, we believe that one observation cannot be avoided—the breakdown of traditional institutions, which necessarily implies some breakdown in the discipline important for the encouragement of law-abiding behavior. In response to this concern, we suggest that some form of national public service might be appropriate as a means to provide a portion of the structure now lacking in many young people's lives and thereby reduce the likelihood of their involvement in criminal activity. In this regard, while we are not issuing a formal recommendation on this subject, we do urge the Attorney General to initiate a study of the feasibility of establishing such a national service program, including an examination of the issues relating to whether it should be compulsory or voluntary and the costs associated with such an undertaking.

Notes

1. We also address juvenile crime in Phase I Recommendations 8 and 12.
2. Information compiled by the Office of Juvenile Justice and Delinquency Prevention, July 1981.
3. *Ibid.*
4. *Ibid.*
5. *Ibid.*

Chapter 5

Victims of Crime

Violent crime has increased tremendously over the past two decades in this country. In spite of the fact that federal, state, and local police and prosecutors have made tremendous efforts to stem the flow of violent crime, it remains at extremely high levels. As an example, statistics from the National Crime Survey show that from 1973 to 1979 there were an estimated 40,035,000 rape, robbery, and assault victimizations in this country. During that same period, the Uniform Crime Reports show that there were 118,096 victims of homicide. Although these figures are staggering, it should be remembered that these "statistics" represent human beings.

While we of course must continue to do everything feasible to try to prevent crime in the first place and bring to justice those who commit it, it is clear that the country owes a duty to the victims of crime. Such effort should be directed at two specific areas: first, to make the victims whole again to the greatest extent possible and, second, to improve the criminal justice system in order to prevent victims of violent crime from being victimized twice.

Federal standards for the fair treatment of victims of serious crime

Recommendation 62

The Attorney General should establish and promulgate within the Department of Justice, or support the enactment of legislation to establish, Federal Standards for the Fair Treatment of Victims of Serious Crime.[1]

Commentary

Our society is based on the rule of law rather than individual anarchy and personal vengeance. Members of society have given up the right to personally enforce the law and to collect their own retribution in favor of our federal, state, and local governments performing those roles. As a result, government owes a duty to protect law-abiding members of society.

Moreover, experience has shown that victims and witnesses are much more apt to report crimes in the first place and, secondly, to cooperate with the authorities once a case is brought to their attention, if they perceive that the government cares about them and will do everything feasible to protect their rights. If victims and witnesses cooperate fully with the criminal justice system, it will be much easier to bring to justice and punish those responsible for breaking the law. Our society will thus become much safer.

The importance of victims to the criminal justice system has been recognized at the highest levels. While a candidate for President of the United States, Ronald Reagan created an Advisory Task Force on Victim's Rights. After taking office, President Reagan proclaimed the week of April 19 through 25, 1981, "Victim's Rights Week."

There have been a number of offices in this country, such as D. Lowell Jensen's former office in Alameda County, California, and Michael McCann's office in Milwaukee, Wisconsin, that have made tremendous progress in recognizing and attending to the problem of victims and witnesses. However, the overall response to those problems has been inconsistent and in some cases practically non-existent. While most violent crime is prosecuted in state and local courts, some violent crime, particularly assaults on federal officials, robbery of federally insured financial institutions, and violent crime associated with organized crime, is prosecuted in federal courts. No U.S. Attorney's Office has set up a victim/witness assistance unit.[2] This may be due in part to the fact that the U.S. Attorney's Offices prosecute relatively few cases involving violent crime and civilian victims. On the other hand, it may well be that at least the larger offices or those that prosecute cases involving offenses that occur on federal reservations do have a need for such a unit. Accordingly, we recommend that the Attorney General provide for the funding of victim/witness assistance units in those offices that have a need for such a unit.

A federal standard for the fair treatment of victims of violent crime would serve as a model toward which all prosecutors' offices throughout the country could strive.

It should be noted that a federal standard would not, in and of itself, afford victims any substantive rights that, if violated, would give them a cause of action. It was out of concern that the public or courts might construe the adoption of a "Victim's Bill of Rights" as the creation of a new cause of action that we declined to accept that label in our recommendation. However, we do support the general concept that is embodied in recent proposals for better treatment for victims. One such proposal is now pending enactment in New York. That bill, with slight modifications, is set forth below in order to illustrate this issue. We wish to point out, however, that by including it for illustrative purposes, we do not necessarily suggest that this list is a definitive set of standards. The actual federal standards that would be established would be up to the Attorney General. Under the New York proposal, citizens would have the following expectations:

- To be protected from criminal violence and crime.
- To be kept informed by law enforcement agencies of the progress of their investigation.
- Once a suspect is apprehended, to be kept informed by the District Attorney as to the progress of the case including any final disposition, when the victim so requests. This expectation also includes notification that the defendant has been released from custody.
- To be notified of any proposed discretionary disposition, and the terms thereof, including any plea and sentence bargain arrangement involving the accused perpetrator of the crime and any agreement by a prosecutor to accede to an insanity defense.
- After conviction, to be notified of any release of the defendant if such defendant was incarcerated, including a temporary pass, furlough, work or other release, discharge, or an escape.
- To be notified of any change in a defendant's status when such defendant has been committed to the custody of the Department of Mental Hygiene as a result of being found not guilty by reason of insanity or being found unable to stand trial due to mental infirmity. A change in status would include the transfer to any less secure facility, a temporary pass, furlough, vacation, work or other release, discharge, or an escape. Other interested parties, such as the court and the District Attorney, should also be notified.
- To be informed of financial and social service assistance available to crime victims. This includes receiving information on how to apply for such assistance and services.
- To be provided with appropriate employer and creditor intercession services to ensure that employers of victims will cooperate with the criminal justice process in order to minimize an employee's loss of pay and other benefits resulting from court appearances.
- To be provided with adequate witness compensation and to be informed of such compensation and the procedure to be followed to obtain such witness fees.
- To be provided with, whenever possible, a secure waiting area, during court proceedings, that ensures that the victim/witness will not be in contact with defendants and families and friends of defendants.
- To receive adequate protection from any threats of harm arising out of cooperation with law enforcement and prosecution efforts. This right includes receiving information as to the level of protection available.
- To have any stolen or other personal property held by law enforcement authorities for evidentiary or other purposes returned as expeditiously as possible (photographs should be taken whenever possible).
- To be represented by an attorney, not necessarily at public expense, in certain types of cases (rape, etc.) where the reputation or right of the complaining victim/witness is at stake.
- To be made whole through restitution and/or civil recovery wherever possible.
- To have perpetrators prevented from being enriched, either directly or indirectly, by their crimes or at a victim's expense.

Two additional proposed features are, first, that victims and witnesses should expect that they will be treated with dignity and compassion and, second, that they should expect that a translator will be provided where necessary and practical.

Notes

1. We also address victims of crime in Phase I Recommendation 13.

2. The U.S. Attorney's Office for the District of Columbia has recently set up a victim/witness unit but it is based in the District of Columbia Superior Court, which handles local, not federal, prosecutions.

Third-party accountability

Recommendation 63

The Attorney General should study the principle that would allow for suits against appropriate federal governmental agencies for gross negligence involved in allowing early release or failure to supervise obviously dangerous persons or for failure to warn expected victims of such dangerous persons.[1]

Commentary

In the past, there have been a number of occasions where extremely dangerous criminals have been precipitously released into society by prison officials, parole boards, and mental institutions. Once at large in society, they have brutalized and even murdered persons. Since these victims and their survivors have had no real recourse to redress the wrongs visited upon them, they have, with some justification, felt that their government had failed in its obligation to protect them. In an effort to find some redress, the survivors of one such victim brought a suit against the Federal Bureau of Prisons and the U.S. Board of Parole under the Federal Tort Claims Act. The facts of this case, *Payton* v. *United States*, 636 F. 2d 132 (5th Cir. 1981), are briefly set out below in an effort to elucidate the issue of third-party accountability.

A member of the U.S. Air Force, Thomas Whisenhant, was sentenced in 1966 to 20 years in federal prison on a charge of assault with intent to murder a female member of the Air Force, whom he severely and brutally beat almost to death. While in prison he manifested his continued homicidal tendencies by threatening the life of a female penitentiary employee. He was repeatedly diagnosed in prison as a paranoid, schizophrenic psychotic who had tendencies toward brutal assaultive behavior. One psychiatrist concluded that he was in dire need of long-term psychiatric treatment. Nonetheless, his sentence was inexplicably reduced to 10 years and he was released. This release, according to the testimony of a psychiatrist, was a grievous error bordering on gross negligence.

After his release, he brutally beat and murdered two women and kidnapped, raped, murdered, and mutilated a third woman, whose survivors brought suit under the Federal Tort Claims Act against the Federal Bureau of Prisons and the U.S. Board of Parole. This suit was dismissed by the trial court, but the dismissal was reversed by the Fifth Circuit Court of Appeals. There is presently a motion for rehearing en banc pending.

The public expects vigorous governmental efforts to protect it against such occurrences as took place in the *Payton* case. A growing body of authority recognizes the duty to properly supervise parolees and patients who are dangerous, to advise appropriate officials of their release, and to warn potential victims. Such accountability would act as an incentive for professional and efficient administration and would tend to act as a deterrent to grossly negligent actions that result in the release of obviously dangerous persons into our society. As the scope of government grows, the potential for harm due to its negligence increases. When injury results from the grossly negligent actions of government under the circumstances herein described, there is a need to compensate the victims. Since there is no real method in existence now, it should be created.

We are of the opinion that any cause of action in this area should be a limited one. One definite advantage of having legislation is the ability to set out the parameters of the cause of action and thus restrict it to the relatively rare situations to which it should apply. There is a careful balancing that must be performed: first, to allow for governmental responsibility in those situations that call for it and, second, not to foster a public perception that the government is responsible in money damages for every dereliction, however minor, that its employees commit. A carefully crafted legislative proposal which sets out these parameters would accomplish this end.

It is clear that allowing this type of suit against governmental agencies would require additional manpower and financial resources. In addition, arguments have been made that such judicial scrutiny would be a burden on governmental activity and would inhibit the exercise of governmental decisionmaking, although it should be noted that the proposal involves governmental, not individual, liability and is limited to gross negligence involving obviously dangerous persons who later commit acts of criminal violence. Nonetheless, fears have been expressed that allowance of this type of suit would open the door to broader, more inclusive litigation and governmental liability. However, as we have pointed out, liability could be narrowly drawn.

Because the need for compensating victims of crime under the type of circumstances outlined in the *Payton* case is so great and because we think that the existence of governmental liability for acts of gross negligence would have a beneficial effect on the performance of governmental duties, we recommend that the Attorney General study the principle of establishing governmental liability for acts of gross negligence that result in injury under conditions such as we have described in this section.

Note

1. We also address victims of crime in Phase I Recommendation 13.

Victim compensation

Recommendation 64

The Attorney General should order that a relatively inexpensive study be conducted of the various crime victim compensation programs and their results.[1]

Commentary

In an effort to compensate victims of crime, 34 states have enacted crime victim compensation laws. The subject of victim compensation is an extremely complicated one, involving a myriad of issues ranging from funding and financial considerations to eligibility requirements. The programs in the states are quite different, and each has its own advantages and disadvantages. A federal crime victims compensation bill has been introduced in the last eight sessions of Congress, where it has failed to achieve passage.

It seems apparent that the state of the art in crime compensation has not advanced to the point where it could be said that a model program could be recommended that would quiet the extensive controversy that surrounds this issue. It would appear that a thorough study is necessary that is outside the scope of this Task Force. Accordingly, we recommend that the Attorney General direct that a relatively inexpensive study of the various programs and their results be conducted.

Note

1. We also address victims of crime in Phase I Recommendation 13.

Appendix

Witnesses before the Attorney General's Task Force on Violent Crime

April 16–17, 1981—Washington, D.C.

Harry A. Scarr, Task Force Staff

William H. Webster, Director, Federal Bureau of Investigation

David Nurco, Doctor of Medicine, University of Maryland School of Medicine

Peter B. Bensinger, Administrator, Drug Enforcement Administration

Norman A. Carlson, Director, Federal Bureau of Prisons

John J. Twomey, Deputy Director, U.S. Marshals Service

G. R. Dickerson, Director, Bureau of Alcohol, Tobacco and Firearms

William T. Archey, Acting Commissioner, U.S. Customs Service

D. Lowell Jensen, Assistant Attorney General, Criminal Division

William P. Tyson, Acting Director, Executive Office for U.S. Attorneys

Allen F. Breed, Director, National Institute of Corrections

Robert F. Diegelman, Acting Director, Office of Justice Assistance, Research and Statistics

May 20–21, 1981—Atlanta, Georgia

Lee Brown, Commissioner of Public Safety, Atlanta, Georgia

Charles F. Rinkevich, Director, Atlanta Federal Task Force

Abraham S. Goldstein, Sterling Professor of Law, Yale Law School

Daniel N. Robinson, Professor of Psychology, Georgetown University

David Robinson, Jr., Professor of Law, George Washington University

R. Kenneth Mundy, Attorney-at-Law, Washington, D.C.

Rufus L. Edmisten, Attorney General, State of North Carolina

M. James Lorenz, U.S. Attorney, Southern District of California

Edwin L. Miller, Jr., District Attorney, San Diego County

Lee M. Thomas, Director, Division of Public Safety Programs, Office of the Governor, State of South Carolina

June 2–3, 1981—Los Angeles, California

Edmund G. Brown, Jr., Governor, State of California

Tom Bradley, Mayor, City of Los Angeles

Evelle J. Younger, Attorney-at-Law, Los Angeles, California

George Deukmejian, Attorney General, State of California

Malcolm Richard Wilkey, Judge, U.S. Court of Appeals for the District of Columbia Circuit

Yale Kamisar, Henry K. Ransom Professor of Law, University of Michigan Law School

Pete Dunn, Member, Arizona House of Representatives

John K. Van de Kamp, District Attorney, Los Angeles County

Daryl F. Gates, Chief, Los Angeles Police Department

Donald E. Santarelli, Attorney-at-Law, Washington, D.C.

June 17, 1981—Chicago, Illinois

Tyrone C. Fahner, Attorney General, State of Illinois

Sylvia Bacon, Chairperson-Elect, American Bar Association Section of Criminal Justice, and Judge, Superior Court of the District of Columbia

Laurie Robinson, Director, American Bar Association Section of Criminal Justice

George C. Stimeling, Superintendent of Schools, Bloomington, Illinois

Marvin E. Wolfgang, Professor of Sociology and Law, University of Pennsylvania

Former Youth Gang Member

Richard M. Daley, States Attorney, Cook County, Illinois

Phillip Wayne Hummer, President, Chicago Crime Commission

Patrick F. Healy, Executive Director, Chicago Crime Commission

William S. White, Justice, Illinois Court of Appeals

Richard J. Brzeczek, Superintendent, Chicago Police Department

June 18, 1981—Detroit, Michigan

Mark H. Moore, Professor of Criminal Justice, Policy and Management, Kennedy School of Government, Harvard University

Colin Loftin, Assistant Professor of Sociology, University of Michigan

William L. Cahalan, Prosecuting Attorney, Wayne County, Michigan

Albert J. Reiss, Jr., William Graham Summer Professor of Sociology and Lecturer in Law, Yale University

Coleman A. Young, Mayor, City of Detroit

Richard J. Gross, President, National Association of Crime Victims Compensation Board

Catherine G. Lynch, Director, Dade County (Florida) Advocates for Victims

Aaron Lowery, Director of Public Safety and Justice, New Detroit, Inc.

Professor Harold Norris, New Detroit, Inc.

July 21–22, 1981—Key Biscayne, Florida

Kenneth I. Harms, Chief of Police, City of Miami

Bobby L. Jones, Director, Metro-Dade Police Department, Dade Country, Florida

Amos E. Reed, Secretary, Department of Corrections, State of Washington

W. Clement Stone, Chairman and Founder, Combined Insurance Company of America, Chicago, Illinois

Bob Graham, Governor, State of Florida

Jim Smith, Attorney General, State of Florida

Jon A. Sale, Attorney-at-Law, Miami, Florida

David H. Bludworth, State Attorney, 15th Judicial Circuit, West Palm Beach, Florida

George Sunderland, Director, Criminal Justice Services, National Retired Teachers Association/ American Association of Retired Persons

James W. York, Commissioner, Florida Department of Law Enforcement

John R. Manson, Commissioner, Department of Correction, State of Connecticut

Gerald Lewis, Comptroller, State of Florida

Howard M. Rasmussen, Executive Director, Citizens' Crime Commission of Greater Miami, Inc.

August 4–5, 1981—New York, New York

Edward I. Koch, Mayor, City of New York

Robert J. McGuire, Commissioner, New York Police Department

Robert G. M. Keating, Criminal Justice Coordinator, City of New York

Mario Merola, District Attorney, Bronx County, New York

Henry S. Dogin, Attorney-at-Law, New York, New York

Ernest van den Haag, Author and Professor of Law, New York Law School

Thomas A. Reppetto, President, Citizens' Crime Commission of New York City

James P. Damos, First Vice President, International Association of Chiefs of Police

Norman Darwick, Executive Director, International Association of Chiefs of Police

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