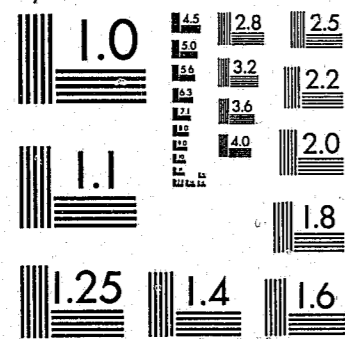


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BEFORE THE  
ATTORNEY GENERAL OF THE UNITED STATES

Public Hearing:  
TASK FORCE ON VIOLENT CRIME

JEFFREY HARRIS, EXECUTIVE DIRECTOR  
Chairman

Hyatt Wilshire Hotel  
Main Ballroom  
3515 Wilshire Boulevard  
Los Angeles, California

Tuesday, June 2, 1981

9:40 a.m.

(MORNING SESSION ONLY)

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1 APPEARANCES:

2  
3 TASK FORCE MEMBERS PRESENT:

4 JEFFREY HARRIS, EXECUTIVE DIRECTOR, Chairman

5 HON. GRIFFIN B. BELL, Co-Chairman

6 ROBERT L. EDWARDS

7 DAVID L. ARMSTRONG

8 WILBUR F. LITTLEFIELD

9 CHIEF WILLIAM L. HART

10 FRANK G. CARRINGTON

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3 I N D E X

4 PRESENTATION BY:

5 JEFFREY HARRIS, EXECUTIVE DIRECTOR,  
6 Introduction

7 HONORABLE EDMUND G. BROWN, JR.,  
8 GOVERNOR, STATE OF CALIFORNIA

9 HONORABLE TOM BRADLEY,  
10 MAYOR, CITY OF LOS ANGELES

11 EVELLE J. YOUNGER,  
12 ATTORNEY AT LAW, LOS ANGELES, CALIFORNIA

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P R O C E E D I N G S

(9:40 a.m.)

CHAIRMAN HARRY: Ladies and gentlemen, I'd like to call the meeting to order, please.

On behalf of the Task Force, let me open by saying we're delighted to be in Los Angeles. We are in the midst of preparing recommendations on a number of matters for the Attorney General, and also taking public testimony. The agenda today includes both public testimony this morning and the discussion of issues which will result in recommendations for the Attorney General this afternoon.

We're delighted to be here. We have a complete schedule today. And momentarily we will begin. This afternoon the round table discussion of recommendations for Phase I for the Attorney General is also open to the public, and anyone who is interested in observing those can.

Without further ado, let me call our first witness, the honorable Governor Brown.

Governor, welcome. Thank you very much for appearing today, and we're delighted you're with us.

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P R E S E N T A T I O N   B Y :

EDMUND G. BROWN, JR.,

GOVERNOR OF CALIFORNIA.

GOV. BROWN: I have a relatively short statement that I will read and then I'll be glad to respond to any questions. I also have some materials that I've submitted to you relative to successful programs in California that have also been tried in other states.

Mr. Director, and former Attorney General Bell, and other distinguished members of this important panel, I'm confident that as this Task Force moves from city to city throughout the nation, that with few exceptions violent crime is foremost in the minds of our citizens. Therefore, as we address the matter of crime, it's essential that we understand that it's not the time for partisanship, mere rhetoric, or a search for scapegoats. Crime waves, brutal assaults and heartbreaking tragedies are not new. In fact, over the years we've heard repeatedly about crime, juvenile delinquency and criminal prosecutions.

However, I sense today an even deeper concern about crime and personal safety. Thousands of private security guards have been hired. A level of fear, the senseless violence against old and young alike, the sheer number of burglaries, create a climate of

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1 apprehension that undermines our basic right to be free  
2 in our own communities.

3 Let me try to put California's present crime  
4 problem in context. It's often said that judges are caus-  
5 ing the problem by their leniency. Whatever has been the  
6 case in years past, recent statistics demonstrate that  
7 California judges have dramatically increased the number  
8 of convicted felons going to state prison. During my time  
9 as Governor, there has been a 100-percent increase in the  
10 number of persons sent to prison.

11 In the early 1970's, judges in California sent  
12 an average of about 4,500 felons to prison each year.  
13 Last year our judges sent 11,000 felons to state prison.  
14 And this year we expect the number to go up. We now have  
15 so many convicts in prison that our prisons are seriously  
16 overcrowded. We've been forced to use dangerous makeshift  
17 methods, such as double celling and even housing prison-  
18 ers in an abandoned warehouse.

19 If the present arrest and conviction rate con-  
20 tinues, we will need to house another 10,000 prisoners by  
21 1985. Sen. Robert Presley, a Democrat from Riverside, has  
22 repeatedly carried my administration proposals to fund and  
23 construct new prisons, but to little avail in the face of  
24 budgetary demands. The number of convicts in our state  
25 prisons has increased from just over 20,000 back in 1976 to

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1 26,500 today. It is not necessary here to belabor the  
2 tragedy and turmoil which can result from a troubled  
3 prison system. Witness the recent disturbances within the  
4 state of Michigan.

5 Here in California, for example, the population  
6 has grown by 8 million, or 50 percent, during the past 20  
7 years. During that same period, the number of people  
8 arrested for serious crimes has gone up by 175 percent.  
9 But our state prisons and local jails have expanded by  
10 only 10 percent. We are literally mandating increased  
11 prisonment in nonexistent prisons. We must now exapnd our  
12 facilities or allow more and more dangerous criminals to  
13 go free. Some people doubt the reality of that statement,  
14 but the fact of the matter is, more felons are going to  
15 local jails, and more misdemeanants who would have been  
16 charged as felons, were there the capacity, are being  
17 released prematurely from those jails, and some are not  
18 even being incarcerated at all.

19 Building more prisons obviously won't eliminate  
20 crime. But most of the law enforcement officials I've  
21 met with during these past few months are convinced that  
22 expanding our prisons and jails is utterly essential to  
23 reduce crime. Each criminal sent to prison often repre-  
24 sents not one act of violence but many. On the average,  
25 convicts committed 14 serious crimes each year before

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1 being caught and convicted. Now, some were guilty of as  
 2 many as 60 or 70 crimes, others of only a few, and that is  
 3 an average figure. There is a group within the prison  
 4 population which has a much higher record of crimes. To  
 5 the extent that that relatively small group could be  
 6 identified, very cost-effective incarceration could be  
 7 obtained, because of the tremendous reduction in the crime  
 8 rate that that incarceration of career criminals would  
 9 result in.

10 To achieve California's goal of controlling  
 11 crime, I am supporting a quarter-cent sales tax increase,  
 12 and a constitutional amendment to create a special trust  
 13 fund dedicated to law enforcement activities. Under the  
 14 proposed amendment, a fund would be established to pay  
 15 for new prisons and jails, more local police and sheriffs,  
 16 additional prosecutions, and appropriate crime prevention  
 17 programs. The amendment and accompanying legislation  
 18 will raise about \$5 billion during the coming decade.  
 19 Half of the money, about \$2.5 billion, will be used to  
 20 expand our prisons and jails. The other half will go to  
 21 critical law enforcement activities at the local level.

22 My quarter-cent increase in the sales tax is  
 23 proposed for 10 years, and the plan will only go into  
 24 effect upon approval of the constitutional amendment by  
 25 the voters.

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1 In addition, considerable reform is also needed  
 2 in the area of federal funding of police and prosecution  
 3 efforts. Our experience to date with LEAA programs shows  
 4 that far too much of the available funding has been con-  
 5 sumed by paper work and administrative requirements.  
 6 Many of the dollars made available under LEAA were spent  
 7 on programs which had no measurable impact on the crime  
 8 problem.

9 It's now time for the Federal Government to  
 10 determine which of the programs that it has funded were  
 11 really successful in dealing with the crime problem, and  
 12 to restrict future federal funding to the expansion of  
 13 these programs in states that made them work and the  
 14 initiation of such programs in states where they have not  
 15 been implemented to any significant extent.

16 In California, there are four programs previ-  
 17 ously supported by LEAA funds that we have made work and  
 18 that we are now supporting with state funds; the Career  
 19 Criminal Prosecution Program, the Career Criminal  
 20 Apprehension Program, the Victim/Witness Services, and the  
 21 Community Crime Prevention. I signed into law the  
 22 nation's first state funded Career Criminal Prosecution  
 23 Program in 1977, which has become a model. By providing  
 24 additional resources for prosecution of those individuals  
 25 with the most intensive criminal history, we've been able

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1 to significantly increase the conviction rate and length  
2 of terms for criminals who tend to be the most active.

3 In 1978 I signed into law a Career Criminal  
4 Apprehension Program which provides increased funding to  
5 police and sheriff departments so that personnel can be  
6 freed up from routine police work and dedicated to the  
7 identification and arrest of the most intensive criminals.  
8 Greater success in obtaining convictions and compensating  
9 the victims of crime has been achieved through our Victim/  
10 Witness Services Program, which I also signed into law in  
11 1977. Over \$15 million is now being provided to improve  
12 security and services for witnesses and to compensate the  
13 victims of violent crimes.

14 In 1977 I signed an Executive Order creating the  
15 Crime Resistance Task Force to develop community crime  
16 prevention programs. Since then the funds have been made  
17 available to provide training, radios and other equipment  
18 necessary to enable citizens to patrol their own neighbor-  
19 hoods.

20 If federal funds are going to be used to improve  
21 effectiveness of local police and prosecution efforts,  
22 then I recommend that they be earmarked for programs of  
23 the type that I've just described. Specific criteria for  
24 use of the funds can be established based on a review of  
25 the programs of this type that have already proved

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1 successful. Allocation of the funds for a specific pur-  
2 pose should substantially reduce the administrative over-  
3 head and inefficiency which has plagued law enforcement  
4 assistance programs in the past.

5 In discussing violent crime, something more must  
6 be said. Government can do much, but fundamentally our  
7 society is directed by the choices of individuals; anony-  
8 mity, urbanization, mobility, obvious differences between  
9 groups in our society, all these play a part. And as we  
10 confront the sorrow, the fear, the suffering and the out-  
11 rage of the victims of crime, let us ask ourselves what  
12 each of us can do to strengthen the fabric of our commu-  
13 nity. Those in public service can discharge their duties  
14 fully and with deep responsibility. Parents can know more  
15 about their children and instruct them more carefully.  
16 Neighbors can be made aware of each other and work together  
17 to assure a mutual reliance that will add immeasurably to  
18 their own security and well-being.

19 Accordingly, and mindful of the connection  
20 between the health of a society and the choices of its  
21 individuals, I would challenge the Task Force today to  
22 return to Washington and call for a new federal funds to  
23 operate state-run conservation corps such as our own  
24 California conservation called the CCC. We are painfully  
25 aware of the difficult economic conditions of the Federal

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1 and the State Government. My own recently proposed state  
 2 budget allowed for less than 1 percent growth over the  
 3 previous year in its general funding. However, in our  
 4 enthusiasm for cutting back on expenditures in these  
 5 difficult times, we must not overlook those exceptional  
 6 programs which provide tangible benefits to our society.  
 7 Here in California, our CCC has grown into one of the most  
 8 successful model programs of its kind anywhere in the  
 9 nation. By combining disciplined living conditions with  
 10 simple, old-fashioned hard work, thousands of young  
 11 Californians have graduated from the CCC with a better  
 12 sense of their self-worth and appreciation for society's  
 13 requirements.

14 It is estimated that for every dollar spent on  
 15 one California Conservation Corps youngster, the community  
 16 receives back \$1.20 in public benefit. Given the uncer-  
 17 tain nature of today's investment outlook, that is a  
 18 rather solid return on one's investment. But the return  
 19 goes much further than that. The youngster returns to the  
 20 streets with less propensity to commit violence and  
 21 re-enters the world with a new sense of self-esteem and  
 22 personal commitment to the values of hard work, mutual  
 23 cooperation and ecological stewardship.

24 And I want to add just a final note on the CCC  
 25 effort. Many of the things that you will hear about and

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1 many of the things you'll read in these programs are after  
 2 the fact, bandaids, postoperative surgery and therapy for  
 3 a society whose fabric is pulling apart. The central  
 4 problem is to create bonds among the citizens, and a  
 5 deeper sense of citizenship, a deeper sense of self-worth  
 6 and of responsibility to the community at large.  
 7 California Conservation program is not like other programs.  
 8 We have a 24-hour-a-day, seven-day-a-week program. They  
 9 work for as long as one year. They are paid the minimum  
 10 wage, out of which they must pay their own room and board.  
 11 They must pay for their health services, they must clean  
 12 their own room, they must get up in the morning and exer-  
 13 cise. We have both men and women. We have all minority  
 14 groups. We have people from the middle class, from the  
 15 lower class, we have a variety of individuals from back-  
 16 grounds and educational attainments. People who have had  
 17 some college, people who can't read to the sixth grade  
 18 level.

19 The binding glue is a highly instilled sense of  
 20 esprit de corps, high staff ratios, and a clear mission,  
 21 which is to restore the ecological quality and maintain  
 22 it in California, fight forest fires, build trails, clear  
 23 clogged streams, and be available in times of disaster.  
 24 What is done here, for many of these individuals it is  
 25 the first time they've ever had to get up in the morning

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1 at a definite hour. It's the first time they've ever  
 2 been called to account for their individual behavior; the  
 3 first time that other people have ever depended on their  
 4 particular teamwork. It is a character building that  
 5 many people miss in our society today. I don't think this  
 6 has to be limited to an environmental program or a fire  
 7 fighting program. One could do the same thing in a  
 8 hospital corps. It could be done even in the Peace  
 9 Corps. It could be done in some urban corps. Its central  
 10 ingredients are, young people are taken out of their  
 11 homes and put in entirely different contexts. They have  
 12 a disciplined, rule-bound environment that at the same  
 13 time relates to them as an individual, inspires them,  
 14 expects far more of them than any school system under  
 15 our present cultural mores would ever be allowed to  
 16 demand.

17 And unless something like this is done, you can  
 18 put in all the prisons you want, and all these criminal  
 19 programs you want, and you're not going to be able to get  
 20 at the root cause, which is the lack of internalized  
 21 citizenship, which is what we're all seeking. So my  
 22 final point, and my strongest point, is that in all this  
 23 budget of some \$700 billion, and all the increases that  
 24 are going to defend us against various foreign enemies,  
 25 there ought to be several billion dollars available for

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1 a program of this kind of youth involvement. The military  
 2 can play it for some people, but not everybody is cut out  
 3 for that.

4 Now, we're a country of extreme individualism.  
 5 And I think a program where there are a variety of options  
 6 to young people 16, 17, 18, that that has the best hope of  
 7 reducing the crime rate, strengthening the capacity of  
 8 Americans, whether for peace or for defense. And that  
 9 will take money, and it will take billions of dollars, to  
 10 take care of these young people, \$14,000, \$15,000 a year.  
 11 We assert you get back \$1.20 for every dollar you put in.  
 12 These are not paper shufflers. They're not sitting in  
 13 some building in Washington or in Sacramento or Los  
 14 Angeles moving paper around. They are moving real things,  
 15 whether they're trees, or they're fighting fire, or water,  
 16 or sand or gravel, they're doing things. And they're  
 17 increasing the net wealth of the community in a tangible  
 18 way, and they're also redirecting their own habits.  
 19 This is old-fashioned habit formation.

20 I realize there is no great consensus right now  
 21 for a new program. But this will take money, just like  
 22 the military takes money. But this is a domestic defense  
 23 against a cancer that, if it is not dealt with, is going  
 24 to eat the heart of this society and destroy it with far  
 25 greater probability than the Russians or the Cubans or

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1 the Angolans or any other adversary against which we are  
2 now looking at a 21 percent increase in our military  
3 budget.

4 Thank you, and I'll be glad to answer any of  
5 your questions.

6 CHAIRMAN HARRIS: Thank you, Governor.

7 Judge Bell.

8 JUDGE BELL: Governor, I'm very interested in  
9 the California Conservation Corps. I assume you have to  
10 volunteer to join the Corps.

11 GOV. BROWN: You have to volunteer, and you're  
12 easily kicked out if you don't follow the rules.

13 JUDGE BELL: And how many people are in the  
14 Corps?

15 GOV. BROWN: About 2,000.

16 JUDGE BELL: 2,000. You've struck a friend  
17 here this morning on this concept, because I believe very  
18 strongly that to bring the crime rate down in this country,  
19 to cure the problems of the cities, we're going to have to  
20 a period of compulsory national service. You can be in  
21 the California Conservation Corps, you can work the hos-  
22 pitals, or you can be in the military, but it would make  
23 our country over if we could give these choices, but have  
24 every young person give something to their country. I  
25 believe it would have more to do with reducing the crime

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1 rate, among other things. Many of these people would  
2 benefit. They would become literate, if they're illiter-  
3 ate. A lot of the people in the Corps would help others,  
4 people who needed medical treatment would get it. There  
5 is going to be a bill introduced in the Senate at an  
6 early date on a national service concept. There's a lot  
7 of talk about it, as you know, and has been for some  
8 years. But I congratulate you on starting something here  
9 in California that is along that line. It's voluntary,  
10 but nevertheless it's an experiment.

11 Would you have any thoughts you'd like to share  
12 with us on national service?

13 GOV. BROWN: I would make two observations.  
14 Number one, to develop a corps, whether it be California  
15 Conservation Corps or civilian conservation corps or  
16 urban corps, takes time. And it can't be done overnight.  
17 We had difficult problems in starting the organization up.  
18 Anytime you take a group of people of mixed ethnic and  
19 economic backgrounds and you put them in a camp somewhere  
20 in the hills, you've got problems, unless you have a high  
21 staffing ratio, unless you develop an esprit de corps,  
22 and that doesn't happen by bureaucratic fiat. It takes  
23 tremendous leadership by the people involved.

24 So it has to be done gradually. This is not  
25 something that you can turn on in a year or two. This has

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1 got to be phased in over a longer period of time, care-  
 2 fully thought about, or else you're going to have problems  
 3 in the camps, you're going to get bad publicity, and  
 4 people are going to say, "Turn it off." That's what  
 5 happened in the job corps.

6 So that has to be very carefully thought out,  
 7 and these programs have to start out with the most advan-  
 8 tages first, trying to be somewhat selective in the people  
 9 that are put in. You can't just take anybody in the  
 10 beginning, because the organization is too fragile. As  
 11 the esprit de corps and the leadership develops, then the  
 12 base of those who can be taken can be expanded dramatic-  
 13 ally because there is a basic set of tradition and insti-  
 14 tutional knowledge that will be able to control the  
 15 exuberance of adolescent and post-adolescent emotion and  
 16 energy, which would overcome most bureaucracies, as it is  
 17 doing to most of our schools today.

18 The second point I want to make, with respect to  
 19 the extent of a service program, as we know, soldiers cost  
 20 \$15,000, \$16,000, \$17,000 a year, depending on how you  
 21 want to calculate. This isn't any different. It takes  
 22 the same amount of supervision, overhead and direction.  
 23 Therefore, if only \$1 million were involved in a corps of  
 24 this type, we're looking at an expenditure of anywhere  
 25 from \$14 to \$17 billion. We ought to take that into

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1 account. I personally think it's a good investment. But  
 2 as you expand this, those numbers get very large. I  
 3 think, if you ask me, it's probably the best expenditure  
 4 we can make, because this is the youth, this is the future,  
 5 and given all the other distortions in the economy that  
 6 the rising unemployment will stimulate, this is a control-  
 7 led expenditure that should not add to inflation. And if  
 8 it is financed by an appropriate revenue measure, it will  
 9 deal with the problem of rising unemployment, and youth  
 10 unemployment particularly, when these anti-inflation  
 11 efforts begin to crimp the economy, as most experts think  
 12 they will.

13 And I would say \$15 or \$20 billion in this line  
 14 is far better than the creation of money, than the infla-  
 15 tionary mechanisms that we put in place after the anti-  
 16 inflationary program begins to create too much negative  
 17 reaction within the country. So I think it's a very  
 18 positive effort. I think that the present Administration  
 19 can well embark upon this. I think there are examples in  
 20 other states. Whether or not it should be compulsory I'd  
 21 rather withhold a definitive comment at this time, other  
 22 than to say the funding of it may be its key impediment.  
 23 There are 4 million young people 18 years of age. If you  
 24 were to ask all of them to serve, you're looking at  
 25 4 million times \$15,000 to \$17,000 a piece. That is a

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1 large expenditure.

2 Personally, something at least half of that is  
3 probably very reasonable, when you think of all the ends  
4 we're going to, from the MX to the Trident to the space  
5 weapons that are going to be built. Those are all an  
6 attempt to defend society. And yet if we look at what is  
7 happening, in past cultures, societies generally collapse  
8 by a demoralization, by a lack of social cohesiveness  
9 whereby the basic values are internalized. And that's  
10 why I think this ought to be viewed as just as important  
11 as the military, because social stability has a higher  
12 priority, or at least as high a priority, as the defense  
13 against a foreign adversary.

14 And whatever the price, the price is very small  
15 to pay. Because if we get the demoralization as they had  
16 in Germany, if we get the rising unemployment and the  
17 chaos in the economy, we could be in for a major challenge  
18 to our political framework, and therefore something like  
19 this ought to be treated.

20 Now, given the fact that things like this don't  
21 happen overnight, and given the fact that the crime effort  
22 has been around for decades, it is very appropriate to  
23 start this at a relative modest level, and then begin the  
24 consideration of just how large this ought to be, and what  
25 this ought to be in our national way of life. I'm talking

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1 about a fundamental change in the way youths transition  
2 from childhood to adulthood. I'm looking at a rite of  
3 passage that becomes synonymous with American society.  
4 And it is that large, that important, and therefore the  
5 cost should not be an impediment if we realize that this  
6 lack of a rite of passage, this lack of adult supervision  
7 and this gap that has been created by the automobile, by  
8 the television, by the anonymity of urbanization, that is  
9 going to eat away our culture unless we can create some  
10 new institution to instill in youth the fundamental values  
11 and responsibilities of our culture.

12 And I think the CCC is a model of what could be  
13 done. It will be much more difficult at the federal level,  
14 because we're talking about a far-flung empire, harder to  
15 manage, and I've suggested in this proposal that it be  
16 managed by the states. And it will take a great politi-  
17 cal will for people to pay for it. Because there is  
18 nothing cheap about this, although actually it's not a  
19 spending program, it is an investment program, because of  
20 all the tremendous work.

21 Now, there are going to be obstacles about  
22 private enterprise, about labor unions, about this and  
23 that, Labor Department, who's in charge, the jurisdiction.  
24 I can think of 10 different reasons why this can't fly.  
25 But I do think it is necessary, and I think if people

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1 cared about it, from the President to the Congress to the  
2 governors, we could make this a reality, and I think we  
3 should make it a reality, and I intend to dedicate my  
4 life to seeing that at some point brought into the  
5 American society.

6 JUDGE BELL: Well, you'll find more and more  
7 people thinking this way. The problem in the past has  
8 been the cost, the fact that no one knows for sure what it  
9 would cost. But the fact is, I think it would cost very  
10 little in the long run. You need people in the military,  
11 so some people would volunteer for the military. You'd  
12 deduct that cost. And then you save money on crime and  
13 you save money on poverty. You get people where they can  
14 be employed. You break the so-called ghetto syndrome.  
15 Drug syndrome would be broken. It's all good, as I see it.

16 But at any rate, I want to ask you about two  
17 other things.

18 GOV. BROWN: I've got to throw out one more  
19 caveat, one more obstacle to this program, and that is  
20 the sense that the family is the one that is capable in  
21 all cases of instructing the young people. And while we  
22 all subscribe to that as an ideal, and maybe as a genera-  
23 lity, the fact of the matter is that in some families  
24 that isn't working. And therefore a substitute is  
25 required. And these base camps, as they are set out

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1 throughout the state, provide a very excellent substitute,  
2 because there is the adult figure, there are peers, there  
3 are rules, and there is accountability, plus there is  
4 positive expectation and esteem and care and concern.  
5 So it isn't just a policeman saying, "Don't." It is a set  
6 of rules, plus it is a group of human beings who care and  
7 who encourage, which basically substitutes for what should  
8 have been gotten in the home. But unfortunately, for a  
9 variety of reasons, they're not getting it.

10 And I would say one of the big cultural impedi-  
11 ments is saying the emperor doesn't have any clothes, in  
12 some instances. We've got to do something because the  
13 families aren't doing it, as judged by the performance in  
14 the school, or by deviant behavior, or by some other clear  
15 measure.

16 JUDGE BELL: Well, in addition to that there  
17 would be an opportunity to serve. And most young people I  
18 know want to do something for their country. The country  
19 doesn't make anything available for them to do. And this  
20 would be a great thing, I think, for our nation.

21 I want to ask you about the prison problem here.  
22 You have 26,500 people in prison now. The population has  
23 grown 50 percent in a certain period of time, according to  
24 your statement, and prison facilities have grown only 10  
25 percent. This is sort of a fact of the nation, in every

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1 state, almost. And these prisons cost a great deal. Do  
2 you have a prison building prison building program going  
3 on here in California now?

4 GOV. BROWN: We're expanding existing prisons,  
5 we're expanding facilities in a number of the older pri-  
6 sons, we have some sites for new prisons, and we have a  
7 building program that modestly will cost \$1 billion and  
8 could easily run \$2 billion. Now, I should explain one  
9 of the things that has happened in the past. It's kind of  
10 interesting because you don't hear about it, and people  
11 usually aren't too candid to talk about it. Under the  
12 indeterminate sentencing law, the state authorities have  
13 a valve that they can turn on or turn off. Back in 1970,  
14 the prisons were about where they are now. They were  
15 over capacity, there was double-celling, there was unrest,  
16 and there were lots of problems developing.

17 The Director of Corrections came to Gov. Reagan  
18 and said, "Do you want to spend the hundreds of millions  
19 of dollars --" I think it was \$800 million at that time  
20 "-- to expand the prisons?" And the decision ultimately  
21 came back that they didn't want to spend the money. So  
22 about 10,000 prisoners were released over a relatively  
23 short period of time.

24 Then I came into office. By that time the  
25 prisons had filled up again and were again reaching their

1 capacity. I had appointed that individual from Director  
2 of Corrections now to head of the Parole Board. He came  
3 in to explain to me a new program on sentencing, which I  
4 have to admit at the time I wasn't totally clear on, but  
5 the net result is that another 10,000 prisoners were  
6 released over a two-year period.

7 Now those numbers are building up again, but we  
8 have created a determinate sentence. There is no valve.  
9 The sentences are longer. The Parole Board does not have  
10 any discretion. And more prisons must be built. The  
11 traditional way this has been handled is by just letting  
12 people out by one way or another. And what is now happen-  
13 ing is, the system is impacted. And that impaction is  
14 going to relate to the jails. Because people are being  
15 released early from the jails.

16 Judges cannot sentence someone to a nonexistent  
17 cell. It's just that simple. And no matter how much you  
18 change the exclusionary rule, or how much you put on some  
19 judge that wants to be tough, when the probation report  
20 comes in and they say, "Here are your options", if there  
21 is no room in the reception center, let alone the  
22 ultimate place in the cell, they cannot send them to  
23 prison. It is just that simple.

24 And they won't exactly say that. They'll find  
25 lots of different ways. This will be dropped to a

1 misdemeanor, it will be into the county jail, it will be  
 2 probation with some jail time. And there is enough flexi-  
 3 bility in the system that people who should get 10 months  
 4 in jail will get five months, and those who should get  
 5 five months will get two, those who should get something  
 6 else in prison will get lowered. And the entire system of  
 7 criminal justice will be distorted because of the capa-  
 8 city factor. That is where we are today, and it's going  
 9 to become exacerbated if people don't put the money up.

10 JUDGE BELL: You have just described something  
 11 that is a national problem. This is something that is  
 12 true in many, many states, what you've just described.  
 13 Now, it seems to me we get down to how we're going to get  
 14 more prisons. You've got this sales tax program you are  
 15 sponsoring. Do you suppose the states would have any  
 16 interest in some matching funds program, if the Federal  
 17 Government put up part of the money? Do you think the  
 18 states would match?

19 GOV. BROWN: I'm sure that would make it more  
 20 attractive. I think that would make it very attractive,  
 21 and I believe there is a national interest in the fact  
 22 that so many of these criminals do move in interstate  
 23 commerce.

24 JUDGE BELL: Right.

25 GOV. BROWN: And they travel from one state to

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1 another.

2 JUDGE BELL: Now, there is some thought that  
 3 there ought to be regional prisons in the sparsely popu-  
 4 lated states. That's not a problem in California. You  
 5 wouldn't need a regional prison here. It's such a large  
 6 state --

7 GOV. BROWN: Well, I haven't found too many  
 8 neighborhoods that want a prison.

9 JUDGE BELL: There are not too many neighbor-  
 10 hoods that want them.

11 GOV. BROWN: They do not want them. There is  
 12 one out there near Palm Springs, out in the desert there,  
 13 where they'd like one. But other than that, I find a  
 14 great reluctance to site prisons. Now, I think that's  
 15 something that you might consider on this panel. The  
 16 regional prison could have economies of scale. The  
 17 question becomes, is it good to have a correctional faci-  
 18 lity next to the families? And the notion is, it's good  
 19 therapy, it's good to re-enter -- reintegrate people into  
 20 the fabric of the community.

21 The other side of the coin is, many of the  
 22 communities these people come out of aren't that great to  
 23 begin with, and spending some time in a more remote region  
 24 may not be so bad. So I believe that there should be some  
 25 careful testimony and analysis as to whether the proposition

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1 that prisons should be based near the families is the  
2 highest factor, or whether or not these remote sitings are  
3 not so bad.

4 We have a tradition in our society whereby we  
5 put insane asylums and prisons far, far from the madden-  
6 ing crowd. Now we have a new thing called community based  
7 programs. Now, I think you've got to look at that issue,  
8 and I think that there -- I don't think the answer is  
9 clear.

10 JUDGE BELL: Well, of course, that's apples and  
11 oranges, the community release program. But there is some  
12 thought that the Federal Government ought to just run  
13 prisons, and the federal prisons now take a substantial  
14 number of state prisoners. Some of the state prisons  
15 take federal, depending on what the need is. But the  
16 federal prisons could -- there could be a federal prison  
17 agency, and perhaps they could take over the prison func-  
18 tion. I don't know about that. But there is some thought  
19 along that line. But surely, as much land as the Federal  
20 Government owns, there would be places to build prisons.  
21 So I don't think that's a big problem. First, deciding  
22 you need prisons, as you've done, second, financing  
23 prisons is the problem.

24 GOV. BROWN: Also, if you could get the prison-  
25 ers to be working. What do they do when they're in prison?

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1 Now, just idleness --

2 JUDGE BELL: Make automobile tags and things  
3 like that.

4 GOV. BROWN: Or lifting weights and taking  
5 karate so when they get out the'll even be more dangerous.  
6 I would some working in camps would be a good idea.

7 JUDGE BELL: Right.

8 GOV. BROWN: These people should be working.  
9 There is no excuse for idleness. They should be in an  
10 environment where they can work on something. And the  
11 trouble is that camps close to cities are not acceptable.  
12 And so with the Federal Government and all their remote  
13 areas, that would be a real service the Federal Government  
14 could provide.

15 JUDGE BELL: Yes. Now, getting down to law  
16 enforcement, I want to ask you one question. That's about  
17 the wiretapping. I understand that under California law  
18 there cannot be a state wiretap. I don't know, there are  
19 probably other states like that.

20 GOV. BROWN: We don't have any state wiretapping.

21 JUDGE BELL: You don't?

22 GOV. BROWN: No. Not that I know of. I hope  
23 we don't. I sometimes wonder.

24 JUDGE BELL: Well, a lot of states do, and they  
25 have laws that permit it. There is a federal statute, as

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1 you know, that sets the guidelines and limits on how a  
2 state can engage in wiretapping. If a state does engage  
3 in wiretapping, it has to be reported to the Federal Court  
4 Administrative Office. And you can get a volume every  
5 year that tells you how many wiretaps there were in each  
6 state. I've seen it.

7 But given the fact that the Federal Government  
8 has gone that far, do you see any utility in crime fight-  
9 ing for the Federal Government just to preempt the wire-  
10 tapping field, and if any state wanted to get a wiretap,  
11 they'd just go to the Federal Court and get the Order,  
12 just as the federals do now, federal law enforcement.  
13 This would create some uniformity, is what I'm driving at.

14 GOV. BROWN: Well, I do believe that having  
15 every local official empowered to tap people's telephones  
16 creates a tremendous temptation. So to the extent that  
17 that's made uniform, it's put within the custody of a  
18 federal agency that is reviewable by Congress, that's  
19 better. My own sense is that there is such potential of  
20 abuse in this area that I would not want to see an  
21 expansion.

22 JUDGE BELL: I had to administer the federal  
23 wiretap program, so I know what the federals do. And it's  
24 very carefully managed. And nothing is done without a  
25 federal judge granting an order. That's what I was driving

1 at. Maybe we ought to have a -- we do need wiretaps in  
2 some types of situations. And it may be we ought to have  
3 some simple, uniform, safe system. And it seems to me  
4 it's quite unusual for some states to use that vehicle  
5 for law enforcement and some not to do it. And it's  
6 probably other states besides California.

7 GOV. BROWN: Well, I would not like to see the  
8 Federal Government empower a state to wiretap when it's  
9 against the laws in that state to engage in that activity.  
10 So if the thrust of your question is, should the Federal  
11 Government in effect create a statute that says any local  
12 law enforcement that wants to have a wiretap can just ask  
13 their local federal official and have that done, that  
14 would be a severe and historic intrusion into states'  
15 rights, particularly a state that has not, by its legisla-  
16 ture, voted to authorize eavesdropping.

17 JUDGE BELL: Well, there's already a negative  
18 intrusion. If California wanted to wiretap now, they  
19 couldn't do it except by the federal standard, so there is  
20 a negative intrusion now.

21 GOV. BROWN: Well, as I understood it, you were  
22 saying that even without a legislative vote by the state,  
23 you could envision some congressional enactment that  
24 would empower a state to do wiretapping. And as you know,  
25 we have different views within the local police, within

1 the Legislature, within the courts. And until the entire  
2 government authority of California has authorized wire-  
3 tapping, which I hope they don't do, then I don't think  
4 the Federal Government ought to come in the back door and  
5 offer a part of local government or of state government  
6 that option in violation of the policy as presently stated  
7 by the California Legislature.

8 JUDGE BELL: Well, that would be a matter of  
9 policy. I think the Congress would be empowered to do  
10 that, just as Congress could take over the habeas corpus  
11 problem and put it all in the state courts so you wouldn't  
12 have this ramble between state and federal courts, as we  
13 have now. But that is a matter of policy, and that's all  
14 I was asking about.

15 GOV. BROWN: I think it would be interesting  
16 for some analysis of to what the benefits of wiretapping  
17 has been; what has been obtained by it. The words  
18 "organized", "conspiracy", "foreign involvement", those  
19 are words that become rubrics that can be abused. And  
20 a number of citizens are concerned about that.

21 JUDGE BELL: Anyone who is caught by a wiretap  
22 of course feels badly. They had a saying in England that  
23 no one has great respect for the law who has felt the  
24 halter draw. That's the same theory.

25 GOV. BROWN: Well, I was talking to Sen. Ed

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1 Davis, who was the police chief of Los Angeles, and he  
2 expressed an opposition to empowering local police chiefs  
3 to wiretap, and felt that there had been abuses in the  
4 past.

5 JUDGE BELL: Oh, yes. Well, I would be very  
6 much opposed to having the local police chiefs in charge  
7 of it. To be court administered, is what I would favor,  
8 the federal system. It would have to be done by the  
9 courts. As you know, now, even in foreign intelligence,  
10 you have to get a federal court order before you wiretap.

11 GOV. BROWN: Until you build some prisons,  
12 though, empowering the system to incarcerate more people  
13 is counterproductive.

14 JUDGE BELL: I agree that building prisons is  
15 the basic thing, Governor.

16 CHAIRMAN HARRIS: Mr. Littlefield.

17 MR. LITTLEFIELD: Governor, one problem that  
18 everybody has is, suppose the Legislature tomorrow voted  
19 every dollar that you'd asked for to build prisons, it's  
20 going to be four or five years before that prison is built.  
21 Isn't that correct? Or a new prison.

22 GOV. BROWN: Not exactly, because we can expand.  
23 We can expand and make temporary quarters within the  
24 existing prisons.

25 MR. LITTLEFIELD: One of the suggestions that --

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1           GOV. BROWN: We have a phased program to take  
2 care of it. If we got started right away, we could handle  
3 the population.

4           MR. LITTLEFIELD: And how soon?

5           GOV. BROWN: By what we expect.

6           MR. LITTLEFIELD: We're double-celling now in  
7 a number of places, right?

8           GOV. BROWN: We're double-celling now, yes.

9           MR. LITTLEFIELD: One suggestion that's been  
10 made to us, Governor, is that perhaps the states could  
11 take over surplus federal installations and, rather than  
12 build a new prison, take over an existing federal instal-  
13 lation for minimum security prisoners. What do you think  
14 of that kind of a suggestion?

15           GOV. BROWN: Well, fine, if there are some  
16 available. But they're still going to cost money to refurb-  
17 ish, to build. We're talking about some rather maximum  
18 security prisons as well as some of the minimum.

19           MR. LITTLEFIELD: Don't you think it would be  
20 possible? Right now, I think in California not everybody  
21 in our maximum security prisons is a maximum security risk.  
22 We have check writers, auto thieves in Folsom --

23           GOV. BROWN: Not as many as you think.

24           MR. LITTLEFIELD: I know, but they are still,  
25 especially in --

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1           GOV. BROWN: The clientele is getting much  
2 rougher than it was in times past.

3           MR. LITTLEFIELD: There is no question about  
4 that, but we still have a number of areas where persons  
5 could be in minimum security places where they are not  
6 now. And what we'd like to do is to see that the maximum  
7 security facilities are for maximum security inmates, and  
8 if they're not, if we could put them somewhere else, that  
9 is what we would like to do. Incidentally, have you --

10           GOV. BROWN: And by the way, the ones we have  
11 now have been built in the last century, and some of them  
12 are just totally anachronistic. They're dangerous, they  
13 have dark corners in them. They're not really suitable  
14 to work. So if nothing else, a lot of those things ought  
15 to be torn down, and there ought to be prisons that are  
16 built so that they can be managed properly.

17           MR. LITTLEFIELD: Yes. Governor, is there any  
18 way that we can convince people -- everyone-says, "Yes,  
19 we should build more prisons, just as long as it's more  
20 than 100 miles from where I live." Is there any way that  
21 some public relations program could work and try to make  
22 people accept a prison within their --

23           GOV. BROWN: A prison siting authority could be  
24 established with representatives of local government and  
25 state government, and given the authority to make the

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1 final siting.

2 MR. LITTLEFIELD: You mentioned how they used to  
3 release inmates under the indeterminate sentence law. Do  
4 you think we might have to go back to something like that  
5 here in California and go back to the --

6 GOV. BROWN: Well, there is a serious risk that  
7 if more prisons are not built that at some point in the  
8 next few years that consideration will have to be given to  
9 releasing prisoners. And the reason is that federal  
10 courts will come and say that the conditions with the  
11 federal Constitution.

12 MR. LITTLEFIELD: Thank you.

13 CHAIRMAN HARRIS: Mr. Edwards.

14 MR. EDWARDS: Governor, you reference in your  
15 talk four exemplary programs which the State of  
16 California has adopted and funded that were using LEAA  
17 seed money. I'm particularly interested in how your  
18 Career Criminal Apprehension Program works. You refer-  
19 enced in your speech that the program provides increased  
20 funding to police and sheriff's departments so that  
21 personnel can be freed from routine police work and  
22 dedicated to identification and arrest of the most inten-  
23 sive criminals. Does that mean that you have a program  
24 in California which allows funding to local entities for  
25 additional police resource? Or is that -- how does the

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1 program actually work?

2 GOV. BROWN: Money is provided to local commu-  
3 nities for the specific purposes of the criminal apprehen-  
4 sion program, and then it is used as -- there are phases  
5 to it. Research is done on developing a capacity to  
6 identify certain methods of operation or certain patterns  
7 of crime, and then to develop the capacity to focus the  
8 police resources on apprehending those individuals.

9 Basically what it is is money to the local  
10 police to prioritize their own resources so that the most  
11 troublesome and serious offenders can be apprehended  
12 with the resources that they have. It's smarter manage-  
13 ment, as developed by these apprehension programs around  
14 the country, and then translated to the local community  
15 and paid for by state money.

16 MR. EDWARDS: So they actually establish the  
17 priorities and establish their own criteria as to how  
18 the moneys are used?

19 GOV. BROWN: The local police would do that,  
20 but it's within the larger criteria.

21 CHAIRMAN HARRIS: Chief Hart.

22 CHIEF HART: Governor, I'm very interested in  
23 your conservation program. It's kind of an old-fashioned  
24 thing that happened prior to World War II. It seemed that  
25 the youth with nothing to do, and those that committed

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1 misdemeanors, made up that corps. It was more than a  
2 voluntary force. And of course I'm interested, as a law  
3 enforcement official, and also a program that we don't  
4 have to spend a lot of money, number one, the voluntary,  
5 I don't think, is going far enough. You have 2,000  
6 volunteers. Would you consider using that as an alterna-  
7 tive to crime for youth?

8 GOV. BROWN: Well, the nature of our program is  
9 that we try to get people who have not been involved in  
10 crime. We're trying to get people before that happens,  
11 and to maintain the integrity of the program, there is a  
12 certain standard and a certain high quality. So --

13 CHIEF HART: Well, that's like saying, if you  
14 live in the ghetto you're going to get some kind of a  
15 record because you're going to be stopped by the police.

16 GOV. BROWN: No, we wouldn't have that. What  
17 I would like to see -- the reason we have 2,000 is, it's  
18 hard enough to get state government to spend the \$25  
19 million for a residential program. I don't believe there  
20 is any other state that is spending that kind of money to  
21 just have people go work in streams and fight fires and  
22 do things like this. You know, people have the Highway  
23 Patrol or State Police or fire fighters. But to take  
24 young people and create an entirely new corps devoted to  
25 public service, that has only been done during the time

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1 of Franklin Roosevelt.

2 Now, you had a Job Corps, but that was really a  
3 very temporary kind of thing. And this is much more  
4 encompassing and a much higher quality program. I  
5 believe that the program should dramatically expand, and  
6 it should cover a wide spectrum of young people. We have  
7 a very high representation among minorities. I believe  
8 we have minority somewhere between 30 and 40 percent.  
9 We've got about 35 percent women.

10 I think a very large percentage cannot read to  
11 a sixth grade level. So we're drawing in disadvantaged  
12 people. And they're going out of there very advantaged,  
13 probably more advantaged than most of the high schools  
14 could assist them with.

15 So I think it's an excellent program, but it's  
16 going to cost money. You want something good like this,  
17 you have to pay for it. We don't want a second class  
18 Army. I don't think we should have a second class public  
19 service corps. And we ought to draw people from the low-  
20 est economic ladders and from some of the most difficult  
21 neighborhoods. But we also ought to draw people from  
22 some of the best neighborhoods. And there has to be an  
23 esprit de corps. That to me is the essential thing, that  
24 when you come into that, you learn what the corps has to  
25 teach you, not what you want to bring in from the street.

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1 And that's the restructuring, or in old-fashioned terms,  
2 that's the character formation, the habit formation. And  
3 that can only happen if the context is controlled and  
4 very tightly monitored and people follow a prescribed  
5 program. I think that is the critical variable.

6 And that's expensive. And that's not what we  
7 have today. You don't have programs where you tell  
8 people to get up at 5:30 in the morning and start doing  
9 calisthenics. I don't know too many like that. Maybe  
10 the Army does that, and even they, I hear, get up rather  
11 late in the day in recent times.

12 And I think if people aren't on time they are  
13 punished, and they're docked. And they're charged for  
14 their medical. This is not a freeby. There's no free  
15 medical checkup. You pay. You want to go see a doctor  
16 because your foot hurts? Pay him. And you pay him out  
17 of a minimum wage. But at the end, you put it all in  
18 the bank, and you may save only a couple hundred dollars  
19 a month. That's still a lot of money for most people to  
20 be able to have \$1,000, or \$1,500, at the end of a period.  
21 So it's more than they're ever going to save.

22 So I think it really gets to the problem. But  
23 it's got to be much bigger. And it's got to encompass  
24 perhaps some of the people you had in mind.

25 CHIEF HART: Yes, exactly. Probably the only

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1 reason it didn't continue beyond Roosevelt, because we  
2 got World War II. So the young men that were joining  
3 the CCC camps joined the Army or Navy or Marines to fight  
4 the war. But our values got turned around. We lack  
5 discipline. People don't get up early in the morning.  
6 And we have this first, second and third generation of  
7 welfare people. Those are the kind of people I'm talking  
8 about, young men and women that you described prior, can,  
9 instead of just getting welfare -- they'd like to have  
10 some values, if they could be put into this Conservation  
11 Corps. We have 50 states. Not everybody has huge for-  
12 ests like California, but there are other constructive  
13 things that they could do.

14 So it's a two-pronged thing, as I see it, an  
15 alternative to the welfare system, and an alternative to  
16 crime, and also rolled into it is discipline, and that  
17 what we've got to get back to, I think.

18 GOV. BROWN: I think this is one of the issues  
19 in even the CCC. Some people always want an urban com-  
20 ponent. We do have a couple of urban camps. But I feel  
21 very strongly people have to be put in a totally new  
22 environment. And that has to be a world all its own. And  
23 that to me is the real value. Because someone who has  
24 never had any responsibility, if they're given a power  
25 saw and taught how to chop a tree down, and somebody else

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1 is depending on them, and they can cut their finger off  
2 if they don't do it right, that's a certain reality exper-  
3 ience that, I think people used to say, that makes a man  
4 out of you.

5 And there are risks. In fact, some of them  
6 went across a lake and didn't come back. I think that is  
7 part of the -- that happens. But I think that's good.

8 There's another program in Idaho called Outward  
9 Bound, where they take these young people and they climb  
10 up through the wilderness. And not all of them make it.  
11 And I think you have to bring back a certain component  
12 of risk and mutual dependence, so that different people  
13 in the organization learn to depend on other people. And  
14 then they get a sense of their own importance as an indi-  
15 vidual, because other individuals need what they can do  
16 in that particular situation. And that's a very important  
17 learning situation.

18 So I think it does have a real substitute factor  
19 for welfare. And since some people are collecting welfare  
20 grants based on people who are 16 or 17 years of age, if  
21 those people are then taken out and put into one of these  
22 programs, then obviously that grant would be reduced, and  
23 the money could be transferred into an effort like this.  
24 Plus, I think the health is generally improved, because  
25 there's preventative health, and people learn dietary

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1 information and they learn about fitness and they learn  
2 about blood pressure and hypertension and how to take  
3 care of themselves. And all of that then produces a solid  
4 citizen.

5 The craziest thing in the world is, we don't pay  
6 enough attention to how we're producing citizens. And  
7 that is more important than some complicated missile sys-  
8 tem that most of the people in the Army can't figure out  
9 how to use anyway. So I really think this is a simpler  
10 program, but it's expensive, and it tends to go somewhat  
11 counter to the cultural and sociological patterns that  
12 prevail today.

13 CHIEF HART: I agree. And I get back to the  
14 first, second and third generation welfare recipients.  
15 They don't know anything else, and it seems to me that  
16 this would be an organization for them to join, aside  
17 from the youth who get into trouble on the periphery. And  
18 I'm not talking about hard-core criminals. We know they  
19 should be imprisoned. But there are some on the periphery  
20 that if they have something else to do as an alternative  
21 to robbing and breaking in, and some pride in self, it  
22 would seem to me that would be a good program. And also  
23 it would take care of some of the institutionalized  
24 welfare people who would like to get out but don't know  
25 how.

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1           GOV. BROWN: Well, I agree with you, and I  
 2 think there is a need for, among young people, for certain  
 3 exhibitionism, for risk-taking, for competition, for under-  
 4 going certain dangers. And in all of that, we find some  
 5 of the reasons for crime. And in a properly structured  
 6 program as I'm mentioning, there can be an outlet for  
 7 this tremendous youthful energy. An outlet for competi-  
 8 tive desires and an outlet for a desire to take risks,  
 9 even to risk their lives. There's no reason why young  
 10 people shouldn't have that. Every other society from time  
 11 immemorial had that among young people. We now shelter  
 12 everybody so much that perhaps some feel that crime is  
 13 an outlet, and more exciting and not as prosaic as sitting  
 14 in the classroom learning about George Washington. Maybe  
 15 for those kinds of people they ought to be hanging from  
 16 a mountaintop, trying to do something, or building a  
 17 building, or doing something that has an element of skill,  
 18 danger and satisfaction after they get through it.

19           CHIEF HART: Thank you very much.

20           CHAIRMAN HARRIS: Mr. Armstrong.

21           MR. ARMSTRONG: Gov. Brown, one of the purposes  
 22 of these hearings is to determine the federal role in its  
 23 assistance to states in the law enforcement effort. We  
 24 have heard in previous testimony that many states, such as  
 25 mine and Kentucky, and I'm sure in California, are having

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1 a problem of domestic grown marijuana. Do you have a  
 2 program that involves the DEA or the Federal Government  
 3 in assisting in the eradication of that crop that is being  
 4 illegally grown?

5           GOV. BROWN: I think the Attorney General, or  
 6 former Attorney General, on my right, can probably speak  
 7 to that issue. But we do have programs that are under  
 8 the Department of Justice, and the Attorney General takes  
 9 action, and I believe has some aerial raids in northern  
 10 California, and they fly over and they go and try to  
 11 confiscate it.

12           MR. ARMSTRONG: Do you see that as a problem in  
 13 California?

14           GOV. BROWN: I think it's a problem in some  
 15 areas. In some areas there is activity that not only lends  
 16 itself to the action itself but then breeds related  
 17 criminal activity and violence and other things that I  
 18 think are very serious.

19           MR. ARMSTRONG: Do you think there is need for  
 20 stronger federal involvement, or federal interdiction to  
 21 eradicate the problem?

22           GOV. BROWN: I don't think within the confines  
 23 of the state, I don't think there is a need. At the  
 24 border, or in something that involves interstate problems,  
 25 I think that's the traditional jurisdiction. But I'm very

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1 wary of the creation of a federal police force. And I  
 2 don't care what it is, I think this society is too fragile,  
 3 that we should give up the security of having a diversi-  
 4 fied local police force. And certainly marijuana should  
 5 not be the justification for expanding the police powers  
 6 of the central state.

7 I don't think there are too many reasons why  
 8 we ought to do that.

9 MR. ARMSTRONG: Presently pending in Congress  
 10 are several measures for gun control. I'm not familiar  
 11 with any gun control statutes that you may have in  
 12 California. Are you aware of the legislation that's  
 13 pending in Congress now to deal with the specific issue  
 14 of gun control in America?

15 GOV. BROWN: Well, if you'd like to ask me to  
 16 comment on a particular bill, I'd be glad to do it, if I  
 17 can.

18 MR. ARMSTRONG: Let me reverse that then. In  
 19 California, what measures have you taken to control the  
 20 illegal sale of guns and to control the arming of  
 21 Californians and the use of guns in criminal acts?

22 GOV. BROWN: Well, first of all, I signed a  
 23 "Use a gun, go to prison" law in 1975 that made it a  
 24 mandatory prison sentence for the use of a gun in the  
 25 commission of a crime. That was the first time we'd had

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1 a mandatory prison sentence in several decades.

2 Secondly, I signed a bill requiring a 15-day  
 3 waiting period prior to the time when someone could  
 4 actually obtain a gun. More recently, I have proposed  
 5 that handgun possession be made illegal by anyone who has  
 6 been convicted of a violent misdemeanor or a violent  
 7 juvenile crime. Today it is illegal for a felon to pos-  
 8 sess a gun, a handgun. I would like to add to that list  
 9 violent misdemeanants and violent juveniles, who are  
 10 presently excluded.

11 And I would like to make that a one-year manda-  
 12 tory prison sentence for anyone in those two categories  
 13 who is found to be in possession of a concealable weapon,  
 14 concealable handgun.

15 MR. ARMSTRONG: One final question. Totally  
 16 aside from the federal role of assisting states, Chief  
 17 Justice Burger has spoken to the ABA and has spoken more  
 18 recently before George Washington University. He's  
 19 talked about the need for a finality of judgment and  
 20 finality of bringing to close a case that in our system of  
 21 jurisprudence in America seems to go on perpetually. One  
 22 of the critics of our system, and the reason that many  
 23 people think we have a crime problem, is that our judges  
 24 have been far too lenient.

25 And in this area, I notice that you've already

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1 addressed this question of what was once considered the  
 2 leniency of some judges. You've shown an increase in the  
 3 past few years of 100 percent commitment to penitentiaries.  
 4 Do you think governors throughout the United States  
 5 ought to develop some kind of criteria that would truly  
 6 reflect the qualifications of a judge to be able to bring  
 7 about a finality of judgment and have the competency to  
 8 serve at the highest levels of state court? Should there  
 9 be some kind of announced selection criteria?

10 GOV. BROWN: I would prefer to leave that within  
 11 the discretion of the Chief Executive. The criteria that  
 12 are developed by bar associations tend to reflect a more  
 13 limited perspective on the community, and judges have a  
 14 wide policy-making function, at least when it reaches the  
 15 Supreme Court. And our tradition has been the appointment  
 16 by a Chief Executive. And I don't find any problem  
 17 with that.

18 There is bar politics, as well as normal garden  
 19 variety political considerations, and I think in  
 20 California it has worked well. I can't say how it has  
 21 worked in New York or Chicago or New Jersey or other  
 22 states. But in general we've had a very solid tradition  
 23 in our state courts. And what we do is submit the names  
 24 to review by the bar. And the bar rates people. And  
 25 those they feel are unqualified, they say so. And it is

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1 not generally done that a governor would appoint someone  
 2 who is not qualified.

3 In addition to that, as far as leniency, I don't  
 4 believe there is any more room within the prisons for any  
 5 toughening policy, assuming that one would be needed. And  
 6 I've tried to suggest and demonstrate that the judges have  
 7 been getting much tougher. The laws have been getting  
 8 tougher. We've had an explosion of sentence-lengthening  
 9 bills and mandatory prison sentences. Since I've been  
 10 Governor I've signed -- we didn't have mandatory prison  
 11 sentences before I became Governor.

12 Then we got one on using a gun, then on assault-  
 13 ing the elderly, then one for rape, then one for first  
 14 degree burglary, then one for someone committing a crime  
 15 while on parole. And there are many more that are still  
 16 being proposed. So the laws are toughening up. Plus, the  
 17 citizenry is concerned. You have groups that are watching  
 18 judges. We have many judges that have been challenged.  
 19 Because judges in this state have to run for election.

20 I would say the heat is on. As far as finality  
 21 of judgment, you're getting to a more difficult area.  
 22 Finality is not a characteristic of our particular society,  
 23 if you notice, in many fields. For example -- you're  
 24 speaking of criminal law -- I would cite the medical  
 25 field, the educational field, the regulatory field. The

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1 development of the capacity to develop information has  
 2 prolonged the decision-making process. When you go see  
 3 your doctor today, his capacity for biological data and  
 4 inquiry has expanded tenfold within this decade. And  
 5 therefore there are continuing tests, there is continuing  
 6 questioning. People talk about getting second opinions.  
 7 We have in our workmen's compensation laws even third  
 8 opinions. When we go to the regulatory area, we have  
 9 decisions by one level, then second levels, third levels.  
 10 Then they go to the courts.

11 And there's a continuing review in that fashion,  
 12 and then there are various kinds of rule-making attacks  
 13 as well as attacks on a particular ruling or judicial  
 14 proceeding. So then you get to the criminal law, and  
 15 there is a lack of finality, which is not good. But I  
 16 just try to suggest to you that we live in a society  
 17 right now that is information bound and is proliferating  
 18 the decision-making process in every field, from medical  
 19 to legal to educational to government, to regulatory, and  
 20 even within the government field itself, there is a con-  
 21 tinuing retrying of issues. The Energy Department has  
 22 changed its mind several times on natural gas. I could  
 23 cite any number of examples.

24 So we get down to the issue of crime. Is some-  
 25 one guilty? Have the rules all been followed? And you go

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1 right up the scale. I think we ought to work toward  
 2 finality of judgments. But just speaking, if I may, as  
 3 someone giving you my view after having looked at it for  
 4 10 years, I think finality of judgments is easier to  
 5 state than to create. And even though you may wish to  
 6 change the federal habeas corpus rules, you may try to  
 7 change some of the evidentiary rules, that if there is a  
 8 general unease in the society about these adjudications,  
 9 that the astute lawyer and the scrupulous judge will find  
 10 a way to complexify this process, as they have up till  
 11 now, and it's a process that has occurred under Republi-  
 12 cans and Democrats, under conservatives and liberals.  
 13 It's a product of a certain pattern of thinking and  
 14 living. And certainly I commend you ways of strengthen-  
 15 ing the process so there is finality, because we're  
 16 spending an awful lot of time just retrying the case  
 17 issue.

18 But I would caution you to think it through, so  
 19 that in fact you can make some step forward.

20 MR. ARMSTRONG: Thank you, Governor.

21 CHAIRMAN HARRIS: Mr. Carrington.

22 MR. CARRINGTON: I have no questions of Gov.

23 Brown.

24 CHAIRMAN HARRIS: Governor, thank you very much  
 25 for being with us today. We appreciate your testimony.

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1 Excuse me. I think Judge Bell has one more.

2 JUDGE BELL: One last question on the waiting  
3 period before one may purchase a gun. What guns are  
4 included?

5 GOV. BROWN: Handguns.

6 JUDGE BELL: Just handguns?

7 GOV. BROWN: But there is one other catch that  
8 I should bring to your attention. That is handguns sold  
9 through a store, and so it doesn't cover resale..

10 JUDGE BELL: I see. And does the law provide  
11 that someone is to be notified during that period?

12 GOV. BROWN: Yes, notified, and I'd like to see  
13 that law strengthened so that those forms can be examined  
14 in a more expeditious manner.

15 JUDGE BELL: Who do you notify, local police?

16 GOV. BROWN: Local police, and then there should  
17 be a more uniform registry of this.

18 JUDGE BELL: I don't suppose you try to maintain  
19 a registration roll of the numbers, or do you, numbers of  
20 the weapons?

21 GOV. BROWN: I couldn't tell you what they are,  
22 offhand. My hunch is, there are a large number in this  
23 state.

24 JUDGE BELL: I mean the number on the weapon.  
25 The serial number. I'm thinking along the lines that we

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1 need a national registration in a sense that we keep  
2 numbers, not that everyone has to go and register the gun.  
3 You know, when we put the Fingerprint Bureau in the FBI,  
4 we didn't require every American to show up and be finger-  
5 printed. We just did it gradually. Now we have many  
6 millions of fingerprints on file. And if we would start  
7 keeping the numbers of guns that are sold, just the  
8 serial numbers, it wouldn't be many years before we'd have  
9 a lot of numbers, and then it would help law enforcement.  
10 But have you tried that in California?

11 GOV. BROWN: Well, those numbers are kept some-  
12 where, and perhaps Mr. Younger could enlighten you as to  
13 exactly where they're kept.

14 JUDGE BELL: I don't suppose it would be any  
15 good just to keep them in one state anyway. It would  
16 need to be a national thing if we are going to do it at  
17 all. Thank you.

18 GOV. BROWN: Thank you.

19 CHAIRMAN HARRIS: Governor, thank you very much.  
20 Our next witness is the Honorable Tom Bradley,  
21 Mayor of the City of Los Angeles.

22 PRESENTATION BY:

23 TOM BRADLEY, CITY OF LOS ANGELES.

24 CHAIRMAN HARRIS: Mayor Bradley, welcome. Thank  
25 you for appearing today, and we look forward to hearing

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1 your remarks.

2 MAYOR BRADLEY: Mr. Chairman and members of the  
3 Task Force, thank you for the opportunity to offer some  
4 testimony on this very important issue of how the  
5 Federal Government can assist with the problem of violent  
6 crime in this community and other cities across the  
7 country. I compliment the Attorney General for the  
8 appointment of this Task Force, and I commend you for  
9 your efforts. I know that you're traveling a road that  
10 has been trod by at least three presidential commissions  
11 in the past. I recognize that there are some things that  
12 you're going to cover once again. I believe that the  
13 level of violence, the dimensions of violent crime in this  
14 country have caused all of us to have some additional  
15 concern about its cause and, what can we do to control it?

16 And so I think it is vital. I think it's very  
17 important that this Task Force hear from local officials,  
18 that they examine very carefully the implications of  
19 violent crime.

20 In Los Angeles, for example, I think perhaps  
21 the most dramatic evidence of this kind of violence  
22 occurred the tail end of last year when, in one of our  
23 restaurants, several suspects came in, held up the Big  
24 Boy Restaurant, took all of the customers and the employ-  
25 ees into the back room, made them lie on the floor, and

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1 without provocation, gunned them down. The same kind of  
2 thing is happening in a frightening degree, in far too  
3 many cases. Almost every night you're hearing of cases  
4 of someone entering a home, holding up the occupants, and  
5 killing one or more of them. It happened two nights ago  
6 in one of our communities, with an elderly couple. A  
7 man apparently on the onramp to the freeway just last  
8 night shot through his windshield, killed. Someone driv-  
9 ing down the street in a residential neighborhood, shot  
10 and killed. No provocation, no rationale for it.

11 And the level of this kind of unexplainable  
12 violence is the thing that causes us the greatest concern.  
13 I know it is the concern of this panel. There are not  
14 enough answers. And I would suggest that one of the  
15 things that might be recommended by this Task Force is to  
16 centralize, one, the kind of inquiry, the kind of research,  
17 the kind of search for answers as to why this increase in  
18 unexplainable violence in connection with criminal acti-  
19 vity in our country, and then make that information  
20 available to all law enforcement agencies, all cities  
21 across this country.

22 It is difficult, expensive, and I think imprac-  
23 tical, for city after city to do this. Last November,  
24 I called together a panel of expert criminologists,  
25 psychologists, people involved in law enforcement, to try

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1 to get some of these same answers. And despite their  
2 best efforts, and we had a relatively limited time frame,  
3 they offered some ideas, but I think that the answers  
4 were not definitive enough, not clear enough, not precise  
5 enough, as to these causes. And I think it would be  
6 helpful if that kind of research could be done and then  
7 made available to all of us.

8 I think that there is a need for a central  
9 information bank that could collect information on violent  
10 crime and criminals, and then to disseminate that infor-  
11 mation to cities across the country. That is done, to  
12 some degree, but not sufficiently well, I think.

13 I've heard comments about a number of things  
14 that relate to causes of crime, and I'm not going to try  
15 to get into all of those. But I do want to touch upon  
16 one critical element that I think is of concern and needs  
17 to be addressed, and I think it's perhaps the most approp-  
18 riate place where the Federal Government can be of assis-  
19 tance to us here at the local level. I'm talking about  
20 narcotics and drugs.

21 Almost every law enforcement official will tell  
22 you the connection, the direct or indirect relationship  
23 between narcotics and drugs, and crime in their community.  
24 And if we examine that connection, it seems to me that one  
25 of the ways in which you can be most helpful at the

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1 federal level is not by reduction in the budget of the  
2 Drug Enforcement Administration but an increase in the  
3 resources for that agency, giving them the capability to  
4 further assist local law enforcement agencies. And let  
5 me just say categorically that the federal law enforce-  
6 ment agencies do an excellent job of cooperating with,  
7 working with our local law enforcement agencies. And  
8 it's simply a question of, how do we expand that capa-  
9 bility? We're reaching the point now where my own police  
10 department is asking for the purchase of an additional  
11 fixed-wing airplane. I don't want to have to develop a  
12 local Los Angeles Air Force. There is a need for a fixed-  
13 wing craft, and it seems to me that ought to be central-  
14 ized or ought to be at the federal level, instead of  
15 having every local law enforcement agency look to its own  
16 resources to get these kinds of planes and to engage in  
17 surveillance that requires that kind of long-range air  
18 surveillance.

19 I think that if we could get greater assistance  
20 in preventing the intrusion into this country of that  
21 contraband, drugs and narcotics, it would be the most help-  
22 ful thing that could be done by the Federal Government.  
23 I recognize that it's difficult for these agencies, with  
24 the limited resources that they have, and with the tremen-  
25 dous range of our borders that make it possible for this

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1 contraband to enter and not be interdicted by local law  
2 enforcement agencies, but if something more could be done  
3 to stop this kind of contraband at its source, in the  
4 foreign countries where it originates, either through  
5 diplomatic means or economic pressures or through some  
6 kind of international agreement, this would be the most  
7 effective thing that you can do to lower the level of  
8 the incidence of narcotics and drugs in every city in this  
9 country. Because it is a major source of criminal acti-  
10 vity.

11 Some reference was made to marijuana fields  
12 here in California. Let me tell you, we are the number  
13 one agricultural state in the Union. Largest industry.  
14 And someone told me the other day that the greatest cash  
15 crop in California is marijuana. I would be prepared to  
16 have help from the federal agencies and with the local  
17 law enforcement agencies in controlling and destroying  
18 any of those fields. Because in every way that we can  
19 cut down on the supply, the source, the amount of any form  
20 of drugs or narcotics, I think we will diminish the kind  
21 of crime that we have in our communities.

22 These are the essential points that I wanted to  
23 get across to you. There are a host of other things that  
24 could be said. I know you're going to hear some of them  
25 from other witnesses, and I don't want to try to duplicate

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1 what they're going to say. But these are the matters of  
2 greatest concern to me, and I would hope that in your  
3 recommendations you can help us get that additional  
4 effective action.

5 CHAIRMAN HARRIS: Thank you, Mayor Bradley.  
6 Do you have some time for questions?

7 MAYOR BRADLEY: Surely.

8 CHAIRMAN HARRIS: Judge Bell.

9 JUDGE BELL: I agree with what you said. Mr.  
10 Mayor, I'd like to ask you about one thing which is purely  
11 a municipal problem, I suppose, and that is the police  
12 capacity, number of police, and whether they have the  
13 tools they need. We are running across a phenomenon, I  
14 suppose you would say, in the nation. Nearly all large  
15 cities have smaller police departments now than they did  
16 five years ago. I don't know if that's caused by lack  
17 of funds or some perception that we don't need as many  
18 policemen because they're more efficient. We've got some-  
19 thing -- substitutes for police. Could you comment on  
20 that? And I hasten to say, I don't know what the situa-  
21 tion is in Los Angeles.

22 MAYOR BRADLEY: Judge Bell, your comment  
23 couldn't have been more timely. This very day people in  
24 Los Angeles are voting on an issue that would permit us  
25 to hire what we call 8500 policemen, an additional 1,354

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1 law enforcement officers. In all candor, we're not very  
 2 optimistic about the passage of that assessment because it  
 3 takes a two-thirds vote. It's going to be difficult to  
 4 get it. We have a smaller number of law enforcement  
 5 officers in our department today than we had five years  
 6 ago, not because there is inadequate money for it. We  
 7 have the authority and the revenue to hire 7,146 officers.  
 8 For the last few years we have been running short. In  
 9 fact, we were 550 short of our authorized strength. And  
 10 we put on a vigorous campaign starting the beginning of  
 11 this year. We've had great support from the media and  
 12 from the business community. And we've begun to make  
 13 some dent in that kind of problem.

14 We discovered that we're not the only law  
 15 enforcement agency having trouble recruiting additional  
 16 personnel. Our own Los Angeles County Sheriff's  
 17 Department was running similar shortage of about 500  
 18 people. We descended on Detroit when they had to lay off,  
 19 I guess about 1,100 police personnel. We thought, here's  
 20 a good pool of candidates. And we sent a team there to  
 21 try to recruit. We didn't do very well. We were compet-  
 22 ing with other cities across the country.

23 Law enforcement today is not as popular a job  
 24 as it once was when I was a police officer. It is a  
 25 tougher job today than it was when I was a police officer.

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1 And people who have the kind of qualifications simply are  
 2 looking for other jobs, and they're getting them. And  
 3 so we're competing with many job opportunities now, and  
 4 it's a lot tougher to attract the people to law enforce-  
 5 ment. We have to do a better job of telling them what a  
 6 great job, what a great career it is. I think it is.  
 7 And then to use the recruiting devices that we can to  
 8 attract them to our departments.

9 JUDGE BELL: I take it then you are short in  
 10 the number of police officers who are now authorized?

11 MAYOR BRADLEY: That's correct.

12 JUDGE BELL: You attribute that to a recruiting  
 13 problem?

14 MAYOR BRADLEY: Yes, sir.

15 JUDGE BELL: And then in addition to that you're  
 16 trying to get some more authorization, some additional  
 17 authorizations?

18 MAYOR BRADLEY: Yes. We think that we'll fill  
 19 our vacancies by the end of this year. We've had suffi-  
 20 cient success in our recruiting efforts this year that  
 21 we think we'll fill those 500 vacancies that we had.

22 JUDGE BELL: This national recruiting is some-  
 23 thing I'm somewhat familiar with. Houston came into  
 24 Atlanta on one weekend and hired 150 Atlanta policemen,  
 25 two or three years ago, which resulted in Atlanta raising

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1 its police pay. All right, thank you.

2 CHAIRMAN HARRIS: Mr. Littlefield.

3 MR. LITTLEFIELD: Mr. Mayor, is there any truth  
4 in the rumor that the Los Angeles Police Department is  
5 recruiting deputy sheriffs from the sheriff?

6 MAYOR BRADLEY: Yes. We're competing with  
7 everybody. And any qualified candidate, from wherever,  
8 we'll seek them. In fact, we got an offer of support  
9 from the business community. And one of the things we  
10 asked them was to search in your own companies for people  
11 who would like to be career law enforcement officers.  
12 And they were willing to provide inducements, to help,  
13 even though it would mean diminishing their own employee  
14 force.

15 MR. LITTLEFIELD: Another thing, Mayor. Do you  
16 think that the cooperation between the federal and the  
17 local law enforcement agencies is better than when you  
18 were a policeman?

19 MAYOR BRADLEY: I think it is. I can recall  
20 there were times when there was suspicion among the  
21 agencies. There wasn't the kind of trust that exists  
22 today. And I think over the years we've seen a growing  
23 degree of trust and cooperation. And I'm very proud of  
24 what we see here in this community today.

25 MR. LITTLEFIELD: We've heard, Mayor, and I'm

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1 sure you'd agree, that the involvement of the community is  
2 extremely important in this crime problem, that it's not  
3 just the policemen's or the prosecutor's job, but it's  
4 everybody's job. You're doing some things in Los Angeles,  
5 certainly, so far as getting the community involved,  
6 aren't you?

7 MAYOR BRADLEY: Yes, we are, everything from  
8 recruiting people to serve as volunteers, manning our  
9 desks, helping with paper work, relieving officers of  
10 the kinds of jobs that take their time. We have police  
11 reserves who ride radio cars, who supplement the existing  
12 law enforcement officers by doing the same thing the  
13 police do, for literally no pay. We have people who have  
14 come forward to sit on top of buildings in a shopping  
15 center and serve as look-outs with a two-way radio, where  
16 they can alert the police on the ground when they see  
17 some suspicious activity on the ground, in the parking  
18 lot. Police can then respond and take care of the problem.

19 We've had some communities where people have  
20 organized a private patrol. They ride around in their  
21 own cars with two-way radios, where they can directly  
22 report to the police division in that area, and get a  
23 police response to the scene when they see something that  
24 calls for it. They're not permitted to arrest, they're  
25 not permitted to stop and question anybody. We don't want

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1 them playing policemen or being vigilantes, simply to be  
2 extra eyes and ears for the department. That is working,  
3 and I think that we're going to see an expansion of that  
4 kind of community support.

5 We believe that in addition to everything we  
6 do in providing support for law enforcement, the most  
7 critical area is community involvement. We have programs  
8 of Neighborhood Watch, Basic Car Plan, an idea which  
9 fully involves the community in working with the police.  
10 That has been effective. We simply have not been able  
11 to expand as much as we would like, and we're going to  
12 have to do more.

13 MR. LITTLEFIELD: Thank you, Mayor.

14 CHAIRMAN HARRIS: Mr. Edwards.

15 MR. EDWARDS: Mayor Bradley, you referenced a  
16 need for an expanded information sharing capability. Do  
17 you have any specific areas that you would like to elabo-  
18 rate on in terms of that expanded capability? We have  
19 programs in effect now that you referenced. But do you  
20 have any particulars you'd like to discuss?

21 MAYOR BRADLEY: I didn't have any particular  
22 item in mind. I was thinking of the whole range of things  
23 where sharing of information, programs that work in one  
24 area that might work in others, a sharing of information  
25 about criminal activity that could be helpful, as you

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1 well know. Criminals don't respect any jurisdictional  
2 boundary lines, whether they're city or state. They  
3 cover the whole range of this nation. And any informa-  
4 tion which can be shared that would be helpful in that  
5 kind of detection and apprehension I think would be  
6 beneficial.

7 MR. EDWARDS: We're seeing more and more a  
8 tendency towards the information sharing in the areas  
9 you're referring to, specifically drug types of intelli-  
10 gence, this type of thing. What's your feelings as to  
11 why this has evolved in recent years? You're familiar  
12 with the problem we've had historically. What's the  
13 basic reason you think this has changed?

14 MAYOR BRADLEY: I think further awareness that  
15 we no longer can isolate ourselves by jurisdiction and  
16 think that we can solve the problem. Because they simply  
17 go beyond our jurisdictional boundaries, and they slop  
18 over, and they will affect us, if they're coming from  
19 someplace else. And there is absolute need for this kind  
20 of sharing of information, and cooperation.

21 MR. EDWARDS: Thank you, sir.

22 CHAIRMAN HARRIS: Chief Hart.

23 CHIEF HART: Thank you.

24 Mr. Mayor, it's a pleasure meeting you. You've  
25 been a gracious host, you and the people that represent

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1 you, and I want to thank you for that. I'd like to thank  
2 you for not taking too many of our laid-off officers.

3 MAJOR BRADLEY: We tried.

4 CHIEF HART: I understand the recruiting problem.  
5 It took us three years to recruit those people. Unfor-  
6 tunately, due to budgetary constraints, we had to let them  
7 go for a while. And we're in the process of trying to  
8 raise some tax money to recall them.

9 Also in the area of recruiting, do you feel  
10 that your agency is realistically not excluding some  
11 applicants? Or do you think they're giving you a fair  
12 shake?

13 MAYOR BRADLEY: At one time we had a height  
14 limit that did exclude some people, and by our own  
15 action, sort of being a step ahead of the court order, we  
16 have lowered our height limit, so that is no longer going  
17 to be a problem for us. We had some concern about whether  
18 or not someone five feet in height is going to be capable  
19 of dealing with some of the suspects that they have to  
20 confront.

21 We've made a number of changes over the years,  
22 all the way from eyesight to teeth, and other standards  
23 that I think were unrealistic at the time, and those  
24 changes have been made. We think we're in a position now  
25 where none of these standards should exclude any qualified

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1 and competent candidate who wants to be a police officer.  
2 CHIEF HART: You're interested, of course, in  
3 having an agency that reflects the community?

4 MAYOR BRADLEY: Yes, and we've put on a vigor-  
5 ous recruiting drive among minorities and women. And we  
6 have had pretty good success in this past 12 or 15 months.  
7 The number of recruits among women and blacks and  
8 Hispanics, have -- in the case of women, almost 18 per-  
9 cent, in each of the classes, among Hispanics over 25  
10 percent. Among blacks I think it's about 22 percent.  
11 So we are improving our recruiting efforts in this regard.

12 CHIEF HART: It seems that you have recruited  
13 more of our women than you did our men.

14 MAYOR BRADLEY: Well, we've really had to focus  
15 on them, because we were at that time under a lawsuit,  
16 and we finally signed a consent decree arising out of that  
17 very issue. We had not done a very good job of recruiting  
18 women. And we were far behind the rest of the country.  
19 And I'm pleased to say that we've now come into the 20th  
20 century. And I think we're doing a better job.

21 CHIEF HART: Well, don't feel bad. The rest of  
22 us were forced by court order also. So we have nothing to  
23 brag about in the rest of the country.

24 One serious question about cooperation among the  
25 locals and the federal agencies. I know you're concerned,

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1 because of part of your presentation. How do you feel  
2 now about federal and local authorities cooperating in  
3 information? Some local agencies feel that it's a one-  
4 way street. The federals get all the information and the  
5 locals get none.

6 MAYOR BRADLEY: I don't think that's true here  
7 in the southern California area. I cannot speak for the  
8 rest of the country. At one time we had that very prob-  
9 lem. But that's no longer true. The spirit of coopera-  
10 tion is absolutely phenomenal. And anybody who has less  
11 than a satisfactory experience, I think, could look to  
12 southern California and we'll tell you how it's been done  
13 here in hopes that you could follow suit.

14 CHIEF HART: Very good. You don't have any  
15 trouble then making narcotics cases with DEA?

16 MAYOR BRADLEY: No.

17 CHIEF HART: Okay. Very good. Then you would  
18 support legislation or a theory that the FBI and all the  
19 other federal agencies should be in some kind of informa-  
20 tional mode to help each other out?

21 MAYOR BRADLEY: I certainly would.

22 CHIEF HART: Very good. I don't have any  
23 further questions. As I said, I appreciate your candor  
24 in explaining the narcotics situation, especially the  
25 marijuana that's grown in the state. And you don't have

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1 any problem going to the source, including California,  
2 if that's the source.

3 MAYOR BRADLEY: Yes.

4 CHIEF HART: Thank you very much, sir.

5 CHAIRMAN HARRIS: Mr. Armstrong.

6 MR. ARMSTRONG: Mayor, I'd like to commend you  
7 for your perception of the problem in this country with  
8 drugs, and the real impact it is having on urban violence.  
9 You don't fear if there was some sort of a cooperative  
10 blueprint, either by state or federal legislation, that  
11 would mandate an intensified eradication of domestic  
12 marijuana, would you fear that if such a piece of legis-  
13 lation came down or was created through some joint task  
14 force that it would ultimately create within your state  
15 some presence of a federal police force?

16 MAYOR BRADLEY: I don't think it would result  
17 in a federal police force taking over all law enforcement  
18 activity in this state. We would welcome additional  
19 resources from the federal level. And if it's dealing  
20 with drugs and narcotics or bank robberies or any other  
21 crime in which the federal agencies appropriately should  
22 be involved, I would welcome it, and I think most of the  
23 people in this state would.

24 MR. ARMSTRONG: This next question I'm sure you  
25 are not prepared to answer, but perhaps some member of

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1 the Task Force staff could get with your research and  
2 development staff. Would you have the figures available  
3 as to how many manhours are spent by your policemen  
4 waiting or appearing in court, and the lack of a finality  
5 of judgment, or the continuances that occur within our  
6 court system, how much that costs the City of Los Angeles?

7 MAYOR BRADLEY: The Chief of Police, Daryl  
8 Gates, is going to testify tomorrow, and I'm certain that  
9 he'd be happy to help secure that kind of information.  
10 We have devised a system of what we call stand-by.  
11 Instead of the officers coming to court, knowing that  
12 they are going to sit around for two or three hours and  
13 then have the case continued, having to go back home, and  
14 that diminishing the number of actual manhours they could  
15 spend on the street, we've tried to cure that through an  
16 arrangement with the courts. It applies now to the  
17 Municipal Court. We think it ought to be expanded to  
18 Superior as well.

19 They can be at home on stand-by and they can get  
20 a call if they're going to be needed. That has helped  
21 tremendously in reducing the number of waiting hours in  
22 the courtroom.

23 This whole question of finality of decision is  
24 one of the great criticisms that we have heard from all  
25 law enforcement agencies in this community, and I think

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1 it's true across the state. It is demoralizing to the  
2 law enforcement officers. It's demoralizing to witnesses  
3 who come again and again and have continuances that  
4 stretch out for months. I think if there is anything in  
5 the whole judicial system that has eroded the sense of  
6 confidence in the people, it is that kind of continuation,  
7 postponement of trial and final determination of the case  
8 pending in the courts.

9 MR. ARMSTRONG: Thank you, Mayor.

10 CHAIRMAN HARRIS: Mr. Carrington.

11 MR. CARRINGTON: Mr. Mayor, you touched on a  
12 couple of things in your presentation that we may have  
13 to come to grips with this afternoon. First, you urged  
14 an increased federal presence in narcotics enforcement.  
15 We will be talking this afternoon, and particularly  
16 about schools, whether schools should be sanctuaries.  
17 Some people feel that narcotic enforcement particularly  
18 has no business being in schools. Others feel that because  
19 schools are the repository of the principal narcotic  
20 victims, i.e., the buying students, that there should be  
21 perhaps increased narcotic activity in schools. What  
22 might your position on that be?

23 MAYOR BRADLEY: We have an arrangement here in  
24 our city where, working with the school authorities, our  
25 law enforcement agencies can go onto a campus in an

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1 undercover role, so long as there is agreement by the  
2 school administrators, and stay there as long as they need,  
3 to get evidence, to effectuate arrest. I strongly support  
4 that. I don't think that any school ought to be a sanc-  
5 tuary where this kind of criminal activity can be conduc-  
6 ted, where literally the lives of our young people can be  
7 destroyed through the sale or dissemination of drugs and  
8 narcotics.

9 And I strongly oppose the idea that there ought  
10 to be some area, whether it's a school or church or any  
11 other facility or institution in our society, that ought  
12 to be a sanctuary where this kind of criminal activity can  
13 be carried on without any threat of outside interference.

14 I go to many high schools in our city, and  
15 about once a month I'm on at least one or more campuses,  
16 speaking on many issues. And this issue always comes up.  
17 And I've never been hesitant about saying to the young  
18 people that it's in their best interest that this kind of  
19 program is carried on. And you'd be surprised, you know,  
20 how many people, many of the students agree with and  
21 support that idea.

22 MR. CARRINGTON: The other issue that you  
23 brought up tangentially that I think we're going to be  
24 discussing this afternoon is the posse comitatus issue,  
25 whether there is a role for the United States military to

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1 play, again in the drug field, primarily, at least in  
2 the area of using the detection facilities that they have  
3 available to assist local law enforcement. How do you  
4 feel about it? I mean, you said you don't want to start  
5 a Los Angeles Air Force. Would you be grateful for, say  
6 the military using their detection techniques, perhaps  
7 only to assist you in the fight against narcotics?

8 MAYOR BRADLEY: Well, it's been my experience  
9 that the military has been reluctant to get into this kind  
10 of activity.

11 MR. CARRINGTON: That's what we want to address  
12 this afternoon.

13 MAYOR BRADLEY: I think that any way that we  
14 can increase our resources, our capacity to detect and  
15 ferret out either marijuana that's grown, or drugs that  
16 are concealed, I'm prepared to expand whatever is neces-  
17 sary to secure that kind of assistance.

18 MR. CARRINGTON: I would like to commend the  
19 Mayor, not only on the candor of his answers, but also on  
20 the conciseness of his presentation and his answers.  
21 Thank you very much, sir, and I hope that the ballot  
22 issue passes tonight.

23 MAYOR BRADLEY: Thank you very much.

24 CHAIRMAN HARRIS: Mr. Mayor, thank you very  
25 much. We appreciate your testimony and your answers

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1 today, and once again you have our thanks for appearing.

2 MAYOR BRADLEY: Thank you.

3 CHAIRMAN HARRIS: Our next witness this morning  
4 is the Honorable Evelle J. Younger, presently attorney at  
5 law in Los Angeles, and former well known law enforcement  
6 official to the Californians in the audience.

7 Mr. Younger, welcome. We thank you for appear-  
8 ing today, and we look forward to hearing your presenta-  
9 tion.

10 PRESENTATION BY:

11 EVELLE J. YOUNGER

12 MR. YOUNGER: Thank you.

13 Gen. Bell, distinguished gentlemen on the Task  
14 Force, I appreciate the opportunity to share a few thoughts  
15 with you on the very critical subject assigned to your  
16 Task Force. It's often said that the alcoholic can't be  
17 helped until he or she hits bottom, that is, has a serious  
18 accident, spends a night in a drunk tank, or has no money  
19 left for food or drink. Maybe that's what we must exper-  
20 ience in our nation before we can take effective steps  
21 to control violent crime.

22 If so, I think we've bottomed out. You know, I  
23 thought we'd reached that point 10 years ago. A citizen  
24 in our nation then was twice as likely to be raped,  
25 robbed or murdered in 1970 as in 1960. That was 10 years

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1 ago. In 1971, there were 1,636 homicides in California,  
2 in the state. But few people were alarmed. In 1980 there  
3 were more than that in the County of Los Angeles, more  
4 than in the whole state 10 years earlier; 1,750 in the  
5 County, in 1980. That's a 79 percent increase in the  
6 last five years.

7 And we all know that you can do lots of things  
8 with statistics, but I'm not talking about statistics.  
9 This is body count. The city of Los Angeles is fast  
10 becoming a jungle. There were over 1,000 homicides here  
11 last year, 1,042. And the Coroner is falling behind in  
12 his work. It sounds mind-boggling, but it's true. If  
13 we keep going at this speed, at this rate, the homicide  
14 rate will be 5,000 per year in the city on June 1st, 1986.  
15 Now, I believe our citizens here and in every other part  
16 of our country are alarmed, scared is probably a better  
17 word, and they're demanding and they will support a real-  
18 istic approach to solving the problem.

19 When a football team is trying to break a losing  
20 streak, the coach often expresses the need to get back  
21 to basics, that is, blocking and tackling. I think that  
22 is what we have to do to bring violent crime under con-  
23 trol. Get back to the basics. The solution isn't easy,  
24 but I think it's simple. Get back to basics. And here,  
25 in my view, are the basics.

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1 One, we don't know much about correcting human  
 2 behavior. People have been assaulting, robbing, raping  
 3 and killing other people for 600,000 years. And we don't  
 4 seem to have learned much about how to make them stop.  
 5 But while we search for the answers, we have to stop  
 6 giving the benefit of the doubt to the armed robber and  
 7 the heroin peddler. We must remember that the first duty  
 8 of any government is to protect its citizens, not to close  
 9 all prisons, not to rehabilitate all criminals, not to  
 10 experiment. The first duty is to make it safe for the  
 11 law abiding citizen to work, move about safely, enjoy his  
 12 family and friends and the fruits of his labor.

13 Two, no human institution can survive, let  
 14 alone operate successfully, without ground rules and the  
 15 means and the will -- repeat, the will -- to enforce the  
 16 ground rules. You can't run a little league team, a  
 17 Sunday school class, or a nation of 215 million people,  
 18 unless you punish, or discipline, if you prefer the word,  
 19 those who violate the ground rules. The punishment should  
 20 be reasonable, prompt and certain. But above all, it  
 21 must be based on faithful and consistent adherence to the  
 22 concept of individual responsibility for one's own conduct.

23 And thirdly, we can't make law abiding citizens  
 24 more secure without making the criminal less secure.

25 Now, in stating what I perceive to be the basics,

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1 I was quoting from a speech I gave to the California  
 2 Sheriffs State Convention in 1973, not because my state-  
 3 ment then was all that perfect, but because I just can't  
 4 think of a better way to say it now. I believe, have  
 5 believed for 30 years, and have said so, that our  
 6 appellate courts, not trial courts, but our appellate  
 7 courts have been so preoccupied with the rights of the  
 8 persons accused of crimes that they have not shown suffi-  
 9 cient concern for the rights of the victims of crime and  
 10 other law abiding citizens.

11 Unrealistic probation and parole policies have  
 12 contributed to the increase in crime. President Reagan  
 13 made it clear by his words and actions during his two  
 14 terms as California's Governor, and in his speeches during  
 15 the recent campaign, that he believes our criminal justice  
 16 system is failing because it does not protect law abiding  
 17 citizens from dangerous violent criminals, that the  
 18 principal function of the justice system is to prevent  
 19 crime, and where it cannot, to identify, apprehend,  
 20 prosecute, fairly try, and punish those who violate the  
 21 law, that one who violates the law should pay a price,  
 22 the price to be established by a legislative body, and  
 23 that punishment should be reasonable, but protection of  
 24 law abiding citizens should be the primary consideration.

25 President Reagan, prior to his inauguration,

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1 appointed a Task Force composed of 35 persons from various  
2 parts of our nation; lawyers, judges, professors, public  
3 officials, with expertise in the field of criminal justice,  
4 to make recommendations to the President and his Attorney  
5 General concerning ways to improve the justice system.

6 I was appointed Chairman of the Task Force. We have had  
7 two meetings and have made specific recommendations to  
8 the President as requested.

9 It would be inappropriate to repeat those recom-  
10 mendations unless and until he chooses to do so. But it  
11 is fair and safe to say that all recommendations are  
12 consistent with those beliefs attributed to President  
13 Reagan. The President and the members of his Task Force  
14 all recognize that control of crime is basically a prob-  
15 lem for local government authorities. The Federal  
16 Government has a limited role. It must be supportive of  
17 and responsive to the needs of local authorities in their  
18 public safety efforts.

19 Everyone knows, however, that the landmark  
20 decisions by the United States Supreme Court in criminal  
21 cases in the last 30 years have often been five to four  
22 split decisions, with the majority tilting toward protec-  
23 tion of the accused rather than society. And the first  
24 appointment President Reagan makes to the U.S. Supreme  
25 Court might well change the course of history.

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1 For example, the Supreme Court, with one or  
2 more Reagan appointees on it, will probably abolish or  
3 modify the exclusionary rule. The rule, which requires  
4 that a criminal should be set free because a policeman  
5 made a mistake, the rule provides in effect that evidence  
6 otherwise admissible cannot be considered if obtained as  
7 the result of an illegal search and seizure. Illegal,  
8 in this case, means what five Supreme Court Judges consi-  
9 der illegal and four consider legal.

10 Who can believe sincerely that a policeman  
11 should have known of a technical rule two to five years  
12 before the bare majority of a divided appellate court did?  
13 Much has been written about the alleged values and pur-  
14 poses of this rule. It is a social experiment that failed.  
15 No emperical data can justify its continuance.

16 The rule excludes from consideration by the  
17 judge or the jury the most valid, conclusive and irrefut-  
18 able factual evidence. The mystique and misunderstanding  
19 of the rule causes not only many ordinary citizens, but  
20 also judges and lawyers, to conclude that the rule was  
21 enshrined in the Constitution by the founding fathers,  
22 and that to abolish it would do violence to the whole  
23 Bill of Rights. Actually, the rule was not employed in the  
24 U.S. courts during the first 125 years of the Fourth  
25 Amendment. It was devised by the Judiciary in the assumed

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1 absence of any other method of controlling the police.  
 2 And no other country in the civilized world has adopted  
 3 such a rule.

4 The exclusionary rule hurts where we have our  
 5 biggest problem, street crime. Judge Malcolm Wilkey, I  
 6 understand, is going to appear before your Task Force.  
 7 I quote him in this statement at some length, and I will  
 8 leave it to him to make his own comments. I can simply  
 9 say that he points out that the huge cost is most clearly  
 10 demonstrated in the rate of street crime, assaults and  
 11 robberies with deadly weapons, narcotics trafficking,  
 12 gambling and prostitution. They flourish in no small  
 13 degree, in Judge Wilkey's opinion, and mine, simply  
 14 because of the exclusionary rule of evidence.

15 Prof. John Kaplan of Stanford Law School, a  
 16 member of our Task Force on the Administration of Justice,  
 17 incidentally, writes that, "In any democratic country  
 18 there is a political requirement of punishment for the  
 19 sake of felt justice." This is unrelated to Judge  
 20 Wilkey's comments, but still a very valid point. He  
 21 says, "It's precisely this feeling of justice that is  
 22 outraged when an obviously guilty person is released  
 23 through application of the exclusionary rule. Unlike  
 24 procedural protections, such as the right to counsel, and  
 25 to a fair trial, which can be defended as preconditions

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1 to a reliable fact-finding process, the exclusionary  
 2 rule lessens the probability of a rational determination  
 3 of guilt. The solid majority of Americans rejects the  
 4 idea that the criminal is to go free because the con-  
 5 stable has blundered." Indeed, this public dissatisfac-  
 6 tion has recently become a major political force. And  
 7 I might add that in answer to the question of why is it  
 8 so difficult to recruit police, why are more and more  
 9 judges resigning and going into private practice, why is  
 10 it more difficult to get qualified people to assume impor-  
 11 tant positions in the administration of justice, from the  
 12 Department of Justice on down?

13 Certainly not the only reason, and maybe not  
 14 the major reason, a reason is the fact that we, by manu-  
 15 facturing rules like the exclusionary rule, offending the  
 16 people's, as Prof. Kaplan says, sense of justice, I think  
 17 we've contributed to that difficulty.

18 For a more detailed indictment of the exclu-  
 19 sionary rule, I've attached a position paper prepared by  
 20 Americans for Effective Law Enforcement, Inc., for use by  
 21 your Task Force. I am a member of the AELE's Board of  
 22 Directors, and I'm pleased to adopt and endorse the  
 23 conclusions and recommendations contained in this paper.

24 Chief Justice Warren Burger made a remarkable  
 25 speech recently at an American Bar Association meeting.

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1 Remarkable because it realistically reflects the point  
 2 of view of most Americans. The Chief Justice said, among  
 3 other things, "I put to you this question: Is the society  
 4 redeemed if it provides massive safeguards for accused  
 5 persons, including pretrial freedom for most crimes,  
 6 defense lawyers at public expense, trials and appeals,  
 7 retrials and more appeals, almost without end, and yet  
 8 fails to provide elementary protection for its decent,  
 9 law abiding citizens?"

10 The statistics are not merely grim, they are  
 11 frightening. Let me begin near home. Washington, D.C.,  
 12 the capital of our enlightened country, in 1980 had more  
 13 criminal homicides than Sweden and Denmark combined, with  
 14 an aggregate population of over 12 million, as against  
 15 650,000 for Washington. From New York City to Los  
 16 Angeles to Miami, the story on increase in violent crimes  
 17 from 1979 to 1980 is much the same. For at least 10 years,  
 18 many of our national leaders and those of other countries  
 19 have spoken of international terrorism, but our rate of  
 20 casual, day-by-day terrorism in almost any large city  
 21 exceeds the casualties of all reported international  
 22 terrorists in any given year.

23 Why do we show such indignation over alien  
 24 terrorists and such tolerance for the domestic variety?  
 25 Are we not hostages within the borders of our own

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1 self-styled, enlightened, civilized country?

2 In that connection, I think I read the other  
 3 day, there were 75 terrorist killings in Northern Ireland  
 4 last year. It's a terrible tragedy that occurs in that  
 5 country. But I wonder how many people realize that that's  
 6 less than 10 percent, about 7 percent of the homicides  
 7 that occurred in Los Angeles City last year.

8 The Chief Justice goes on to say, "I shared and  
 9 still share the belief that poverty and unemployment are  
 10 reflected in crime rates, chiefly crimes against property.  
 11 But the hard facts simply do not support the easy claim  
 12 that poverty is the controlling factor. It is just one  
 13 factor. The crime rate today exceeds our crime rate  
 14 during the Great Depression. We must not be misled by  
 15 cliches and slogans that if we'd but abolish poverty,  
 16 crime will also disappear. A far greater factor is the  
 17 deterrent effect of swift and certain consequences; swift  
 18 arrest, prompt trial, certain penalty, and at some point,  
 19 finality of judgment."

20 I honestly believe that if a Chief Justice had  
 21 made that speech 20 years ago, it would have generated  
 22 threats of impeachment. This time it received only mild  
 23 criticism from Bruce Ennis, ACLU National Legal Director,  
 24 and Harvard Professor Alan Dershowitz, among a few others.

25 Whatever else we do, we need more police

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1 officers on the street, and new and more modern prison  
2 facilities to house the ever-increasing numbers of danger-  
3 ous offenders. That will cost money. There is, however,  
4 much that the Federal Government can do now at no signi-  
5 ficant expense to control violent crime.

6 Specifically, I urge the Administration to take  
7 a leadership role in cooperation with the legislative and  
8 judicial branches of government to achieve the following  
9 specific goals at the earliest possible date:

10 One, revise procedural rules so that a criminal  
11 trial becomes again a search for the truth.

12 Mr. Armstrong, you asked, was there any statis-  
13 tics on how much money was spent on police officers wait-  
14 ing around in courts, nonproductive time and so forth.  
15 I'll estimate -- and this is -- if I had a few million  
16 dollars and were given a grant, maybe I could prove it.  
17 But based upon experience, as a judge, as a District  
18 Attorney and as Attorney General, I can tell you that from  
19 arraignment on -- I'm not talking about before arraignment.  
20 But once the matter reaches the courts, in my opinion,  
21 40 percent of the whole effort, all of the resources  
22 allocated to the justice system, are wasted, in the sense  
23 that they are spent in gamesmanship. That 40 percent  
24 worth of time and money has absolutely nothing to do with  
25 the guilt or innocence of persons accused of crimes.

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1 It is spent in motions to exclude evidence, to exclude  
2 the jury because it wasn't properly -- Grand Jury,  
3 because it wasn't properly constituted. Motions to  
4 exhume bodies that have been buried for five years. All  
5 sorts of silly, outrageous gamesmanship that the courts  
6 have tolerated over the years. And again, the people are  
7 aware of this. They don't need the proof. They know  
8 much time is wasted, even if they've never had the mis-  
9 fortune of waiting around court while some of these  
10 motions were heard and reheard and reheard.

11 Secondly, revise the rules governing bail so  
12 that dangerous criminals can be kept in custody pending  
13 trial. There are several bills now wending their way  
14 through Congress on this same subject.

15 Three, enact an appropriate federal death penalty  
16 law and appoint judges who will enforce it.

17 Four, enact laws calling for mandatory sentences  
18 for violent and/or firearms use federal crimes.

19 Five, revise the rules of appeal so that justice  
20 can truly be swift and certain.

21 JUDGE BELL: Go back to four a minute. I  
22 missed four.

23 MR. YOUNGER: Four was, enact laws calling for  
24 mandatory sentences for violent and/or firearm use  
25 federal crimes. Five, revise the rules of appeal so that

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1 justice can truly be swift and certain.

2 I might say, there is no great mystery how that  
3 has to be done. The National Association of Attorneys  
4 General have for years been very specific in their recom-  
5 mendations as to what we should do to reform the rules  
6 concerning habeas corpus and other rules on appeal, but  
7 there just hasn't been the support in Washington to do  
8 what everybody agreed could be done.

9 I might say, I made these same recommendations  
10 to a congressional committee 10 years ago, but nothing  
11 happened. But I believe a different climate exists in  
12 Congress today, and I think that is why you gentlemen,  
13 your Task Force, the Attorney General, the Administration,  
14 has such a tremendous opportunity to really get something  
15 done.

16 Times have changed. Actually, 10 years ago,  
17 only 60 percent of our women were afraid to walk alone  
18 after sundown. Now it's 80 percent. Our citizens are  
19 demanding protection. They are electing candidates who  
20 support effective law enforcement. They're prepared to  
21 pay the cost. You've all heard the definition of a  
22 conservative. That's a liberal who has been mugged.  
23 Well, so many people have been mugged that there really  
24 aren't many liberals left on our streets. In drawing  
25 rooms, yes, but not on the streets.

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1 In 1968, the Federal Government, in a massive  
2 response to fear of crime and legitimate concern of  
3 citizens, enacted a massive program called the Law  
4 Enforcement Assistance Administration, LEAA. Up to now,  
5 it's been responsible for expending approximately  
6 seven billion federal dollars, and indirectly tens of  
7 billions more in state and local expenditures, as well  
8 as matching funds required by the federal law.

9 Never before have our courts, our police and  
10 our correctional organizations been so upgraded so  
11 quickly, so pervasively, given sophisticated training,  
12 sophisticated equipment and manpower. What has that done?  
13 Are we safer? Has crime declined? Clearly, the answer  
14 is no. This massive effort by state and federal govern-  
15 ment to control crime is simply misdirected. The enor-  
16 mous experience, the costly studies, all tell us what we  
17 in our common sense knew before spending those tens of  
18 billions of dollars. That is simply that serious, most  
19 violent crime is usually committed by a small group of  
20 repeat offenders.

21 The price of crime must be borne by the criminal  
22 and not by the innocent. The notion of spreading the  
23 risk of crime among all of the citizens and punishing all  
24 of those who are otherwise productive, honest, God fearing  
25 and law abiding, is simply contrary to logic and justice.

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1 We must face the fact that once we have identified the  
2 dangerous, violent criminal, he must be incapacitated  
3 until such time as the probability is high that he will  
4 no longer harm anyone.

5 I think this Task Force, I think our government  
6 has to recognize that measured in terms of protecting our  
7 citizens, our government has failed. I guess that says  
8 something about the stability of our great country. I do  
9 not believe, given the murder rate, in every major city  
10 in the country, I don't think the government in any  
11 other nation in the world could survive today without  
12 doing a better job of protecting its citizens. History  
13 is replete with examples. The Philippines. They declared  
14 martial law in the Philippines when the murder rate in  
15 Manila was only a fraction of what it is here. As I say,  
16 it says much for the stability of our country, much for  
17 the confidence our people have in the government, but not  
18 much for the record of that government in protecting our  
19 citizens. I've mentioned a couple of times in this paper  
20 things I said 10 years ago, eight years ago, not in the  
21 sense that, I told you so, but simply to emphasize that  
22 there really isn't that much of a mystery about what has  
23 to be done and what should be done.

24 Fortunately, the Attorney General has asked your  
25 Task Force to spend a very short time reconsidering and

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1 considering recommendations, and then make some specific  
2 recommendations. And I think that is a challenge, but  
3 I think you'll be able to make some very specific and  
4 helpful recommendations, and much of the groundwork has  
5 been done, as I say. If you want to reform the habeas  
6 corpus procedures, and the muscle is there to do it in  
7 Congress, all you have to do is dig out the National  
8 Association of Attorneys General's file, and you can  
9 write a bill in 30 minutes that would do it.

10 Thank you very kindly for giving me a chance to  
11 mention some of these things.

12 Mr. Littlefield, I think you said something  
13 about the percentage of violent prisoners in institutions.

14 MR. LITTLEFIELD: Yes.

15 MR. YOUNGER: And how that impacts the housing  
16 problem. As Gov. Brown says, the percentage of violent,  
17 dangerous people in prison is increasing, but there is  
18 still a very substantial number of nonviolent, nondanger-  
19 ous, in the sense of physically dangerous, people in  
20 prison. And there are all sorts of facilities; state-  
21 owned, federal-owned, in the hills and countryside, sitting  
22 vacant and so forth. Whoever wants to use those is going  
23 to have to crack some heads, I know, whether it be a  
24 Governor or President. The people in Corrections want  
25 to build new and modern institutions. And you can't blame

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1 them, you know, where computers do the job more effi-  
 2 ciently, where the doors close and open at the right times  
 3 and so forth. If you took one of these camps out in the  
 4 hills, in the foothills of the Sierra, it might not be so  
 5 convenient for the staff, but there are lots of nonviolent  
 6 prisoners that could be moved into places like that, to  
 7 take some of the pressure off. It's still going to cost  
 8 money, but they are there.

9 I was looking for a facility once when I was  
 10 Attorney General. And we looked at 10 or 15 places  
 11 around the state I never knew existed, sitting out in the  
 12 hills. Some of them had termites, some of them had leaky  
 13 roofs. But still, they're there. The problem is not  
 14 insurmountable. Thank you.

15 CHAIRMAN HARRIS: Thank you, Mr. Younger.

16 Questions. Judge Bell.

17 JUDGE BELL: General, we thank you for giving us  
 18 your time here this morning. As everyone knows, you  
 19 probably know as much about the law enforcement as anyone  
 20 in the country. I want to ask you two or three questions  
 21 that are not too general. One is, you said that you  
 22 thought maybe President Reagan would change the course of  
 23 history with his first appointment to the Supreme Court  
 24 because it might lead to a revision of the exclusionary  
 25 rule. I happen to agree with it that we ought to do away

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1 with the exclusionary rule. It was a rule that was  
 2 fashioned in another era at a time, even if we needed it  
 3 then, I doubt we need it now. But I'm not certain it's  
 4 quite that easy. And I want you to tell me who the four  
 5 justices are now that have taken public positions on  
 6 doing away with the exclusionary rule. I know it's  
 7 Justice Powell and Justice Rhenquist, but I've forgotten  
 8 who the fourth one is. If you replaced one of those,  
 9 you wouldn't get the rule changed.

10 MR. YOUNGER: That's right. No, I simply mean  
 11 that we've been dealing for so many years with a five-to-  
 12 four court on these issues. As you know, there have  
 13 already been some appellate court decisions that have  
 14 modified the exclusionary rule. I'm told that in the  
 15 National Law Digest, I think it is -- Mr. Carrington,  
 16 maybe you saw it -- yesterday, apparently a New York  
 17 appellate court is the most recent court to --

18 JUDGE BELL: Well, it's the highest court. I  
 19 think it's the New York Court of Appeals.

20 MR. YOUNGER: I think so. And I think they've  
 21 done it. So the movement is in that direction. I'm not  
 22 even sure that it won't happen before President Reagan  
 23 even gets a chance to make an appointment.

24 JUDGE BELL: That's true. Yes. I think more  
 25 and more people now agree that there are other ways to

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1 inhibit violations of the law by law enforcement. It  
2 started, I guess, with the Bivens case in the Supreme  
3 Court on federal law enforcement.

4 There are some people who say that there is a  
5 failure of will in our country, in the aspect of enforc-  
6 ing criminal law, that we have spent 20 years apologizing  
7 because we can't rehabilitate everyone who goes to prison,  
8 therefore we ought not to send anyone to prison, that we  
9 have not cured all the causes of crime, therefore we  
10 ought not to punish anyone who commits crime, and that  
11 somehow or other this has permeated our public officialdom  
12 to the point that they won't enforce the law. Do you have  
13 any view on that?

14 MR. YOUNGER: I think that's true. I think that  
15 for many years it was very popular to make speeches about  
16 attacking the root causes of crime. And sure, I think  
17 every decent American wants to, to the extent possible,  
18 eliminate poverty and illiteracy. And I might say I  
19 think your idea of compulsory national service is great.  
20 I think it has a spinoff in health areas and education,  
21 in poverty and so forth. But it was a great thing, much  
22 more popular 15 years ago for somebody running for  
23 governor or attorney general or district attorney to talk  
24 about eliminating the root causes than it was putting the  
25 bad guys in prison. I think we've overdone that. I think

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1 the chickens are coming home to roost. Now, that's what  
2 I said when I say, I think we have to get back to basics.  
3 While we're trying to solve these other problems -- and  
4 people have been trying to solve poverty problems and  
5 literacy and health problems for hundreds of thousands of  
6 years. But while we're trying to solve those problems,  
7 the kind of people that killed these innocent bystanders  
8 in Bob's Big Boy I think have to be treated as the animals  
9 they are. They've got to be, hopefully, if guilt is  
10 established, they should be -- the appellate process  
11 should proceed, and the ultimate sentence carried out.  
12 I predict that, given our present rules, that case will  
13 take at least eight years to be resolved.

14 JUDGE BELL: Well, I think they'll know now  
15 that the people now want the basic thing, and that is the  
16 right to be safe on the streets and in the places of work  
17 and in the homes. And they know that you have to have  
18 more police to ensure that, and that you have to have  
19 more prisons to incarcerate people who would otherwise  
20 make them unsafe. I don't think there is any doubt that  
21 that's what the American people want. The question is,  
22 can you get the public officials to do what the public  
23 wants? That is the question.

24 MR. YOUNGER: I think so, and I hope so. I  
25 know that they've discovered crime in Sacramento. The

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1 word is out. The members of the State Legislature have  
 2 read the signs, and those of us that have been involved  
 3 for many years just can't believe some of the bills that  
 4 are now being supported by the Criminal Justice Committee,  
 5 in the State Legislature. It's very gratifying. I think  
 6 it's happening in Washington, too.

7 JUDGE BELL: It might be, as they say, an idea  
 8 whose time has come.

9 MR. YOUNGER: I think it has.

10 JUDGE BELL: Let me ask something a little more  
 11 controversial now. I guess even being for prisons and  
 12 more police is controversial in some quarters. But we  
 13 hear a lot of talk about gun control. Everyone has got  
 14 their own pet ways of controlling guns. And I think the  
 15 polls show -- and politicians pay attention to polls, as  
 16 we all know -- that the great majority of the American  
 17 people are against registering the guns they already have,  
 18 whatever kind, handguns, rifles, shotguns. I have an  
 19 idea, though, that probably a waiting period before you  
 20 buy a handgun would be an acceptable thing to the American  
 21 people. And also I have an idea that registering that  
 22 same handgun prospectively -- not making anyone register,  
 23 but register for the future, just as we started the  
 24 Fingerprint Bureau -- might be something that's acceptable  
 25 to the American people. It might be a reasonable approach.

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1 Do you have any views on that?

2 MR. YOUNGER: Yes. I think you are correct.

3 You asked the Governor a question about recording the  
 4 serial numbers of weapons and so forth. We in California  
 5 have had some success in getting people to voluntarily  
 6 register not only firearms but television sets and so  
 7 forth. And those records in Sacramento are computerized  
 8 and exchanges are made with the Federal Government. And  
 9 actually, it's in a person's own self-interest if they do  
 10 register them.

11 As you pointed out, I think most of us would  
 12 agree that if you're going to have a law requiring a wait-  
 13 ing period when a person buys a weapon, it ought to be  
 14 realistic enough so that the authorities could actually  
 15 check criminal records.

16 JUDGE BELL: Right.

17 MR. YOUNGER: I think those things are true.

18 JUDGE BELL: Like waiting period for what pur-  
 19 pose?

20 MR. YOUNGER: Yes. I have traditionally been  
 21 opposed to mandatory registration of firearms, not because  
 22 as some people think, that that's going to lead to a  
 23 communist takeover, and so forth. I just thought it would  
 24 be a waste of time and money and we'd have another  
 25 10-story building in Sacramento with 10,000 people working

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**CONTINUED**

**1 of 5**

1 there, and it wouldn't accomplish anything. What I would  
 2 like to see, and I think many states are moving in this  
 3 direction, is a Massachusetts type law, the philosophy  
 4 being, you can have a weapon, a firearm, a handgun, what-  
 5 ever, in your place of business and in your home, but  
 6 elsewhere, no. And if you're caught with a weapon outside  
 7 of your home or place of business, with a handgun, without  
 8 a permit, you're going to do mandatory time. But it  
 9 would have to be accompanied by a more realistic law,  
 10 exclusionary rule. There isn't a policeman in this town  
 11 that wouldn't be able, if it were not for the exclusionary  
 12 rule, to go out at night, tonight, and pick up some ille-  
 13 gal weapons. If you see four males driving down the  
 14 street with an old beaten up car with the license plate  
 15 illumination out and so forth, and boisterous, and driving  
 16 fairly recklessly, none of those things so far give you a  
 17 right to do any more than write a traffic citation. But  
 18 knowledgeable policemen should be able to make a patdown  
 19 for weapons, and could. And I'll bet you could collect  
 20 thousands, thousands of weapons in a week around here,  
 21 and hopefully prevent some of the Bob's Big Boy type  
 22 things, if it were not for the inhibiting effect that  
 23 some of these rules. If those rules were expanded, if a  
 24 policeman is given greater authority to make patdowns --  
 25 I'm not talking about looking for marijuana cigarettes or

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1 anything else. I'm just talking about a patdown for  
 2 weapons. To pass any enlightened law with respect to gun  
 3 control without also giving the policeman greater author-  
 4 ity to make reasonable patdowns would be a waste of time.

JUDGE BELL: Well, it would be saying, we have  
 a law which we aren't going to enforce.

MR. YOUNGER: Right.

JUDGE BELL: Yes. We would have a fine law,  
 but we've been through all that charade. That's one  
 problem we have now in this country. We engage in char-  
 ades. What is the use of having a law if we're not going  
 to enforce it? That just breeds disrespect for the law,  
 in my judgment. Well, thank you very much.

MR. YOUNGER: Thank you, sir.

Mr. Littlefield.

MR. LITTLEFIELD: Gen. Younger, you've had  
 experience as a Municipal Court Judge and as a Superior  
 Court Judge. In connection with the finality of judgment,  
 do you think that more of the time is taken in the  
 appellate process than in the trial process?

MR. YOUNGER: Oh, yes. And much of the time  
 taken in the trial process is because of what is going to  
 happen on the appellate process, on these various motions  
 and so forth.

MR. LITTLEFIELD: And this gamesman ship is

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1 possibly a result of appellate decisions, and the lawyer  
2 has to do it because he might be sued for malpractice if  
3 he doesn't, I suppose.

4 In connection with federal habeas corpus and  
5 revision, what specific suggestions do you have with  
6 respect to that?

7 MR. YOUNGER: Well, I guess the bottom line is,  
8 I think there should be one complete full and fair  
9 appellate process. One. I do not believe a federal court  
10 in San Francisco should be able to reverse the United  
11 States Supreme Court. And yet you know that's happened  
12 repeatedly in murder cases and so forth. These usually  
13 occur, of course, in the high visibility murder cases.  
14 I don't think that should happen.

15 And as I say, the research is there. It's been  
16 done. If Congress has a will to do something about habeas  
17 corpus and the rules on appeal, they can do it. And I  
18 think it's encouraging to see that the Chief Justice of  
19 the United States Supreme Court has in effect asked for  
20 their help.

21 MR. LITTLEFIELD: As a former trial judge,  
22 General, what do you think about mandatory sentences?  
23 Do you think judges should have a little bit of discretion  
24 for that one case in 100? Or do you think it should be  
25 an absolutely mandatory sentence for certain offenses?

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1 MR. YOUNGER: I more and more believe that there  
2 are certain cases where the sentence has to be mandatory,  
3 if the system is going to work. I believe the present  
4 California law, as an example, gives the judges sufficient  
5 authority, within limits, if a certain crime calls for  
6 a mandatory prison sentence. They can be different  
7 categories -- can be a lesser time, a greater time and  
8 so forth.

9 The gun law, if you pass a Massachusetts type  
10 gun law without a mandatory sentence, it's useless.  
11 Because if you pass a law, the first person you bust  
12 under a law like that is going to be some elderly widow,  
13 retired school teacher, who is just as pure as the driven  
14 snow, but she's carrying a gun illegally. Now, no judge,  
15 no reasonable judge is going to go impose any mandatory  
16 sentence on that lady unless it's absolutely mandatory.  
17 And yet the whole system isn't going to work unless people  
18 know, everyone; the retired school teacher, the hoodlum on  
19 the street. Everyone knows if they're caught illegally  
20 with a weapon they're going to do some time. Then the  
21 system would work.

22 MR. LITTLEFIELD: Don't you think it would be  
23 kind of rough on that school teacher who doesn't feel  
24 safe being on the street without that weapon?

25 MR. YOUNGER: It would be terrible. And that

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1 is why I say that no laws with reference to guns are going  
2 to work unless we protect the people. If we keep on  
3 playing games in court, nobody is going to obey the gun  
4 laws anyway. When I was Attorney General of California,  
5 the question was always coming up, how about laws abolish-  
6 ing all handguns, and so forth. And I met with a group  
7 of people that all owned a particular kind of recreational  
8 vehicle, Airstream or something, you know. They all had  
9 the same kind of vehicle. There were 50 of them in a  
10 group. They were traveling around, staying out in the  
11 country and so forth.

12 I asked how many had handguns in vehicles.  
13 Forty-eight out of the 50 did. I asked how many of those  
14 48 would turn them in if it were made a felony to possess  
15 them. Not one would have done it. So it's, which comes  
16 first, the chicken or the egg? We've got to start giving  
17 people protection before we start talking about any  
18 stricter gun controls.

19 MR. LITTLEFIELD: Thank you, General.

20 CHAIRMAN HARRIS: Mr. Edwards.

21 MR. EDWARDS: Gen. Younger, I have no questions,  
22 but I would like to say that your ideas and your recommen-  
23 dations are in my opinion extremely valid. We definitely  
24 appreciate your input this morning.

25 MR. YOUNGER: Thank you.

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1 CHAIRMAN HARRIS: Chief Hart.

2 CHIEF HART: I have the same statement. I  
3 enjoyed your presentation. It was right on the point as  
4 far as law enforcement is concerned, and I appreciate your  
5 presentation.

6 MR. YOUNGER: Thank you.

7 CHAIRMAN HARRIS: Mr. Armstrong.

8 MR. ARMSTRONG: I do have a question. Gov.  
9 Brown passed a question with regard to the problem in  
10 domestically grown marijuana in this state, and how the  
11 State Justice Department is working with DEA. Would you  
12 like to comment on this, since he passed the question on  
13 to you?

14 MR. YOUNGER: No. Yes, I would. It is a real  
15 problem. And the basic problem with California is that  
16 again we're being phony about it. Those of us who are  
17 in the system can probably rationalize what happens, but  
18 the average smart citizen says, "Hey, isn't this strange?  
19 You can smoke marijuana with impunity in California, but  
20 you get all excited when somebody raises so the rest of  
21 the people in the state can smoke it."

22 We do have a law in California, theoretically,  
23 making possession of marijuana illegal. But as a practi-  
24 cal matter, it doesn't. It was a law passed by the  
25 Legislature. The Legislature, for political reasons,

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1 reasons, didn't want to legalize marijuana, so they passed  
2 a very gentle law outlawing it, and it's something less  
3 serious than getting a traffic ticket. So as a practical  
4 matter it isn't in force.

5 But then as you point out, apparently growing  
6 of marijuana has become a very important crop, and it's  
7 pretty hard, I guess, to convince some of those farmers  
8 that they're committing such a great sin if people all  
9 over the state can smoke it after they grow it.

10 Another thing, the last time I checked, it was  
11 against the federal law to possess marijuana. It's a  
12 pretty well kept secret, because federal agencies over the  
13 years have been perfectly happy to let local law enforce-  
14 ment officers deal with this dilemma for understandable  
15 reasons, that it's a no-win proposition.

16 But I think everybody would be very gratified  
17 if the present Federal Government would exercise its  
18 authority and somehow eliminate all marijuana fields in  
19 this and every other state. I don't know if they have the  
20 facilities to do it. Their comments over the years when  
21 you talk to them about enforcing marijuana laws, they're  
22 short-handed and understaffed. But I think we ought to  
23 decide one way or the other. Either the possession of  
24 marijuana is against the law, and we ought to do something  
25 about it, or we ought to stop kidding ourselves.

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1 MR. ARMSTRONG: One final question. I'm sure  
2 we're going to hear from the Chief of Police of Los  
3 Angeles tomorrow on this phenomenon of youth gangs. From  
4 your experience as the District Attorney in Los Angeles,  
5 and later as Attorney General, do you think we ought to  
6 seriously consider revising our juvenile justice system,  
7 and in what aspect would you approach that?

8 MR. YOUNGER: Very simply, I think that we have  
9 to recognize that many of our problems of violent crime  
10 come from young people. Most, an ever greater percentage  
11 of violent crimes are committed by young people. In  
12 California, for a while -- I don't know what it is now,  
13 maybe Mr. Littlefield can update this -- but a few years  
14 ago if you were a minor, you could commit first degree  
15 murder secure in the realization that you wouldn't do over  
16 two or three years, at most, in the Youth Authority. I  
17 don't know how it is now. I do think we have to recognize  
18 that some young people are becoming more mature faster  
19 now, and in the good ones, that's great. In the bad ones,  
20 it's very harmful.

21 I think we have to become more realistic. I  
22 would like to see the procedural rules changed, and they  
23 are, I think, being changed in California, regarding the  
24 treatment of dangerous, violent young people. I don't  
25 know how it is in the rest of the country. I think progress

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1 being made in California in that area.

2 MR. ARMSTRONG: Thank you, General.

3 CHAIRMAN HARRIS: Mr. Carrington.

4 MR. CARRINGTON: Judge Younger, if you recall  
5 when Mayor Bradley was testifying, Mr. Littlefield asked  
6 him about the cooperation between the Los Angeles Police  
7 Department and the citizens of the community. And he  
8 said it was very good. That was on the local level.  
9 We're a national Task Force. And somewhere, I assume in  
10 Phase II, I think we're going to get into government-  
11 citizen cooperation on the national level.

12 You happen to be the Director of what are  
13 probably the two most effective national citizen law  
14 enforcement groups in the country. I refer specifically  
15 to Americans for Effective Law Enforcement, that you've  
16 already mentioned, and Laws at Work. I wonder if you  
17 could take just a minute, because you are Director of  
18 both, and tell the Task Force about both organizations,  
19 what they do, and what possible potential they may have in  
20 the scheme of things.

21 MR. YOUNGER: In the attachment that I've  
22 presented, the position paper on the exclusionary rule,  
23 there is some background on AELE. It's been referred to  
24 often as the policemen's ACLU. The ACLU over the years  
25 will, at the drop of a hat, go to defend somebody that has

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1 been arrested under circumstances which they consider  
2 questionable, that the ACLU thinks deserves support and  
3 so forth. And I think that's great. They've performed  
4 a real service over the years.

5 But if a prisoner dies in a rural county jail,  
6 there are probably 50 organizations that will represent,  
7 for free, the relatives of the person who died, in a suit  
8 against the sheriff and the county and so forth. But to  
9 my knowledge, there is only about one that will represent  
10 that sheriff who is being sued. And in the case of a  
11 judgment, he might have worked for 30 years and have  
12 everything wiped out because, if some court concludes that  
13 he was careless and the person committed suicide or died  
14 because of some fault of the sheriff.

15 The AELE is one group that has over the years  
16 done a yeoman's job of filing amicus briefs and really  
17 assisting in worthy cases. It's been a lonesome and  
18 sometimes very difficult job, because there are many  
19 foundations around the country that will, again, allocate  
20 all sorts of money to assist people who, because of  
21 poverty or illiteracy and so forth, have not developed  
22 their own skills and income and need help. But there are  
23 very few of them that have ever, in their organizational  
24 setup, anticipated giving any help to the sheriff who is  
25 being sued.

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1 Laws at Work is another very fine organization  
2 that is moving, that has gone national, and it's moving  
3 more and more into the field. So Mr. Carrington and I  
4 both share the conviction that this has been a badly needed  
5 private effort over the years, and I think we're going to  
6 see maybe increased support, hopefully, to those two  
7 groups.

8 MR. CARRINGTON: I have no further questions.  
9 Thank you very much, General.

10 CHAIRMAN HARRIS: Gen. Younger, I just have two  
11 brief questions before you leave. I noted some weeks ago  
12 that a measure similar to the one on the Los Angeles  
13 ballot failed in Oakland. And Mayor Bradley this morning  
14 spoke pessimistically about the chances of today's mea-  
15 sure passing. Why, in your judgment, with so many  
16 Americans concerned about crime and fear in their own  
17 communities, do such measures fail? And secondly, if  
18 local residents are unwilling to help themselves, should  
19 the Federal Government come in and provide the assistance  
20 that they will not provide for themselves?

21 MR. YOUNGER: I think there are a number of  
22 reasons. It's pretty hard to convince -- not sophisti-  
23 cated people, but it's pretty hard to convince unsophi-  
24 sticated people that a police department that hasn't been  
25 able to fill all its jobs, that's out trying to hire

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1 people and can't hire them, needs more money for more  
2 people that it can't hire. It's a difficult thing to  
3 sell. I think it's important. I'm for it. I hope it  
4 passes. But as the Mayor said, we think we're going to  
5 be able to fill those vacant positions within a reasonable  
6 length of time.

7 Chief Hart probably is much better qualified  
8 in this area than I. No, I would not be in favor of see-  
9 ing the Federal Government come in. As a matter of fact,  
10 the Federal Government, I think, has already done enough  
11 damage in this area. Part of the problem, of course, is  
12 that the courts, in their zeal to run schools and state  
13 prison facilities and local police departments impose all  
14 sorts of quota requirements on the police departments  
15 that have made it more difficult to recruit.

16 Now, maybe 10 or 20 years from now we'll all  
17 be grateful that that occurred. But right now, I think  
18 it would be unrealistic to not recognize the Federal  
19 Government's part in some of the recruiting difficulties.  
20 I don't think there is any question that the police  
21 department, not only here but generally throughout  
22 California -- I can't speak for other states, I suspect  
23 it's the same -- people will do anything that's reasonable  
24 to support their local law enforcement efforts, if it  
25 seems logical to them, as I say.

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1 The problem today is to convince the people in  
2 Los Angeles that although we have vacancies on the police  
3 department that we haven't been able to fill, we need  
4 more vacancies.

5 CHAIRMAN HARRIS: And one last question. If  
6 the exclusionary rule were to evaporate or disappear  
7 today, what would be your suggestion as to the kind of  
8 alternative controls that police departments ought to be  
9 put under to assure the public that they performed in a  
10 lawful manner?

11 MR. YOUNGER: Number one, I'd be happy to  
12 respond to that, but even if I wouldn't respond or  
13 couldn't respond, I don't think those who say the exclu-  
14 sionary rule has failed ought to be able to come up with  
15 an acceptable substitute as a condition to eliminating it.  
16 That doesn't make sense to me. It either works or it  
17 doesn't work. If it doesn't work, let's get rid of it  
18 and then consider the problem of, what do we do to improve  
19 the police procedures.

20 Actually, I think that the number of cases  
21 where the police have performed the kind of an outrageous  
22 arrest or act that started some of these decisions many,  
23 many years ago is very rare. Most of the time the police  
24 conduct is sufficiently good so that four out of five  
25 members of the Supreme Court will endorse the conduct.

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1 So it really isn't all that bad.

2 I think that basically, for those rare circum-  
3 stances where the policeman is really a bad guy and just  
4 out to hassle somebody, does not act in good faith, I  
5 think civil liability on the part of the policeman and the  
6 local government entity, increased civil responsibility  
7 and would probably solve that problem.

8 CHAIRMAN HARRIS: Thank you, Gen. Younger.  
9 We appreciate your testimony and your answers to our  
10 questions. And we appreciate your being here today.

11 MR. YOUNGER: Thank you, sir.

12 CHAIRMAN HARRIS: At this time we will recess  
13 for lunch and we will reconvene here for discussion of  
14 Phase I recommendations at 2:00 p.m.

15 (Whereupon, at 12:10 p.m., the hearing was  
16 recessed for lunch until 2:00 p.m.)  
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BEFORE THE  
U.S. DEPARTMENT OF JUSTICE

Public Hearing:  
ATTORNEY GENERAL'S TASK FORCE ON VIOLENT CRIME

JEFFREY HARRIS, EXECUTIVE DIRECTOR  
Chairman

Hyatt Wilshire Hotel  
3515 Wilshire Boulevard  
Los Angeles, California

Tuesday, June 2, 1981

2:00 p.m.

Afternoon Session only:

"DISCUSSION OF PHASE I DRAFT RECOMMENDATIONS"

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A P P E A R A N C E STASK FORCE MEMBERS:

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Co-Chairman: HON. GRIFFIN B. BELL

WILBUR F. LITTLEFIELD

WILLIAM L. HART

FRANK G. CARRINGTON

ROBERT L. EDWARDS

DAVID L. ARMSTRONG

OTHER PARTICIPANTS:

ALEX WILLIAMS

GARY STARKMAN

DAN ROSENBLATT

RAY CHAVIRAS

JOSEPH KRUGER

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A F T E R N O O N   S E S S I O N

2:05 p.m.

CHAIRMAN HARRIS: I think we can get started. I hope Frank will be with us shortly. It is five after, and let's begin.

I will tell you what I propose, and, well let me tell you what you have. You have a list of draft recommendations based upon what we think we heard you say in Atlanta. In a couple instances you have alternatives, mutually exclusive. In other instances, you have alternatives which are not mutually exclusive.

I also spent an hour on the phone -- oh, here is Frank. I spent an hour on the phone last night with Jim Wilson (ph.) who gave me his comments on each of them, so with your permission, I will identify when I am expressing his point of view and tell you what it is on each of these things.

What I propose is that we just go through them, seriatum, and the idea is that we need to leave here, if we are going to make recommendations, we need to leave here with a recommendation unless it is for some reason just impossible to arrive at a consensus or some further information is necessary. Okay?

These are in no particular order, except that they are in the same order as the red briefing book that we used

1 last time. The first draft recommendation reads as follows:

2 "The Task Force recommends that the FBI identify  
3 violence-prone offenders on their unlawful flight to avoid  
4 prosecution rolls and give higher priority to the location  
5 and apprehension of such fugitives."

6 MR. LITTLEFIELD: I have some problems with that  
7 sentence. I don't have any problem with the thought. If I  
8 am correct in my memory of what is on the Post Office wall,  
9 they are charged with unlawful flight to avoid prosecution.  
10 Isn't that correct?

11 CHAIRMAN HARRIS: Yes.

12 MR. LITTLEFIELD: How about saying: the Task Force  
13 recommends that the FBI identify violence-prone offenders  
14 who are charged with unlawful flight to avoid prosecution and  
15 give higher priority to the location and apprehension of such  
16 fugitives?

17 It bothers me, that "rolls" -- the "roll" in there.  
18 That is what bothers me.

19 JUDGE BELL: Yes, that is --

20 CHAIRMAN HARRIS: I think that is a function of  
21 poor English, rather than any intention --

22 MR. LITTLEFIELD: Yes, well I mean -- yes, that is  
23 right.

24 JUDGE BELL: Well, now, with respect to that, I  
25 find that after talking to the Marshal Service, that they

1 have a vastly larger number of fugitives to deal with than  
2 does the FBI, and it would be like throwing a pebble in the  
3 ocean to just make this recommendation for the FBI and ex-  
4 clude the Marshal Service.

5 The Marshal Service is already, they say, doing  
6 some prioritizing on violent crime, but I would say that they  
7 both should do it.

8 And I also learned that the DEA, while they have  
9 turned over the drug traffic bail jumpers to the Marshal Ser-  
10 vice, they still have co-jurisdiction.

11 CHAIRMAN HARRIS: Judge, I will tell you what the  
12 thinking was on this one. The FBI has the responsibility for  
13 the state fugitives, and Judge Webster (ph.) testified that  
14 less than one percent of those fugitives are under active in-  
15 vestigation by the Bureau.

16 This wasn't intended to exclude those areas, but  
17 simply to focus on that particular problem because it was so  
18 acute, namely that the Bureau was looking for basically no-  
19 body.

20 JUDGE BELL: Yes, but the American public would  
21 want to know what the Department of Justice is doing about  
22 violent crime, and if you all want to talk about this 1,500 a  
23 year to the charge of unlawful flight, you are failing to  
24 mention 50,000 others.

25 CHAIRMAN HARRIS: The numbers here -- Judge Webster

1 testified there are 180,000 such people on their list.

2 JUDGE BELL: Oh, well, that: people charged with  
3 giving a bad check or battering their children or something  
4 like that.

5 CHAIRMAN HARRIS: Well, that is --

6 JUDGE BELL: We are talking about violent offenders.  
7 I assume these 1,500 are serious crimes. I think members of  
8 the Task Force ought to understand what happens.

9 There may be 180,000 turned over to the FBI. The  
10 FBI has jurisdiction, under the federal law, of a crime  
11 called "unlawful flight". They have to go and file a charge  
12 against somebody, and to do that, they have to go to the  
13 United States Attorney and they file charges, and then they  
14 get a warrant out to apprehend that person.

15 So you are really talking about 1,500 cases. Now,  
16 out of the 1,500, you are saying divide the 1,500 into vio-  
17 lence-prone people and nonviolence-prone. I have no objec-  
18 tion to that at all.

19 What I am saying that the public would not under-  
20 stand is why we didn't do the same thing for 50,000 that are  
21 under the jurisdiction of the Attorney General. That is all  
22 I am saying.

23 So it seems to me that if this Attorney General  
24 wants to know what he can do now, well, this is one thing, of  
25 course, he can do. But that would raise more questions than

1 it answers.

2 MR. CARRINGTON: Jeff, I am not trying to jump a-  
3 head, but it looks to me like 2 might subsume this:

4 "The Task Force recommends that the Attorney Gener-  
5 al examine the feasibility of having a single Federal law en-  
6 forcement agency coordinate all Federal and state -- activ-  
7 ities -- "

8 Then could we go back to 1? Delete from up to "the  
9 FBI":

10 And that such agency identify violent-prone offen-  
11 ders on an unlawful flight.

12 In other words, combine the two.

13 CHAIRMAN HARRIS: Well, I guess we could do it  
14 either that way, or another suggestion that would probably  
15 accomplish the same thing would be to make a more blanket  
16 statement saying that the Task Force recommends that the At-  
17 torney General assign a higher priority to the apprehension  
18 of all violent or violence-prone fugitives.

19 JUDGE BELL: All fugitives. Yes, same thing, ex-  
20 cept it's everybody. That is all I am saying. But 2 seems  
21 to dwell on -- it seems to point toward the whole thing.

22 Maybe you ought to combine 1 and 2, unless 2 is  
23 meant to do something else.

24 CHAIRMAN HARRIS: No. Well, I guess the two con-  
25 cepts -- and it is clear that they can be combined. One

1 concept is simply that the federal government ought to start  
2 looking for fugitives. It is as plain and simple as that.

3 The second concept is suggesting that the Attorney  
4 General examine whether the way it is organized now is sen-  
5 sible and whether or not he ought to make some changes. We  
6 clearly could put them together in one, or we could separate  
7 them.

8 I think that it sounds like we don't have disagree-  
9 ment on the concepts. It is just a question of the way it is  
10 worded.

11 JUDGE BELL: We might have a disagreement on the  
12 concepts. I would not agree that the Attorney General ought  
13 to give a higher priority through the FBI, the Marshals, to  
14 violence-prone offenders than to drug traffickers who have  
15 jumped bail and left.

16 It seems to me they ought to be treated equally bad.

17 MR. LITTLEFIELD: How about check writers, though,  
18 Judge? They don't want to treat them in the same category.

19 JUDGE BELL: No, no. I am just talking about vio-  
20 lence-prone offenders and drug traffickers.

21 MR. CARRINGTON: Even then, Judge, don't we have a  
22 degree of drug traffickers -- major violators, as opposed to  
23 two ounces of cocaine? They are both federal fugitives.

24 JUDGE BELL: Oh, you would? What I would --

25 MR. CARRINGTON: Could we add "violent-prone

1 offenders and major narcotic violators"?

2 JUDGE BELL: Well, that would be all right with me.  
3 "Major" might not be bad. Sometimes, though, they get the  
4 head of a multi-million dollar ring, and they may just have  
5 caught him on two pounds of cocaine, like charging Al Capone  
6 with tax evasion.

7 MR. CARRINGTON: Yes, and that brings in the whole  
8 organized crime specter, too.

9 JUDGE BELL: Yes.

10 MR. ARMSTRONG: One of the things that the frustra-  
11 tion with local and state District Attorneys is that there  
12 has been a lack of response by the FBI to these unlawful  
13 flight warrants, and in a mobile society, unless they can be  
14 assured there is going to be some effort made by some agency  
15 at a priority level, you know, you can't mix the federal fug-  
16 itives with the state fugitives.

17 I think you almost need a recommendation to say to  
18 the Attorney General that state and local law enforcement  
19 agencies need the federal government's help in the apprehen-  
20 sion of state criminals who flee the jurisdiction beyond  
21 their boundaries.

22 And that ought to be a separate recommendation be-  
23 cause it is a frustrating experience that state prosecutors  
24 deal with daily, as opposed to the, I think, separate and  
25 distinct issue of the federal fugitive question with the

1 Marshal Service.

2 JUDGE BELL: That is a different question. See, he  
3 is not talking about the 180,000 Judge Webster was addressing,  
4 out of which they file charges on about 1,500.

5 MR. ARMSTRONG: That is right.

6 JUDGE BELL: Now, I don't know enough about it to  
7 answer this. Are there some of the rest of the 181,000 that  
8 they apprehend, or do they just apprehend the ones they take  
9 warrants out on for unlawful flight?

10 MR. ARMSTRONG: They basically are not apprehended,  
11 but generally are arrested in some other jurisdiction for a  
12 subsequent charge, and then the warrant is executed in that  
13 jurisdiction.

14 There is no pursuit made by the FBI, and that is  
15 the concern, I think, by District Attorneys and local state  
16 officials, that there is not that pursuit being made by the  
17 Bureau.

18 MR. CARRINGTON: Almost every District Attorney's  
19 office I know -- and I think this is true in federal, but I  
20 am not sure -- has a major violator, major offender bureau,  
21 and that those words, "major violator" or "major offender",  
22 have really become words of art in the criminal justice sys-  
23 tem.

24 I think that might cover the organized crime, if we  
25 use "major violator" as such; it might cover the organized

1 figure, the major dope dealer, and then we add the violence-  
2 prone offender, and we might have at least the people that  
3 should be given a priority as opposed to the check forgers.

4 JUDGE BELL: One other thing that ought to be con-  
5 sidered with this. I learned from talking with the Marshals  
6 that they move 30,000 prisoners in a state each year. With  
7 some additional funds, they could move people for states.

8 In other words, they are expert at moving prisoners.  
9 When the state of Kentucky learns that they have caught a man  
10 out here in Los Angeles that they want back in Louisville, it  
11 is a problem to you to move that man.

12 But if the Marshal Service was available, you would  
13 have them; you would send to notify them, and they would  
14 bring this man to you, because they are moving people anyway.

15 Now, how do we get into that? That is a service.

16 MR. LITTLEFIELD: Judge, that would deprive a poor  
17 policeman in Louisville from a trip to Los Angeles. I don't  
18 think they would support that. (Laughter)

19 CHAIRMAN HARRIS: Judge, I think that is a good  
20 point. Before we get into that, though, I think we ought to  
21 resolve the question of whether we want to make a separate  
22 recommendation which, in Bill Littlefield's language, on the  
23 state UFAB problem.

24 And then we can make a separate one on the general  
25 priority issue of fugitives. I would like to know what you

1 think about that.

2 I know your feeling, Dave.

3 MR. ARMSTRONG: Just to reiterate it, it is a sep-  
4 arate issue and I think it must be kept separate from the  
5 federal fugitive issue.

6 MR. LITTLEFIELD: I agree with Dave.

7 CHAIRMAN HARRIS: Okay. Any violent disagreement  
8 with that?

9 JUDGE BELL: I don't understand that. What are we  
10 keeping separate?

11 MR. ARMSTRONG: Under the existing federal frame-  
12 work, the Bureau provides a service to state and local law  
13 enforcement agencies who have an unlawful flight situation.

14 That is a separate issue compared to the federal  
15 fugitive apprehension that the Federal Marshal Service pro-  
16 vides.

17 So we are talking about the federal role in assist-  
18 ing state and local law enforcement in the apprehension of  
19 violent criminals who flee the state's jurisdiction.

20 JUDGE BELL: Well, I see. I thought we were dis-  
21 cussing what the Attorney General could do to assist in low-  
22 ering the level of violent crime, period, not just helping  
23 the states.

24 MR. ARMSTRONG: That is one way they can help, for  
25 this reason: it has not been a priority, admittedly, by

1 Judge Webster. And until it is a priority, people can simply  
2 become more mobile and go into a border state like Kentucky,  
3 commit a crime in Louisville, cross the river into Indiana,  
4 and our law enforcement effort to apprehend that individual  
5 stops at the Ohio River.

6 And unless we can have a quick response time from  
7 the Bureau in serving and apprehending someone on an unlawful  
8 flight warrant, we are thwarted. Our entire effort is thwart-  
9 ed. And that is applicable to all 50 states.

10 JUDGE BELL: But I want to say to you that the Bur-  
11 eau doesn't have any such resources. That is the reason they  
12 are not catching these 181,000 people. They just don't have  
13 6,000 agents.

14 MR. ARMSTRONG: Maybe we ought to be talking about  
15 a redirection, then. If they don't have the resources to do  
16 it, then perhaps there ought to be some federal law changed  
17 to allow law enforcement agents to go across state bounds if  
18 you are in pursuit.

19 JUDGE BELL: Yes.

20 MR. HART: If it is more than hot pursuit, you mean.

21 MR. ARMSTRONG: More than hot, yes. It would have  
22 to be.

23 MR. CARRINGTON: It seems to me that the key words  
24 here -- at least, the words for a point of departure in num-  
25 ber 2: "a single Federal law enforcement agency". If we go

1 from that, that, I assume, would encompass both the Marshals  
2 and the FBI, but a single agency would coordinate.

3 Then we go from that back to 1, and strike all the  
4 way up to "the FBI", and say, "that single agency".

5 I think that who is going to have responsibility  
6 would be more or less up to the Attorney General. I think  
7 what we are trying to get at in this meeting is how can the  
8 fugitive program, as such, be targeted toward the violence-  
9 prone offenders and major violators and the drug dealers.

10 And I am not sure we really need to direct the Attorney Gen-  
11 eral one way or the other on which particular agency.

12 Just put it in fairly generic terms with "that  
13 single federal law enforcement agency".

14 MR. HART: Well, that seems to make sense to me.  
15 If you narrow it down too much, then you don't give the At-  
16 torney General an opportunity to devise the best method.

17 CHAIRMAN HARRIS: Well, Mr. Carrington's proposal  
18 is that the recommendation would read as follows:

19 "The Task Force recommends that the Attorney Gener-  
20 al examine the feasibility of having a single federal law en-  
21 forcement agency coordinate all federal and state unlawful  
22 flight to avoid prosecution activities. The Task Force also  
23 recommends -- "

24 Well, I'm not sure. Maybe you should say what you  
25 have in mind.

1 MR. CARRINGTON: Okay. Two becomes one under this  
2 particular idea:

3 "The Task Force also recommends that -- " scratch  
4 out "the FBI"; insert "such agency -- identify violence-prone  
5 offenders, major narcotic offenders and major violators on  
6 their unlawful flight to avoid prosecution rolls -- " Well,  
7 it should be "roll". Then, " -- in its unlawful flight to  
8 avoid prosecution roll, and give higher priority to the loca-  
9 tion and apprehension of such fugitives."

10 In other words, in 2 we seem to centralize, and  
11 then if we go back to 1, we can centralize what crimes we are  
12 looking for and what fugitive warrants we are going to give  
13 priority to, and it looks like that is as far as we ought to  
14 go, and let the Attorney General work out the details.

15 JUDGE BELL: Well, let me read it. Let me read 2,  
16 and see if this has got it:

17 "The Task Force recommends that the Attorney Gener-  
18 al examine the feasibility of having a single Federal law en-  
19 forcement agency coordinate all Federal and state unlawful  
20 flight to avoid prosecution activities, and that higher prior-  
21 ity be given in apprehension to violent offenders and major  
22 drug traffickers."

23 CHAIRMAN HARRIS: The one thing that that doesn't  
24 cover is the Marshals do more than go after UFAB violators.  
25 They go after bail jumpers. I mean, we have sort of

1 excluded -- we have focused only the UFAB and not fugitives  
2 in general.

3 JUDGE BELL: "All fugitives", then, instead of say[  
4 ing "unlawful flight to avoid prosecution"?

5 CHAIRMAN HARRIS: Well, the idea in the first part  
6 of it is that, you know, the FBI is looking for the state  
7 UFABs and the Marshals are looking for the federal UFABs and  
8 other. And the question is, should those be consolidated?  
9 Perhaps the Marshals are better suited to be the fugitive  
10 agency if the Bureau can't do it.

11 Perhaps the Marshals ought to look for federal  
12 UFABs and state UFABs, as well as the bail jumpers and the  
13 escapees, etcetera. That is the concept in the consolidation  
14 1. If we focus on UFABs in our priority part of it, then we  
15 seem to be saying only give priority to UFABs. Don't worry  
16 about escapees or abil jumpers. And I don't think that is  
17 what we mean.

18 MR. CARRINGTON: Would "fugitive" encompass a bail  
19 jumper and escapee?

20 CHAIRMAN HARRIS: Yes.

21 MR. CARRINGTON: An escapee automatically, more or  
22 less, becomes a fugitive --

23 CHAIRMAN HARRIS: I think "fugitive" is an all-en-  
24 compassing term.

25 MR. CARRINGTON: Then I think we should us it.

JUDGE BELL: Where it says, "Federal and state

1 unlawful flight to avoid prosecution -- " and fugitive ac-  
2 tivities.

3 CHAIRMAN HARRIS: And other fugitives.

4 JUDGE BELL: Activities and other fugitives? All  
5 right. I have got it.

6 CHAIRMAN HARRIS: So, let's see how this sounds.

7 JUDGE BELL: All right. Do you want to read it?

8 CHAIRMAN HARRIS: I am not sure I can read your  
9 handwriting, Judge.

10 JUDGE BELL: All right. "The Task Force recommends  
11 that the Attorney General examine the feasibility of having  
12 a single Federal law enforcement agency coordinate all Feder-  
13 al and state unlawful flight to avoid prosecution activ-  
14 ities -- " or should it be, "prosecution and other fugitive  
15 activities"? Where is "activities" going?

16 MR. ARMSTRONG: Strike "activities" somehow.

17 CHAIRMAN HARRIS: Put it at the end. Strike it up  
18 to "prosecution".

19 JUDGE BELL: "Prosecution and other fugitive -- "

20 CHAIRMAN HARRIS: "Activities".

21 JUDGE BELL: " -- and that higher priority be given  
22 in apprehension to violent offenders and major drug traffick-  
23 ers."

24 MR. CARRINGTON: That leaves out organized crime,  
25 Judge. If you were going after a major prostitution ring or

1 something like that, which you might be, I would say, "major  
2 violator". I think that is --

3 JUDGE BELL: "Violent offender", then --

4 MR. CARRINGTON: "Violence-prone, major narcotic  
5 offenders and other major violators." Then you have got the  
6 whole spectrum of fugitives.

7 JUDGE BELL: Violent what?

8 MR. CARRINGTON: "Violence-prone", comma.

9 JUDGE BELL: "Violent-prone."

10 MR. CARRINGTON: "Major narcotic offenders."

11 JUDGE BELL: Well, the jargon is "major drug traf-  
12 ficker," isn't it?

13 MR. CARRINGTON: Yes. "Major drug traffickers,"  
14 comma, "and other major violators," comma --

15 JUDGE BELL: Period.

16 MR. CARRINGTON: " -- in the location and apprehen-  
17 sion of such fugitives."

18 CHAIRMAN HARRIS: Well, we have said that. I think  
19 we got that at the front end of the sentence.

20 MR. CARRINGTON: Oh, okay.

21 JUDGE BELL: Well, you can read that.

22 CHAIRMAN HARRIS: That is it.

23 JUDGE BELL: No pride of authorship; you can change  
24 it. (Laughter)

25 CHAIRMAN HARRIS: Okay. This is the next

1 recommendation:

2 "The Task Force recommends that the FBI continue  
3 prototype testing of the Interstate Identification Index."

4 And in parentheses after it, I have the following,  
5 which is more or less a stage direction. It says:

6 "(While the issue of message-switching will take  
7 place in Phase II, the Task Force makes the above recommen-  
8 dation regardless of whether any recommendation is forthcom-  
9 ing regarding the establishment of a national data base.)"

10 If you recall, the way that comes in is, if you re-  
11 call, last time in Atlanta we talked about should we bite the  
12 bullet and recommend the Attorney General take on the Con-  
13 gress again on this issue.

14 And here, what we think we heard is that the FBI  
15 ought to proceed with their prototype of its Index regardless  
16 of what we decide about that.

17 JUDGE BELL: Tell me what the Interstate Identifi-  
18 cation Index is.

19 CHAIRMAN HARRIS: The Interstate Identification In-  
20 dex is a new prototype that the Bureau is going to be test-  
21 ing late summer and early fall which basically will have the  
22 Bureau maintaining an index of what states have information  
23 on a particular violator.

24 So, if the state of California says to the Bureau,  
25 "What do you have on John Doe," they will be able to say to

1 say to California, "Ask Indiana, Ohio and Idaho. They have  
2 information on John Doe."

3 The Bureau would have an index, but not the infor-  
4 mation.

5 I ought to defer to Bob Edwards on this, because I  
6 have just about exhausted my knowledge.

7 MR. EDWARDS: That pretty well covers it.

8 JUDGE BELL: Could you keep a separate index on  
9 firearm offenders?

10 MR. EDWARDS: I don't think the intention of the  
11 Interstate Identification Index took that into account, but I  
12 think that the potential is there for keeping indices on any  
13 kind of specific offender.

14 The project itself doesn't take that into account.

15 JUDGE BELL: You have all offenders, not just fire-  
16 arm offenders?

17 MR. EDWARDS: That is correct.

18 JUDGE BELL: How would we go about getting the city  
19 of Nashville, Tennessee, to give a name to somebody so it  
20 would get in this index the next time they arrest a young man  
21 at the airport with three pistols on him and take him down-  
22 town and fine him 50 dollars and let him go?

23 We need to get that kind of information on a list  
24 somewhere. Now, how are we going to do that?

25 MR. ARMSTRONG: I guess what we are talking about is

1 the issue of: will the locals and state people participate  
2 in providing the information for the Index?

3 MR. EDWARD: I think the basic concept, Judge, is  
4 that you will have within each state the establishment of --  
5 and this is pretty much universal within the states -- a cen-  
6 tral repository for criminal record information at the state  
7 level.

8 What you have to have and what you have to ensure  
9 is that in a specific town that the people are aware that  
10 that information must be forwarded to the state level if it  
11 is going to be of any meaningful advantage for the whole  
12 process.

13 JUDGE BELL: Well, I was thinking about firearms  
14 because these attempted assassinations we have had would have  
15 all been known to the Secret Service if somebody had just  
16 said, "Well, this fellow had a gun one day. He's bought a  
17 gun."

18 And yet they go into these comedian courts, I call  
19 them, pay a small fine, and they don't even get into the  
20 criminal justice system. That is why I am asking if it could  
21 keep a separate under this -- what do you call this thing?  
22 The I.I.I.? If we could keep a separate roster on firearms  
23 violations, and is that worth considering? I just suggest  
24 that.

25 CHAIRMAN HARRIS: Just a point of order. As you

1 know, Governor Thompson couldn't be here today because the  
2 state of Illinois is grinding to a halt in terms of transpor-  
3 tation and he is addressing that problem.

4 Gary Starkman of his staff is here and has asked to  
5 be able to interject what the governor's position is on some  
6 of these issues. Gary?

7 JUDGE BELL: Come up here. Do you want to sit up  
8 here with a chair?

9 MR. STARKMAN: It makes no difference.

10 JUDGE BELL: No. Well, you can sit there. Be glad  
11 to have you put the governor's views in.

12 MR. STARKMAN: The point on this recommendation is  
13 that in the absence of some substantive kind of suggestion of  
14 the type that Judge Bell recommends, is there any risk that  
15 the FBI will stop its prototype program in the absence of a  
16 Commission recommendation?

17 I think the governor feels very strongly that the  
18 Task Force shouldn't be recommending what the Agency is going  
19 to do anyway where an issue is not controversial.

20 CHAIRMAN HARRIS: My guess is the answer to that  
21 question is that the Bureau is going ahead with its plan and  
22 the question is: do we want to express any support for it in  
23 Phase I, considering we may be making a different recommenda-  
24 tion in Phase II, namely that the Attorney General take on  
25 this issue again of a national data base.

1 The question is, if we do that in Phase II and re-  
2 main silent in Phase I, there is an argument as to whether  
3 we are repudiating this effort or simply trying to add onto  
4 it. That is the only reason for that.

5 JUDGE BELL: I think I can answer it. The FBI has  
6 been trying to do this for several years. They get blocked;  
7 always get blocked. There will be people in the Congress  
8 trying to block this, and it probably will strengthen the  
9 hand of the Attorney General if we made some recommendation.

10 It would strengthen it tenfold if we recommended  
11 that they look into keeping a separate index on firearms  
12 violations. There is hardly anybody who could stand up  
13 against that. That is really one of the reasons I am sugges-  
14 ting it, besides it was a good idea.

15 CHAIRMAN HARRIS: Well, let me ask you this first:  
16 does anyone have an objection to the recommendation that the  
17 Task Force recommends that the FBI continue prototype testing  
18 of the Interstate Identification Index?

19 MR. HART: I don't have any objections at all. I  
20 think it is a great idea and long overdue.

21 I have a question. What if Indiana, Utah and Cali-  
22 fornia don't have the answer on criminal activity of an in-  
23 dividual, but the FBI have it. Are they going to give that  
24 up when you call?

25 CHAIRMAN HARRIS: Well, I think the answer is that

1 to the extent that a state queries about someone and there  
2 is information in the federal files, within the Privacy Act  
3 and the FOIA constraints, yes. And that is something we are  
4 going to deal with in Phase II about what sort of statutory  
5 constraints there are.

6 JUDGE BELL: Yes, but the chief wants to know, if  
7 they have got it in their file, can they tell you? That is  
8 what he wants to know. Can the policeman or can the FBI say,  
9 "Yeah, we know about John Doe and he is a violent person,  
10 dangerous and armed."

11 MR. HART: Right --

12 MR. EDWARDS: In the criminal history record area,  
13 the answer is yes.

14 JUDGE BELL: No, we are talking about the FBI giv-  
15 ing it out, now.

16 MR. EDWARDS: The federal records would be acces-  
17 sible under that.

18 JUDGE BELL: Yes. This is not much of a recommen-  
19 dation to make to the Attorney General, that the FBI continue  
20 doing what they are doing.

21 CHAIRMAN HARRIS: That is Gary's point.

22 JUDGE BELL: I know. But I am thinking about that.  
23 That is not a bad point. Why don't we recommend that they do  
24 this, period? To tell them to continue to do it, we don't  
25 know where they are, even. It might be just an idea in

1 somebody's head.

2 CHAIRMAN HARRIS: Well, then we could simply remove  
3 the word "continue".

4 JUDGE BELL: Oh, yes.

5 CHAIRMAN HARRIS: And it would read:

6 "The Task Force recommends the FBI prototype -- "

7 JUDGE BELL: " -- do prototype testing".

8 CHAIRMAN HARRIS: " -- do prototype testing of the  
9 Interstate Identification Index."

10 JUDGE BELL: I would say: that they move toward  
11 the establishment of an Interstate Identification Index.

12 CHAIRMAN HARRIS: "The Task Force recommends that  
13 the FBI move towards the establishment of an Interstate Identi-  
14 fication Index."

15 JUDGE BELL: That is beyond prototype testing.

16 CHAIRMAN HARRIS: Anyone object to that?

17 JUDGE BELL: I mean, I can't see how we can get by  
18 without this in this country.

19 MR. EDWARDS: We can't. That is why we have gone  
20 to the extent that we have to try to do something that we are  
21 doing now with that program. We have got to have it.

22 JUDGE BELL: Well, I don't think we ought to be  
23 timid about it, and certainly the Attorney General can't con-  
24 tinue to be timid about it.

25 I mean, I was arguing with the Congress the whole

1 time I was Attorney General about "message switching", they  
2 call it. That is what we are talking about.

3 MR. EDWARDS: Yes, Sir.

4 MR. STARKMAN: How about adding the recommendation  
5 that the FBI, in connection with this, determine the feas-  
6 ibility of establishing a gun registry?

7 JUDGE BELL: I think that would really help out if  
8 we do that.

9 CHAIRMAN HARRIS: Does anyone object to that?

10 (No response)

11 CHAIRMAN HARRIS: Now, let me just repeat the lan-  
12 guage so we think we have it. There will be a period after  
13 "(III)". And, "In addition, the FBI -- "

14 What was the language you suggested, Gary?

15 JUDGE BELL: " -- examine the feasibility -- "

16 CHAIRMAN HARRIS: " -- examine the feasibility of  
17 establishing -- "

18 JUDGE BELL: " -- the separate registry of firearm  
19 violators."

20 CHAIRMAN HARRIS: "Violators."

21 MR. ARMSTRONG: I just wonder. Shouldn't that be  
22 perhaps a separate issue? I would hate to see this one be  
23 attacked in connection with the latter statement.

24 CHAIRMAN HARRIS: Well, we could separate them, and  
25 that way, you wouldn't run that risk and we could get them

1 both in.

2 MR. EDWARDS: I would rather see it as a separate  
3 issue, personally. In working on that particular one, I  
4 think that that falls into the same category that the judge  
5 touched on at the last meeting, and we started talking about  
6 intelligence files and that type of thing.

7 And I don't want to have this project, which is  
8 moving forward and which is a valuable tool on looking at  
9 career criminals and pre-sentence investigation and all those  
10 other things that we need on that rap sheet data nationally --  
11 I would hate to see that impacted in any way.

12 So I would personally request that it not be tacked  
13 on as a part of this particular project.

14 JUDGE BELL: Well, we will make it separate. It  
15 would suit me to have it separate.

16 CHAIRMAN HARRIS: So why don't we simply do it sep-  
17 arately and make it a new recommendation.

18 JUDGE BELL: New recommendation. Separate recom-  
19 mendation. All right.

20 CHAIRMAN HARRIS: Okay.

21 UNIDENTIFIED VOICE: It would read stronger if you  
22 say simply, "establish" instead of "move toward the establish-  
23 ment of" --

24 JUDGE BELL: Yes. Take out that "move toward".  
25 All right. "Establish."

1 CHAIRMAN HARRIS: "Establish."

2 JUDGE BELL: Yes, that is stronger.

3 CHAIRMAN HARRIS: Yes.

4 JUDGE BELL: And we all are prepared to be strong.

5 CHAIRMAN HARRIS: Okay. The next one is an either-  
6 or. It is two versions of the same recommendation, and let  
7 me read the two versions to you.

8 "The Task Force recommends that the Attorney Gener-  
9 al invoke his authority under Title 21 of the United States  
10 Code and request," it should be, "the U.S. Navy to provide  
11 support to detect air-borne and water-borne drug traffic."  
12 That is one version of it.

13 Second version: "The Task Force recommends that  
14 the Attorney General have the Office of Legal Counsel in the  
15 Department of Justice write a legal opinion describing the  
16 maximum degree of assistance the Navy can give to the Federal  
17 drug enforcement officials and, thereafter, meet with repre-  
18 sentatives of the Department of Defense, Coast Guard, the  
19 Drug Enforcement Administration, and the Office of Legal  
20 Counsel to resolve areas of disagreement concerning interpre-  
21 tation of the Posse Comitatus Act."

22 One is -- well, it's self-evident; one is more di-  
23 rect.

24 MR. EDWARDS: Do you have to interpret this as  
25 being that the information that could be furnished by the

1 Navy or the Air Force -- whoever -- can only be given to the  
2 federal law enforcement? I see that as being interpretive,  
3 and that could really cause a problem where you have a joint  
4 force operation going in a state, which brings in local state  
5 and federal entities.

6 CHAIRMAN HARRIS: Well, the only area in which  
7 there is an exception to the Posse Comitatus Act is in the  
8 drug enforcement area, and it is to provide assistance as re-  
9 quested by the Attorney General in carrying out his mandate  
10 to enforce Title 21.

11 So if, in fact, as often happens, the federals are  
12 working on a joint task force operation on a Title 21 viola-  
13 tion, I would think that that would be covered. But it is  
14 very specific.

15 The assistance here is only in furtherance of the  
16 narcotics enforcement title.

17 JUDGE BELL: Well, all I wanted to say is I didn't  
18 know we had a problem with the Coast Guard.

19 MR. EDWARDS: You don't.

20 JUDGE BELL: And by putting this in there, we  
21 create a problem.

22 CHAIRMAN HARRIS: I think that the idea was that if  
23 you are going to go this sort of second route, which is sort  
24 of a let's-have-a-little-consultation-about-it-first, since  
25 the Coast Guard is just one of the players on the board, they

1 ought to be in the discussions.

2       There is no problem with the Coast Guard in terms  
3 of having them act.

4       JUDGE BELL: I have got a bill here that has been  
5 introduced. It is a committee amendment to the Defense Auth-  
6 orization Bill S-815. This was introduced on May the 4th,  
7 1981. It may be already enacted in the law in the Senate. I  
8 am not certain of that.

9       (Unidentified voice from audience, inaudible.)

10       JUDGE BELL: It has been? And it clarifies the  
11 Posse Comitatus law, and it puts the President's position  
12 where he can get the Defense Department to offer assistance.  
13 The Secretary of Defense has to promulgate regulations on how  
14 to do this.

15       But they have a point paper attached to this and it  
16 says that there has been a great deal of indecision at the  
17 Justice Department over the years about the meaning of Posse  
18 Comitatus, and that is why they think they need to change the  
19 law.

20       So based on this, I would not recommend, right now,  
21 until we get a legal opinion, unless the Attorney General and  
22 the President decide that they want to get one.

23       But we might take an option away from them. And  
24 maybe they would rather go with this legislation.

25       MR. CARRINGTON: Jeff, I am going on the assumption

1 that the only reason we have these two recommendations is  
2 we are strictly Phase I.

3       CHAIRMAN HARRIS: That is right.

4       MR. CARRINGTON: In other words, phase II, we may  
5 well recommend exactly what S-815 does?

6       CHAIRMAN HARRIS: That is right.

7       JUDGE BELL: I see. I see.

8       CHAIRMAN HARRIS: The idea being that once we get  
9 into Phase II, however, if we miss the chance to make this  
10 and for some reason the bill falls through or anything else  
11 happens, we are left without anything.

12       MR. CARRINGTON: I would suggest we go the most  
13 direct route, knowing the government. You know they are  
14 going to get all of the legal counsels out to have their  
15 meetings and everything.

16       JUDGE BELL: Yes.

17       MR. CARRINGTON: And I like the first paragraph  
18 much better. And also, the first paragraph does not limit it  
19 to federal.

20       CHAIRMAN HARRIS: Jim Wilson's comment on this was  
21 that the first one was less wishy-washy than the second, and  
22 I don't think we need to talk long distance to him to get  
23 that.

24       He was concerned that there be some consultation,  
25 and I think for that reason, he thought the second was a

1 little too wishy-washy, but he wanted to make sure that con-  
 2 sultation did go on, and therefore was a little uneasy about  
 3 the first.

4 But I think your point, Frank, answers that, that  
 5 it is clear that no matter what we see, that the consultation  
 6 will take place.

7 MR. CARRINGTON: CYA is going to dictate it.

8 JUDGE BELL: All right. All right, then you move.  
 9 Frank, we go with the alternative 1?

10 MR. CARRINGTON: With the single deletion of the  
 11 "s" in "requests". Yes, Sir.

12 JUDGE BELL: Yes.

13 CHAIRMAN HARRIS: Okay. With no further discussion  
 14 or objection, we will move along; 5 reads as follows:

15 "It is recommended that the Attorney General direct  
 16 that a career criminal program be developed for use by all  
 17 United States Attorneys Offices and the Criminal Division.  
 18 The program, most particularly, should provide U.S. Attorneys  
 19 with criteria to use in identifying those types of Federal  
 20 offenders," it should be, "who are most likely to commit ad-  
 21 ditional, serious, Federal or state offenses if they are not  
 22 incarcerated."

23 Now let me just tell you what Jim Wilson's comment  
 24 was and then throw it open for other. He thinks that if we  
 25 make such a recommendation that we should not tie it up with

1 predicting future behavior. He thinks that is a very attack-  
 2 able position since no one has yet been able to find criteria  
 3 to predict future behavior.

4 He thinks we ought to change the second sentence  
 5 and tie it to identify offenders who have committed serious  
 6 crimes or are recidivists. He thinks that we are on much  
 7 firmer ground if we are judging people by their past conduct  
 8 than trying to predict their future conduct.

9 JUDGE BELL: I think that is very well stated.

10 MR. EDWARDS: Yes, right.

11 JUDGE BELL: Very well stated. Now, let me ask a  
 12 question about this. The career criminal program, as I un-  
 13 derstand it, was an LEAA effort which has been used by the  
 14 states. And I take it from this that there has not been a  
 15 career program developed in any Federal U.S. Attorney's of-  
 16 fice?

17 CHAIRMAN HARRIS: Let me ask Alex Williams, the  
 18 Principal Assistant in the Los Angeles U.S. Attorney's Office  
 19 to speak to that.

20 MR. WILLIAMS: There are two points, Jeff. The  
 21 first is -- and the only caveat -- I think the idea certainly  
 22 is endorsable, but two points should be made.

23 First of all, you have the Speedy Trial Act. It is  
 24 absolutely inconceivable that any prosecution in my office  
 25 could be put on a faster track away from the others. I mean,

1 to boil things right down, we are going to trial within a  
 2 month of indictment and it is all we can do to get all the  
 3 king's horses and all king's men in order at the beginning of  
 4 court, particularly with the international and national con-  
 5 spiracies that we prosecute in a court.

6 The second point is almost every major case we han-  
 7 dle -- every major case we handle -- is a vertical prosecu-  
 8 tion, and that is the other component of the career criminal,  
 9 as I understand it. David, you know more about it than I.

10 But in the federal system, the fact that we have  
 11 almost universal vertical prosecution on major cases, and if  
 12 we have the Speedy Trial Act, it takes at least two of the  
 13 points that I think are the heart of the so-called fast track  
 14 rib on criminal prosecution in the state's side.

15 And I think we should operate with an awareness of  
 16 that when we speak to federal prosecution.

17 But beyond that, Judge, I think the answer is no.  
 18 There is not something that I know of that is called specif-  
 19 ically a career criminal.

20 JUDGE BELL: Well, the reason I asked the question,  
 21 does it lend itself to federal prosecution? It may not be  
 22 something you even need in a U.S. Attorney's Office?

23 MR. WILLIAMS: I hate to be whistling against the  
 24 wind, but I think that is a valid point.

25 JUDGE BELL: Well, you know, we don't want to

1 recommend something that is not worthwhile.

2 MR. WILLIAMS: I endorse that thought, Judge Bell.

3 JUDGE BELL: That is so elementary.

4 CHAIRMAN HARRIS: David?

5 MR. ARMSTRONG: I would really like to see the Task  
 6 Force perhaps expand the recommendation on 6, which calls for  
 7 the development within the Department of Justice and Informa-  
 8 tion, and I would like to see it expanded to include funding,  
 9 if possible, to state and local prosecutors who develop and  
 10 institute or -- instead of improve -- establish a career crim-  
 11 inal program; that this system be coordinated with the U.S.  
 12 Attorney network assistant throughout the United States, be-  
 13 cause jointly they can expedite at a state level a speedy  
 14 trial and a fast-track prosecution for career criminals.

15 I think you don't have to tie in a direct request  
 16 that the U.S. Attorneys do that, but U.S. Attorneys can as-  
 17 sist state and local prosecutors who do have career criminal  
 18 programs.

19 And I would like to see perhaps 5 deleted, and you  
 20 expand 6 to read: " -- the development of a department with-  
 21 in the Department of Justice that would aid on an information-  
 22 al basis, and funding, where possible, state and local prose-  
 23 cutors who institute programs dealing with the prosecution of  
 24 career criminals."

25 I might even add to that, "And the development of a

1 training program to assist state and local prosecutors.

2 MR. WILLIAMS: My only request, Jeff, would be to  
3 recognize them. When you are talking about federal prosecut-  
4 ors, you are talking about a nation-wide community of, I  
5 don't think barely -- it is less than 2,000. We have just  
6 been cut ten percent, as have all offices, in overall author-  
7 ization.

8 We have in the entire United States attorney com-  
9 munity enough assistants that are barely three times what  
10 John Van De Kamp has a Deputy D.A.'s in this county. And so  
11 when you are talking --

12 JUDGE BELL: To assist the state prosecutors.

13 MR. WILLIAMS: Yes, I think 6 is terrific. I agree  
14 with that.

15 CHAIRMAN HARRIS: Jim Wilson wanted to eliminate 6,  
16 and his point of view was, from what he can tell through the  
17 LEAA programs, the people that have the expertise in these  
18 programs are already to states and that the federal govern-  
19 ment really has nothing to teach them that they could probab-  
20 ly teach the federal people about career criminal programs.

21 And he really wondered whether we were just delud-  
22 ing ourselves into thinking we have something to offer here  
23 when the expertise is already in the field.

24 Now that I don't know. Dave, do you have a point  
25 of view about that?

1 MR. ARMSTRONG: Well, Jim and I talked about this.  
2 Seven, perhaps, could be enlarged -- I just noticed 7 -- with  
3 the exception of wanting to give some special attention to  
4 the career juvenile offenders.

5 I would think that the real need that the federal  
6 government has in assisting state and local career criminal  
7 programs is an informational need more than anything, and if  
8 we can exchange information as to our prosecutions and get  
9 the records from other jurisdictions through some centralized  
10 office, because the response from the FBI and their records  
11 has not been what it should be, and there would be some major  
12 emphasis given to that --

13 CHAIRMAN HARRIS: Well, are you suggesting that we  
14 do something here like Judge Bell suggested with respect to a  
15 gun registry, that perhaps there be maintained a Career Crim-  
16 inal Registry?

17 MR. ARMSTRONG: It is a tremendous idea. It really  
18 is. And that is really what we have been skirting all this  
19 time without saying that. That is exactly the point that I  
20 think Alex and I both are making.

21 There ought to be, maybe in the Bureau, some statis-  
22 tical data that would identify those people who were appre-  
23 hended and convicted for more than two felonies. And those  
24 are the earmarked.

25 And that would be a regular line, like on the NCIC,

1 that here are people who are targets.

2 JUDGE BELL: Recidivists.

3 MR. CARRINGTON: It appears to me that we are deal-  
4 ing with a concept here -- career criminal -- and it is a  
5 concept that has worked. And I was wondering if we could do  
6 a consolidation job and put career criminal as the basic  
7 thing for the single recommendation which would encompass co-  
8 ordination, a registry; if a State Prosecutor's Office didn't  
9 have a career criminal, then give him the information to  
10 start it.

11 And use the concept of career criminal to involve  
12 all of the coordination that we get to in the recommendation  
13 on page 9, but just delineate it as "career criminal", be-  
14 cause that is pretty much on the books as far as -- number 9  
15 is the omnibus coordination bill, but it is limited to feder-  
16 al districts.

17 MR. EDWARDS: Let me throw out one caution. When  
18 you use the term "career criminal" and you establish criteria  
19 as to what is a career criminal, you are looking at a crimin-  
20 al history record, and you are looking at the recidivists and  
21 all the other stuff along with it.

22 If you establish a separate file that you now call  
23 career criminal, with the number of millions of records that  
24 you have on file in the United States, that file will become  
25 antiquated overnight.

1 What you have to establish is the ability to get,  
2 instantaneously, criminal history information from whatever  
3 jurisdiction, along with the disposition data, quickly and  
4 expeditiously. You have got to be able to assess it and make  
5 it available to the parties involved.

6 If you establish a criminal history record index,  
7 as we are talking about with the Interstate Identification  
8 Index, you have got the nucleus for doing all the other  
9 things that you want to do as spin-off capabilities.

10 The local authorities have the definition problem,  
11 then, as: what is a career criminal? Because what might be  
12 a felon in one state might be a misdemeanor in another.  
13 There are a lot of variables there that come into play.

14 So let me caution you when you start saying a sep-  
15 arate file. Really, what you need to do is reinforce the  
16 concept of establishing a good, credible, criminal history  
17 file, and an index and an access to those records instantan-  
18 eously. That is what you are looking for.

19 CHAIRMAN HARRIS: I guess what was missing when I  
20 was a prosecutor is you get the rap sheet from the Bureau,  
21 and there was never anything in the disposition column. Four  
22 pages long, and there wasn't one disposition. So you didn't  
23 know whether the cases were dismissed, the fellow was con-  
24 victed and served time, whether it was a bad arrest, or what.

25 MR. EDWARDS: Exactly.

1 CHAIRMAN HARRIS: So what you are suggesting is  
2 that we would have everything we needed if our recommendation  
3 was simply that there should be follow-ups to the disposition  
4 to present so when you get a rap sheet, you know immediately  
5 who you are dealing with.

6 MR. EDWARDS: Exactly. The recommendations that  
7 are presently pending would -- the keeping of criminal his-  
8 tory record information. And if you don't have a disposition  
9 within 180 days, you can't disseminate that information.

10 All of these constraints that are now placed upon  
11 us in working in that particular area have forced the states  
12 to maintain that information and establish follow-up proce-  
13 dures which will insure that the disposition data is attached  
14 or that record doesn't go out of that state.

15 Those types of things are just coming of age, and I  
16 think that the things that you are talking about -- career  
17 criminal programs, pre-sentence investigation -- all of that  
18 is necessary through this program we are trying to establish.  
19 And if we get the momentum with that program that we feel we  
20 can and we have an index in Washington for quick access, then  
21 you have got what you are talking about wanting there.

22 MR. CARRINGTON: That is why I used the term "con-  
23 cept" at this stage, because what you are talking about is  
24 Phase II.

25 JUDGE BELL: What I would like to say -- oh.

1 MR. CARRINGTON: I'm sorry. So we talk about the  
2 concept of career criminal now. Obviously, almost none of  
3 the coordination recommendations here are going to work un-  
4 less we do have some kind of centralized criminal history in-  
5 formation. But that is Phase II.

6 MR. EDWARDS: Absolutely.

7 MR. CARRINGTON: So now we are talking concepts.  
8 And then we get into the meat of it when we get into Phase II  
9 and start talking about centralization.

10 JUDGE BELL: I would suggest that we are going to  
11 get in deep water if we get to talking about classifying cer-  
12 tain Americans as career criminals and keeping a file on them,  
13 because this will set off a great argument over what does a  
14 "career criminal" mean; how do you ever repent and get your  
15 name off the list, and all that.

16 I don't think the game is worth the candle. I  
17 would recommend that we take 7 and we can change it to one  
18 sentence, and it would be this:

19 "It is recommended that the Attorney General di-  
20 rect," -- they have got the word "encourage" -- "the National  
21 Institute of Justice," -- and I realize they have got a sep-  
22 arate board, but they don't have any money except the Attor-  
23 ney General puts them in the budget -- "and other components  
24 of the Department of Justice to conduct research and develop-  
25 ment in federal and state career criminal programs." Period.

1 And then that leaves it to the Attorney General to  
2 sort of run it and see what they are going to come up with.  
3 But that these thoughts are indeed on it.

4 MR. HART: Right. I don't want to jump to Phase II  
5 either, but you find that successful career criminal programs  
6 are run by the local prosecutors, usually called the Prosecu-  
7 tor's Career Criminal Bureau, with the police department --  
8 have an input.

9 But he keeps the records so you can have an accur-  
10 ate record when you request it, because he has got the con-  
11 victions and everything else that goes with it.

12 JUDGE BELL: Yes. Yes.

13 MR. HART: Then you will separate all the other --

14 JUDGE BELL: All this does is recommends to the At-  
15 torney General that he take a direct interest in this subject  
16 including research and development. That might get to be  
17 funding for us -- be through with it, you see.

18 CHAIRMAN HARRIS: Jim Wilson felt that in making  
19 such a recommendation as the one that Judge Bell just put for-  
20 ward that we ought to have the word "juvenile" in there, be-  
21 cause he feels that the one area of recidivists never gets  
22 looked at because of the problems with the records, etcetera,  
23 and that is juvenile repeat offenders.

24 JUDGE BELL: I have got no objection to that.

25 CHAIRMAN HARRIS: Judge?

1 JUDGE BELL: Federal and state career criminal pro-  
2 grams coming to include juveniles -- juvenile offenders. All  
3 right.

4 MR. CARRINGTON: Judge, one point. I don't really  
5 share your worry about stigmatizing people's career criminals,  
6 because the way they can get their name off the career crim-  
7 inal list is to quit committing crimes.

8 JUDGE BELL: Once it got up to the threshold, then  
9 they would get off.

10 MR. CARRINGTON: If they have committed three  
11 crimes and then they don't commit any more crimes, then we  
12 are not worried about them.

13 JUDGE BELL: Well, but they would always be listed.

14 MR. CARRINGTON: Only in internal files.

15 JUDGE BELL: I have been down this trail a number  
16 of times, and I am giving you -- I am playing the devil's  
17 advocate.

18 MR. CARRINGTON: I know. You have been there.

19 JUDGE BELL: And you get off -- what you do, they  
20 call this in Washington releasing a rabbit; you release a rab-  
21 bit, and everybody chases the rabbit, and you don't get any-  
22 thing done. I don't want to run a rabbit here if I can help  
23 it.

24 MR. CAPRINGTON: Okay. I go along with what you  
25 say, except I would like a very definite caveat, like we have

1 under number 3 over here, that this recommendation for re-  
 2 search and looking into it is to be considered only as a  
 3 stopgap until we come down to grips with the real issues that  
 4 are coming in Phase II.

5 CHAIRMAN HARRIS: Frank, what I suggest in the re-  
 6 port is in our introduction, which we will supply in filling  
 7 out these recommendations and putting the support in, that  
 8 we give that as a given for all of them, that this is not --  
 9 that we do not preclude ourselves from taking further action  
 10 in Phase II which may in fact be inconsistent or anything  
 11 else with Phase I.

12 JUDGE BELL: Well, you see, another thing I have in  
 13 mind, once this III is set up, you are going to get the in-  
 14 formation anyway. They can check me in there and find out I  
 15 was convicted of three felonies. That will come right out.

16 CHAIRMAN HARRIS: Bob, is there any need to speak  
 17 to the question -- are we getting dispositions now under the  
 18 systems?

19 MR. EDWARDS: You have the disposition data being  
 20 furnished now in the system that is presently being utilized  
 21 where states are participating. That is a requirement, that  
 22 the disposition data must be furnished also before dissemina-  
 23 tion.

24 You talk about releasing a rabbit, Judge. I have  
 25 got some real strong feelings that if you are going to do

1 something with a career criminal program, when you inject the  
 2 juvenile justice area into the career criminal program, rec-  
 3 ognizing that it is a very, very important part --

4 JUDGE BELL: That is like going against motherhood,  
 5 the flag, or something.

6 MR. EDWARDS: Yes, Sir.

7 JUDGE BELL: I know. I see what you mean.

8 MR. HART: That is unfortunate, because most of the  
 9 major areas are having problems with the youth gangs.

10 JUDGE BELL: There is no question about it. Maybe  
 11 we ought to just take this -- I mean, if we didn't mention  
 12 juveniles, maybe we would be sweeping something under the rug,  
 13 you know, wouldn't be making an honest approach.

14 MR. WILLIAMS: Why don't you say just "violent juv-  
 15 enile offenders"? That will take the sting out of it pretty  
 16 fast.

17 JUDGE BELL: What?

18 MR. WILLIAMS: If you said "violent juvenile of-  
 19 fenders" instead of just juvenile offenders in there, that  
 20 would certainly take that sting away pretty fast.

21 JUDGE BELL: It would.

22 MR. WILLIAMS: Because if you think "gangs" in  
 23 this town, that is all you need to do to get everybody lined  
 24 up --

25 JUDGE BELL: Yes. Violent.

1 MR. WILLIAMS: Jeff, one other point, a quick under-  
2 score to what the chief said. This is definitely something  
3 that is a state-centered rather than federal-centered concern  
4 with career criminals, because almost every violent criminal  
5 that comes to my office is someone who has built a record on  
6 the state side first.

7 And therefore, it is the proper locus for keeping  
8 track of these folks.

9 JUDGE BELL: Well, let me ask you this question:  
10 I have been engaged in law enforcement activities of some  
11 kind now about pretty near 20 years, and I never have run  
12 across what a "career criminal" is. I am well acquainted  
13 with a recidivist. If you are trying to, it depends on --  
14 sometimes you say "repeaters".

15 When I see "career", I can't imagine anybody making  
16 a career of going around beating up people. I think of some-  
17 body in organized crime, white collar crime, where you are  
18 making money.

19 And I have got some doubt that "career" includes a  
20 violent juvenile offender. I understand about a recidivist  
21 or a repeater.

22 CHAIRMAN HARRIS: On the idea, if you are a juvenile,  
23 you haven't picked your career yet.

24 JUDGE BELL: We have been through a time in Washing-  
25 ton and elsewhere where you have tried to give everything a

1 good name. And I am wondering if "career criminal" wasn't  
2 sort of a highfaluting term, instead of calling somebody what  
3 they were, which is a recidivist -- outcast from society.

4 MR. ARMSTRONG: We are talking about, really, the  
5 NIJ doing research in this area of career criminal, and also  
6 expanding this directive to go into the juvenile delinquent  
7 who is a repeat offender of violent crimes.

8 So that is basically the recommendation, even  
9 though it is two-fold. I think what Jim was saying is that  
10 heretofore there has not been an opportunity to do research,  
11 and that the Attorney General ought to direct NIJ to start  
12 looking into this to see what programs can be used to be a  
13 deterrent in the future.

14 MR. HART: I know some juveniles that have a great  
15 career in Detroit in stealing cars. I don't know if you know  
16 it, but you can get twice as much for a car if you can steal  
17 it and take it apart and sell it in parts. And they can do  
18 that in about an hour.

19 Go to a nice shopping center and steal eight or ten  
20 cars and drive them away, and you won't recognize them in an  
21 hour, because there won't be anything left but the frame.

22 And they make a career out of things like this.

23 MR. WILLIAMS: I see two thoughts, Judge, in re-  
24 sponse. I realize that names can be gimmicks and sometimes  
25 you wonder what they are telling you. I see the word "career"

1 telling us two things.

2 One, there are some people, that this is what they  
3 do if they are loose in society.

4 JUDGE BELL: Right, right. I agree with that.

5 MR. WILLIAMS: And secondly, I like the notion of  
6 career because much of the criminal activity that we are  
7 concerned about is organized, particularly in narcotics traf-  
8 ficking. It is a business, it is a livelihood, it is a hell  
9 of a livelihood, and we only started seeing meaningful bails  
10 and meaningful sentences in this district when we showed one  
11 of our judges that the crook lived in a lot better house  
12 than any of he or his judicial fellows did.

13 And I think if we focus on the fact that this is  
14 an economic activity with an economic impact, and, I think,  
15 an economic angle at which we can attack it, that certainly  
16 helps focus federal resources a lot faster.

17 JUDGE BELL: I am not wedded to my position. I  
18 just was asking, because I didn't know. What you call a  
19 punk robbing -- snatching a woman's pocketbook on a street,  
20 something like that. I guess that is a career. Could be.  
21 I meant, I don't know what.

22 All right. Go ahead.

23 CHAIRMAN HARRIS: The proposal is that we elimin-  
24 ate 5, we eliminate 6, and we have 7 read:

25 "It is recommended that the Attorney General

1 direct the National Institute of Justice and other components  
2 of the Department of Justice to conduct research -- "

3 JUDGE BELL: And development.

4 CHAIRMAN HARRIS: " -- and development in federal  
5 and state career programs -- "

6 JUDGE BELL: Comma.

7 CHAIRMAN HARRIS: " -- to include violent juven-  
8 ile -- " repeat offenders, do we want to say there?

9 JUDGE BELL: Yes.

10 CHAIRMAN HARRIS: " -- violent juvenile repeat of-  
11 fenders."

12 MR. ARMSTRONG: I don't want to dwell too much on  
13 it, but there is one area that I really think the Attorney  
14 General ought to direct the Department of Justice, and that  
15 is the development.

16 I am sure maybe we are saying that in 7, but the  
17 development of an informational package that could be presen-  
18 ted to state and local prosecutors as, one, how to institute  
19 a program, how to work with whatever existing talents you  
20 might have to see that a career criminal program gets off  
21 the ground in your local jurisdiction.

22 Some kind of a technical assistance manual or di-  
23 rective, or even training, for that matter.

24 JUDGE BELL: That is what I thought "development"  
25 would include, that sort of thing.

1 MR. ARMSTRONG: Okay.

2 CHAIRMAN HARRIS: We can flesh out in the backup,  
3 Dave, as an example of the kind of thing we have in mind here  
4 and make sure that is included so there won't be any uncer-  
5 tainty as to whether or not we contemplated that sort of as-  
6 sistance to locality or state on how to develop a career  
7 criminal program.

8 JUDGE BELL: Just like commentary.

9 MR. CARRINGTON: Jeff? I would not delete 5. I  
10 was applauding Judge Bell in Atlanta when he was arguing with  
11 Jim Wilson. I think this Task Force should be recommending  
12 direct action rather than research, and I would include Judge  
13 Bell's language, but I would leave 5 in exactly like it is.

14 We are recommending action, not research.

15 CHAIRMAN HARRIS: I guess the only thing is that  
16 according to Alex, what he is telling us is that we are re-  
17 commending something that we are already doing because of  
18 the Federal Speedy Trial Act; that we are bringing people to  
19 trial whether they are career criminals or not in 30 days of  
20 indictment, and that there would be no way to single these  
21 people out for any faster track treatment than they are get-  
22 ting now.

23 And since most U.S. Attorneys vertically prosecute,  
24 that we are doing that already also. So that is the only --

25 MR. CARRINGTON: Okay.

1 MR. WILLIAMS: And the sentencing component, Frank,  
2 is a separate recommendation which I endorse.

3 MR. CARRINGTON: I would still feel more comfor-  
4 table if we at least recognize that there is an ongoing pro-  
5 gram and recommend that this is part of the thing. Otherwise  
6 it may be perceived by an uninitiated observer that all we  
7 are doing is recommending research.

8 JUDGE BELL: Research and development. If we re-  
9 commended that you put this program in the U.S. Attorney's  
10 Office, I am hearing that it would be a charade. They are  
11 already doing it.

12 MR. CARRINGTON: Okay, then research and develop-  
13 ment to further the programs that are already there, so that  
14 if somebody who was looking at this cold hadn't heard these  
15 discussions, it might appear to him that no such program ex-  
16 ists now, and all we are suggesting is that we do some re-  
17 search to see if such a program should be initiated.

18 CHAIRMAN HARRIS: Well, there are two ways we can  
19 handle that. In the explanation surrouding this, we can say  
20 that we have come to this recommendation because we are al-  
21 ready mindful that there are rather sophisticated programs al-  
22 ready in place in the federal system, and that might take  
23 away that problem.

24 MR. CARRINGTON: I am assuming each of these will  
25 be annotated in the text -- the recommendations.

1 CHAIRMAN HARRIS: Each will. Each recommendation  
2 will have an introduction explaining the need for it, and in  
3 the context in which we make it, and hopefully those sorts of  
4 explanations would appear. And that might take care of your  
5 problem.

6 MR. CARRINGTON: It does.

7 MR. STARKMAN: Frank, if I can maybe clear up some  
8 of the confusion, in the U.S. Attorney's Office there is no  
9 separate program. It is part of the institution, because of  
10 the Speedy Trial Act and because of the limited number of  
11 cases, everything accomplished by a repeat offender program  
12 or career criminal program is already being accomplished be-  
13 cause of the system.

14 On the other hand, in the states there are recidi-  
15 vist courts, there are career criminal programs, and all kinds  
16 of programmatic structures to bring about what the U.S. At-  
17 torneys have to do to comply with the law.

18 JUDGE BELL: What Frank is saying is he wants that  
19 said, and I think we ought to agree now that what we are doing  
20 is working on a black letter -- that we are going to have  
21 commentary. And then a lot of these things will be said.

22 MR. CARRINGTON: Right.

23 JUDGE BELL: I just had assumed that these little  
24 short statements we are making are black letter.

25 CHAIRMAN HARRIS: Black letter. That is right.

1 That is the black letter with the commentary to follow.

2 JUDGE BELL: Follow.

3 MR. ARMSTRONG: Hopefully in Phase II that, you  
4 know, recommendations for funding and new career criminal  
5 programs at state and local levels will be part of the recom-  
6 mendation.

7 JUDGE BELL: Well, they might have some money  
8 around there now. Did you ever think about that? And this  
9 research and development might produce some of this money.

10 CHAIRMAN HARRIS: That is why the recommendation  
11 tying it to NIJ, I think --

12 JUDGE BELL: Why I put "development" in there.

13 CHAIRMAN HARRIS: That is where the money that  
14 still exists is.

15 JUDGE BELL: Okay.

16 CHAIRMAN HARRIS: Eight is an either-or, and it  
17 reads as follows:

18 "The Task Force recommends that the Attorney Gen-  
19 eral more fully exercise his authority over Federal law  
20 enforcement establishment as prescribed by executive order  
21 11396."

22 Or -- and this would be if you did not do this:  
23 "In Phase II," and this is not a per se recommendation. This  
24 is like a stage direction, I guess. "In Phase II recommend  
25 that there be created a director of Federal law enforcement

1 fulfilling the same functions for the law enforcement commun-  
 2 ity that the Director of Central Intelligence does for the  
 3 intelligence community."

4 JUDGE BELL: That executive order 11396, was that  
 5 issued by President Carter?

6 CHAIRMAN HARRIS: No, that was the one issued by  
 7 President Johnson and Professor Wilson cops out to having  
 8 been the author of.

9 JUDGE BELL: Wrote.

10 CHAIRMAN HARRIS: And I should tell you, he said  
 11 his position was he wasn't keen on either of these. The  
 12 first one; he feels, as having been the author of and having  
 13 watched it sit dormant for all these years, it is sort of a  
 14 worthless gesture.

15 The second one, he doesn't feel that the DCI, for  
 16 example, has a great operational role and he feels that the  
 17 DCI is in operational competition with other components in  
 18 the intelligence community and that there is no real incen-  
 19 tive for him to act in a meaningful, operational way.

20 JUDGE BELL: He is not up to date on the DCI. The  
 21 DCI now makes a budget for all those people. If you have  
 22 the budget, you have a heart, I'll tell you that.

23 CHAIRMAN HARRIS: You have their attention.

24 JUDGE BELL: Well, you have the heart of the matter  
 25 if you make the budget.

1 But I would like to know if it is possible for the  
 2 President to give the Attorney General, by executive order,  
 3 more power than he now has over law enforcement to the extent  
 4 law enforcement is outside the Department of Justice.

5 I would like to get a legal opinion on that, also  
 6 legal counsel. For example, could the Attorney General be  
 7 given the direction of the Firearms Agents of the ATF?

8 And I will tell you why this is important. If, you  
 9 know, each of these agencies have separate jurisdiction -- I  
 10 remember once -- I may have told you all -- about the bombing.  
 11 They had a number of bombings in Miami. And the senators and  
 12 the governor were called in. They wanted to send the FBI,  
 13 and the FBI didn't have any jurisdiction.

14 Finally they blew the leg off of a reporter. I  
 15 sent the FBI there to investigate the violation of civil  
 16 rights of the reporter. That is the only way they got there.  
 17 But if the Justice Department had been there, there would --  
 18 no one had been along.

19 Maybe they would have been satisfied if the Attorney  
 20 General sent the firearms people there, who were given the  
 21 authority by law over bombings. I wonder if the President  
 22 could do that. I never thought of that before.

23 MR. CARRINGTON: Judge, I agree with you. I think  
 24 we are on murky ground in either one of these. I think this  
 25 is clearly a Phase II issue.

1 CHAIRMAN HARRIS: Yes. I think in Phase I, we  
2 could simply reinforce the already existing order. But you  
3 are absolutely right. If we want to do anything further, it  
4 is Phase II, Frank.

5 MR. CARRINGTON: If we want to go, I would go for  
6 the first paragraph, and even in black letter would spell out  
7 a little bit after the period, after "11396" to the effect  
8 that coordination, sharing of information, things like that.

9 Because this really means nothing to the novice  
10 reader, and an awful lot of people who are going to study  
11 this are going to look at the black letter and then go on to  
12 the next one. They are not even going to read the annotation.

13 So if we are going to go, I would go with 1, but  
14 with an elaboration.

15 JUDGE BELL: I believe we would be better off not  
16 to go with either one, and I will tell you why.

17 MR. CARRINGTON: I do, too.

18 JUDGE BELL: This would be a signal in Washington  
19 that the Attorney General was getting ready to take somebody  
20 else's turf. And this would start an argument over nothing.  
21 You know, a turf-conscious place like Washington, this would  
22 be a headline in the Washington Post or the Star as soon as  
23 we put it out, turned it out -- as soon as it leaked out. It  
24 would be leaked out by tomorrow. In fact, you will see it  
25 out now. (Laughter)

1 And everybody would say, "Oh, the Attorney General  
2 is getting ready to move in on somebody."

3 MR. CARRINGTON: More than that.

4 JUDGE BELL: That is not what is intended.

5 MR. CARRINGTON: More than that, if everybody who  
6 was going to read this was Ron Astrogen (ph.), we wouldn't  
7 have any problem, but somebody would read this second one  
8 casually and think, "Oh, they're starting a police state, now.  
9 A national police force."

10 JUDGE BELL: Yes.

11 MR. CARRINGTON: That is what I thought at first.  
12 Then I went back and read "federal". I think we ought to  
13 save this for Phase II.

14 MR. ARMSTRONG: Maybe Phase II is the appropriate  
15 place, but I think this task force has discussed time and  
16 time again the importance of having one single office and in-  
17 dividual responsible for the federal law enforcement effort,  
18 and if nothing else, we ought to say that at this stage,  
19 whether you can recommend that to the Attorney General or not.  
20 I think it is an expression of our findings.

21 JUDGE BELL: Well, I am perfectly willing to say  
22 that at the proper time. I thought that was proper for the  
23 second, for Phase II. I believe that very sincerely -- deep-  
24 ly. But we wouldn't want to just say that when it can't be  
25 accomplished. I thought Phase I dealt with things the

1 Attorney General could do now.

2 CHAIRMAN HARRIS: That is correct, that Phase I are  
3 things that the Attorney General can do without asking for  
4 any legislative or funding changes.

5 MR. EDWARDS: Could I suggest, if you look at item  
6 number 9, which goes into some of the specifics of the coor-  
7 dinating role of the Department of Justice, and you go into  
8 some rather detailed statement about the need for coordina-  
9 tion at federal, state and local; if you ended up with a  
10 statement -- a kind of reinforcement statement -- that the  
11 Task Force recommends in addition that the Attorney General  
12 more fully exercise his authority over federal law enforce-  
13 ment establishment as prescribed by executive order.

14 Now, what that will do, well, that will insure the  
15 coordination and the involvement of the federal entities with  
16 state and local entities to accomplish what we are trying to  
17 accomplish, because most of the effort in the violent crime  
18 effort has to come at the state and local involvement.

19 So that way, you have put it in perspective of what  
20 is the role of the federal government in dealing with violent  
21 crime. So that might be one answer, is combine the two to-  
22 gether.

23 JUDGE BELL: But wait a minute, Mr. Director. Tel-  
24 ling the Attorney General to follow an executive orders is-  
25 sued by President Johnson years ago that I have never read,

1 in the first place, there are a lot of things that have hap-  
2 pened in the past that I don't agree with. And I am too old  
3 to start endorsing things in blank.

4 I have never seen that order. I have highest re-  
5 gards for Professor Wilson. He said he wrote it. But when  
6 Johnson was President, things were a lot different in our  
7 country than they are now.

8 MR. EDWARDS: Maybe we ought to concentrate on item  
9 number 9, then, and leave number 8 alone at this point.

10 CHAIRMAN HARRIS: Why don't we pass 8 and look at  
11 9, and see if 9 standing alone accomplishes most of it?

12 JUDGE BELL: What the sentence is on is just on the  
13 same thing about this order. Go ahead and coordinate it.

14 CHAIRMAN HARRIS: Why don't we look at 9? Nine is  
15 spelled out in a little more detail, and it reads as follows:

16 "The Task Force recommends that there be establish-  
17 ed a Law Enforcement Coordinating Committee in each Federal  
18 district. It is the Federal district around which the Fed-  
19 eral courts and prosecutorial activities are organized. It  
20 ordinarily will be the most practical geographical unit on  
21 which to base Federal, State, and Local cooperation, unless  
22 two ore most districts within the same state decide to form  
23 a single Committee.

24 "The Committee membership should include the prin-  
25 cipal Federal, State and Local law enforcement officials in

the District. The United States Attorney should take the initiative in the formation of the Committee, but participation should be voluntary and cooperative.

"Many districts already have Federal-State-Local Committees of one type or another. Where that is the case the present proposal is intended to build upon, not replace, such efforts. Each Committee should concentrate on the particular law enforcement needs of its district, which will vary substantially from place to place. Nonetheless, there are several requirements that should be met by all Committees including:

"1. Membership. The Committee should have as members the heads of all the Federal, State, county and municipal prosecutorial, law enforcement, and correctional agencies and offices with significant criminal jurisdiction in the district.

"2. District Plan. The initial activity of each Committee, after organizing, should be to formulate a local law enforcement cooperation plan. Such a plan would identify the law enforcement needs and priorities within the district, and the areas where improved Federal, State, and Local cooperation would be likely to produce the greatest public benefit.

"3. Subcommittees. Each Committee should establish subcommittees on subject areas of the greatest

will be appropriate to create are:

"Violent crime, drug enforcement, crime prevention, economic crime and fraud.

"4. Role of the United States Attorney. The Attorney General should direct all United States Attorneys to participate in the formation of Law Enforcement Coordinating Committees in their districts. The U.S. Attorney should be required to report to the Attorney General on the formation of such a Committee and its anticipated activities. In addition, periodic progress reports should be required."

The reason that it is spelled out in that rather lengthy fashion compared to the other recommendations is that recommendations that federal, state and local people cooperate are a dime a dozen, and this is a more particularized recommendation, and for that reason it was thought that it would be well to spell out exactly what we had in mind here.

MR. LITTLEFIELD: I suggest in the commentary, not necessarily in the black letter, that they put "principals only", because if you don't, by the third meeting, you have got a PFC from each outfit coming.

JUDGE BELL: I think you ought to break this up into black letter and commentary, and make the black letter

2 you want to get the maximum out of these commit-  
3 tees that you ought to say, "The United States Attorney," com-  
4 ma -- this is the second paragraph -- "acting on behalf of the  
5 Attorney General," comma, "should take the initiative in the  
6 formation of the committee."

7 We are just getting ready to change all the U.S.  
8 Attorneys. I don't know hwo they are in most states, but in  
9 ours, we have got two people who have never had a criminal  
10 case getting ready to go in. I can't imagine the veteran  
11 state prosecutors running over to his office.

12 MR. LITTLEFIELD: Maybe there will be some federal  
13 money, Judge. Then they will run over.

14 JUDGE BELL: No, I mean you have got to be practical  
15 about these things. In a year's times, some of these new  
16 people, you know, will be really good. But right now, in a  
17 mini-phrase, we already have a committee. But the U.S. Attor-  
18 ney, the way I operated with my agent, he was the highest rep-  
19 resnetative of the Attorney General in each district. And if  
20 we had some kind of violence or whatever it was, I would al-  
21 ways put the United States Attorney in charge.

22 Now, when a U.S. Attorney, he or she forms these  
23 committees, we ought to say that they are acting on behalf of  
24 the Attorney General, and then you will get more cooperation.  
25 You will get a lot more response out of the local people if  
you do that.

1 JUDGE BELL: Because they'd really like to be  
2 dealing with the Attorney General, and in some states it's  
3 the State Attorney General that's in the matter, too, you  
4 know. We heard testimony from the Attorney General of  
5 North Carolina on that. So I would make that suggestion.  
6 That will greatly strengthen it.

7 MR. STARKMAN: How does it help to have the  
8 correctional personnel involved?

9 JUDGE BELL: Where is that?

10 MR. STARKMAN: Under "Membership."

11 CHAIRMAN HARRIS: Under "Membership," paragraph  
12 1, right here.

13 JUDGE BELL: You see, I don't know about that.  
14 That's a good point. Why do we have all these people?  
15 We really ought to be talking to the talk people, and we  
16 can't have everybody there. Let's see. We've got  
17 Federal, we've got State, we've got county, we've got  
18 municipal. Well, in Atlanta, that means you've got the  
19 traffic prosecutor.

20 CHAIRMAN HARRIS: I think that what you could  
21 say, very frankly, is simply --

22 JUDGE BELL: We're supposed to be meeting about  
23 violent crime.

24 CHAIRMAN HARRIS: -- is "appropriate officials"  
25 and leave it to the U.S. Attorney to figure out who it is.

JUDGE BELL: Well, I know our prosecutor in Atlanta wouldn't meet with the prosecutor in the traffic court. He'd say, "Well, I got something more to do than be doing that."

MR. STARKMAN: But that way you're going to get a different composed committee in every district.

CHAIRMAN HARRIS: But that's not, I guess, necessarily a bad thing. The idea here is that the federal establishment ought to pay some attention to the local community's idea of how they'd like their law enforcement resources used. And they each may have different priority areas, and they each may have different personalities and players, which will be important. So you're right, it may end up with different formations for each one. But I don't see that that's necessarily a bad thing.

MR. HART: I do, based on 29 years, and I'm with the man from Illinois. If you do that, that's exactly what you're going to have, a committee based on that man's personality, unless some State's Attorney General or some police official or county -- or somebody. So you'd better be a little more specific. I understand what you're saying. But you'd better name some parameters under which to form this committee.

CHAIRMAN HARRIS: You know, there is a vehicle

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vehicle, that Dave's familiar with, that might be helpful in this. The Department already -- through the offices of the Criminal Division -- has the Executive Working Group, composed of District Attorneys, Attorneys General, and U.S. Attorneys.

And they might be an appropriate liaison mechanism between the Department and these groups to ensure that that didn't happen.

JUDGE BELL: Didn't I set that up?

MR. ARMSTRONG: Yes, you did.

JUDGE BELL: I think I set that up. That doesn't get down to the law enforcement people --

MR. ARMSTRONG: Yes, it does. Yes, it does.

JUDGE BELL: Do you have the Chief of Police in Louisville in it?

MR. ARMSTRONG: Absolutely.

JUDGE BELL: Oh, you do.

MR. ARMSTRONG: Yes. He doesn't come.

MR. HART: That's his problem.

MR. ARMSTRONG: Well, that's because I indicted him. But -- the blueprint is already there, and --

JUDGE BELL: It's, who's on the team, we're talking about.

MR. ARMSTRONG: Yes. I think, as Gen. Edmiston pointed out at our last hearing, the blueprint is there.

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1 What he's looking for is for this Task Force to tell the  
2 Attorney General, in the black letters, "You are the  
3 chief law enforcement officer of this country --"

4 JUDGE BELL: "Do something."

5 MR. ARMSTRONG: "Do something. Make it manda-  
6 tory that the U.S. Attorneys participate, and where  
7 possible, initiate these local, federal, state coordinat-  
8 ing, law enforcement coordinating committees, and do so  
9 as quickly as you possibly can."

10 I think that's probably -- if you were to  
11 develop a black letter, recommendation, that ought to be  
12 it. The blueprint is there, and it's already in the  
13 Department of Justice. How the committees are to oper-  
14 ate and to feed back to the Executive Working Group,  
15 those problems -- the machinery is set up, it just takes  
16 that leadership to say, "Go do it."

17 JUDGE BELL: All right. Now, should the correc-  
18 tional agencies be in there?

19 MR. ARMSTRONG: It's not in the original blue-  
20 print. This is just an addendum, I suppose.

21 MR. STARKMAN: Are the probation officers in  
22 that?

23 MR. ARMSTRONG: No.

24 MR. STARKMAN: Should they be?

25 JUDGE BELL: They're under the jury.

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1 There's a man back there that wants to say  
2 something.

3 MR. CHAVIRA: Thank you very much for allowing  
4 me to speak. For the record, my name is Ray Chavira,  
5 County Commission on Alcoholism. I'm also a County  
6 probation officer. As a person who testified at the  
7 gang violence hearings in this county in October, and also  
8 at the violent crime hearings of four days in January with  
9 Mr. -- also testified, and as one who appeared before the  
10 Mayor's violent crime hearings in the community in  
11 January, I'd like to offer something with respect to  
12 including the community.

13 My suggestion is this. I haven't heard today --  
14 although I wasn't here all the morning -- any discussion  
15 about alcohol, alcohol-related crimes, specifically.  
16 We talk about guns, but not about the liquid instrument  
17 of death, with so many people.

18 JUDGE BELL: That's not why we're having this  
19 Task Force. You might as well get on the track. We're  
20 not running an alcohol commission.

21 MR. CHAVIRA: I understand that, sir. May I  
22 explain this, though, that --

23 JUDGE BELL: We're studying violent crime, and  
24 we can't divert our attention now to that. You got  
25 something to offer on violent crime?

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1 MR. CHAVIRA: Yes, sir. In this state, in this  
2 county, over half the violent crimes, and the more vio-  
3 lent the crime, they're alcohol-related, sir. Especially  
4 with the 15 to 24 age group, which is the prime recidivist  
5 group. That's the future of America that we are really  
6 concerned about, it seems to me.

7 We're also concerned so much that perhaps we  
8 should relate it to the 1984 Olympics which are about to  
9 take place in this city, than in the state. It seems to  
10 me that with the locale of the Olympics being in Los  
11 Angeles, and basically the Coliseum area, we are in grave  
12 danger if we don't move now with respect to what ties our  
13 kids together, what makes them redivate so much, and why  
14 all this relates to minority crime --

15 JUDGE BELL: We really can't take any long state-  
16 ment from you. You stood up back there, and I caused  
17 this, because I said you had something to say. I thought  
18 you wanted to say something about what we were talking  
19 about, which was federal-state law enforcement coordinat-  
20 ing committee. To testify, you have to get permission  
21 from the staff.

22 MR. CHAVIRA: Thank you very much.

23 JUDGE BELL: Now, do you have something about  
24 putting probation officers on the committee? That's what  
25 we were really on.

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1 MR. CHAVIRA: I would suggest that the chief  
2 probation officer -- although in this state it's a county  
3 function, it's not a state function -- that perhaps the  
4 alcohol program coordinator at the highest level should  
5 be involved, since it directly impacts most crimes,  
6 especially with young people.

7 JUDGE BELL: Yes. Well, it's helpful to get  
8 that view, based on your experience. And what about the  
9 parole, prison administrators?

10 MR. CHAVIRA: There you are. Probably the  
11 correctional people, and in this state probation is the  
12 correctional agency for all juveniles, are deeply involved.  
13 They get to live with the ward, or the prisoner, whatever  
14 you want to call him. It would seem to me that they have  
15 an awful lot to say. Traditionally, they've been left out  
16 of the process.

17 JUDGE BELL: Okay. Thank you.

18 MR. ARMSTRONG: I think, to come back to that,  
19 I don't see the role of a correctional officer as being  
20 of an investigative, prosecutorial type, and I just don't  
21 think to add them to the existing framework of these  
22 committees would be of any benefit.

23 CHAIRMAN HARRIS: Well, the whole question I  
24 guess we have to first consider is, do we want to make a  
25 brief recommendation or do we want to have a detailed one,

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1 as the draft is? If you want to make it brief, as you  
 2 suggested, Dave, just saying to the Attorney General,  
 3 "This is something you ought to tell your troops to march  
 4 to," and then there is this existing mechanism, the  
 5 Executive Working Group, which has a blueprint, and let  
 6 the Attorney General, through his Criminal Division, work  
 7 it out, that's one approach we can take. So that's, I  
 8 guess, the first question. Do we want a short, black  
 9 letter statement, à la the one you said, or do we want  
 10 this more detailed plan?

11 JUDGE BELL: I favor the black letter. I mean,  
 12 we can put something in the commentary. About two or  
 13 three different ways that these things have been set up.

14 CHAIRMAN HARRIS: How about this? If we went  
 15 with the black letter one, I could go back and work with  
 16 the Assistant Attorney General in charge of Criminal  
 17 Division, Mr. Jensen, and have him help me flesh out the  
 18 commentary, which would explain the blueprint that already  
 19 exists and the mechanism that has been successful in the  
 20 past, to which Gen. Edmiston referred at our last hearing.

21 JUDGE BELL: Something like that. And these  
 22 things would vary, depending on the way you --

23 CHAIRMAN HARRIS: And I think there is flexi-  
 24 bility built into that master plan.

25 MR. ARMSTRONG: I think the thrust of the

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1 testimony we received is that it has to be a mandatory  
 2 participation by the U.S. Attorneys. And --

3 JUDGE BELL: That was the point that Gen.  
 4 Edmiston made, that these things will never be set up,  
 5 they won't work unless the U.S. Attorney General directs,  
 6 orders the U.S. Attorney to get into it. That's what  
 7 we're trying to accomplish.

8 CHAIRMAN HARRIS: So then we would have a very  
 9 short statement basically that the Attorney General should  
 10 direct U.S. Attorneys to participate or to formulate  
 11 such committees, and then in the commentary we could cite  
 12 the Executive Working Group and the model that already  
 13 exists for implementing such things.

14 JUDGE BELL: The proof of the pudding is that  
 15 this has been going on nearly three years, and just have  
 16 30, of 95 federal districts.

17 CHAIRMAN HARRIS: Dave could probably give you  
 18 a number, of those 30, how many are affected. A lot less  
 19 than the 30. Some are mere shells which are dormant.

20 JUDGE BELL: Yes.

21 MR. EDWARDS: Not to belabor it, but that's the  
 22 thing, I guess, where I'm concerned, from a cautionary  
 23 standpoint, that if you give generalized statements and  
 24 leave it at that, then you run the risk of it being inter-  
 25 preted as just a shell. And the result of it is that

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1 it ends up just a shell. And the purpose here is to  
2 establish enough of a guideline so that it can't be sub-  
3 terfused and it can't be circumvented.

4 JUDGE BELL: That bothers me.

5 CHAIRMAN HARRIS: Well, I can tell you this.  
6 I know the Associate Attorney General, if there were one  
7 recommendation he'd like to see in Phase I, it is this.  
8 Because I've known him for years, and ever since he  
9 assumed his new position, this is all he's been whisper-  
10 ing about, is that this ought to be a responsibility, and  
11 the U.S. Attorneys ought to be selected, and they ought  
12 to agree in advance to participate, as part of their  
13 job performance, that the job of U.S. Attorney includes  
14 this function.

15 And I know, even in advance of our recommenda-  
16 tion, in interviewing U.S. Attorney candidates, this has  
17 been an area which has been discussed with them, that,  
18 "We will expect you to do this kind of thing." So --

19 MR. ARMSTRONG: It ought to carry one of the  
20 highest priorities of this report. If you're really  
21 talking about how the Attorney General can effectuate  
22 better coordination, so we don't lose people in the gaps  
23 of the systems that are created, the federal and state  
24 systems, it ought to carry one of the highest priorities.  
25 And I think the short commentary, the short black letter,

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then a commentary expressing  
and I think Lowell Jensen's  
good preface.

JUDGE BELL: I am  
on behalf of the Attorney  
than you think.

CHAIRMAN HARRIS  
that -- because that's clear  
ded here. The U.S. Attor-  
Attorney General expects  
be doing this.

The next recom-  
what we learned in Atlan-  
"The Task Force recomman-  
expand the experimental  
Assistant U.S. Attorneys  
to other judicial distri-  
from such a program."

And this is  
District Attorney Ed Har-  
Attorney Jim Jensen in  
with the cross designa-

MR. TUTTLEBEE:  
two lines and just --  
thing. Just, experimen-

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the views of the Task Force --  
paper on this gives a pretty

think the language in, "acting  
General", will get more done

Well, we certainly can make  
that's exactly what's inten-  
is being told that the  
part of his job, that he will

ation also is a spin-off from  
and it reads as follows:  
that the Attorney General  
ram of cross-designation of  
Assistant District Attorneys  
which would likely benefit

spin-off of the success that  
in San Diego, and U.S.  
Diego told us they were having  
program.

How about striking the last  
I think it really adds any-  
program of cross-designation

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1 of Assistant U.S. Attorneys and Assistant District  
2 Attorneys." Period. Is there any problem with that?

3 JUDGE BELL: Since the public's going to have  
4 this, why don't we take out the word "experimental" and  
5 say, "Assistant District Attorneys and state --"

6 MR. LITTLEFIELD: "-- prosecutors", or some-  
7 thing like that?

8 JUDGE BELL: "State prosecutors." See, it's  
9 not clear to the average reader what "Assistant District  
10 Attorneys" means.

11 CHAIRMAN HARRIS: "State or local prosecutors."  
12 In some instances they're state and in other instances  
13 they're local.

14 JUDGE BELL: Yes. "State and/or." Okay.

15 CHAIRMAN HARRIS: Take out "experimental", and  
16 Bill's suggestion is, we just put a period after "state  
17 or local prosecutors" and end it there.

18 JUDGE BELL: Yes. That's covered by the word  
19 "expand". All right. Good point.

20 CHAIRMAN HARRIS: If no one has anything fur-  
21 ther on that one, the next one reads, "Current estimates  
22 indicate that the FBI takes 25 days to process finger-  
23 print identification requests", that should read. "The  
24 Task Force finds this response time to be far too great  
25 and recommends that the Attorney General urge the FBI

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1 Director to take all steps necessary to hasten the pro-  
2 cessing of identification applications."

3 JUDGE BELL: I would take out the, "finds this  
4 response time to be far too great". I'd say, "Task Force  
5 recommends". I don't know whether it's too great or not.  
6 It's according to which way you're looking at it; which  
7 end of the gun are you on? If they've got to have 1,000  
8 more people to give you faster service, they haven't got  
9 the people.

10 CHAIRMAN HARRIS: In talking to the Bureau, you  
11 know, they get requests from people who need these things  
12 for criminal, and I think in order to get a license as  
13 a landscape architect in Montgomery County, they run you  
14 through this system also. And I think the Bureau recog-  
15 nizes, and have told us, that there are ways in which they  
16 could prioritize such requests so that the criminal  
17 requests took significantly less than 25 working days.

18 JUDGE BELL: Well, you haven't said anything  
19 about criminal law in here.

20 CHAIRMAN HARRIS: Well, we could, "Current  
21 estimates indicate the FBI takes 25 days to process  
22 fingerprint --" "The Task Force finds this response time  
23 in criminal cases to be far too great", if that explains  
24 it somewhat.

25 JUDGE BELL: Well, are we called on to make a

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1 finding, or to make recommendations?

2 CHAIRMAN HARRIS: Recommendations.

3 JUDGE BELL: I'm not going to be in the position  
4 to criticize the Bureau. I know all how they operate.  
5 I've been in the Fingerprint Bureau. And it would take  
6 more people than they have now, and they've got a lot of  
7 reasons why they can't give you better time. What we want  
8 to do is do better, not criticize.

9 MR. CARRINGTON: Jeff, does the Bureau have a  
10 priority system?

11 JUDGE BELL: They said they'd put one in.

12 CHAIRMAN HARRIS: I believe that they do have  
13 a priority system. I'm not sure, in practice, exactly how  
14 it works, Frank.

15 MR. CARRINGTON: I think we should definitely  
16 go on record that any criminal request comes ahead of a  
17 landscape artist. Let him wait around for his license a  
18 while.

19 JUDGE BELL: Well, let me give you all a hypo-  
20 thetical. Suppose we passed a law, Congress passed a law,  
21 saying that you had to wait 15 days before you could pur-  
22 chase a handgun, and that the Chief of Police of Detroit  
23 had to be notified, and you wait 15 days. Well, the  
24 police might want to get somebody's fingerprints. They'd  
25 have that man's fingerprints. You know, the law might be

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15 1 that you had to be fingerprinted to buy a handgun. Well,  
2 now, all of a sudden they may have a lot more business  
3 than they have now.

4 And what I'm saying is, until they can get those  
5 fingerprints on a computer, which is my understanding they  
6 do not yet have, it's going to take some time. So I  
7 think criminal law ought to be the priority. But suppose  
8 that they got so far behind they couldn't respond to the  
9 application to get a gun license. I don't want to get  
10 them in such a bind that they can't function.

11 MR. ARMSTRONG: We've talked a lot about the  
12 fast track needed for criminal apprehension and prosecu-  
13 tion. This seems to be one that melds into that overall  
14 recommendation that in the area of criminal fingerprint  
15 identification the Task Force would recommend that a  
16 priority be developed within the Bureau for a system  
17 created whereby local and state law enforcement author-  
18 ities could have a better response -- I don't know how  
19 we would word that -- or immediate response to the --

20 JUDGE BELL: Well, I'm in complete agreement.  
21 All I want to do is just take out the finding of fact,  
22 which is that we find this time to be far too great.  
23 I'm suggesting that we haven't had any evidence on this,  
24 and we don't know whether it's too great or not.

25 CHAIRMAN HARRIS: Okay. What you would like to

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16 1 see, then, Judge, is the recommendation read as follows:  
2 "The Task Force recommends the Attorney General urge the  
3 FBI Director to take all steps necessary to hasten the  
4 processing of fingerprint identification applications."

5 JUDGE BELL: I would say, "to substantially  
6 reduce this delay." That's what I'd say.

7 CHAIRMAN HARRIS: "To urge the FBI to take all  
8 steps to substantially --"

9 JUDGE BELL: "Necessary to substantially reduce  
10 this delay."

11 MR. STARKMAN: That's a finding of fact that  
12 there is delay, Judge.

13 CHAIRMAN HARRIS: "To substantially reduce the  
14 time necessary to process identification applications."

15 JUDGE BELL: I guess there is a finding some-  
16 where that it takes 25 days. Otherwise, how would we  
17 know it? Somebody said it.

18 Do we know that?

19 CHAIRMAN HARRIS: Yes.

20 MR. ROSENBLATT: The Identification Division  
21 said it took about 25 days.

22 JUDGE BELL: Well, it wouldn't be a finding to  
23 ask them to reduce the 25 days, would it?

24 MR. EDWARDS: I think there's a need to empha-  
25 size the responsiveness to the criminal justice

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1 applications. I think that that's necessary. Because I  
2 do know that the response time that we're getting, 25  
3 days is minimal, in terms of working days, that we're  
4 getting the information back from the FBI. And in a  
5 criminal justice environment, that's just not acceptable.

6 JUDGE BELL: What sort of form is this?

7 MR. EDWARDS: When the State of Florida, for  
8 instance, submits a fingerprint card --

9 JUDGE BELL: Oh, it's fingerprints you're talk-  
10 ing about?

11 MR. EDWARDS: Yes. To the FBI, in getting a  
12 response back on that individual's rap sheet, sometimes  
13 it extends beyond 25 working days. And that's just not  
14 acceptable in a criminal justice type of application.  
15 And I think the FBI will agree that it's unacceptable, in  
16 terms of that type of response.

17 The problem is that they have been inundated.  
18 The work is extremely heavy. And the priorities are such  
19 that it may not be looked at in terms of a Bureau priority.

20 JUDGE BELL: But is it your understanding that  
21 they have so far not computerized the fingerprint file?

22 MR. EDWARDS: There are two applications within  
23 the Identification Division. One application is proces-  
24 sed whereby they use what they call the finder system,  
25 which is a classification mechanism where they run it

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1 through a computer and it's automatically classified and  
2 then goes into the file. The NCIC, which is the computer  
3 system within the FBI, the forwarding of that information  
4 over to that system has not been working as well as it  
5 should.

6 The project that I chair under that committee,  
7 that III, allows us to minimize the response time by  
8 establishing an index within the computer. But I still  
9 feel that the Task Force has an obligation to point out  
10 that law enforcement and criminal justice nationally needs  
11 to reduce the response time for criminal justice applica-  
12 tions and it should be given a priority within the Identi-  
13 fication Division.

14 Now, some of these things are not going to be  
15 solvable overnight, as we know, in just about every one  
16 we're talking -- but that's one where there has to be an  
17 awareness that criminal justice needs that information in  
18 a priority mode. Now, I can't say that that's the case  
19 today.

20 CHAIRMAN HARRIS: One of the things that you get  
21 from watching TV, I think the public would be shocked to  
22 learn that that's the response time. It usually seems to  
23 be that you make a phone call, and the information is  
24 immediately available. When you consider the Speedy Trial  
25 Act, I guess it's possible to hypothesize cases in which

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1 you're required to go to trial before you get the finger-  
2 prints back.

3 MR. EDWARDS: That's not a hypothesis, that's  
4 fact.

5 MR. HART: Well, I think, in large measure, the  
6 priority may be established by the local authority. Based  
7 on experience, we've had suspects locked up, got the print,  
8 and as fast as we got it on a plane down to Washington,  
9 the Identification Section would match the prints, if  
10 possible, and call you back within hours.

11 I think in many cases the local authorities do  
12 set that kind of priority, and the FBI will listen to that,  
13 if it's urgent.

14 MR. EDWARDS: Right.

15 JUDGE BELL: Didn't they trace James Earl Ray  
16 in just a --

17 MR. HART: Certainly. That's how it was done,  
18 as a matter of fact.

19 JUDGE BELL: As fast, almost, as you could turn  
20 around. They can do it, but they have to prioritize.

21 MR. HART: Right. The local authorities have  
22 to prioritize. The FBI will respond. For instance, all  
23 people that carry guns concealed in Michigan are finger-  
24 printed. And the FBI is given that. There's three  
25 stages, in talking about the gun specifically. If you're

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1 going to purchase -- want a license to purchase a gun, you  
2 go to the county, and the county clerks gives you a permit.  
3 Once you buy it, and you live inside the city limits of  
4 Detroit, you have to have that gun registered. Not only  
5 do you have the person's print, but you have the gun print,  
6 because the gun is fired. Then the FBI has both your  
7 print and your gun's print, so to speak.

8 So the local authorities do set the priority of  
9 how they want this done. So --

10 CHAIRMAN HARRIS: Bob, is it your recommendation  
11 that we simply put the word "criminal" in front of  
12 "identification applications"? Would that take care of  
13 your problem? So it would read, "The Task Force recom-  
14 mends the Attorney General urge the FBI Director to take  
15 all steps necessary to substantially reduce the delay in  
16 the processing of criminal identification applications."

17 JUDGE BELL: Okay.

18 CHAIRMAN HARRIS: Okay. And let me just ask you  
19 one thing. Do we want to have the Attorney General urge  
20 the FBI Director, his employee, or subordinate, or do we  
21 want to have him direct the FBI Director?

22 MR. EDWARDS: Well, I think Judge Bell, made a  
23 very valid point. You've got a tremendous resource prob-  
24 lem there, in order to solve the particular problem. And  
25 just an awareness on the part of the powers that be, that

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1 this is something that the criminal justice community  
 2 desperately needs is going to have tremendous impact.  
 3 But I can tell you for sure that if we came out with a  
 4 dictate or directive or whatever, there's no one that can  
 5 be waved that's going to solved the problem overnight.  
 6 We're talking some long-range planning to solve that one.

7 CHAIRMAN HARRIS: Well, the only reason I bring  
 8 this up is, we were talking about the need to have the  
 9 Attorney General as the law enforcement coordinator, and  
 10 the boss, so to speak --

11 JUDGE BELL: Well, let's take out the, "urge  
 12 the FBI Director". Just say, "recommends that the  
 13 Attorney General take all steps necessary." Because the  
 14 FBI Director is working for the Attorney General, after  
 15 all. I don't know a better way to say it than you had it,  
 16 but if you could construe that to mean that he's just  
 17 urging, he doesn't have authority, and that -- let's just  
 18 say that he, "take all steps necessary". He's going to  
 19 take it up with the Director anyway.

20 CHAIRMAN HARRIS: Maybe we could take five  
 21 minutes, Judge.

22 (Brief recess.)

23 CHAIRMAN HARRIS: Okay. I think Gary has a  
 24 last comment on the one we just left off with, is that  
 25 right, Gary?

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1 MR. STARKMAN: Yes. The last point is limited  
 2 to fingerprints, but I've heard complaints from prosecu-  
 3 tors in rural communities confronted with state speedy  
 4 trial laws that they can't get other lab results back from  
 5 the FBI fast enough. So I wonder if this ought to include  
 6 other lab tests, or there ought to be a separate recommen-  
 7 dation on handwriting analysis, for example, or blood  
 8 smears, things of that nature, or just generically, lab  
 9 tests.

10 JUDGE BELL: That's called technical services.  
 11 There's nothing wrong with including that in here, if  
 12 we can disconnect it from the 25 days.

13 CHAIRMAN HARRIS: We can put a separate sentence  
 14 in there that speaks to that point.

15 JUDGE BELL: Yes.

16 MR. LITTLEFIELD: Yes, let's do it that way.

17 JUDGE BELL: Or you'd take out the reference to  
 18 25 days and just group it all together. But you just  
 19 rewrite it. You've got the point.

20 CHAIRMAN HARRIS: The next one reads, "The Task  
 21 Force is generally pleased with the kind and quality of  
 22 training programs the Federal Government provides to  
 23 law enforcement personnel and recommends the Attorney  
 24 General continue to make these programs available where  
 25 possible to state and local criminal justice officials."

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1 Now, I guess this is another one that Gov.  
2 Thompson would say, "You're just painting over the paint."

3 JUDGE BELL: Well, I would agree with him.

4 MR. CARRINGTON: I'm not sure, though, because  
5 the cutbacks in funds -- I think the "where possible"  
6 qualifies it. But since they are cutting back so drasti-  
7 cally, I think it's worth a place in there. That's not  
8 just reiterating an ongoing --

9 CHAIRMAN HARRIS: I think one of the things that  
10 you have to keep in mind, the FBI Director said to us, and  
11 has in fact told the Congress, that if his funds or cut or  
12 he doesn't get his appropriations, the first place he's  
13 going to cut is in the area of training provided to state  
14 and local people. He's made that cut, or he's informed --  
15 and I don't know what DEA's position is. They have a sub-  
16 stantial investment in training local people, also, whether  
17 that's where they would choose to make the cut. But at  
18 least that has been said publicly, I know, by the FBI  
19 Director.

20 JUDGE BELL: Well, more than that. This is very  
21 important, now. Mr. Armstrong told us at the last meeting  
22 that he thought it was important to train more prosecutors  
23 in the Department of Justice Trial Advocacy Institute.  
24 I agree with that. I can't go along with anything that's  
25 going to dismantle these programs. And what I would do,

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24 1 I move that we expand them, that we don't talk about  
2 holding what we have; they ought to be expanded, if we're  
3 going to do something about crime in America.

4 We've been criticizing the governors for not  
5 building prisons, and the local police chiefs for not  
6 hiring more police officers. Now we're up to the time  
7 when we've got to -- we're up to the -- so to speak.  
8 Is the Federal Government going to go out of business, or  
9 are we going to do what we ought to do? And that means  
10 we ought to offer all the training we can.

11 I asked the FBI Director if he could train more  
12 state and local police. He said he believed they're  
13 training about as many as they could, but he didn't say  
14 anything about cutting back. Certainly we ought to keep  
15 that going, and if there's any way to expand it, we ought  
16 to expand it.

17 So I think this is where we can do something  
18 positive. We can recommend more training, more than we  
19 have now.

20 MR. EDWARDS: I think it goes a step further,  
21 there, Judge. I think it's not only training, I think  
22 the support services that are furnished by the FBI have  
23 been a tremendous aid to local law enforcement; specifi-  
24 cally, the training, crime laboratory system, the criminal  
25 identification area, the NCIC, all of those support

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1 service functions are extremely valuable tools. And I  
2 believe Judge Webster answered. When I asked that question,  
3 in terms of priorities, when he testified, that would  
4 have to be considered in an overall departmental or  
5 Bureau priority list. But I think where we can recommend  
6 is that all of the support services be amplified to  
7 assist local law enforcement, and not just the training  
8 area.

9 JUDGE BELL: I want to tell you all a story.  
10 The point of this is, we shouldn't be timid about law  
11 enforcement. I was directed by the President once to cut  
12 the budget of the Justice Department by two percent in  
13 money and manpower. The whole government was instructed  
14 to do that.

15 It turned out I was the only Cabinet officer to  
16 carry out the order. So I had to cut the FBI. And I was  
17 called over to the Senate, the Appropriations Committee.  
18 And one of the senators asked me if I'd taken leave of my  
19 senses. And I said, "Well, I was ordered to cut the bud-  
20 get." He says, "We're not agreeing to cut the size of the  
21 FIB. Don't be telling us anything like that. You can be  
22 under all the orders you want to be under, but we are  
23 restoring these people."

24 They ended up by giving me more than I had the  
25 year before. And they're getting the message, the

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1 Congress is. They know that the American people want good  
2 law enforcement. These are the sorts of things the  
3 Federal Government can do.

4 The Federal Government can do precious little,  
5 but the things we can do, we ought to do. So I think  
6 you ought to strengthen this, Mr. Director.

7 CHAIRMAN HARRIS: What I hear is, we could  
8 change it as follows: "The Task Force feels that the  
9 training and support programs provided by the Federal  
10 Government to local law enforcement are vital and recom-  
11 mend that the Attorney General continue these programs and  
12 expand them where possible."

13 JUDGE BELL: "To the extent possible."

14 CHAIRMAN HARRIS: "And expand them to the  
15 extent possible."

16 MR. ARMSTRONG: Excellent.

17 CHAIRMAN HARRIS: Now, the next one I know is  
18 controversial, but it's one of the areas I left Atlanta  
19 with not knowing whether to fish or cut bait. And I  
20 figured I'd put it in and see who's going to salute. It  
21 reads: "Given the limited amount of resources available  
22 for federal training efforts, the Task Force recommends  
23 that the Attorney General see that domestic law enforce-  
24 ment officials are afforded first priority for training  
25 and opportunities before these programs are offered to

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1 foreign law enforcement officials."

2 MR. ARMSTRONG: I won't salute that one.

3 JUDGE BELL: I move we strike it.

4 MR. ARMSTRONG: I second that.

5 JUDGE BELL: I'm not in favor of telling  
6 Scotland Yard we couldn't train a few of their people  
7 every year, that's all --

8 CHAIRMAN HARRIS: We're not telling them that.

9 MR. LITTLEFIELD: I think it's especially  
10 important in the source countries where training narcotics  
11 officers from the source countries now --

12 JUDGE BELL: That's right.

13 MR. LITTLEFIELD: It's really vital to keep  
14 that up, rather than to some local lieutenant or sergeant  
15 that wants to get a trip.

16 MR. ARMSTRONG: This is mine.

17 CHAIRMAN HARRIS: I'm going to sit back.

18 MR. ARMSTRONG: This is the one that I proposed.  
19 You know, given the training at Quantico of a sergeant  
20 in narcotics, or sergeant in robbery or burglary, versus  
21 training someone from Scotland Yard, Judge, I really think  
22 we ought to place our emphasis on the domestic training of  
23 our own officials in the state and localities throughout  
24 the country before we give any kind of consideration to  
25 training some international police department. And I

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1 recognize that through Interpol and through Scotland Yard  
2 that we've got major contacts for international crimes  
3 that take place in this country. But it just seems to me  
4 that we ought to make it a priority to train our people  
5 first, and where possible include foreign countries for  
6 training.

7 JUDGE BELL: How many foreign police does the  
8 DEA train? Who knows?

9 MR. KRUGER: Approximately 900 per year.

10 JUDGE BELL: 900 per year. How many domestic  
11 officers do we train?

12 CHAIRMAN HARRIS: Can you identify yourself for  
13 our reporter?

14 MR. KRUGER: My name is Joseph Kruger,  
15 Drug Enforcement Administration.

16 JUDGE BELL: How many domestic --

17 MR. KRUGER: In response to your question,  
18 approximately 3,000 domestic.

19 JUDGE BELL: 3,000 domestic. How many of our  
20 own? Is that included in the 3,000? How many of our own  
21 people do we train?

22 MR. KRUGER: In all the training programs?

23 JUDGE BELL: Yes.

24 MR. KRUGER: Approximately 800 to 1,000.

25 JUDGE BELL: 800 to 1,000. And 900 foreign.

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1 Well, the number at Quantico, foreign, would be far less  
2 than that, but I don't know the number.

3 Do you know, Frank?

4 MR. CARRINGTON: Not offhand.

5 JUDGE BELL: Nobody here from the Bureau.

6 The Chief's a graduate.

7 MR. HART: Right, but -- there were three or  
8 four in our class, a couple from Central America, one  
9 from Europe and one from the Islands.

10 MR. ARMSTRONG: I guess we ought to determine  
11 whether they pay their own way or not, or do we pick the  
12 tab up?

13 CHAIRMAN BELL: I don't know, but I want to say  
14 that --

15 MR. LITTLEFIELD: I'm sure we pick up the tab.  
16 It's the American way.

17 JUDGE BELL: I want to say, I started out this  
18 morning with my tie clasp on, from the Academy. I  
19 decided I'd better take it off. Somebody might think  
20 something about it. But they do a fine job. Then the  
21 Glencoe law enforcement training center is another place  
22 where there's a lot of training going on for other  
23 agencies.

24 I do not believe it's a good thing to make this  
25 recommendation, for another reason. I don't think we're

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1 so impoverished in the Great Society, or whatever it is  
2 we call ourselves now, that we can't do both. And for  
3 that reason, I wouldn't want to say it.

4 MR. STARKMAN: Besides, if the previous recom-  
5 mendation to expand the program is followed, then this  
6 will be moot.

7 JUDGE BELL: Good point.

8 MR. ARMSTRONG: Except we did not earmark the  
9 expansion to be for our own domestic law enforcement agen-  
10 cies.

11 JUDGE BELL: It's a federal program. That  
12 would be for both.

13 MR. ARMSTRONG: "Where possible, state and  
14 local officials." Are we, by saying that, excluding  
15 foreign governments? I'm going back to 13.

16 MR. EDWARDS: Do we have any data to support --

17 JUDGE BELL: I would leave that like it is.  
18 But, see, we're not training foreign. You just throw in  
19 a few. This is sort of an international cooperation.  
20 I'd hate to see us say something in a report that reflec-  
21 ted adversely on our friends in other countries. This is  
22 very important in drugs, in addicting drugs, that we have  
23 good relations with these other countries.

24 It's very important in regular law enforcement,  
25 but not so much as in drugs.

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MR. ARMSTRONG: If a motion to withdraw is appropriate, I think I've been convinced.

MR. EDWARDS: Second.

CHAIRMAN HARRIS: Then we'll cut bait on this one and move on to the next.

JUDGE BELL: You can put something in the commentary about it. I didn't know we had 900. That's going pretty strong.

CHAIRMAN HARRIS: The next one reads: "In order to alleviate the problems suffered by victims of violent crimes, the Task Force recommends that the Attorney General direct each U.S. Attorney to play a leadership role in victim advocacy by making appropriate changes within his or her office and by placing this issue on the agenda of the proposed Law Enforcement Coordinating Committees."

MR. CARRINGTON: I'd just go on and say, "Set up a victim advocate in his office." And that can be as appropriate or not. If he's dealing primarily with non-violent crime things, then the victim advocate won't have much to do. If he's like in Arizona dealing with an Indian reservation, then the victim advocate would probably have a lot to do. But it's kind of wishy-washy at this point, "making appropriate changes." Just tell him, "Set up a victim advocate", and let the victim

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advocate make the appropriate changes.

JUDGE BELL: Well, you've got five of these things here in a row.

CHAIRMAN HARRIS: Maybe we ought to take them as a group, and we can roll them together. So that was the first one.

The second one reads: "In recognition of the fact that victims of violent crimes have a vital interest in the outcome of their cases, the Task Force recommends that the Attorney General direct each United States Attorney to insure that victim input in violent crime cases is solicited prior to making a plea offer to the defendant. The victim input is not to be binding on the government, but is an additional factor to be taken into account in determining what would be an appropriate and just plea offer in a case."

The next one: "In order to insure that a balanced presentation is made to the judge prior to sentencing, and to thereby insure that informed sentencing can be accomplished, the Task Force recommends that the Attorney General direct each United States Attorney to see that victim impact statements are filed prior to sentencing, with the pre-sentence report officer and the sentencing judge in appropriate cases involving violent crime."

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1 And the last one in the victim area is: "In  
2 light of the recognized need for protection of victims  
3 of violent crime, the Task Force recommends that the  
4 Attorney General announce his support for a Victims Bill  
5 of Rights."

6 Now, just briefly, let me tell you what Prof.  
7 Wilson's comments were, and then we can go on. He was  
8 against the Victims Bill of Rights. He thinks it's too  
9 unspecific, and would not adopt that recommendation. He  
10 had no problem with victim impact statements in appropri-  
11 ate cases. He felt, on the question of getting the  
12 victim's input prior to a plea, that he wanted to make  
13 sure that we limit it to individuals and not corporations  
14 or businesses. And he had no problem with 15, the leader-  
15 ship role in victim advocacy. That was his position on  
16 those. And now that they're on the table, we can --

17 JUDGE BELL: I would like to see us write one  
18 sentence on these, all of them together, in which the  
19 Attorney General takes notice of the problem of the vic-  
20 tim of crime and issues guidelines or promulgates some  
21 sort of statement on the subject. That's what the  
22 Attorney General is going to do anyway. You can't put out  
23 anything like this, this specific. He's going to call in  
24 somebody in the Department and get them to call you,  
25 probably, and they'll sit down and write out something.

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1 And all we need to do is just mention this. Could you  
2 write out -- give us something like, by the morning, just  
3 giving us a sentence?

4 MR. CARRINGTON: Yes.

5 JUDGE BELL: Sort of a policy statement. I  
6 think that's the way we ought to do it.

7 CHAIRMAN HARRIS: So is it the consensus that  
8 we want to hold this over? We'll briefly consider it  
9 tomorrow, and we'll work on some language encompassing  
10 these concepts, in 25 words or less, in the words of  
11 Pillsbury --

12 JUDGE BELL: What do you call this general  
13 subject? Victim advocacy? So --

14 MR. EDWARDS: How about witnesses?

15 MR. WILLIAMS: Yes. I think you probably can  
16 figure it to be victim/witness everywhere it's used.

17 MR. STARKMAN: Does that mean all witnesses,  
18 or victims who are witnesses?

19 MR. CARRINGTON: I think it means both. Very,  
20 very few cases, you're going to have a victim who isn't a  
21 witness.

22 MR. STARKMAN: Lots of federal cases; documents,  
23 witness --

24 JUDGE BELL: You have to be a victim and a wit-  
25 ness, is what they're saying. What you're really asking

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1 the Attorney General to do is to set up a victim advocacy  
2 program -- adopt a victim advocacy program.

3 MR. CARRINGTON: That's correct. And then I'm  
4 going to come back at you, of course, with my accounta-  
5 bility for the Parole Board. But that's Phase II, so we  
6 can defer that.

7 JUDGE BELL: You won't have much trouble with  
8 me, I don't think, on the Parole Board. But that's what  
9 we're really asking the Attorney General to do.

10 CHAIRMAN HARRIS: Next, we're up to 19, since  
11 we've moved through this package of victim issues.

12 Nineteen: "In order to insure that judges have  
13 a complete picture of the defendant's past conduct before  
14 imposing sentence, the Task Force recommends that the  
15 Attorney General direct federal agents and the U.S.  
16 Attorneys to collect and bring all relevant information  
17 to the court's attention where it is not otherwise provi-  
18 ded."

19 JUDGE BELL: Now, is this not a good example of  
20 carrying coals to Newcastle? This is what's done every  
21 day.

22 CHAIRMAN HARRIS: I think not. And let me  
23 tell you --

24 JUDGE BELL: I represented a man, a defendant,  
25 not long ago. And they had more about him in the probation

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1 report than he was guilty of, not less.

2 CHAIRMAN HARRIS: Well, this is intended to  
3 cover those instances in which the probation report does  
4 not have adequate information. Very often, busy proba-  
5 tion officers simply take at face value, it seems to me,  
6 the defendant or his lawyer's version of the facts and  
7 the defendant's background. And often, busy Assistant  
8 U.S. Attorneys and busy federal agents are not terribly  
9 interested in investing time in a case at this point in  
10 the proceedings.

11 And this recommendation simply says, if it's  
12 provided by the probation report, there's nothing to do.  
13 But in those instances where it isn't provided, it's the  
14 U.S. Attorney who has a responsibility to insure that the  
15 material is forthcoming.

16 JUDGE BELL: This doesn't have to do with vic-  
17 tims in this area? This is --

18 CHAIRMAN HARRIS: No, this is --

19 JUDGE BELL: This is the full picture?

20 CHAIRMAN HARRIS: That's correct. Background  
21 of the defendant, if it's relevant -- all this is saying  
22 is, if the people who are supposed to be doing it, the  
23 officers of the court, the probation department, for one  
24 reason or another, doesn't do it, that the U.S. Attorney  
25 ought to take it upon himself or herself to supply that

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1 information so the court has it before sentence is imposed.

2 JUDGE BELL: Well, wouldn't it be better to say,  
3 "to take care to see that the court has the information"?  
4 I think it'd be too bad to have to add three assistants  
5 in every U.S. Attorney's office to collect this informa-  
6 tion. You're duplicating what the probation officer does,  
7 complete duplication. What you're doing, you're monitor-  
8 ing the probation officer.

9 CHAIRMAN HARRIS: Well, the recommendation here  
10 was only to do it in cases in which it's not otherwise  
11 done. I --

12 JUDGE BELL: How would you know it wasn't other-  
13 wise provided if you didn't collect it?

14 CHAIRMAN HARRIS: Well, you usually get a copy  
15 of the probation report, as a prosecutor, at some point.  
16 And if it looked like a slipshod job, it would be your  
17 responsibility to then do something, I would imagine.

18 Alec, do you have anything?

19 MR. WILLIAMS: I think the theme that Judge  
20 Bell said, and masterfully, consolidating the last four or  
21 five or six, or however many it was, issues, by using the  
22 term "victim advocacy", lends itself here, and I would  
23 use the term of "sentencing advocacy". And I do think  
24 that there's some sense that there's some variance in  
25 the practice in the Department. And there's room for the

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1 Attorney General to set a standard of sentencing advocacy  
2 that would assure -- and I think "assure" is an acceptable  
3 word -- assure that all appropriate information is brought  
4 to bear at the time of sentencing. I think we need to  
5 define that that is among the obligations of a prosecutor,  
6 because I do think on occasion it is overlooked.

7 JUDGE BELL: That's very good to think of it in  
8 terms of sentencing advocacy.

9 MR. WILLIAMS: By the way, I'm going to also  
10 recommend bail advocacy at a point, because that's  
11 another ill-practiced art in some areas.

12 JUDGE BELL: When are we going to get to bail?

13 CHAIRMAN HARRIS: Hold on, Judge, we're almost  
14 there. Bail is going to be a Phase II issue, and I don't  
15 mean to --

16 JUDGE BELL: All right. We've got victim advo-  
17 cacy, now we've got sentencing advocacy, and we're getting  
18 ready to get to bail advocacy.

19 CHAIRMAN HARRIS: Not today, but if you hold  
20 on -- we're not going to miss bail.

21 JUDGE BELL: All right.

22 MR. WILLIAMS: One technical point, Jeff. I  
23 would recommend on 19 that we strike the words "federal  
24 agents", because first of all, most federal agents, or  
25 many of them, don't answer directly to the Attorney

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1 General yet, and secondly, sentencing and courtroom func-  
 2 tions are really the responsibility of the U.S. Attorney,  
 3 and it's our responsibility to marshal the appropriate  
 4 federal agency resources.

5 CHAIRMAN HARRIS: What I would hope, Alec -- and  
 6 they tell me I'm supposed to be a good delegator -- that  
 7 maybe you could provide the language that you spoke, on  
 8 the page, and we'll be able to -- you and I will work on  
 9 that tonight.

10 Twenty: "The Task Force recommends that the  
 11 Attorney General work with the appropriate governmental  
 12 authorities to make available immediately abandoned mili-  
 13 tary bases and other federal properties for use by states  
 14 and localities as correctional facilities."

15 MR. STARKMAN: I think you've got the cart  
 16 before the horse here. Isn't it necessary to determine  
 17 where the facilities are, what kinds of costs are involved  
 18 in rehabilitating them, refurbishing them for inmate  
 19 suitability, determining whether the individual states can  
 20 bear the operational costs, and amass that kind of infor-  
 21 mation before any kind of recommendation of this nature is  
 22 made?

23 CHAIRMAN HARRIS: Well, I think not. Right now,  
 24 I don't think this property is available. There are a  
 25 number of local jurisdictions who indicated to us in

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1 informal conversations that they would be delighted to  
 2 have the opportunity to use these facilities. Now, there  
 3 may be some states which the costs they don't want to  
 4 bear, or there are other impediments such as the ones  
 5 that Gov. Thompson mentioned, in terms of where the site  
 6 is and the impact on the community. But I think that what  
 7 the Attorney General ought to do is determine the avail-  
 8 ability of this land -- and I can guarantee you some of  
 9 it will be accepted by state jurisdictions --

10 JUDGE BELL: We don't want them to accept it,  
 11 though, always. I mean, this is a very poor solution to  
 12 a bad problem.

13 CHAIRMAN HARRIS: But the problem is that if  
 14 prison construction -- someone asked Gov. Brown this, this  
 15 morning, "What are you going to do in the interim? It  
 16 takes five years to get a bed on line." And we're not  
 17 suggesting this, and I guess our commentary could make it  
 18 clear, that we're not suggesting this as an alternative  
 19 to states facing the responsibility for having adequate  
 20 prisons themselves, but merely that in an emergency  
 21 situation -- and I think it's fair to characterize the  
 22 correctional system in the United States in that way --  
 23 that this is an interim solution.

24 MR. STARKMAN: It doesn't say "determine  
 25 whether it's available." It says "to make available".

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1 We don't want to give the states the impression that they  
2 don't have to build prisons.

3 JUDGE BELL: That would be the worst thing we  
4 could do. Let me read the way I would rewrite it: "The  
5 Task Force recommends that the Attorney General work with  
6 the appropriate governmental authorities to make available,  
7 as needed and where feasible, abandoned military bases  
8 and other federal properties for use by states and local-  
9 ities, on an interim basis only, as correctional facili-  
10 ties." Because they'll get these things, in some states,  
11 and they'll move out. And there won't be any decent  
12 prisons. The first thing you know, everybody will be  
13 there, giving emergency funds, because they had a riot or  
14 something.

15 MR. STARKMAN: Judge, I think the Governor would  
16 feel that even that goes too far.

17 JUDGE BELL: Well, tell us what he would say.

18 MR. STARKMAN: I think probably that the Attorney  
19 Generals should begin to determine what existing fede-  
20 ral facilities, of whatever nature, are suitable for  
21 making them available to the states for correctional --

22 JUDGE BELL: In other words, he's what Gov.  
23 Brown called a site committee? This would be a study to  
24 determine which military bases and other federal proper-  
25 ties, if any, would be available for use? To go through

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1 the study first. That might be a very good approach to  
2 the Attorney General, because that would give him some-  
3 thing he could do right away, and he could come up and  
4 say, "We've got 47 places."

5 I know they closed an Air Force Base, in the  
6 Air Force, two or three years ago, out in Texas. And the  
7 people there were most anxious to have it converted to a  
8 prison. And I think the federal prison system finally  
9 used part of it. But you might find some places. I don't  
10 know.

11 But all you're saying is, let's recommend that  
12 the Attorney General make up a list.

13 MR. STARKMAN: Exactly. Otherwise, communities  
14 surrounding abandoned military bases are going to be up in  
15 arms at the very suggestion.

16 CHAIRMAN HARRIS: Anyone else have a view on  
17 this? I guess we have two different approaches. Anyone  
18 have any views?

19 MR. LITTLEFIELD: I'd consider it, if you have a  
20 study, that's the greatest way to just forget about it.  
21 That's my problem. Anytime you recommend a study, you're  
22 just brushing it under the rug and forgetting about it.  
23 That's the only thing.

24 MR. CARRINGTON: I disagree on this. I think  
25 this is one of the legitimate areas. It's brand new.

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1 Nobody knows what's going on. I think this is one where  
2 we could legitimately recommend a study.

3 JUDGE BELL: The truth is, we need to inventory  
4 all prison facilities, and anything you can make into  
5 prison facilities, in the whole country. That's one of  
6 the first things we need to do.

7 MR. CARRINGTON: Liability problems, economic  
8 impact statements. It staggers the imagination. It's a  
9 good idea, but this does need to be studied.

10 JUDGE BELL: We could call this as a part of an  
11 inventory.

12 MR. LITTLEFIELD: I'm sure it has to be studied,  
13 but we might be able to build a prison faster than the  
14 study comes back. That's my concern.

15 CHAIRMAN HARRIS: The way this came into being  
16 is, you know, when we were down in Atlanta, I guess,  
17 while we were there, the State of Alabama turned out a lot  
18 of prisoners on the street. I know it's happened --

19 JUDGE BELL: Not yet. They haven't turned them  
20 out yet. They're still threatening to do it.

21 CHAIRMAN HARRIS: It's happened in a number of  
22 states. And the question is, this was intended as a band-  
23 aid for that. That was the point. And -- well, I guess  
24 my opinion is not appropriate.

25 JUDGE BELL: Yes, it's appropriate.

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1 MR. EDWARDS: Bill, would you feel comfortable --  
2 I think what your major concern is there that you can  
3 study something to death and never get anything out of it.

4 MR. LITTLEFIELD: Yes, that's right.

5 MR. EDWARDS: Would you feel comfortable with  
6 the approach of the Task Force adopting a posture of  
7 supporting a feasibility study, and then let's put a time  
8 frame on it, for recommendations to come back to whoever?  
9 I have a hard time just saying that I support the recom-  
10 mendation as it's here stated, because I think there's a  
11 lot of data that we need in order to make those determina-  
12 tions.

13 MR. LITTLEFIELD: I'd buy that, Gary. Would  
14 that satisfy the Governor, do you think?

15 MR. STARKMAN: Oh, sure. I don't --

16 JUDGE BELL: Well, I want to tell you all some-  
17 thing now. You start putting a deadline on the Attorney  
18 General about this, it'll take him a long time just to  
19 get a response from the Defense Department. So you're not  
20 deadlining the Attorney General. You're trying to dead-  
21 line the Secretary of Defense, too. And we need to use  
22 some general language.

23 MR. EDWARDS: Well, then, "Due to the critical  
24 nature of the issue, immediate response is recommended",  
25 or whatever. But I think what we're trying to avoid is

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1 it being studied to death, but to also try to get enough  
2 data that we can make a good recommendation.

3 MR. HART: Well, it seems to me it shouldn't  
4 take that long to tell whether military bases are feasi-  
5 ble. I can tell you right now, and I've been in the  
6 military for 30 years, that they have Kenshelo (?) Air  
7 Force Base in Michigan, which is very modern, but it was  
8 cut out of that DEW line process, and it's sitting there  
9 empty. And it's certainly more modern than any prison in  
10 Michigan, because it was built recently. So it shouldn't  
11 take forever and a day to find out what the military has.

12 JUDGE BELL: Well, the way we've got this  
13 worded, "to make available as needed and where feasible",  
14 would require the Attorney General to go to see the  
15 Secretary of Defense and say, "I need to get a list of  
16 places that are available. Let me see the list." And  
17 they'd come up and they'll give them about two places in  
18 the United States. But he'll get a list of some kind.  
19 And then the negotiating will start. But it won't be an  
20 easy process.

21 And I don't think that Gov. Thompson need worry  
22 that this is going to be done.

23 CHAIRMAN HARRIS: Well, could we again -- if we  
24 modify the language, as the Judge has suggested, and then  
25 in the commentary, make it clear the process we think the

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1 process we think the Attorney General ought to follow,  
2 namely to go through the process that Gary suggested,  
3 would that be a compromise that's acceptable?

4 Gary, do you think the Governor would be able  
5 to live with that?

6 MR. STARKMAN: The language as it is here says,  
7 "make available immediately" abandoned military bases.

8 JUDGE BELL: Oh, I took out "immediately".  
9 "Make available", strike "immediately", "as needed, and  
10 where feasible," -- "where feasible", it seems to me,  
11 includes about all the sins of omission and commission.  
12 Then you go on and say, "military bases and other federal  
13 properties for use by states and localities", insert  
14 this, "on an interim basis only, as correctional facili-  
15 ties."

16 CHAIRMAN HARRIS: If we made those changes in  
17 the black letter, and then in the commentary addressed  
18 the concerns that you related to us, do you think that  
19 would be acceptable, Gary?

20 MR. STARKMAN: I think you have two considera-  
21 tions here. One is, a state like perhaps Alabama, that  
22 may have an immediate problem and needs a place right now  
23 to put some people, in that instance you want it to be on  
24 an interim basis only. On the other hand, there may be  
25 three or four or 50 wonderful sites around the country that

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1 states could use as full-time prisons with a minimal  
2 capital investment. Those you would not want to limit to  
3 interim use only.

4 CHAIRMAN HARRIS: There's another question here,  
5 Judge, that I know in California, I was speaking to some  
6 people who said that they would like to get, as a solution  
7 to their site problem, a piece of Camp Pendleton to use on  
8 a permanent basis, not that there's an existing facility  
9 there, but just the land on which to construct the prison  
10 that they would construct. So --

11 JUDGE BELL: Why don't they use some of their  
12 own land? Why do they want to get the federal land?

13 CHAIRMAN HARRIS: Well, I guess -- in San Diego  
14 County, you know, you have to go out in the desert --

15 JUDGE BELL: They want to get cheap land.

16 CHAIRMAN HARRIS: Yes, I --

17 MR. LITTLEFIELD: No one else will have it close  
18 to town. They won't stand for a prison close to town.

19 CHAIRMAN HARRIS: What I'm speaking to is the  
20 question, if we want to limit it to interim only, because  
21 I guess there may be instances, and what we're looking for  
22 is the Federal Government to kick in with the land. That's  
23 just another consideration that we ought to factor into  
24 this.

25 JUDGE BELL: Well, yes, I see. You're talking

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1 about land and I'm talking about buildings.

2 CHAIRMAN HARRIS: Right. Talking about both.

3 JUDGE BELL: You're talking about, abandoned  
4 military --

5 CHAIRMAN HARRIS: Abandoned military facilities  
6 and other federal properties.

7 JUDGE BELL: Yes.

8 MR. ARMSTRONG: Would other federal properties  
9 include existing federal prisons and --

10 CHAIRMAN HARRIS: No. Existing federal prisons  
11 are a Phase II issue, because the legislation which  
12 contemplates taking out the Atlanta Penitentiary, McNeil  
13 Island, and one other, which I never can remember, says  
14 that they cannot, after 1984, be used for correctional  
15 purposes. So that requires a legislative change.

16 JUDGE BELL: They're trying to change that now,  
17 and the State is going to buy the Atlanta Penitentiary.  
18 They've decided it's a fine place, since the State wants  
19 to buy it. You know, everything in life is relative.  
20 What I'm trying to do is not solve the prison problem by  
21 turning over a bunch of old broken down military barracks  
22 to the states. I mean, that's as good as the states want.  
23 Because nobody wants to build any prisons. And we have to  
24 build prisons. Now, we're ruining our position, weaken-  
25 ing our position, if we do this, unless we use "interim".

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1 But I agree, though, that to get federal land is quite a  
2 different thing. That's not "interim" to use land.

3 MR. LITTLEFIELD: Can we handle that in the  
4 commentary, that "interim basis" thing, in the commentary,  
5 with a differentiation, rather than -- and then there  
6 wouldn't be any problem as far as the black letter portion  
7 is concerned?

8 CHAIRMAN HARRIS: Well, one thing we could do is  
9 simply take out "other federal properties" from this first  
10 sentence and add a new sentence which says the same thing  
11 about federal properties that we're going to say about  
12 abandoned military facilities, absent the "interim"  
13 caveat. Just break it out separately, to make it clear  
14 that what we're talking about is, we don't want old  
15 barracks used on a permanent basis. That's an interim  
16 measure, but if we're talking about using a piece of  
17 federal land on which to construct a modern building,  
18 that that is not necessarily on an interim basis.

19 JUDGE BELL: Yes.

20 MR. LITTLEFIELD: That's all right. Why not do  
21 it that way?

22 JUDGE BELL: That would be all right. But  
23 there are a lot of times you'll need some land. We'll  
24 need to add the sentence about land.

25 CHAIRMAN HARRIS: The way it would read is, "The

1 Task Force recommends that the Attorney General work with  
2 appropriate governmental authorities to make available,  
3 as needed and where feasible, abandoned military bases for  
4 uses by states and localities, on an interim basis only,  
5 as correctional facilities." And then a sentence which  
6 I'm about to make up, which would read something like,  
7 "Further, the Task Force recommends that the Attorney  
8 General work with appropriate governmental authorities to  
9 make available, as needed and where feasible, other  
10 federal properties to be used as sites for new correctional  
11 facilities."

12 JUDGE BELL: Right. "Sites", that's good.

13 MR. CARRINGTON: The only thing is, if what  
14 Chief Hart says is true, and the Air Base is more modern  
15 than any penitentiary in Michigan, that could be a perma-  
16 nent installation.

17 JUDGE BELL: Well, you wouldn't have but at  
18 best a part of it, though, that you'd use as a prison,  
19 and the rest of it would fall down, I guess. Some of the  
20 buildings wouldn't lend themselves, hangars and those  
21 sorts of things.

22 MR. LITTLEFIELD: I would imagine that some  
23 bureaucrat in Michigan could probably figure "interim"  
24 means about 75 years, don't you think, Chief?

25 JUDGE BELL: "Interim" means for the life of the

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1 buildings.

2 CHAIRMAN HARRIS: One thing we could do in the  
3 commentary is put in a sentence that says something to  
4 the effect, "We do recognize there may be exceptional  
5 circumstances in which an abandoned base has modern,  
6 appropriate facilities for a correctional institution  
7 already." That's going to be a rare case. Most of these  
8 are broken-down barracks, is right. But we could, in the  
9 commentary, recognize that there can be an exception, and  
10 where there's a modern facility which would meet the same  
11 standards as if Michigan were going to build it from  
12 scratch.

13 MR. HART: Right. If they recommend Grosail (?)  
14 Naval Air Station, then you know somebody's had you. You  
15 know, that goes back to World War I.

16 MR. ARMSTRONG: I worry about the message that  
17 will be received by this recommendation. It just seems  
18 like, again, what Judge Bell said. We're attempting to  
19 bail out states in their responsibilities to start plan-  
20 ning construction for facilities.

21 CHAIRMAN HARRIS: Well, could not we say that  
22 right up front in the commentary on this, that -- just  
23 what you've said, basically. The problem is, what does  
24 the criminal justice system do in the interim? That's  
25 where this concept started. And this will be exacerbated,

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1 for example, if the Supreme Court comes down on the side  
2 of single-celling.

3 JUDGE BELL: What about a poor, helpless state  
4 that finds itself with no abandoned military base? Are  
5 we going to get complaints that some states are being  
6 treated better than others?

7 MR. CARRINGTON: They'd have to build an  
8 abandoned military base.

9 CHAIRMAN HARRIS: People ought to look to their  
10 senators as to why that ever happened.

11 JUDGE BELL: Well, maybe the weather was bad,  
12 you know, it wasn't a good place to train. This has to be  
13 treated as an interim measure, an emergency. Otherwise  
14 it will --

15 MR. ARMSTRONG: Let's use the word "emergency"  
16 then.

17 JUDGE BELL: Yes. Otherwise you're not even  
18 treating the states the same.

19 CHAIRMAN HARRIS: So you want to substitute, in  
20 the first sentence, "emergency" for "interim"?

21 JUDGE BELL: I'd put both.

22 CHAIRMAN HARRIS: "Interim emergency"?

23 JUDGE BELL: "Interim and emergency". How can  
24 you have an interim emergency?

25 CHAIRMAN HARRIS: Let me think about that, Judge.

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1 I think that's going to require quiet contemplating in  
2 my room.

3 JUDGE BELL: That would be the same thing as  
4 a tooth dentist, I guess. Anyway --

5 CHAIRMAN HARRIS: Okay. Twenty-one: "It is  
6 recommended that the Attorney General take a leadership  
7 role in building a national consensus that crime and  
8 violence have no rightful place in our schools, and when  
9 these conditions exist, vigorous criminal law enforcement  
10 should ensue."

11 Prof. Wilson's comments were, this is inappropri-  
12 ate for the Attorney General, leave it to the governors,  
13 that more fundamental changes are needed in the schools,  
14 such as school authorities recognizing that they have to  
15 take responsibility for this sort of conduct in schools,  
16 et cetera, et cetera. But he did not favor making this  
17 recommendation.

18 MR. CARRINGTON: But then we heard from Mayor  
19 Bradley that, in response to my specific question, that  
20 they do go into the schools, and he would like some  
21 federal help with that. So maybe we want to redraft that  
22 certainly there could be federal assistance to local  
23 narcotic authorities, even in schools, or something like  
24 that. I don't think we ought to just drop it. I think  
25 that's an important thing, the sanctuary concept. And I

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1 think we should address it.

2 MR. HART: I'd like to add a comment on that,  
3 that goes beyond narcotics, the other violence in schools.  
4 In 1976, Detroit put uniformed officers inside the 23  
5 high schools we have, and they have remained. At least  
6 two, some have three. And even some of the immediate,  
7 the feeder schools, have -- and we have them assigned  
8 there on a regular basis. It has worked very well. It  
9 cut down on the violence. We keep the drop-outs away from  
10 the playground, and the kids that want to learn have a  
11 chance.

12 MR. CARRINGTON: I don't see how it becomes  
13 federal unless we're talking about narcotics, in 99 percent  
14 of the cases.

15 CHAIRMAN HARRIS: I guess the way it's phrased  
16 here is, it would be federal only in that the Attorney  
17 General would publicly take a stand, coming down on the  
18 side of law enforcement in schools, as opposed to the  
19 opposite point of view, where parents, usually of the  
20 arrestee, take the position that it's inappropriate to  
21 have that sort of activity in the schools. Maybe that's  
22 unfair. Maybe other parents feel that way, too.

23 JUDGE BELL: Well, I'm wondering why it is we  
24 just picked the schools as a place where he's going to be  
25 a leader. I would think it's just about as bad in the

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1 downtown area of most large cities. I wish the Attorney  
2 General would take a leadership role in making it possible  
3 for me to walk around in Atlanta at night, or to find a  
4 policeman in the middle of the day at the Central City  
5 Park.

6 MR. CARRINGTON: I think this just addresses the  
7 sanctuary concept. Doesn't it?

8 JUDGE BELL: Well, the sanctuary is in Central  
9 City Park, in Atlanta.

10 MR. CARRINGTON: No, you don't have people  
11 coming, saying, "The police shouldn't be in Central City  
12 Park." They want more people. It's the concept that the  
13 schools are sacrosanct, that no enforcement officer,  
14 federal or state or local, should ever go aboard a high  
15 school or a college. And I think we should take a forth-  
16 right stand --

17 JUDGE BELL: Well, I'm under the impression that  
18 schools have policemen now, security officers, right in  
19 the building.

20 Don't you have that in Detroit?

21 MR. HART: Yes, sir, they're uniformed police.  
22 They're regular Detroit police officers. In other words,  
23 church or school or nowhere is sacred against crime,  
24 violent type. And I'm talking about violent crime.

25 JUDGE BELL: Where is the sanctuary system used?

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1 CHAIRMAN HARRIS: In a lot of places, it's not  
2 like it is in Detroit, and that's the problem, that if the  
3 police chief in a lot of cities in this country suggest  
4 putting uniformed officers in, there would be a hue and  
5 cry. And we're suggesting that the Attorney General come  
6 down in endorsing that kind of approach that Detroit has  
7 taken.

8 MR. HART: Yes. They were sacred before we put  
9 them in there, you know. A regular police officer  
10 couldn't even enter a school door.

11 CHAIRMAN HARRIS: That's the problem. And it's  
12 still like that in a lot of places in this country.

13 MR. STARKMAN: A much greater hue and cry in the  
14 suburbs than in the central city. But I have a couple of --

15 JUDGE BELL: What does the Governor think of  
16 this?

17 MR. STARKMAN: Well, he was concerned with the  
18 focus on drug abuse, as opposed to simply crime, crime only  
19 to the extent that it's caused by drug abuse. My sugges-  
20 ted changes are that instead of "crime and violence" we  
21 add "drug abuse and the violent crime that it breeds", and  
22 strike the period at the end and add, "through the coordi-  
23 nated efforts of teachers, school administrators and local  
24 law enforcement officials."

25 JUDGE BELL: Does "drug" include alcohol?

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1 MR. STARKMAN: In the proposed bill that we've  
2 introduced in Illinois to deal with this problem, it does  
3 not.

4 MR. HART: Well, that's one of the biggest  
5 problems.

6 MR. EDWARDS: It really is. It certainly is  
7 here.

8 CHAIRMAN HARRIS: Why should it be limited to  
9 narcotics? I mean, sexual offenses take place in schools,  
10 extortion --

11 JUDGE BELL: Rape, extortion.

12 CHAIRMAN HARRIS: Why should we say they can  
13 come in over drugs but not extortion?

14 MR. LITTLEFIELD: I agree, it should be as  
15 broad as possible.

16 MR. HART: Right.

17 JUDGE BELL: I've got some grave doubts that  
18 we ought to have the Attorney General getting into this.

19 MR. ARMSTRONG: Aren't you talking about private  
20 property, to begin with, and the right to come onto  
21 private property?

22 MR. LITTLEFIELD: I don't think schools are  
23 private property.

24 CHAIRMAN HARRIS: Public schools.

25 MR. EDWARDS: Judge, I would have to agree with

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1 you and Prof. Wilson. This, to me, is an item that should  
2 be handled at the state and local level and should be  
3 addressed as a state and local item. I further think that  
4 your statement concerning the, not just schools but the  
5 general public areas throughout, is something that is a  
6 concern. And under Item No. 22, I think that's what is  
7 being recommended, that it takes the flavor that you're  
8 referring to there.

9 JUDGE BELL: I tried to figure out how to  
10 include something like this in 22. But 22 just refers to  
11 the -- what is 22? Let's talk about 22 and 21 together.

12 CHAIRMAN HARRIS: Let me tell you what 22 is.  
13 You and Prof. Wilson had a debate over the National  
14 Institute of Justice and this research. And it ended with  
15 you saying that if he could come up with some language,  
16 you might be amenable. And then he came up with some  
17 language and you said that sounded pretty good. This is  
18 almost a quote from the record in Atlanta, Judge. And  
19 what -- hoping that we could co-opt you on this one.  
20 What this is is stating that the National Institute of  
21 Justice is already appropriated \$15 to \$20 million. They  
22 are not cut out. And this is simply a recommendation  
23 that the Attorney General direct officials at the National  
24 Institute to make a high priority of systematically  
25 testing programs which reduce violent crime and make

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1 those affected programs available to the states and local-  
2 ities and the public. Basically, it's saying, the Attor-  
3 ney General ought to look at what the NIJ is doing with  
4 their money and make sure that they're spending it in ways  
5 which make sense in developing technology and research in  
6 these areas.

7 JUDGE BELL: This helps the NIJ get the budget.

8 CHAIRMAN HARRIS: Well, they have the budget  
9 already. This is not --

10 JUDGE BELL: It helps to get one next year,  
11 then, if we recognize them as being worth something.

12 CHAIRMAN HARRIS: Right.

13 JUDGE BELL: They haven't demonstrated that to  
14 date. What have they done?

15 CHAIRMAN HARRIS: I do not want to be in a  
16 position to speak for them.

17 JUDGE BELL: Well, I mean, it's just singling  
18 out one place in the Department, that we're going to help  
19 them get the budget. I mean, why don't we pick out --  
20 there's 27 other places for that.

21 CHAIRMAN HARRIS: Well, I guess Prof. Wilson's  
22 point was, and the reason he feels they ought to be  
23 singled out, is because one of the things that the  
24 Federal Government can do that operational police forces  
25 can't is noodle around with research, so to speak, and that

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1 just like any other evolving area, technology is impor-  
2 tant, and demonstration projects are important, and that  
3 there ought to be someone trying to keep up with it and  
4 find out -- keep on the technological edge. And that's  
5 what NIJ ought to be doing. But they ought to be doing  
6 things which will have demonstrable effects, as opposed  
7 to being a place where Ph.D.'s can work at federal expense  
8 on projects they've always thought would be interesting.

9 JUDGE BELL: The FBI and the DEA together  
10 would come up with 20 times more things than they'll ever  
11 come up with at the National Institute of Justice. And  
12 we're not recommending anything for them. That's my  
13 complaint about it. I still have the same complaint I  
14 had last time.

15 CHAIRMAN HARRIS: I'm not sure we've advanced  
16 the ball on disposing of 21 --

17 JUDGE BELL: No, I see we haven't. We'd better  
18 get back to 21. Let's get it out of the way.

19 MR. STARKMAN: Back on 21, crime in the schools  
20 is a phenomenon of the last 15 years, really. The problem  
21 stems, in the opinion of many people, from the advent of  
22 a drug culture. We heard testimony in Springfield that  
23 as many as anywhere from 30 to 80 percent of all Illinois  
24 high school students use drugs. The problem in dealing  
25 with that issue is the fact that teachers and school

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61 1 administrators and even some parents have a natural  
2 antipathy toward any form of law enforcement intruding on  
3 their jurisdiction. Peter Bensinger testified in Washing-  
4 ton that the teachers really can't turn away from the  
5 problem, because it's their problem as much as it is law  
6 enforcement's. And the Governor's concern is that the  
7 Attorney General take the position that law enforcement  
8 can mesh with the administration of the schools to  
9 eradicate the problem.

10 MR. EDWARDS: Does he see it as an issue for  
11 the Attorney General, or does he see it as a state and  
12 local issue?

13 MR. STARKMAN: There's no question that it can  
14 only be dealt with on the state and local level, however,  
15 because it's a national -- the problem of drug abuse in  
16 the schools is a national phenomenon of recent vintage,  
17 it's not inappropriate for the Attorney General to take  
18 a position on it, or a recommendation come from the Task  
19 Force that the Attorney General sensitize the national  
20 educational community to the issue.

21 CHAIRMAN HARRIS: What we're suggesting here is  
22 a leadership role, not an action role.

23 MR. ARMSTRONG: I'm not so sure the Attorney  
24 General can -- even if he were empowered to do so --  
25 could have much effect in school systems of this country.

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1 Because that's primarily, as Bob has said, a state and  
2 local problem.

3 I'm sure in Phase II that organizations like  
4 the National District Attorneys Association and the  
5 National Association of Attorneys General would love to  
6 be able to have the resources to go into states and their  
7 school systems to put on drug awareness programs and to  
8 talk about the dangerousness involved with the use of  
9 drugs. So that seems to be a more appropriate area for  
10 Phase II on this issue than anything.

11 MR. STARKMAN: We have a lot of those programs,  
12 and the reason they're not succeeding to the extent they  
13 should is the fact that law enforcement provides no real  
14 deterrents, because students are insulated by the educa-  
15 tional community from law enforcement. And the Attorney  
16 General's role, perhaps, is to sensitize the communities  
17 throughout the nation to the problem.

18 MR. HART: I think a lot of people are a heck of  
19 a lot more aware this decade than they were last, even  
20 two years ago. It's just as appropriate to protect your  
21 bus transportation system or your school system or whatever  
22 system is public. And I think you'll find that a lot of  
23 educators, and certainly parents who are victims, and  
24 their children, are a lot more -- would be more willing  
25 to have more police involvement when it comes to violent

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1 crime, not just drugs. Because when you talk about just  
2 drugs, you're just singling out -- and I thought the  
3 committee said we're going to bite the bullet and face  
4 some of these issues head on. And I think you'll find  
5 most Americans, not just in Detroit -- if law enforcement,  
6 federal, state and local, are willing to bite the bullet,  
7 with some direction from the Attorney General of the U.S. --  
8 would be more than willing to try something different.

9 MR. STARKMAN: We thought that, too, Chief.

10 And when the bill that the Governor mentioned in the last  
11 meeting in Atlanta was introduced -- but the opposition  
12 to the bill, which simply required teachers to report  
13 instances of drug abuse and drug transactions to the  
14 State Department of Law Enforcement, was introduced,  
15 opposition came from every teachers group, every counsel-  
16 ors group, every school administrators group. And  
17 fortunately the bill passed out of one house and into the  
18 other.

19 But unlike public parks and public transporta-  
20 tion where the average citizen would welcome law enforce-  
21 ment presence, there seems to be a desire to insulate the  
22 elementary and secondary schools from any connection with  
23 law enforcement.

24 MR. HART: Well, they screamed for about two  
25 seconds, and that was two seconds after we entered the

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1 door, they stopped. You know, that is the educational  
2 process. Maybe we had a unique situation of a strong  
3 mayoral type of government. The citizens elected him  
4 and they said, "Hey, we want that crap cut out in schools.  
5 We want you in there and clean that up. We want our kids  
6 to learn." So it was done.

7 CHAIRMAN HARRIS: Well, I guess what we ought  
8 to do, I think we've talked it out --

9 JUDGE BELL: Don't quit, I've got a suggestion.

10 CHAIRMAN HARRIS: Oh, okay.

11 JUDGE BELL: I might have 21 and 22. Twenty-one  
12 I'd say this. Let me try this. "The Task Force believes  
13 that the Attorney General has a major leadership responsi-  
14 bility to inform the American public of the extent of  
15 violent crime -- or the extent of the problem of violent  
16 crime. In that connection, it is recommended that the  
17 Attorney General seek to build a national consensus that  
18 crime and violence", I don't care what you want to put  
19 there, "have no rightful place in our schools, and that  
20 when these conditions vigorous law enforcement should  
21 ensue."

22 That gives a reason for him saying it, and the  
23 way we've got it here, it just comes out of the blue. It  
24 looks like it's singled out. And the way I've got it  
25 written, it's just an aspect of the overall problem. I

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1 think if you do that, we can probably agree to it, it  
2 seems to me.

3 CHAIRMAN HARRIS: Anyone have a problem with  
4 that?

5 JUDGE BELL: That means we could add something  
6 else later, if we wanted to, or he could add something,  
7 as he informs the American public of the extent of the  
8 problem.

9 MR. HART: That's fair and honest. Sure.

10 JUDGE BELL: All right. And 22, down here,  
11 where we're bragging on the National Institute of Justice,  
12 helping them get their budget, I would say, "The Task  
13 Force suggests that the Attorney General", and I do this  
14 very reluctantly, "direct officials of the National  
15 Institute of Justice, among other elements in the  
16 Department, to make a high priority of systematically  
17 testing programs which would reduce violent crime and  
18 make those effective programs known to state and local  
19 law enforcement and to the public." "Among other elements  
20 in the Department means the FBI and the DEA and other  
21 worthwhile organizations might also have something to  
22 offer to the public.

23 CHAIRMAN HARRIS: No problem there.

24 MR. LITTLEFIELD: Make it "Department of  
25 Justice" rather than "Department."

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1 JUDGE BELL: All right. "Other elements of the  
2 Department of Justice."

3 (Speakers in audience, inaudible.)

4 JUDGE BELL: Well, then, my phrase, "among  
5 other elements in the Department of Justice", would  
6 include them, anybody that the Attorney General wants to  
7 pick out.

8 CHAIRMAN HARRIS: Well, if you want to neutral-  
9 ize it even more, you could simply take out the specific  
10 reference to NIJ and say that, "The Attorney General  
11 directs responsible officials in appropriate components  
12 of the Department of Justice."

13 JUDGE BELL: That's a lot better.

14 CHAIRMAN HARRIS: So we won't single any parti-  
15 cular component out, and we'll just simply say "components".

16 JUDGE BELL: See, he might not be able to direct  
17 them. They've got their own outside board, the way they  
18 finally got the law passed.

19 CHAIRMAN HARRIS: Now, just one other matter  
20 that Prof. Wilson asked me to bring up. He would like  
21 to add one recommendation, and this is the last one I  
22 have. He feels very strongly that we ought to recommend  
23 that the Attorney General should insure that civil rights  
24 violators, violations involving police, are vigorously  
25 pursued by the Department of Justice. What he said was --

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1 and I'm not giving the exact language -- that in order  
2 for a violent crime program to be effective, the police  
3 departments around this country have to have credibility,  
4 and that there has to be an effective investigation and  
5 prosecution where there is conduct, illegal, outrageous  
6 conduct. And he feels that he wants to make that recom-  
7 mendation that the Attorney General place a high priority  
8 on investigation of that sort of violation by police  
9 departments.

10 JUDGE BELL: I am absolutely 100 percent opposed  
11 to that. And I'll tell you why. There's nothing that's  
12 done more vigorously in the Department of Justice than  
13 pursuing the police who engage in brutality. As everyone  
14 knows that's kept up with the Department recently, we  
15 changed the rule so that you can prosecute the state  
16 police even though he's been prosecuted in state court,  
17 if he was acquitted or the sentence was low. And this is  
18 a very strong thing in the Department right now. And  
19 unless the Attorney General has changed the policy, and  
20 I've not heard of it, I wouldn't want to do it. Have  
21 they changed the policy? Does anybody know?

22 CHAIRMAN HARRIS: No, there's been no announce-  
23 ment of any policy change in that area.

24 JUDGE BELL: There's been no change. This has  
25 been very, very vigorously done. And it will be

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1 misunderstood if we say this.

2 CHAIRMAN HARRIS: Is there any support for that,  
3 other than Prof. Wilson? Then I guess we will drop that  
4 one.

5 JUDGE BELL: I don't mean to cut it off. I  
6 mean, if you can get a majority, it's all right with me.  
7 That's just my feeling --

8 MR. LITTLEFIELD: It's being done at the present  
9 time, so why --

10 CHAIRMAN HARRIS: Well, I just have the language  
11 of a redraft in 19, and if you tell me it's acceptable,  
12 we can adjourn. And this is the sentencing advocacy one.  
13 "In order to insure that judges have a complete picture  
14 of the defendant's past conduct before imposing sentence,  
15 the Task Force recommends that the Attorney General  
16 establish standards of sentencing advocacy whereby  
17 federal prosecutors will assure that all relevant infor-  
18 mation is brought to the court's attention prior to  
19 sentencing."

20 JUDGE BELL: Do we have standards now?

21 VOICE: ABA does.

22 JUDGE BELL: I mean the -- they've got a U.S.  
23 Attorneys' manual. Is there anything in the manual about  
24 it?

25 MR. WILLIAMS: I don't recall specifically.

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1 JUDGE BELL: Well, check that tomorrow, because  
2 we wouldn't want to put out something that's already in  
3 the manual. Somebody will catch that and say, "What are  
4 you doing, putting out something that's already in the  
5 manual?" Call the executive officer of the U.S. Attorney  
6 and ask them if they'd know anything like this. I mean  
7 tomorrow. And ask them if they know of a policy or  
8 directive or anything where this is already supposed to  
9 be being done.

10 CHAIRMAN HARRIS: Is there anything further?

11 MR. CARRINGTON: Yes. Mr. Chairman, I feel  
12 that members of the Task Force should take notice that  
13 the staff had exactly seven working days since the Atlanta  
14 meeting to put together these recommendations. And I  
15 think the number of recommendations we have accepted,  
16 either in the form it's drafted or with minor changes,  
17 indicates that a splendid job was done, and the Task  
18 Force should commend the staff for so doing, in such a  
19 short period of time.

20 JUDGE BELL: If that's a motion, I second it.

21 CHAIRMAN HARRIS: On behalf of the staff, I'd  
22 like to say thank you --

23 JUDGE BELL: You're not willing to risk a vote  
24 on it?

25 CHAIRMAN HARRIS: I don't want to vote, because

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1 I think that this week has been the eight-furlong race.  
2 Between now and Chicago is the mile and a quarter. So  
3 hopefully we can keep up the pace.

4 Thank you very much. We appreciate that.

5 (Whereupon, at 5:10 p.m., the hearing was  
6 recessed until the following day, Wednesday, June 3, 1981,  
7 at 9:30 a.m.)  
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BEFORE THE  
ATTORNEY GENERAL OF THE UNITED STATES

Public Hearing:  
TASK FORCE ON VIOLENT CRIME

JEFFREY HARRIS, EXECUTIVE DIRECTOR  
Chairman

Hyatt Wilshire Hotel  
Main Ballroom  
3515 Wilshire Boulevard  
Los Angeles, California

Wednesday, June 3, 1981  
9:30 a.m.

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APPEARANCES:

TASK FORCE MEMBERS PRESENT:

- JEFFREY HARRIS, EXECUTIVE DIRECTOR, Chairman
- HON. GRIFFIN B. BELL, Co-Chairman
- ROBERT L. EDWARDS
- DAVID L. ARMSTRONG
- WILBUR F. LITTLEFIELD
- CHIEF WILLIAM L. HART
- FRANK G. CARRINGTON

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I N D E X

PRESENTATION BY:

PAGE:

- HON. GEORGE DEUKMEJIAN,  
Attorney General, State of California
- HON. MALCOLM R. WILKEY,  
Judge, United States Court of Appeals  
for the District of Columbia Circuit
- YALE KAMISAR,  
Professor of Law  
University of Michigan Law School
- PETE DUNN,  
Representative, Arizona House of  
Representatives
- HON. JOHN K. VAN DE KAMP,  
District Attorney, Los Angeles County
- HON. DARYL F. GATES,  
Chief, Los Angeles Police Department
- DONALD E. SANTARELLI,  
Attorney at Law, Washington, D.C.

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PROCEEDINGS

(9:35 a.m.)

CHAIRMAN HARRIS: Before we begin the program for today, we had two brief items that we left off yesterday that I want to come back to. One, Mr. Carrington has drafted some language as we suggested on the victims issues. The proposal would now read, "The Task Force recommends that the Attorney General take a leadership role in insuring that victims of crime be accorded their proper status in the criminal justice system." That would be the general kind of statement we talked about. Is there any discussion or objection?

JUDGE BELL: None.

CHAIRMAN HARRIS: Lastly, item no. 8, the one that we discussed and decided to put over concerning the Executive Order in the Johnson Administration, which has the Attorney General as the Coordinator, there was some sentiment for just dropping that at this time. Is there any objection to that?

JUDGE BELL: I move we drop it.

MR. LITTLEFIELD: Second.

CHAIRMAN HARRIS: That is the way we'll go then. And I think that completes our business from yesterday and we can now turn to today's business.

Our first witness today is the Honorable George

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Deukmejian, the Attorney General of the State of California.

And at this time, we would ask you, General, to take the witness chair. We are delighted that you could join us today, and we anxiously await your testimony.

PRESENTATION BY:

GEORGE DEUKMEJIAN, ATTORNEY GENERAL,  
STATE OF CALIFORNIA

GEN. DEUKMEJIAN: Thank you very much.

I had a great distance to travel this morning. I walked from across the street. Our office happens to be down the block, our office here in Los Angeles, so it's very, very convenient for me. We're delighted to have the Commission here.

Judge Bell, members of the Task Force, I would like to thank you for inviting me to address you today on what I believe the Federal Government may be able to do to assist state and local law enforcement to reduce violent crime in our area. Crime in California has been on a steady rise for the past 20 years, with the greatest increase impacting during the past 10 years.

Today in California you are four times more likely to be the victim of a murder, four times to be the victim of a robbery, and three times more likely to be the victim of a rape than you would have been in 1960.

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1 During the last 10 years there was an increase of violent  
2 crimes in this state of 103 percent, going from approxi-  
3 mately 94,000 10 years ago to 195,000 violent crimes this  
4 last year.

5 I'm constantly asked why we have experienced  
6 this tremendous increase in crime. I believe that part of  
7 the explanation was found by Prof. James Q. Wilson and  
8 Charles E. Silverman of Harvard. In their study they  
9 concluded that there is a, and I quote, "bloody uprising  
10 of crime in this country for the most obvious reason --  
11 criminals can get away with it and they know they can get  
12 away with it."

13 Today, our system of justice gives criminals a  
14 very clear message. That message is, there is profit in  
15 crime, loopholes for the guilty are plentiful, criminal  
16 conduct will be tolerated in large doses before punishment  
17 is meted out. Early this year, Chief Justice Warren  
18 Burger of the United States Supreme Court posed this  
19 question to the American Bar Association, and I quote:  
20 "Is a society redeemed if it provides massive safeguards  
21 for accused persons, including pretrial freedom for most  
22 crimes, defense lawyers at public expense, trials and  
23 appeals, retrials and more appeals, almost without end,  
24 and yet fails to provide elementary protection for its  
25 decent, law abiding citizens?"

1 The description of society that is implied in  
2 that question is sadly accurate. Our criminal justice  
3 system has focused for so long on the rights of the accu-  
4 sed that it has become blind to the effect that crime is  
5 having on our lives. Strong and reliable protections  
6 against convicting the innocent are imperative to a fair  
7 system of criminal justice. Rational restraints on the  
8 powers of law enforcement are elementary to a humane  
9 society. But our system today goes well beyond these  
10 protections and restraints. It seriously inhibits pro-  
11 secution of the guilty and it is neither humane to toler-  
12 ate crime nor fair to release the guilty.

13 Our present court procedures are not designed  
14 to convict guilty criminals. The nature of the criminal  
15 trial has been altered from a test of the defendant's  
16 guilt or innocence to an inquiry into the propriety of the  
17 policeman's conduct. Rather than a search for truth,  
18 today's criminal trial has become a prologue for an appeal.  
19 I can tell you in the last five years in this state the  
20 number of appeals has increased 40 percent, whereas in  
21 the prior five-year period, the number of appeals only  
22 increased seven percent.

23 JUDGE BELL: What was that figure?

24 GEN. DEUKMEJIAN: During the last five years  
25 the number of appeals increased 40 percent. In the prior

1 five-year period it only went up seven percent. ,

2 MR. CARRINGTON: Gen. Deukmejian, I read a  
3 newspaper article that stated that every single criminal  
4 case in California goes to appeal. Is that correct, by  
5 your -- in fact, even some where guilty pleas were had  
6 later go to appeal. Is that 100 percent figure reasonably  
7 correct?

8 GEN. DEUKMEJIAN: Well, it is true that indi-  
9 viduals that actually plead guilty still appeal their  
10 cases on certain points of law. As far as the 100 per-  
11 cent figure is concerned, I have seen that figure myself,  
12 and frankly, I'm a little bit confused about it. I'm not  
13 exactly sure whether it is talking about all contested  
14 types of criminal cases or whether it's talking about all  
15 convictions. However, I can just tell you, since our  
16 office handles the appeals, that we had over 4,000 appeals  
17 that we handled in California last year before the  
18 Appellate Courts. And it's nearly 100 percent, but I'm  
19 not sure -- 100 percent of what?

20 MR. LITTLEFIELD: I really think that ought to  
21 be laid to rest. That's completely and totally inaccu-  
22 rate, as far -- George, you know, here in Los Angeles  
23 County, we have about 15,000 felony cases, and most of  
24 them result in convictions, and that's just in this one  
25 county, which is about one-third of the total number of

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1 cases. So it might make interesting talk at a cocktail  
2 party, but it is completely and totally incorrect to say  
3 that 100 percent of the cases are appealed. Our office  
4 appeals a very small percentage, I know.

5 GEN. DEUKMEJIAN: My recollection is that that  
6 statement came out of the Judicial Council, and I think it  
7 was the Chief Justice -- I'm trying to remember his name,  
8 the doctor-lawyer. He's the head of the --

9 MR. LITTLEFIELD: The assistant to the Judicial --

10 GEN. DEUKMEJIAN: Yes.

11 MR. LITTLEFIELD: Was President of the State Bar  
12 for a short period of time before he got the job. The  
13 name escapes me, too.

14 GEN. DEUKMEJIAN: I think that's where that  
15 statement came from, but I don't know what the basis is.

16 The courts explain that it will teach policemen  
17 not to kick down your door at night. How many people lock  
18 their doors and bar their windows and install alarms and  
19 buy handguns to protect themselves from police misconduct?  
20 Not many, I'm sure. The exclusionary rule must bear much  
21 of the responsibility for shifting the focus from guilt  
22 or innocence to a microscopic dissection of not only the  
23 police officer's conduct but also his thought process.  
24 The avowed purpose of the exclusionary rule is to deter  
25 lawless action by law enforcement personnel. However, this

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1 rule only aids the guilty. A law abiding citizen, who is  
 2 the subject of an unreasonable search cannot redress his  
 3 grievance through the suppression of evidence, for there  
 4 is none. Yet in countless prosecution, tangible evidence  
 5 is routinely excluded in furtherance of the belief that  
 6 through suppression of ill-gotten truth, a more perfect  
 7 legal system will emerge.

8 The actual suppression of evidence is one evil.  
 9 But the almost endless series of motions and appeals on  
 10 the question of admissibility is as bad. Court calendars  
 11 are bloated with hearings that challenge search warrants,  
 12 defining of evidence, and the almost daily changing  
 13 formula of probable cause.

14 While the most desirable objective would be the  
 15 elimination of the exclusionary rule, the more realistic  
 16 approach would be to limit the scope of that rule. I  
 17 recommend that evidence which is seized in reasonable good  
 18 faith by law enforcement officers be admissible. This  
 19 proposed modification of the exclusionary rule has already  
 20 been adopted by the Fifth Circuit Court of Appeal in  
 21 Williams v. United States.

22 Federal habeas corpus is another which is  
 23 badly in need of reform. I personally support the goals  
 24 of Senate Bill 653 by Senators Thurman and Chiles, which  
 25 will amend and limit federal habeas corpus procedure.

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1 This legislation provides a time limit within which a  
 2 habeas corpus petition must be filed and limits federal  
 3 evidentiary review. This legislation if enacted will  
 4 undoubtedly lessen the burden of our office in responding  
 5 to habeas corpus petitions.

6 In 1979-80, our office handled 1,435 federal  
 7 habeas corpus petitions at an average cost of approximately  
 8 \$800 for each one. Passage of this legislation would  
 9 allow me to redirect some of the resources of my office  
 10 to better protect the citizens of California.

11 Narcotic trafficking, with its related violent  
 12 and street crime, constitutes the underlying motivation  
 13 for much of our criminal activity. It requires the full  
 14 attention of all of us in government to work toward its  
 15 ultimate elimination. Just this year, California and  
 16 four other western states of Alaska, Hawaii, Washington  
 17 and Oregon took steps to coordinate narcotic trafficking  
 18 information and to promote its exchange enforcement  
 19 agencies at the state and local level. The Western States  
 20 Information Network, known as WSIN, a federally funded  
 21 organization, which is housed in our Department of Justice,  
 22 has established itself as a coordinating and clearinhouse  
 23 for narcotic trafficking information in which all agencies,  
 24 local and state, can share.

25 Although WSIN has just become operational, it

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1 has supplied analysis and information in numerous major  
2 cases which probably would not have been made, were it  
3 not for the coordinated effort presented by WSIN. I  
4 regret that the future of WSIN is questionable. This is  
5 because the United States Department of Justice transfer-  
6 red \$6 million of the \$9.1 million funding for all regio-  
7 nal narcotic information networks to the FBI for the  
8 fiscal year 1981.

9 JUDGE BELL: What was that again?

10 GEN. DEUKMEJIAN: They had transferred from  
11 their budget \$6 million out of \$9.1 million to the FBI.

12 JUDGE BELL: You mean out of the DEA budget?

13 GEN. DEUKMEJIAN: It's not DEA, sir, it's money  
14 out of their own Department of Justice budget that had  
15 originally been allocated for all of the regional informa-  
16 tion, narcotic information networks that we have through-  
17 out the United States.

18 JUDGE BELL: That didn't take funds away from  
19 EPIC, did it?

20 GEN. DEUKMEJIAN: No.

21 JUDGE BELL: El Paso?

22 GEN. DEUKMEJIAN: No.

23 JUDGE BELL: Where was the money transferred to?

24 GEN. DEUKMEJIAN: To the FBI's budget. In  
25 other words, it's all within the United States Department

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1 of Justice, but they took moneys that had previously been  
2 allocated for these information networks.

3 MR. EDWARDS: What was the rationale for that,  
4 General?

5 GEN. DEUKMEJIAN: I believe that the rationale  
6 is that they're going to give the FBI a greater role in  
7 narcotic trafficking cases, a much greater role than they  
8 had had in the past. Otherwise, I don't know what the  
9 rationale was. This is a comparatively new program, at  
10 least for the western states. It's been in existence in  
11 some of the other areas of the country.

12 JUDGE BELL: Does that mean that these regional  
13 operations would be shut down?

14 GEN. DEUKMEJIAN: Well, as I'm going to continue  
15 to indicate, there is a reduced level of funding, but --

16 JUDGE BELL: Go ahead, I'm sorry I interrupted.

17 GEN. DEUKMEJIAN: It's all right. But, Judge  
18 Bell, you're correct that -- because next year, in the  
19 next fiscal year, at the present time there is no approp-  
20 riation for the next fiscal year, so unless there is some  
21 appropriation, it will be shut down. But at least for  
22 this year, they are going to be operating on a lower level  
23 of funding than had been anticipated. But the danger is,  
24 in the next fiscal year, right now there is no funding  
25 that is anticipated. So what I'm urging is that funding

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1 be maintained at a level at least consistent with the  
2 level that is now in existence.

3 The narcotic problem is a national problem with  
4 international overtones, which clearly warrants the focus  
5 and attention of the Federal Government and the resources  
6 available to it. The Federal Government could, and I  
7 think it should, assume a more dedicated role in inter-  
8 dicting the importation of controlled substances into  
9 the United States. The efforts of the Coast Guard need  
10 to be increased, and the resources of other branches of  
11 the military could be authorized to assist in the drug  
12 war. The Federal Government could also be of great  
13 assistance in California by establishing an enforcement  
14 policy for the California-Mexico border, and then imple-  
15 ment that policy with adequate resources.

16 Currently, Immigration and Naturalization  
17 Service, Border Patrol and Customs work in a disjointed  
18 and uncoordinated fashion. The Federal Government needs  
19 to coordinate the efforts of these three agencies and  
20 establish a border policy. Frankly, I just wish the  
21 Federal Government would establish a policy. We don't  
22 know what their policy is. And if they would establish a  
23 policy, whatever it is, and then be prepared to support it  
24 with adequate resources, I think that this would be of  
25 tremendous assistance.

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1 JUDGE BELL: You say that's the INS, Border  
2 Patrol and --

3 GEN. DEUKMEJIAN: And Customs.

4 JUDGE BELL: Well, Border Patrol is part of INS.

5 GEN. DEUKMEJIAN: But they --

6 JUDGE BELL: They're both in the Justice  
7 Department. Customs is over in the Treasury.

8 GEN. DEUKMEJIAN: Yes.

9 JUDGE BELL: But I'm very well aware of the  
10 problem you've mentioned.

11 GEN. DEUKMEJIAN: Consideration should also be  
12 given to the establishment of check points entering into  
13 Mexico. They now have check points for traffic and people  
14 coming from Mexico into the United States. The establish-  
15 ment of a southbound check point will interdict the flow  
16 of stolen merchandise into Mexico. In 1978, law enforce-  
17 ment agencies estimated that over 6,250 stolen vehicles  
18 crossed into Mexico. In a related survey conducted by  
19 law enforcement agencies affected by the border, it was  
20 estimated that 25 percent of all stolen property is taken  
21 into Mexico.

22 Acceptance and implementation of these recommen-  
23 dations will improve the administration of justice and  
24 help to protect society.

25 I would like to thank you for your interest and

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1 providing me with the opportunity to speak with you today.  
 2 And if you seek any other information, certainly our  
 3 office would be more than happy to furnish you with any  
 4 information that we may have available. Thank you.

5 CHAIRMAN HARRIS: Thank you, General.

6 Questions. Judge Bell.

7 JUDGE BELL: I would like to make some response.  
 8 We will look into the regional drug intelligence opera-  
 9 tion funding problem. That will be part of Phase II of  
 10 what we're doing. But we'll get to that at a very early  
 11 date.

12 The INS, Border Patrol, Customs problem is not  
 13 new. It's been around a long time. And we made a strong  
 14 effort when I was Attorney General to have all that put  
 15 together under a heading called Federal Law Enforcement.  
 16 You'd think we had several governments instead of one.  
 17 And we've been unable to have a head of Federal Law  
 18 Enforcement. We have a head of Central Intelligence. But  
 19 law enforcement is scattered throughout the government.  
 20 But that's a Phase II question. But we're very well aware  
 21 of that.

22 I'm interested in your pessimistic view of the  
 23 court system. I agree with you, and I think that we've  
 24 reached a point where guilt is irrelevant, and that the  
 25 court system is dedicated to what Frankfurter called the

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1 quest for error. We just put blinders on. We don't  
 2 care about whether a person is guilty or not. And we set  
 3 out on a quest for error, and that's one of the troubles.

4 I'm getting around to asking you, what do you  
 5 think the role of the lawyer has been in this, building  
 6 up this kind of justice, criminal justice system? I've  
 7 been struck for some years by the canons of ethics which  
 8 require lawyers to make contribution to the system, and  
 9 Rule 11 of the Federal Rules of Civil Procedure, which  
 10 prohibit a lawyer from taking a frivolous position, and  
 11 I'm wondering if the lawyers themselves are not respon-  
 12 sible for the build-up of this system, as much so as the  
 13 judges, or maybe even more so. Have you got any views  
 14 about that? It's well and good to knock the courts, but  
 15 are you prepared to knock the lawyers?

16 GEN. DEUKMEJIAN: Well, Judge, the lawyer, of  
 17 course, does indeed have the responsibility to use every  
 18 single avenue that is made available to him. I'm talking  
 19 now about the defense lawyer, on behalf of his client.

20 JUDGE BELL: But he is not to take a frivolous  
 21 position, an unfounded appeal, so to speak.

22 GEN. DEUKMEJIAN: That is true up to a certain  
 23 point, Judge. I'll tell you, in this state, our highest  
 24 court -- and I hope I'm stating this correctly -- has said  
 25 in some decisions that even if an attorney -- and maybe Mr.

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1 Littlefield will correct me if I'm wrong. But my under-  
 2 standing of the law is that even if a defense attorney  
 3 doesn't think that he's got a point of law that he can  
 4 present on an appeal, that still that appeal could and  
 5 should be taken and it's up to the judges of the court of  
 6 appeal to review the entire record to determine whether or  
 7 not there are any kind of appealable issues involved. In  
 8 other words, even though the attorney --

9 JUDGE BELL: Well, that's a Supreme Court of  
 10 the United States decision called *Anders v. California*.  
 11 But that doesn't mean you fail to tell the court that you  
 12 think there is no ground for appeal. That's where the  
 13 troubles come in. How many of these 4,000 appeals in your  
 14 state do you think lack probable merit? As the Supreme  
 15 Court of the United States termed it, "without arguable  
 16 merit". That's the language, "without arguable merit".

17 GEN. DEUKMEJIAN: I have to answer it this way.  
 18 Because of the courts' seeming fly-specking examination  
 19 of the entire trial process and what the law enforcement  
 20 officers did and the like, they keep holding out a hope  
 21 to the defense attorney and to his client that he ought to  
 22 try anything, because he's going to have a pretty reason-  
 23 able opportunity that he may catch the fancy of the  
 24 court. And by the way, if he doesn't do some of these  
 25 things, he's liable to be subjected to malpractice action.

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1 JUDGE BELL: That's one of the reason a lot of  
 2 these frivolous appeals are taken.

3 GEN. DEUKMEJIAN: They feel that they have to,  
 4 to protect themselves.

5 JUDGE BELL: You have done your duty if you say  
 6 to the court that you do not find a ground for appeal,  
 7 and then cite possible grounds, and then turn it over to  
 8 the court, let the court do its duty. I blame a lot of  
 9 this on lawyers, myself. I don't think it's fair to blame  
 10 it altogether on the courts. So it takes the courts and  
 11 the lawyers to make a system. We've sort of built up a  
 12 system, as I say, where guilt is irrelevant, and you're  
 13 rolling the dice. Take the appeal. Most of the time  
 14 you're getting a free lawyer. Why not appeal?

15 In England you'd never find a barrister who  
 16 would take a frivolous appeal. You'd be disgraced. We  
 17 simply have got to do something in the court system of  
 18 this country where lawyers, where there's a Rule 11 in  
 19 every proceeding, that you won't take a position unless  
 20 there is good ground for the position you're taking.  
 21 Thank you.

22 CHAIRMAN HARRIS: Mr. Littlefield.

23 MR. LITTLEFIELD: I think perhaps, General, we  
 24 ought to tell Judge Bell, there is no such thing as a  
 25 frivolous appeal in California. I was interested, what

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1 do you attribute the tremendous growth in the appeals  
2 in the last five years here, the great growth in the num-  
3 ber of appeals?

4 GEN. DEUKMEJIAN: Well, again, I think you sort  
5 of answered it yourself, that most defense attorneys feel  
6 that the way the courts have been responding that they  
7 might as well try it. They might as well go ahead and  
8 appeal. And also, of course, in the case of the defendant  
9 who has counsel provided for them, at public expense,  
10 again, I mean, the defendant certainly has nothing to lose.

11 And so it's a combination of the two.

12 MR. LITTLEFIELD: In connection with the  
13 regional network for narcotic enforcement, that's a tre-  
14 mendously good thing. Is there any possibility that  
15 maybe the states would pick up the tab for that if they  
16 didn't get it financed by the Federal Government?

17 GEN. DEUKMEJIAN: I don't know. I would say,  
18 at the present time in California, under the present  
19 Administration, I would have strong doubts about that.  
20 Maybe the next administration might be different.

21 MR. LITTLEFIELD: A couple of years ago, or  
22 perhaps it was longer than that, some of the insurance  
23 companies financed or fronted the money for some border  
24 checks going in. Was that a successful program?

25 GEN. DEUKMEJIAN: No. We have attempted to

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1 establish a southbound border check point operated by  
2 state and local law enforcement, and we have asked insur-  
3 ance companies if they would help to finance it, and they  
4 have indicated that they would. However, we are trying to  
5 get legislation passed that would make it possible for  
6 that border check point to operate without running into  
7 the constitutional problems. And that legislation was  
8 defeated last year. And we're trying it again this year.  
9 I don't know whether or not we're going to be successful.

10 But we would have been able to go ahead, had  
11 the Legislature given law enforcement the authority to  
12 conduct that operation. But thus far we haven't gotten  
13 that authority.

14 MR. LITTLEFIELD: And if you had had that auth-  
15 ority, there is a tremendous amount of stolen property  
16 that would have been recovered, I'm sure.

17 GEN. DEUKMEJIAN: That's our opinion, yes.

18 MR. LITTLEFIELD: That's all I have. Thank you.

19 CHAIRMAN HARRIS: Mr. Edwards.

20 MR. EDWARDS: You have no mechanism at the  
21 present time for checking on -- your figures of 6,200  
22 stolen vehicles, approximate, and then 25 percent of the  
23 stolen property, you have no mechanism at the present time  
24 for checking that, going out of California?

25 GEN. DEUKMEJIAN: No. The only mechanism would

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1 be that if there was a reported stolen car and the Highway  
2 Patrol happened to see it going down the freeway on its  
3 way to Mexico and stopped it. But I mean there is no  
4 check point, there is no means of a formalized type of  
5 examination of cars, trucks going into Mexico, whereas,  
6 as you know, there is the border check point as they come  
7 from Mexico into the United States.

8 MR. EDWARDS: The Western States Information  
9 Network -- does Customs, DEA and the Coast Guard have  
10 membership in that system also?

11 GEN. DEUKMEJIAN: We work together with them.  
12 When you use the word "membership", I'm not sure that  
13 they are formal members, but we certainly do work together  
14 with them and cooperate with them, to the extent that  
15 they're allowed to do so under their own rules and regu-  
16 lations, their own policies.

17 MR. EDWARDS: We have a similar system in  
18 Florida, and we have a membership requirement, just a  
19 localized, tailored-to-Florida-needs system. But I was  
20 wondering if they were members, and did they use your  
21 system as a focal point for the sharing of information as  
22 opposed to going directly to EPIC if they came through  
23 the WSIN system as opposed to going direct?

24 GEN. DEUKMEJIAN: Our experience up to this  
25 point is that they would rely more on EPIC. But again,

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1 we're just beginning to get operational. And I think as  
2 we become more operational and then build up confidence in  
3 those agencies with our work, I'm sure we'll have even  
4 more of an interplay. But right now I would say that they  
5 probably look more to EPIC for their resources.

6 MR. EDWARDS: Thank you, General.

7 CHAIRMAN HARRIS: Chief Hart.

8 CHIEF HART: I have one question, General. In  
9 the area of narcotics, you say the federal agencies that  
10 operate in the area have no policy on drug enforcement?

11 GEN. DEUKMEJIAN: No, I didn't mean to say they  
12 have no policy, sir. I meant to indicate, number one, I  
13 think they can do more in terms of interdicting narcotics  
14 coming into the United States, use more of the federal  
15 resources that are available. I said where there is no  
16 policy is -- I don't know what the policy is with respect  
17 to the border between California and Mexico. What is the  
18 real federal policy there as far as enforcement along the  
19 border? And that includes the problems involved with  
20 illegal aliens, it involves just all of the law enforce-  
21 ment type problems. It's very difficult to know what the  
22 policy is, and whether they're going to provide adequate  
23 resources to carry out a policy.

24 CHIEF HART: What do you think the problem is?  
25 You have these three different agencies who can't seem to

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1 get together? No leadership?

2 GEN. DEUKMEJIAN: I think Judge Bell probably  
3 knows the problem even better than I do, because he was  
4 very much involved. And as he has indicated, he had  
5 worked on that area as well, and the difficulties that he  
6 encountered. But all I can say is that from our view-  
7 point, from our vantage point, it just appears as though  
8 there really doesn't seem to be an established policy that  
9 is truly backed up by the Federal Government and their  
10 agencies in an effective, unified, coordinated fashion.

11 CHIEF HART: Of course, that hurt your effort  
12 greatly then?

13 GEN. DEUKMEJIAN: Yes.

14 CHIEF HART: Thank you.

15 CHAIRMAN HARRIS: Mr. Armstrong.

16 MR. ARMSTRONG: General, are you familiar with  
17 the federal-state law enforcement committees, or concept  
18 of that, federal-state coordinating committees that the  
19 Justice Department has been touting for some time?

20 GEN. DEUKMEJIAN: Yes, I'm familiar with them in  
21 general, and I know that we have some attorneys general  
22 from the states that are representative of the National  
23 Association of Attorneys General that are members of  
24 those, if that's the same group that you're referring to.

25 MR. ARMSTRONG: Do you have such a working

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1 organization in California where you periodically meet  
2 with the federal officials working in your state, DEA,  
3 FBI, U.S. Attorneys?

4 GEN. DEUKMEJIAN: No. We don't have a formalized  
5 organization of that kind in which we meet with federal  
6 agents.

7 MR. ARMSTRONG: Well, do you think it would be  
8 helpful, for example, if the Attorney General of the  
9 United States were to mandate that the United States  
10 Attorneys and all other law enforcement agencies within  
11 his purview were to meet periodically with state and local  
12 officials within a jurisdiction? Would that be helpful  
13 in, say, perhaps developing a policy with regard to  
14 narcotics?

15 GEN. DEUKMEJIAN: Yes, I think it would be help-  
16 ful.

17 MR. ARMSTRONG: Would you recommend that the  
18 Task Force forward that recommendation on to the Attorney  
19 General?

20 GEN. DEUKMEJIAN: I would certainly recommend  
21 that it be very seriously considered. I haven't thought  
22 the whole thing through totally, as far as what might be  
23 involved and the costs and so on. But it would appear to  
24 me to be a very sound suggestion. It certainly ought to  
25 be given very serious consideration by your panel.

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1 MR. ARMSTRONG: I've asked this question of  
 2 several other witnesses we've had here in Los Angeles. In  
 3 my home state of Kentucky, we're beginning to have a  
 4 serious problem of domestic grown marijuana, and the need  
 5 for law enforcement resources to target on the eradication  
 6 of that problem. Do you have such a problem in California,  
 7 and if so, what have you done in connection with the  
 8 drug enforcement authorities or the United States  
 9 Department of Agriculture to try and eradicate domestic  
 10 grown marijuana?

11 GEN. DEUKMEJIAN: Yes, we do have a very signi-  
 12 ficant problem here. We have given it total support from  
 13 our department, and we are working with DEA, and we're  
 14 working with local sheriffs. We have just last year --  
 15 I believe that over 1,000 individuals were arrested in  
 16 this state, charged with the violation of cultivating,  
 17 growing of the more potent form of marijuana, sensamilia,  
 18 and we're continuing to carry on as strong an enforcement  
 19 effort as we can with the resources that we have available  
 20 to us.

21 I recently testified before a House of  
 22 Representatives Select Committee on Narcotics Abuse that  
 23 was here in Los Angeles, and again spoke to them more  
 24 specifically on that subject. But we're very much involved  
 25 in a vigorous enforcement effort, trying to curtail that

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1 problem.

2 MR. ARMSTRONG: Do you need more assistance from  
 3 the Federal Government to help eradicate the problem?

4 GEN. DEUKMEJIAN: Well, the only really addi-  
 5 tional assistance that we could use is some financial help.  
 6 Because, really, the control problems of that involve  
 7 tremendous amounts of manpower. It takes a large number  
 8 of deputy sheriffs to go in and to eradicate these gardens  
 9 when we find them, and a lot of overtime that has to be  
 10 put into those projects and operations. And just to help  
 11 to offset some of the costs that local law enforcement  
 12 has would be helpful.

13 But as far as beyond that, I would say that the  
 14 extent of the assistance to date by DEA, by the federal  
 15 agencies, has been adequate. We provide a lot of training  
 16 for local law enforcement. We train, for example, the  
 17 individuals who fly in the airplanes that conduct surveil-  
 18 lance and who then are qualified to go to a judge to get  
 19 search warrants in order for the agents, the local police  
 20 and the agents to go in and to actually destroy and  
 21 eradicate those crops.

22 We do a lot of other things, but basically,  
 23 we're kind of the coordinating agency. We have within our  
 24 Department of Justice, we have a Bureau of Narcotic  
 25 Enforcement, state narcotic officers. Our narcotic

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1 officers work with the local sheriff and with DEA in that  
2 program.

3 MR. ARMSTRONG: Let me ask you something. You  
4 mentioned training. Are your narcotics officers trained  
5 with DEA or through any of the DEA programs of training?

6 GEN. DEUKMEJIAN: Well, I'm not sure. I would  
7 imagine that there have been some kinds of programs where  
8 we have sent some representatives. But in other words,  
9 not all of our agents are trained or involved in training  
10 programs that may be offered by DEA. We may have sent  
11 some representatives.

12 MR. ARMSTRONG: Would that be helpful to you,  
13 to be able to have your agents trained through training  
14 programs sponsored by the Federal Government, specifically  
15 earmarked for DEA? Would that help your staff?

16 GEN. DEUKMEJIAN: I don't think that we have any  
17 real great need for that. Our people are very good.  
18 They're very well trained. In fact, we're training other  
19 people all the time. And I don't think we have a real  
20 strong need for that.

21 MR. ARMSTRONG: Let me be more specific about it.  
22 Do you think the Federal Government has a role in assist-  
23 ing states in training law enforcement officers?

24 GEN. DEUKMEJIAN: I would say, if I had to  
25 prioritize where I think the federal resources should be

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1 used -- and I think everybody has to prioritize them  
2 today -- I would not put that at the top, or toward the  
3 top of the list of priorities. I think that the  
4 Federal Government and DEA and the other agencies can do  
5 more to help us by using more of their resources in  
6 stopping the narcotics from coming into this country. I  
7 think that is the place where they should put their big-  
8 gest emphasis, and then if they can, I mean, if there are  
9 some funds that would assist in, as I say, helping local  
10 law enforcement carry on these additional duties because  
11 of the need for tremendous manpower needs, and the overtime  
12 and the expense that's involved, that would be helpful,  
13 too.

14 But I don't think that we need to have, for  
15 example, if your question is, would it help to take DEA  
16 personnel or other federal personnel and use them to train  
17 law enforcement throughout this state, I would say no,  
18 because I really think that California law enforcement is  
19 probably as highly professionalized as you'll find any-  
20 where.

21 MR. ARMSTRONG: Thank you, General.

22 CHAIRMAN HARRIS: Mr. Carrington.

23 MR. CARRINGTON: Gen. Deukmejian, you heard in  
24 the opening orders of business today that this Task Force  
25 will recommend to the Attorney General of the United States

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1 States that he use the leadership powers of his office to  
2 accord the victims of crime their proper status in the  
3 criminal justice system. On the State Attorney General  
4 level, through yourself and Senior Assistant Attorney  
5 General George Nicholson, your office is undoubtedly the  
6 leader in doing precisely that.

7 Would you, for the benefit of this Task Force,  
8 briefly outline some of the initiatives that your office  
9 has been taking in the area of victims, victims' rights?

10 GEN. DEUKMEJIAN: Yes, I'd be very pleased to.  
11 We've had in California now what started out being called  
12 the Forgotten Victims Awareness Program. It began five  
13 years ago. And it works in conjunction with the  
14 California District Attorneys Association. And together  
15 what we have attempted to do during these past five years  
16 is to make the public and to make public officials more  
17 aware of the plight of the victims. And little by little  
18 we are accomplishing that goal.

19 For example, in California of course we've had a  
20 Violent Crime Compensation Program where victims of  
21 violent crimes are entitled to make application to be  
22 reimbursed for some of their medical expenses, lost wages  
23 and costs for rehabilitation. That is a program that  
24 needs again more resources. But nevertheless it has been  
25 extremely helpful.

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1 We have also established in California, Victim/  
2 Witness Assistance Programs. There are 30 of them spread  
3 throughout the state. And as the name indicates, those  
4 centers, those Victim/Witness Assistance Centers, carry  
5 out many, many different types of services for victims of  
6 crimes. And here again, the whole idea is to make the  
7 victim of a crime a participant in the criminal justice  
8 system.

9 Up until this effort was commenced, the victim  
10 to a great extent really was left out of the whole system.  
11 And as you know, most of the cases wind up with guilty  
12 pleas, for example. The victim may never appear in  
13 court, may never appear before the judge, doesn't really  
14 know what has happened, what's gone on. The judge may not  
15 have received any kind of testimony or any kind of state-  
16 ment from the victim. As a result of programs like this,  
17 we've also gotten some laws enacted which now provide  
18 that before a judge does any sentencing that he at least  
19 receive in a probation report, the presentence probation  
20 report or other reports, some comments from the victim.  
21 And in turn, what we're trying to do through the district  
22 attorneys offices, through the courts themselves, is to  
23 really make the victim feel that they are indeed a part of  
24 the criminal justice system.

25 These are just some of the things, and there is

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1 a whole host of services that are now available. Again,  
2 we're constantly pushing to extend that. And I am very,  
3 very supportive of a national effort to recognize the  
4 rights of victims.

5 MR. CARRINGTON: General, your office has  
6 produced a book called "The Victim's Handbook", which  
7 I've read, and to me it synthesizes all these activities  
8 that you have been performing in the victims area. Could  
9 you direct your staff to make copies available to all of  
10 the Task Force members and all of the staff members of  
11 this Task Force?

12 GEN. DEUKMEJIAN: I'd be very pleased to, very  
13 pleased.

14 MR. CARRINGTON: Thank you, sir.

15 CHAIRMAN HARRIS: Thank you, Gen. Deukmejian,  
16 very much. We appreciate your testimony and your time.  
17 And once again, thank you.

18 GEN. DEUKMEJIAN: Thank you all very much.

19 CHAIRMAN HARRIS: We are now going to focus for  
20 the rest of the morning on the exclusionary rule. What  
21 we have in mind here is a little departure from our normal  
22 routine, in that we will hear from both our witnesses on  
23 the exclusionary rule, and hold our questions, and then  
24 have them both available at the same time for questioning,  
25 since I am advised that they probably today will take

1 different points of view on the rule.

2 We are honored to have as our first witness on  
3 the rule the Honorable Malcolm R. Wilkey, United States  
4 Circuit Judge for the District of Columbia Circuit.

5 Judge Wilkey, welcome. Thank you for agreeing  
6 to appear here today.

7 PRESENTATION BY:

8 HONORABLE MALCOLM R. WILKEY,

9 UNITED STATES CIRCUIT JUDGE,

10 DISTRICT OF COLUMBIA CIRCUIT

11 JUDGE WILKEY: Thank you, sir. Gen. Bell, or  
12 Judge Bell, and distinguished members of the Task Force,  
13 I am very grateful to have been invited to participate  
14 in this very important work. I think that your Task  
15 Force here has gotten hold of, or at least has been charged  
16 with, the greatest single domestic problem that we have in  
17 our country today.

18 There is a kind of rot that has been set in in  
19 the administration of justice, and until this country gets  
20 a grip on it, until we get a grip on the situation our-  
21 selves, it certainly is going to lead to disaster. And  
22 it is our responsibility, those in public life, to exer-  
23 cise some leadership on this question.

24 I agree with the Attorney General that although  
25 he didn't use the phrase, we live in a golden age of

1 crime. We live in a golden age of crime because crime  
 2 certainly pays. And we've got to confront that situation  
 3 and take the profit out of crime. Your particular respon-  
 4 sibility is violent crime, which also seems to pay. I  
 5 think first I might point out the relationship of this  
 6 exclusionary rule or exclusionary remedy to violent crime.  
 7 The exclusionary remedy comes about because of alleged  
 8 violation of the Fourth Amendment. The evidence shows --  
 9 and I don't think there is much dispute about this -- that  
 10 on motions to suppress material evidence, 75 percent,  
 11 approximately -- and this will vary with the jurisdiction  
 12 of course -- 75 percent of the motions to suppress involve  
 13 guns, narcotics or gambling paraphernalia. And guns, of  
 14 course, are the tools of violent crime. The narcotics  
 15 traffic and the gambling industry are certainly productive  
 16 of violent crime in the furtherance of their ends.

17 So this exclusionary remedy is directly related  
 18 to the incidence of violent crime in the United States.  
 19 And later on I'm going to mention the amazing coincidence  
 20 of our having this rule of evidence unique among the  
 21 nations of the world and also having the highest rate of  
 22 violent crime in the world.

23 Now, what is this exclusionary remedy? It's  
 24 a judge-made rule of evidence which bars, according to the  
 25 Supreme Court, the use of evidence secured through an

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1 illegal search and seizure. Now, this rule of evidence  
 2 didn't come down from on high. It's man-made, not God-  
 3 given. Until there was a recent trend of examination into  
 4 this rule recently, I fully expected somewhere along the  
 5 line that someone would contend that Moses brought down  
 6 a third tablet from Mount Sinai and that the Supreme  
 7 Court only discovered it in 1914. But we haven't gone  
 8 that far yet, and I think the trend has been arrested,  
 9 and it's been arrested because we've been looking very  
 10 carefully at the rule to see what supports it, either in  
 11 logic or in experience.

12 It's not even in the Constitution. And Congress  
 13 didn't enact it. The Supreme Court adopted it as a remedy  
 14 for, hopefully, to prevent violations of the Fourth  
 15 Amendment. And one of the problems, of course, in doing  
 16 something about it over the years, has been the mystique  
 17 attached to the rule. So let's get it clear from the  
 18 start, this was a prophylactic measure adopted in the hope  
 19 that it would do some good in implementing the Fourth  
 20 Amendment.

21 Let's put this in constitutional perspective.  
 22 Friday afternoon I came back from lunch and walked into  
 23 the Courthouse by one of the four doors which I use less  
 24 frequently. And the guard stopped me. He's supposed to  
 25 stop everyone who comes in there and make them show

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1 identification, or to recognize them and pass them if he  
 2 knows they work there. So I pulled out my identification  
 3 as a United States Circuit Judge and showed it to him.  
 4 And he was a little embarrassed. And this has occurred  
 5 literally dozens of times during my 11 years in that  
 6 Courthouse. And each time I've said to them, as I did to  
 7 this guard, "Don't be embarrassed. You're here for our  
 8 protection. You're supposed to stop everyone you don't  
 9 know. And of course you don't know all the people in this  
 10 Courthouse. So you continue to stop everyone that you  
 11 don't know, because you're here to protect us, and we  
 12 realize that."

13 And he smiled and says, "Thank you, sir, I'll  
 14 remember that." Well, I got on the airplane yesterday  
 15 afternoon and, as we've all done for a good many years  
 16 now, I walked through a security device and put my brief-  
 17 case here, through the X-ray. And on occasion I've been  
 18 stopped, as I know you all have, and forced to go back  
 19 through the security device. Something in there was giving  
 20 off an alarming signal.

21 Well, now these are slight inconveniences. But  
 22 the illustration of my going into the Courthouse and going  
 23 through the airplane search illustrates that the American  
 24 people will accept slight inconveniences or intrusions  
 25 into their privacy, if you want to call it that, if they're

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1 reasonably necessary. And that is the test. Reasonable-  
 2 ness, and the necessity of the intrusions on privacy.  
 3 And for what purpose? For the protection of society as  
 4 a whole, for the protection of innocent people. The test  
 5 of reasonableness, of course, is the constitutional test.  
 6 The Fourth Amendment says, "The right of the people to be  
 7 secure against unreasonable searches and seizures."  
 8 So that's what we're trying to do. We're trying to pro-  
 9 tect people by our law enforcement machinery against  
 10 unreasonable searches and seizures, not against all  
 11 searches and seizures.

12 We normally evaluate public policies by their  
 13 announced purposes and their visible results. The pur-  
 14 pose of law and the result of law is really the test by  
 15 which we judge the reasonableness or desirability of the  
 16 law. Two things should be borne in mind. Searches are  
 17 permitted, as in our Courthouse or the airports, to pro-  
 18 tect innocent people. Secondly, the exclusionary remedy  
 19 has never protected an innocent person.

20 To the extent that law enforcement searches are  
 21 discouraged by this exclusionary remedy, the protection  
 22 of innocent people is reduced. In contrast, only the  
 23 guilty benefit from an exclusionary remedy. We all know  
 24 that if there is an unreasonable, therefore an illegal,  
 25 search, and a gun is found, the guilty man goes free.

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1 If there is an unreasonable and illegal search and no gun  
2 is found, or no other contraband, the innocent person has  
3 no right of redress under the exclusionary remedy. There  
4 is just not much he can do about it.

5 Now, I submit that on analysis the whole purpose  
6 of criminal law is to protect innocent people. It is to  
7 protect society as a whole. If we could do this without  
8 bothering to punish anyone, I think we would do it. It  
9 would be much cheaper. Punishment, imprisonment, is a  
10 terrible financial drain on society. The object of law  
11 is to protect innocent people.

12 Now, whom do the advocates of the exclusionary  
13 rule want to protect? The only obvious result is the  
14 protection of the unquestioned guilty. Now, surely a  
15 legal remedy should have some relationship to the purpose  
16 of all law. The exclusionary remedy fluncts the basic,  
17 fundamental test of protecting society.

18 Now, the proponents would assert, "Well, the  
19 exclusionary remedy protects indirectly, by deterring  
20 future violations of the Fourth Amendment." I challenge  
21 this, and I think this is what we're looking at very care-  
22 fully today, and have been for the last few years. And I  
23 challenge this, and I place the burden of proof on those  
24 who would utilize such an irrational device to keep out  
25 of evidence the most indisputable, valid, provative

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1 evidence. If you're going to distort the truth-making  
2 process by excluding the gun that was found, the narcot-  
3 ics that was found, the gambling slips that were found on  
4 the individual, beyond a shadow of a doubt, if you're  
5 going to distort the truth-finding process of justice and  
6 let that man go scot-free, then the proponent of that rule  
7 has the burden of proving -- and I would say almost beyond  
8 a shadow of a doubt -- the proponent of that kind of a  
9 rule has a burden of proving that the rule works, that it  
10 does something, that it does deter other violations of the  
11 Fourth Amendment. And I submit to you that that has never  
12 been proved. In fact, it's never been seriously attempted.  
13 And as Chief Justice Burger wrote, "Such emperical proof  
14 may really in this situation be beyond proof in ordinary  
15 terms."

16 Now, it has been clear since 1965, the Linkletter  
17 case, or perhaps earlier, in the Elkins case of 1960,  
18 that deterrence of improper police action is the rationale  
19 for the rule. This was reiterated by Justice Powell in  
20 Calandra in '74, by Justice Powell in Stone v. Powell in  
21 '76. That is what the rule relies on : .

22 Now, the exclusionary remedy has many, admit-  
23 tedly many costs and disadvantages. Chief Justice Burger  
24 in Bivens, Harlan in Coolidge, Powell in Calandra, and  
25 again in Stone v. Powell, pointed out these admitted

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disadvantages; the most obvious, the unquestioned guilty go free. And yet there has been only one attempt in 67 years of Supreme Court history of which I am aware, by a member of the Court, not the whole Court, to demonstrate empirically that the exclusionary remedy has any deterrent effect whatsoever. And that was in Justice Murphy's Dissent in Wolf v. Colorado in 1949. Justice Murphy sent out a questionnaire to 38 police agencies in the country. There are about 40,000 different police agencies, I'm told. He sent it to 38. He got replies from 26. And in a footnote he discussed 11 of those 26 replies. It seemed that in five out of six police departments which had adopted the Weeks rule of excluding the evidence that there was extensive police training in search and seizure. And in four out of five police departments which had not adopted the Weeks rule, the federal rule of excluding the evidence, there was no training to speak of in search and seizure. And from that, Justice Murphy drew for himself the highly questionable conclusion that the exclusionary rule had some impact on police training.

That, to my knowledge, unless there is something come in in the last few years that I am unaware of, is the only empirical data the Supreme Court has ever cited in 67 years to justify this rule.

Now, of course, you recall that in the Brown v.

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Board of Education case, the Court, in making a very important rule there, cited empirical data. And they relied on that. And they tested their decision in that by the empirical data available. But they have never attempted to do that in regard to the exclusionary remedy.

That is the principal defect of the exclusionary rule. It doesn't work. It has never been shown to work. And it thus doesn't accomplish the principal excuse for it. But there are at least three other defects in the rule. It's a meat ax approach which produces these other defects. It totally fails to discriminate between the degrees of culpability of the officer. It doesn't question whether he had ignorance or knowledge of the law, whether he acted in bad faith or good faith. It doesn't question or rely upon the clarity or fuzziness of the legal rule governing a specific situation.

I pointed out in a recent opinion that in that particular case if the officer at 2:00 o'clock in the morning had had the assistance of a visiting committee of three judges from the Second Circuit, Judge Friendly, Judge Mansfield and Judge Meskill, he would have been advised by two of those jurists that his action was proper, and the third one would have said that it was questionable but undecided under Supreme Court opinion. Those judges, from their opinions, that's what they viewed

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1 the law was at the time that this officer acted. , But our  
2 court under the exclusionary remedy found that the search  
3 was illegal then threw the evidence out.

4 The remedy, thirdly, doesn't distinguish between  
5 impact on the individual searched or the objects of the  
6 search. To me there is a vast difference between private  
7 papers in a home or office, or a short detention on the  
8 street or in an automobile. There is a vast difference  
9 between personal papers of an individual and contraband;  
10 guns, narcotics, gambling slips or smuggled slips. The  
11 Supreme Court has talked in these Fourth Amendment cases  
12 about the expectation of privacy as being the reason why  
13 a search was illegal.

14 What expectation of privacy does an individual  
15 have in contraband? The right of possession of the  
16 contraband, an illegal gun, narcotics or smuggled goods,  
17 is in the government. The man who possesses it temporar-  
18 ily has no right of possession whatever. The government  
19 can confiscate it and take it away from him. What expec-  
20 tation of privacy does an individual have in contraband  
21 that should be protected by the Constitution?

22 Fourthly, the last defect, major aspect of the  
23 defects, there is no difference between major and minor  
24 crimes or between major and minor criminals. The exclu-  
25 sionary remedy applies to a teenage policy runner with the

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1 slips in his pocket. It equally applies to a syndicate  
2 hit man accused of first degree murder. Now, this is a  
3 serious flaw in our jurisprudence. It's totally contrary  
4 to our accepted humane policy in other branches of the law  
5 of making the punishment fit the crime. This lack of  
6 proportionality in the penalty assessed would not be  
7 tolerated in any civilized justice system.

8 Well, I've talked about four defects in the rule.  
9 What about the visible costs of the rule, aside from the  
10 fact that it's defective? And remember, the burden is on  
11 the proponents of this extraordinary rule to show benefits  
12 over the admitted costs. The costs, the impact of the  
13 exclusionary remedy. First, it is undeniable, it is  
14 inevitable that the most valid, conclusive and irrefutable  
15 factual evidence is excluded from the knowledge of the  
16 jury or consideration by the Court.

17 Cardoza phrased it most beautifully perhaps in  
18 1926. "The criminal is to go free because the constable  
19 has blundered. A room is searched against the law and the  
20 body of a murdered man is found. The privacy of the home  
21 has been infringed, and the murderer goes free." And 50  
22 years later, Justice Powell, in Stone v. Powell, defines  
23 some of the costs. "The costs of applying the exclusion-  
24 ary rule, even at trial and on direct review, are well  
25 known. The physical evidence sought to be excluded is

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1 typically reliable and often the most probative evidence  
 2 bearing on the guilt or innocence of the defendant.  
 3 Application of the rule thus deflects the truth-finding  
 4 process and often frees the guilty. The disparity in  
 5 particular cases between the error committed by the police  
 6 officer and the windfall afforded the guilty defendant  
 7 by application of the rule is contrary to the idea of  
 8 proportionality that is essential to the concept of  
 9 justice."

10 Secondly, under costs, the rationale's illogic  
 11 brings justice itself into disrepute and into disrespect.  
 12 Try to explain the exclusionary rule to a layman. He  
 13 cannot see the rationality of it. Why should the defen-  
 14 dant go unpunished when he is admittedly guilty because  
 15 of a rule of evidence that is ostensibly aimed at punish-  
 16 ing the police who made the arrest?

17 As Wigmore put it, on the deterrence, "Our way  
 18 of supporting the Constitution is not to strike at the  
 19 policeman who breaks it but to let off somebody else who  
 20 broke something else." And as to privacy, this has been  
 21 downgraded. This was one of the original ideas behind the  
 22 rule. But it is no protection at all to the innocent,  
 23 only the guilty person's privacy is protected by this  
 24 rule. The innocent person has some kind of a remedy under  
 25 the Bivens case for his infringement of his constitutional

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1 rights. But that involves a difficult lawsuit and a  
 2 difficult burden of proof. And so the rule protects the  
 3 privacy of the admittedly guilty but never the privacy  
 4 of the innocent.

5 Then as to judicial integrity, the remedy itself  
 6 impairs judicial integrity because people lose faith in  
 7 our judicial process, punishing criminals, when they see  
 8 the impact of the rule. In that comparison, I was talking  
 9 with Judge Bell before this session, and the question of  
 10 judicial integrity -- we bar material evidence that has  
 11 been illegally seized, but we do not bar persons who have  
 12 been illegally seized and brought into court as defendants.  
 13 For many, many years, the Supreme Court has held, in  
 14 several decisions, one I remember in 1952 on which I  
 15 relied in my cases as a United States Attorney, relied on  
 16 the rule that if the defendant is court, he is there.  
 17 And the court will not inquire as to the illegality of the  
 18 process by which he was brought there. The court will  
 19 proceed with the administering of justice.

20 Now, if bringing an accused into court by any  
 21 means possible to get him there does not impair the  
 22 integrity of the judicial system, I don't know why bring-  
 23 ing material evidence, like guns or narcotics, into court,  
 24 irrespective of how they got there, impairs judicial  
 25 integrity.

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1           There are several other costs. Thirdly, police  
2 perjury. It encourages officers to lie. In one of the  
3 examinations of cases made -- I think this was in Illinois,  
4 the Chicago area -- after they were required to adopt the  
5 exclusionary rule, the cases of narcotics dropsy rose 20  
6 to 25 percent. And similarly the cases involving the  
7 search of the person dropped by a comparable amount.  
8 What happened? The police were testifying that instead of  
9 finding the narcotics on the person of the accused, they  
10 were testifying that as he got out of the car, this  
11 glassine packet just happened to drop to the ground.  
12 Within a month after the imposing of the exclusionary  
13 remedy to exclude that evidence, the police had changed  
14 their story.

15           Well, now, the habits of the narcotics peddlers  
16 hadn't changed in that month. It was the story of the  
17 policemen that had changed. So the police are given an  
18 encouragement to lie and an encouragement that is kind of  
19 hard to condemn, because they are thinking, or so they  
20 believe, in terms of the greater good of the society.  
21 This fellow with the narcotics packet has got to be put  
22 away. And if I have to lie to do it, why, I'll do that,  
23 and it's a small thing compared to letting this proven  
24 offender go free.

25           Or fourthly, another cost of the rule -- and the

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# CONTINUED

## 3 OF 5

1 police may adopt this alternate ground. They may harass  
2 people without any intention of making arrest or bring  
3 charges, just harass them, just shake them down. Now,  
4 that's true of policy slip carriers, they do that with  
5 prostitutes, they will do it with narcotics peddlers, just  
6 harass them. Don't bother to bring charges, just harass  
7 them and know that the exclusionary remedy gives nobody  
8 any relief under that.

9 Fifthly, internal discipline by the police is  
10 ruled out. What police department is going to adopt a  
11 stringent policy of punishing its officers who violate  
12 the Fourth Amendment when they're going to wipe out the  
13 cases they've made for the District Attorney? It's only  
14 when we eliminate the exclusionary remedy that we can hope  
15 that the police departments will discipline internally  
16 their people.

17 Sixthly, it makes impossible state consideration  
18 of alternatives to the exclusionary rule. *Mapp v. Ohio*  
19 in 1961 wiped out the possibility a state could engage in  
20 meaningful alternatives for protection under the Fourth  
21 Amendment.

22 And seventhly, it makes hypocrites out of  
23 judges. The trial judge sits there and he hears this  
24 police officer saying that the narcotic packet fell to the  
25 ground when the man got out of the car, and he knows the

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1 officer is lying. But the judge has a choice of believ-  
2 ing the officer or believing the defendant, and so he  
3 believes the officer. And he knows very well that perjury  
4 has been had in that case. But the judge, like the  
5 officer, believes, and with some justification, "I really  
6 don't know that the man is lying, and certainly this  
7 fellow ought to go to jail, and they got the goods on him."

8 Well, these are costs. One of the biggest  
9 costs in violent crime, of course, is that we can have no  
10 effective gun control laws in this country until we get  
11 rid of the exclusionary rule. I take no position on gun  
12 control laws. There is a great argument about that. But  
13 both sides ought to recognize that the gun control laws  
14 we have on our books now, whether stringent or lax, are  
15 never going to be enforced as long as the exclusionary  
16 remedy wipes out the evidence that the people bring in.

17 I bring up again the parallel. The United  
18 States is a haven of violent criminals and violent crime.  
19 It is number one on the world by any standard. The United  
20 States is the only civilized country in the world that has  
21 the exclusionary remedy to rule out violations under  
22 search and seizure. This is not coincidence. Since the  
23 criminals here know the difficulty that the police have  
24 under this restrictive rule of making searches and seiz-  
25 ures and taking away their guns, they carry guns. And

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1 the police, who know their difficulties but nevertheless  
2 know that a substantial percentage of criminals carry  
3 guns, are tempted more often to make searches and seizures  
4 to try to find those guns, whether they're able to make  
5 successful prosecutions or not.

6 So we compare the result in England and some  
7 other civilized countries. In England, neither the police  
8 nor the criminals habitually carry guns. The criminals  
9 know that the police have a right to search under reason-  
10 able cause and that the police will search, and if a gun  
11 is found, conviction and punishment are automatic. There  
12 is no exclusionary remedy and never has been.

13 The same is true in Canada, in Israel, in  
14 Germany. But in our country, because of the difficulties  
15 of successful prosecution because of the exclusionary  
16 remedy, we get the worst of it in both ways. The criminals  
17 carry the guns, the police make more searches than they  
18 do in the other countries, because they know that the  
19 criminals have the guns, and of course many of the searches  
20 are innocent people.

21 We could go on with this at some length, but I  
22 think we have some other things to go into, so I'll not  
23 elaborate on it further. But I'll leave you with this  
24 thought. The cost of the exclusionary rule in regard to  
25 violent crimes and its direction relationship to search

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1 and seizure in regard to guns. You notice that Mr.  
2 Hinckley, who shot President Reagan, allegedly -- I'll  
3 leave the "allegedly" to you, you may have seen the same  
4 film I did -- Mr. Hinckley, after he had been searched at  
5 the airport at Nashville, then went and bought his gun.  
6 When he traveled from California to Washington by bus,  
7 there are no searches at bus terminals.

8 Now, what about this foreign experience? Why  
9 is every country out of step except my Uncle Sam? To my  
10 mind, the most unanimous, irrefutable condemnation of the  
11 exclusionary remedy is that no other country has ever  
12 adopted it. Now, the United States of American cannot  
13 ignore the experience of other nations with legal systems  
14 and standards of justice similar to our own. We can't  
15 say that these people are uncivilized or that they do not  
16 value the rights of privacy, and ignore their systems of  
17 control of the police and their reliance on other methods,  
18 and never the exclusionary rule in the way we do.

19 These other countries have come to look at our  
20 rule. They have seen, and our remedy has not conquered.  
21 And I submit to you that since other nations do control  
22 their police and do protect the privacy of their citizens  
23 without the exclusionary remedy, it is ostrich-like to  
24 proclaim that deterrence by the exclusionary remedy is  
25 the only way to enforce the Fourth Amendment prohibition

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1 against unreasonable searches and seizures.

2 Now, maybe in my closing minutes here I can be  
3 somewhat constructive and suggest alternatives for this  
4 panel. First, internal discipline. Second, external  
5 control. And then thirdly, I'll give you a fond hope I  
6 have for seeing something tried one day.

7 First, under internal discipline, it could be  
8 initiated by the victim of the illegal search, or it could  
9 be initiated by law enforcement disciplinary agencies  
10 within the law enforcement itself. As I pointed out, this  
11 is only feasible if the exclusionary remedy is abolished.  
12 Because you won't have the police discipline themselves  
13 if it is going to ruin the prosecution.

14 And, this process offers a chance to reimburse  
15 the innocent victim and to punish the individual officer.  
16 The exclusionary remedy does neither.

17 Secondly, external control. First, I suggest  
18 that we might have a mini-trial after the main criminal  
19 case. All right. There has been a trial. The evidence  
20 has been admitted. The man has been convicted. But we'll  
21 now have a trial of the officer, in which the victim of  
22 the search can intervene. This would be able to compen-  
23 sate the victim of the search, and it would punish the  
24 officer proportionately to the manner in which he, and  
25 the justification with which he violated the Fourth

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1 Amendment. It would be held before the same judge and  
2 jury that heard the main case. It would be quick, it  
3 would be economical, most of the testimony would already  
4 have been brought out. And the judge and jury would have  
5 full knowledge of all the circumstances and events and  
6 could make a fair assessment in accordance with community  
7 standards.

8 Another method of external control might be a  
9 federal tort action, whether there was a criminal prosecu-  
10 tion or not. Remember, the exclusionary remedy only  
11 comes in when there is a prosecution. But if there were  
12 a federal tort action, this would be able to compensate  
13 innocent victims of the search where no prosecution is  
14 brought, and which the exclusionary remedy totally ignores.

15 Now, then, in such a federal tort action, if  
16 there were recovery by the criminal who was actually  
17 convicted in the main criminal case, I would suggest that  
18 his recovery from the officer and from the government  
19 agency obtained might go to compensate the victim of his  
20 crime, if there was one.

21 Now, a third fond hope, and we need this. I'm  
22 looking for some courageous trial judge to make an experi-  
23 ment to challenge the exclusionary rule. I think the  
24 trial judge ought to admit the evidence in spite of the  
25 violation of the Fourth Amendment. He would admit it

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1 conditioned on a satisfactory administrative punishment  
 2 of the infringing officer. The trial would then proceed.  
 3 If there was a conviction of the defendant but the agency  
 4 did not show within a reasonable time that they had pun-  
 5 ished the officer, then the trial judge, acting under his  
 6 power under motion to suppress, would then, post-conviction,  
 7 grant the motion to suppress, and the conviction would be  
 8 set aside. How would you like that? We try the man.  
 9 If he's guilty, we convict him, give him the punishment.  
 10 But then the administrative agency will either punish that  
 11 officer proportionate to his offense, or the conviction  
 12 of the criminal will be set aside.

13 Now, would a court of appeal sustain this?

14 Well, not in some circuits. They would feel obliged to  
 15 support the present position of the Supreme Court. And  
 16 here we encounter also the mystique of the exclusionary  
 17 remedy. But it doesn't matter what the court of appeals  
 18 would do, because a case like this surely would go to the  
 19 Supreme Court.

20 Would the Supreme Court sustain this? I think  
 21 they would. It would give the Supreme Court a new alter-  
 22 native method of enforcing the Fourth Amendment. I  
 23 really think that they've now got hold of a tar baby, and  
 24 they'd like to let go of it. And this method would show  
 25 them how to let go of the tar baby that they're stuck

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1 with. Admission of evidence conditioned on discipline  
 2 of the police in proportion to his violation. And the  
 3 discipline of the officer in each individual case should  
 4 reflect community of values on the situation involved.

5 Judge Bell, gentlemen, I thank you for this  
 6 opportunity to give my views, for whatever they're worth.

7 CHAIRMAN HARRIS: Thank you, Judge Wilkey.

8 JUDGE BELL: We're going to reserve the ques-  
 9 tions, I suppose, till both -- then I have to leave. I  
 10 wish you and Prof. Kamisar would be thinking about some  
 11 middle ground, if there is a middle ground, that would be  
 12 based on a dissenting opinion that Justice Black once  
 13 wrote where guilt was relevant. If there was substantial  
 14 guilt, you'd let the evidence in. Otherwise you wouldn't,  
 15 the way I remember the case. It doesn't make much sense  
 16 to me, but if there were some middle position that could  
 17 be taken, I'm sure it would help the Supreme Court someday  
 18 to know about it. The problem with the alternative  
 19 remedy, we'll call it, of punishing the police in some  
 20 other way, is that no one is ever clear about how we're  
 21 going to do that. You helped us a great deal with the  
 22 suggestions you made, Judge Wilkey. And I know between the  
 23 two of you you can come up with the best thing for the  
 24 nation to do. There is widespread dissatisfaction with  
 25 the rule, and we don't want to get into the position where

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1 we overreact, perhaps. And if there is something short of  
2 outright abolishing the rule, maybe we ought to know what  
3 that is.

4 CHAIRMAN HARRIS: Our next witness is noted  
5 Professor of Law from University of Michigan, Prof. Yale  
6 Kamisar.

7 Welcome, Professor.

8 PRESENTATION BY:

9 YALE KAMISAR, PROFESSOR OF LAW,

10 UNIVERSITY OF MICHIGAN LAW SCHOOL.

11 PROF. KAMISAR: Thank you very much, Mr.  
12 Chairman, Judge Bell, distinguished members of the Task  
13 Force.

14 I would say, Judge Bell, that I think you've put  
15 your finger on one of the problems. The critics of the  
16 rule are much more specific in telling us what is wrong  
17 with the rule than telling us just what is going to replace  
18 it. And I think frankly we'd have a tremendous amount of  
19 problem trying to replace it. I mean, you know, Wigmore  
20 says, "Hold the officer in contempt and send him to jail."  
21 You try that. People have said, "Discipline the police  
22 officer. Suspend him for 30 days."

23 Well, just this week in the National Law Journal,  
24 it was pointed out that there was a bill in Montana that  
25 proposed to suspend the policeman for 30 days the first

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1 time and 90 days the second time, and the police lobbied  
2 against the bill. So I think we would discover that  
3 there is much more agreement among critics of the present  
4 rule than there would be among those same critics about  
5 replacing the rule.

6 Well, let me say that probably more emotionalism  
7 has been spent on this problem than any other, or as much  
8 as any other, and I will try not to be very emotional.  
9 I can remember many years ago in New York State, consti-  
10 tutional convention, there was a proposal to put the  
11 exclusionary rule right into the State Constitution.  
12 And a then young District Attorney named Tom Dewey said,  
13 "Who'll be protected by the rule? Call the roll. Al  
14 Capone, Lucky Luciano, Dutch Schultz, Tootsie Herbert."

15 Well, somehow Tootsie hasn't survived the test  
16 of time very well, but I don't think that was a fair state-  
17 ment of the issue. On the other hand, a proponent of  
18 the exclusionary rule asked, "Why did our forefathers  
19 die and freeze and suffer at Valley Forge? So that  
20 evidence obtained by means of an illegal search and seiz-  
21 ure would be excluded." Well, I don't think that's true  
22 either.

23 I think most recently Richard Racehorse Haines  
24 of Texas probably made the all-time list of rhetoric in  
25 this area by saying on the CBS show "Sixty Minutes", if

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1 you're against the exclusionary rule, then you subscribe  
 2 to the Ayatollah Homeini rule. You can do whatever you  
 3 feel like doing in the name of the law." Well, I don't  
 4 think that's quite true, either.

5 Now, there are famous names on Judge Wilkey's  
 6 side; Cardoza and Wigmore. On the other side we have  
 7 some famous names, too; Holmes and Brandeis, and in the  
 8 state of California it's appropriate to point out we also  
 9 have, in favor of the exclusionary rule, two great  
 10 Californians, Earl Warren and Roger Trainer. People like  
 11 to think that the exclusionary rule is something only  
 12 law professors and ACLU types are for. It's worth recall-  
 13 ing that Earl Warren served more years as a prosecutor  
 14 and more years in law enforcement generally than any other  
 15 person who ever sat on the United States Supreme Court.  
 16 He was Attorney General, Deputy District Attorney,  
 17 District Attorney, and so forth.

18 And it's also worth recalling that although  
 19 Judge Cardoza was admittedly considered the greatest state  
 20 judge of his time, Roger Trainer was considered the great-  
 21 est state judge of his time, the more recent time, and  
 22 that he eventually -- he originally favored admitting  
 23 illegally seized evidence. It's remarkable for a judge  
 24 to change his position on such a gut issue as this. But  
 25 in the 1940's Judge Trainer wrote an opinion reaffirming

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1 the California rule that evidence, illegally seized  
 2 evidence should be admitted, but a decade and a half  
 3 later, his misgivings about letting the courts use ille-  
 4 gally seized evidence have grown so great, he has seen  
 5 such a steady course of illegal arrests and searches, he  
 6 had seen so much illegally seized evidence in California  
 7 offered and admitted as a routine procedure, that he  
 8 wrote the opinion overruling his earlier decision. He  
 9 wrote the opinion in the famous Kahan case.

10 Now, I agree with Judge Wilkey on one point.  
 11 It is awfully hard to explain the exclusionary rule to  
 12 nonlawyers. I have never been able to explain it satis-  
 13 factorily to my mother or to my two wives -- I mean, one  
 14 at a time. So whatever empirical data I have supports  
 15 that.

16 All right. And I agree with Judge Wilkey that  
 17 the majority of the front-line judges in this country,  
 18 and an even greater majority of our citizens, are against  
 19 the exclusionary rule. Why? Why this deep and widespread  
 20 hostility to the rule? The reason, I think, is the one  
 21 offered by Stanford Professor John Kaplan, who incident-  
 22 ally is a sharp critic of the rule and who is quoted with  
 23 approval in some of the papers submitted by Judge Younger,  
 24 former Attorney General Younger yesterday. The reason,  
 25 as Prof. Kaplan suggests, is that the exclusionary rule is

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1 the worst possible kind of rule. It works after the fact.  
 2 And by then we know who the criminal is and what the  
 3 evidence is against him. If there were some other way to  
 4 make the police obey in advance the commands of the Fourth  
 5 Amendment, the government would lose as many cases as it  
 6 does now. But we would not know what evidence the police  
 7 might have obtained in violation of the Fourth Amendment.

8 If the exception proves the rule, a recent  
 9 Minnesota case may be instructive, a 1979 case called  
 10 O'Connor v. Johnson. Investigating certain violations in  
 11 applying for liquor licenses, and believing the relevant  
 12 records were in the possession of an attorney, the  
 13 police obtained a search warrant to search the attorney's  
 14 office for these records. The lawyer happened to be in  
 15 his office when the police arrived.

16 He must have been a very persuasive fellow.  
 17 For holding onto his work product file, which contained  
 18 some of the records, the lawyer persuaded the police not  
 19 to carry out the search. He persuaded them rather to  
 20 accompany him to the chambers of the judge who issued the  
 21 warrant so they could discuss it further.

22 Well, eventually the lawyer won. A unanimous  
 23 State Supreme Court held that a warrant authorizing the  
 24 search of an attorney's office is invalid when the  
 25 attorney himself is not suspected of any criminal

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1 wrongdoing and there is no indication the document source  
 2 will be destroyed. Under these circumstances the govern-  
 3 ment must proceed by subpoena.

4 The extraordinary thing about this case is the  
 5 police never seized, let alone looked through, the  
 6 lawyer's work product file. They were willing to let him  
 7 bring the file to the court, if the court would rule on  
 8 the validity of their search in an adversary proceeding  
 9 before the search or seizure was ever carried out, before  
 10 anyone knew what was in those files.

11 In the typical case, however, the courts don't  
 12 enter the picture unless and until the police have uncov-  
 13 ered damaging physical evidence. Nobody can stop them  
 14 if they are unwilling to be stopped, not even a lawyer.

15 Mapp v. Ohio, that's a typical case. The police  
 16 approached Miss Mapp's house twice. They first tried to  
 17 get in the house. Miss Mapp telephoned her lawyer who  
 18 told her to try to keep them out, and not consent. She  
 19 refused to admit them without a search warrant. They  
 20 came back three hours later without a search warrant.  
 21 This time they forcibly broke into the house. Miss  
 22 Mapp's lawyer arrived on the scene. The police said,  
 23 "Stay out." They neither allowed him to see his client  
 24 nor to enter the house, and while they kept the lawyer  
 25 outside, they searched his client's entire house.

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1 Now, if Miss Mapp's lawyer had persuaded the  
2 police to accompany him to a judge's chambers, the judge  
3 might have decided the search and seizure question in  
4 the abstract. If the judge had ruled the police were  
5 proceeding unlawfully, we might never know what damaging  
6 evidence would have been found. But that's not what  
7 happened. That's not the way the system works. The way  
8 it works is, although the police may have illegally  
9 searched five or 10 homes without discovering anything,  
10 or illegally arrested five or 10 people without uncover-  
11 ing anything incriminating, the only case that gets to  
12 court is the one where the police did hit pay dirt.

13 By then we know who the criminal is, and what  
14 the evidence is against him. And now the defense lawyer  
15 in effect has the biblical job of asking the court to  
16 turn back the clock and reconstruct events as though the  
17 damaging evidence never existed. This is very, very hard  
18 to do. And the damaging evidence flaunts before us the  
19 price we pay for the Fourth Amendment.

20 Now, I can understand why almost always adver-  
21 sary proceedings before the search takes place is out of  
22 the question. I understand why the police have to proceed  
23 pursuant to ex parte warrants, why exigent circumstances  
24 often allow them to proceed without bothering to get any  
25 warrants at all. I can understand why we can't decide the

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1 case in advance.

2 But what I have great trouble understanding is  
3 why so many members of the bench and the bar and so many  
4 more members of the public are unwilling to let the  
5 courts decide after the fact, the only time unfortunately  
6 the courts can decide the issue in an adversary proceed-  
7 ing, whether the police did comply with the commands of  
8 the Fourth Amendment.

9 Now, as I said earlier, from a public relations  
10 standpoint, deciding the question after the search or  
11 seizure has occurred is the worst time to do it. But from  
12 a practical point of view, it's the only time we can do  
13 it. It's the first time we can do it. This is the so-  
14 called exclusionary rule. The so-called suppression  
15 doctrine. Critics have called it illogical and unnatural.  
16 But it seems to me that it's the most natural and logical  
17 reading of the Fourth Amendment of all.

18 Surely it's not unnatural or illogical to con-  
19 clude that if the government is supposed to honor the  
20 right of the people to be secure against unreasonable  
21 searches and seizures, and if the government violates that  
22 right, it should not be able to benefit from it. If the  
23 government could not have gained a conviction had it  
24 obeyed the Constitution, why should it be allowed to do  
25 so because it violated the Constitution?

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1 As the Supreme Court, speaking through Justice  
2 Holmes, generally regarded as the greatest jurist in  
3 American history, as Holmes said of the Fourth Amendment  
4 some 60 years ago, "The essence of a provision forbidding  
5 the acquisition of evidence in a certain way is that such  
6 evidence shall not be used at all." And as Holmes also  
7 said in his famous Olmstead dissent in 1928, "The  
8 government's protests of disapproval of police illegality  
9 cannot be taken seriously if it knowingly accepts and  
10 pays for and announces in the future that it will pay for  
11 the fruits of this illegality."

12 Now I notice this week there was a cartoon by  
13 Bill Mauldin obviously referring to some South American  
14 country whose police were mistreating a suspect, and the  
15 South American police official is reading a document and  
16 it says, "The United States says its new policy is strict  
17 non-disapproval." Well, that's an interesting term.  
18 "non-disapproval". That's pretty close to approval.

19 Now, it has been said, and we heard it said  
20 again today, that the exclusionary rule is a judge-made  
21 rule. Well, I thought all rules were judge-made. I mean,  
22 it doesn't come from on high. I don't know which rules do  
23 come from on high. It's also said that the exclusionary  
24 rule is a matter of judicial implication. I don't see  
25 how this adds a great deal to the debate. Of course the

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1 exclusionary rule is a matter of judicial implication,  
2 in the sense that the Fourth Amendment guarantee doesn't  
3 say what the consequences of a violation are. It doesn't  
4 explicitly spell out what happens if you violate the  
5 right of the people. It just says, the right of the people  
6 not to be searched without reasonable cause, or without a  
7 search warrant, and so forth, shall not be violated.

8 Okay. But a holding that evidence seized in  
9 violation of the Fourth Amendment guarantee is admissible  
10 would also be a matter of judicial implication. Either  
11 way it's a matter of judicial implication. Now, I defy  
12 anyone to name a single famous constitutional decision  
13 that is not a matter of judicial implication. Start  
14 with the school prayer cases or the reapportionment cases  
15 or school desegregation or the right of the press to  
16 attend criminal trials. Or start with any one of a dozen  
17 freedom of speech doctrines. Start anywhere you want.  
18 Oh, yeah. If you took away one of Rhode Island's two  
19 senators, that would be covered by the Constitution.  
20 But those cases don't come up very often. Forget about  
21 Escobedo Miranda. Go back earlier. Consider the doctrine  
22 that a state cannot base a conviction on coerced confes-  
23 sion, or involuntary confession, however much the confes-  
24 sion is corroborated by extrinsic evidence, however much  
25 the confession is verified by extrinsic evidence.

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1 That contrine, too, is a matter of judicial implication.  
 2 Read the Constitution. It never once mentions confes-  
 3 sions, coerced, involuntary or otherwise. Does that mean  
 4 Congress could have negated the old voluntariness doctrine  
 5 by legislation? As a matter of fact, the Constitution  
 6 doesn't mention very much. It doesn't mention line-ups  
 7 or wiretapping or electronic eavesdropping or stomach-  
 8 pumping or the presumption of innocence or an indigent's  
 9 right to a trial transcript at state expense, or even an  
 10 indigent's right to a lawyer at state expense, decided  
 11 in the famous Gideon case.

12 It does talk about the right to counsel, but  
 13 it doesn't talk about the right to appointed counsel or  
 14 the right of an indigent defendant to counsel. Also, even  
 15 in the famous Gideon case, which seems simple and clear  
 16 and almost universally accepted, it is really a matter of  
 17 judicial implication.

18 Now, you know, in light of the recent work of  
 19 the court, it is almost amusing that critics of the exclu-  
 20 sionary rule still disparage it as a judge-made law or as  
 21 a matter of judicial implication. Now, let me cite but  
 22 one example, the right to travel from state to state has  
 23 been a favorite of both the Warren Court and the Burger  
 24 Court. But the Constitution makes no mention of any such  
 25 right. Various justices have suggested four different

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1 revisions of the Constitution as possible sources of the  
 2 right to travel and various commentators have suggested  
 3 three or four other sources.

4 Well, we do know where the protection against  
 5 unreasonable search and seizure is to be found. There is  
 6 a Fourth Amendment. And the Supreme Court in the 1914  
 7 Weeks case, the case which first adopted the exclusionary  
 8 rule in federal cases, did give a pretty good explanation  
 9 of why the Fourth Amendment requires an exclusionary rule.  
 10 What the court said in Weeks was pretty much what the  
 11 court must have had in mind in all the cases where it  
 12 overturned confessions that were the product of coercive  
 13 tactics but were nevertheless corroborated by extrinsic  
 14 evidence. I quote briefly from the opinion in Weeks:  
 15 "The tendency of those who execute the criminal laws in  
 16 the country to obtain convictions by means of unlawful  
 17 seizures and forced confessions should find no sanction in  
 18 the judgment of the courts.

19 "Not even an order of court would have justified  
 20 the search and seizure in this case, much less was it  
 21 within the authority of the marshal, the federal marshal,  
 22 to invade the accused's house and privacy without a court  
 23 order. To sanction such proceedings would be to affirm  
 24 by judicial decision a manifest neglect, if not an open  
 25 defiance, of the prohibitions of the Constitution", end of

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1 quote.

2 Now, the Weeks case's reading of the Fourth  
3 Amendment strikes me as a sensible one. If the court  
4 can't sanction a search and seizure before the event,  
5 because the police don't have enough grounds to make the  
6 search, then why should the court affirm or sanction the  
7 search and seizure after the event?

8 Otherwise, the government can apply for a war-  
9 rant, get turned down by the court, make the search any-  
10 how, come back to the court with the very evidence the  
11 court said it couldn't seize, and use it. Otherwise,  
12 the government, in those cases where it knew or assumed  
13 the courts would not authorize it to make the search,  
14 could simply avoid the courts altogether, make the search  
15 anyway, and then use the evidence.

16 The courts would look foolish. The courts,  
17 after all, are the specific addressees of the constitu-  
18 tional command, "No warrant shall issue but upon certain  
19 conditions", and that telling the courts that, "You don't  
20 issue warrants except upon certain conditions. Do the  
21 courts roll over and play dead because the police didn't  
22 get them a chance to obey that command before the event?

23 Now, although one would never suspect so from  
24 the opinion in Wolf, and from the arguments of the oppo-  
25 nents of the exclusionary rule, there is no discussion in

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1 Weeks of the effectiveness of the exclusionary rule versus  
2 the effectiveness of tort remedies or other alternatives.  
3 It comes later. It's not in Wolf. It's not in Weeks at  
4 all. It's not in the original case, the landmark case.  
5 Nor is there any discussion of the deterrent effect of  
6 the exclusionary rule. Why is that surprising? I don't  
7 deny, I mean, as Judge Wilkey as pointed out, I don't  
8 deny at all that the dominant view of the exclusionary  
9 rule in recent years has been deterrence. That's a fact.  
10 I don't -- that was not the original meaning, and  
11 obviously you weaken the rule when you view it in terms  
12 of deterrence because it's so hard to prove one way or the  
13 other.

14 I'm talking about the original meaning, the  
15 original understanding, if you will, of the exclusionary  
16 rule. No discussion of a deterrent effect of the exclu-  
17 sionary rule. Now, why is that surprising? Suppose 20  
18 or 30 years after it had first started reversing state  
19 convictions, based on coerced confessions or otherwise  
20 unconstitutionally obtained confessions, the government  
21 had argued, empirical studies show that police interro-  
22 gators are just as lawless as they were 20 years ago. So  
23 give up. Abandon your course, and start letting in  
24 coerced but reliable confessions. Does anybody really  
25 believe the court would have been persuaded by such an

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1 argument?

2 I don't. Yes, the exclusionary rule does leave  
3 a good deal to be desired, a good deal to be desired as  
4 a deterrent. That strikes me as a good reason for sup-  
5 plementing it, not abolishing it. You know, one of the  
6 oldest traps in argument is the "either/or". Either we  
7 give the police more money and better training or the  
8 courts should play a vigorous role. I mean, why can't we  
9 have both? Why must it always be either/or? I keep hear-  
10 ing the exclusionary rule -- I heard it this morning --  
11 has no effect, no direct effect, in those large areas of  
12 police activity which don't result in criminal prosecu-  
13 tions, such as harassment or destruction or confiscation  
14 of property, as a punitive sanction.

15 I also keep hearing, the rule has no effect in  
16 the many instances of illegal search and seizure that turn  
17 up nothing incriminating, which indicate that the victim  
18 was innocent. But there's no conflict between excluding  
19 unconstitutionally seized evidence in those instances  
20 where criminal prosecutions are brought, and on the other  
21 hand suing or disciplining the lawless police when their  
22 misconduct does not produce damaging evidence. Judge Bell  
23 asked for a middle ground. Well, I don't know if it's a  
24 middle ground, but I would say, fine, let's go ahead, let's  
25 get some effective, streamlined, really meaningful ways

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1 to discipline the police where their victims are innocent,  
2 or where the purpose was harassment. We don't have to  
3 abolish the exclusionary rule to do that. We can do that  
4 alongside the exclusionary rule. And if those methods  
5 really do prove to be effective, then the case for the  
6 exclusionary rule will be greatly weakened.

7 But don't tell me we ought to abolish the exclu-  
8 sionary rule and study some alternative and set up a  
9 committee to study it, or think about it or explore or  
10 devise some alternative. I've been hearing that for 60  
11 years. And it's all printed, and it's all in the record,  
12 for 60 years.

13 Now, it's not amiss to note that for quite a  
14 while now the laws against murder, rape, burglary and  
15 robbery have left a great deal to be desired as a deter-  
16 rent, too. Judge Younger said yesterday that for 600,000  
17 years people have been assaulting, raping, robbing and  
18 killing each other. I don't know that it goes back  
19 600,000 years, but it at least goes back 6,000. There-  
20 fore, what? Therefore, we search for additional means  
21 to achieve the objectives of these laws. We don't repeal  
22 these laws. No one says, "Well, the homicide rate is  
23 higher today, or the robbery rate is higher today than it  
24 was 50 years ago. Let's repeal these laws and try some-  
25 thing else." We don't say that. We say, "Let's reinforce

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1 these laws. Let's supplement these laws." If the court  
2 can't do everything, or even very much, in the search and  
3 seizure area, without the help of prosecutors, high  
4 ranking police officials and an aroused and alert public,  
5 there is no reason why it shouldn't try to do something.

6 The exclusionary rule is a seemingly remote and  
7 inherently limited control device. But so it seems is  
8 the whole criminal justice system. As all of you know,  
9 "Time" magazine a few months ago ran a cover story  
10 called, "The Curse of Violent Crime". On thumbing through  
11 it, I came upon a passage which I think has some relevance  
12 to what I've been saying. An expert offered this thought,  
13 quote: "One reason the courts are so overloaded is that  
14 family, church and neighborhoods are weakened. The  
15 criminal justice system is very weak as a crime control  
16 agent. It does some good, but not a lot. We've got to  
17 look and find other forms of social controls than the  
18 remote, impersonal and inherently limited criminal justice  
19 system that now serves as a replacement for institutions  
20 so weakened."

21 Now, note, he didn't say, "We should abolish  
22 the criminal justice system", weak and ineffective though  
23 it seems to be.

24 I was unaware until I read his remarks recently  
25 that 17 years ago a certain commentator made some of the

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1 points that I've tried to make today. I have to admit  
2 this commentator made some observations about the exclu-  
3 sionary rule that I don't like at all. But he did say  
4 some other things that I like very much. He observed  
5 back in 1964, quote, "Not until many years after the  
6 Supreme Court first utilized the exclusionary rule in  
7 federal search and seizure cases do we find any utterances  
8 about deterrence of illegal police conduct, to prevent  
9 polluting the streams of justice, and so forth. Weeks  
10 rested on the court's unwillingness to give even tacit  
11 approval to illegal search and seizure by admitting evi-  
12 denced seized in violation of the Constitution." Still  
13 quoting this commentator, to be named soon, "To challenge  
14 as I do the oft repeated claim that suppression of evi-  
15 dence operates as a deterrent on police is not to attack  
16 the doctrine itself. For the courts are bound to uphold  
17 constitutions and statutes. But there must be a better  
18 way to do it. We must recognize suppression as an essen-  
19 tial tool to implement the Constitution and nothing more,  
20 and that other and different means of deterrence must be  
21 devised."

22 Now, my reading this -- and members of the  
23 Task Force can read it themselves -- but my reading of this  
24 is, what this person is saying, what this commentator is  
25 saying, we have to have the exclusionary rule, it's an

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1 essential tool to implement the Constitution. It's not  
 2 enough, it's inadequate, we need other doctrines, other  
 3 devices, not as a substitute for, but as a supplement to.  
 4 Now, that's the way I read what this person is saying,  
 5 although he didn't say it precisely that way.

6 All right. Then the author of this 17-year-old  
 7 article suggested the following basis for the exclusionary  
 8 rule, one that he thought was implicit in all the court  
 9 had said on this subject up to that point. He said,  
 10 quote, "Since the policeman is society's servant, his acts  
 11 in the execution of his duty are attributable to society.  
 12 Society as a whole is thus responsible. And society is  
 13 penalized by refusing it the benefit of evidence secured  
 14 by the illegal action. This satisfies me more than the  
 15 other explanations. It seems to me that society, in a  
 16 country like ours, is involved in and is responsible for  
 17 what is done in its name and by its agents. Unlike the  
 18 people of a totalitarian country, we cannot say, 'It is  
 19 all the leader's doing, we're not responsible.' In a  
 20 representative democracy we are responsible whether we  
 21 like it or not, and so each of us is involved and each is  
 22 in this sense responsible, when a police officer  
 23 breaks rules of law established for our common protection."  
 24 The person who made these remarks 17 years ago was then  
 25 a relatively obscure federal judge, if you can call any

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1 federal court of appeals judge obscure. But he's any-  
 2 thing but obscure now. He's the Chief Justice of the  
 3 United States, Warren E. Burger.

4 Now, members of the Commission can read that  
 5 for themselves. That's in the 1964 American University  
 6 Law Review. Now, what I read to you, of course, was what  
 7 the Chief Justice said about the exclusionary rule the  
 8 first time he focused on it. Of course, his thinking  
 9 about the matter has changed significantly in the last  
 10 decade and a half. Some would say his thinking has pro-  
 11 gressed. Others would say it has deteriorated. The  
 12 second time he dealt with the matter at length, in the  
 13 1971 Bivens case, he launched one of the most powerful  
 14 attacks ever launched on the exclusionary rule. But he  
 15 stopped short of abandoning the rule, quote, "until some  
 16 meaningful alternative could be developed". The third  
 17 time he dealt with the matter at length, concurring in  
 18 the 1976 case of Stone v. Powell, he had become a good  
 19 deal more impatient. Now he called for the immediate  
 20 abolition of the rule, asking us to believe that such a  
 21 development would inspire a surge of activity toward  
 22 providing an effective alternative.

23 I realize the Chief Justice has changed his  
 24 mind. I merely submit that he was right the first time.  
 25

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1 Now, there is a lot of doubt in this area, and  
 2 there is very little we can say emphatically, "I'm sure  
 3 of this, I'm sure of that." But one thing I feel I can  
 4 say I'm sure about is that abolishment of the exclusionary  
 5 rule before we have an alternative is not going to inspire  
 6 a surge of activity toward an alternative, it's going to  
 7 relieve whatever pressure that now exists for an alterna-  
 8 tive. The only reason people talk about an alternative,  
 9 the only time they've ever talked about an alternative,  
 10 is when there was an exclusionary rule. And the alterna-  
 11 tive was getting rid of that damned exclusionary rule.

12 You show me one instance in a case in a state  
 13 where they admitted illegally seized evidence, where the  
 14 police were talking about a meaningful way to discipline  
 15 the police or a meaningful way to give victims of illegal  
 16 search and seizure relief. For half a century, between  
 17 the 1914 Weeks case and the 1961 Mapp case, most of the  
 18 states of this country had no exclusionary rule.

19 Okay. What happened? Nothing. There was no  
 20 movement in any of these states toward an effective alter-  
 21 native. Oh, some of the courts decided to throw out the  
 22 illegally seized evidence. But there was no movement in  
 23 the Legislature, there was no movement in any major police  
 24 department to come up with anything in place of the  
 25 exclusionary rule. As long as those states were admitting

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1 illegally seized evidence, why look for trouble? When  
 2 there's no reason whatsoever to think that the experience  
 3 wouldn't be the same if we abolished the exclusionary  
 4 rule.

5 Well, there are some other points that I will  
 6 reserve for the questions and answers, such as, who has  
 7 the burden of proof on demonstrating the deterrent value,  
 8 and as you might suspect, I don't think the proponents of  
 9 the rule do. But I just want to get to the final major  
 10 point. And that is why I think the exclusionary rule is  
 11 so important.

12 When the Mapp decision was handed down in 1961,  
 13 I was then teaching at the University of Minnesota Law  
 14 School. Mapp, the effect of Mapp in Minnesota, which up  
 15 to that time admitted illegally seized evidence, as did  
 16 some 20, 25 states, is, I think, typical, and quite  
 17 revealing.

18 When, a few months after Mapp, a Minnesota  
 19 trial court excluded for the first time in the state's  
 20 history evidence seized in violation of the protection  
 21 against unreasonable search and seizure, the Minneapolis  
 22 prosecutor said, "To make a search incident to an arrest,  
 23 the arrest will now have to be based on more than mere  
 24 suspicion."  
 25

When a year later burglaries increased, the

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1 police blamed it on the tighter restrictions imposed by  
2 the Mapp decision, and complained that they would have  
3 many suspects in custody, quote, "if we didn't have to  
4 operate under present search and seizure laws", unquote.

5 Of course, the police always had to make an  
6 arrest on more than mere suspicion. Mapp didn't, at least  
7 in theory, impose tighter restrictions on the police.  
8 What was illegal arrest before Mapp still was. What was  
9 a reasonable search before still was. The exclusionary  
10 rule says nothing about the content of law governing the  
11 police. The rule merely states the consequences of a  
12 breach of whatever principles control law enforcement.  
13 One can support the exclusionary rule and still call for  
14 drastic revision of a law of search and seizure.

15 Now, yesterday, Judge Younger submitted a state-  
16 ment by the Americans for Effective Law Enforcement, a  
17 very knowledgeable group, a group that played a major  
18 role in the "stop and frisk" cases in the late 1960's, for  
19 example. Now, one of the portions of this statement  
20 against the rule says, "The rule fails to consider the  
21 practical realities of the law enforcement function."

22 What's a policeman to do? Stop a vehicle? Not stop a  
23 vehicle? Open the trunk? Not open the trunk? Search  
24 the driver? Open the suitcase? God, look at all these  
25 tough problems. Those problems existed all along. The

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1 policemen were supposed to be thinking about those same  
2 questions before the exclusionary rule. And presumably  
3 he'll be thinking about those same questions if we ever  
4 repeal the exclusionary rule.

5 The law will still say, you've got to arrest on  
6 probable cause. You've got to search on reasonable  
7 grounds. You've got to get a warrant unless there's an  
8 excuse. The law won't change if we abolish the exclu-  
9 sionary rule. And the statement says, "The police must  
10 not only know the law in detail, they must be able to  
11 apply that to the thousands of various situations with  
12 which they are confronted", and so forth.

13 Well, that was true before Mapp, and presumably  
14 it will be true after Mapp.

15 Now, critics say, along the same lines, it's so  
16 hard for the police to absorb the subtleties of the  
17 exclusionary rule. The exclusionary rule is not subtle  
18 at all. Nothing can be simpler. If you violate the law,  
19 you can't use it. The content of the law is subtle, but  
20 the content of the law won't change if we abolish the  
21 exclusionary rule.

22 Now, let me return to the Minnesota experience  
23 for a moment. If the Minneapolis police had had reason-  
24 able grounds to arrest certain burglary suspects, the  
25 Mapp case wouldn't have stopped them from doing so. If,

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1 on the other hand, the police lacked the necessary  
2 grounds to take these suspects into custody, not Mapp, but  
3 the very same state and constitutional provisions which  
4 had been on the books before Mapp was decided, before  
5 Miss Mapp was ever born, that was what prevented them  
6 from making the arrests. The police never had the autho-  
7 rity to make an arrest on mere suspicion or make a search  
8 on less than probable cause. They only had the incentive  
9 to do so, and the Mapp case was an effort to reduce that  
10 incentive.

11 Now, at a panel discussion on the subject in  
12 Minnesota shortly after Mapp, a panel discussion in which  
13 I took part, law enforcement officials -- the proponents  
14 of the rule pointed out that the widespread fears that  
15 were occurring among law enforcement officials, that the  
16 evidence that they had been gathering in the customary  
17 manner would now be excluded by the courts, that those  
18 fears implied that the police had been violating the  
19 Fourth Amendment all along.

20 The Minneapolis City Attorney denied this. He  
21 protested that the state courts had been telling the  
22 police all along that the exclusionary rule didn't apply  
23 in Minnesota. And a St. Paul detective who was also on  
24 the panel protested that although officers had testified  
25 in many criminal cases, that they had acquired evidence

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1 by breaking down doors or by picking locks, the Minnesota  
2 courts had sustained this time after time after time.  
3 And he said -- and I'll never forget it, and this is  
4 documented in various law reviews, has been since -- he  
5 said, "What do you mean we're violating the law all  
6 along? The judiciary okayed it." See, they let it in.  
7 They let the evidence in. They okayed it. They knew what  
8 the facts were and they let the evidence in.

9 There is no reason to think that that experience  
10 is unique. Shortly after the California Supreme Court  
11 adopted the exclusionary rule on its own initiative in  
12 the 1955 Kahan case, the then Los Angeles Chief of Police,  
13 William Parker, warned that his department's ability to  
14 prevent crime had been greatly weakened because his  
15 officers could no longer arrest or search unless they had  
16 probable cause. He did promise, however, that as long as  
17 the exclusionary rule is a law of California, his offi-  
18 cers would act within the framework of limitations imposed  
19 by that rule.

20 Here we go again, confusing the exclusionary  
21 rule with the content of the law of search and seizure.  
22 The exclusionary rule didn't impose any framework of  
23 limitations on the police, it didn't change the existing  
24 framework. The framework was there all along. Similarly,  
25 the former New York City Police Commissioner, Mike

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1 Murphy, recalled how, when Mapp imposed the exclusionary  
 2 rule in his state, he was caught up in the entire problem  
 3 of re-evaluating procedures, creating new policies, new  
 4 instructions, retraining sessions had to be held from the  
 5 very top administrators down to the very bottom. Why?  
 6 Judge Wilkey quoted the famous Cardoza opinion in 1926,  
 7 People v. DeFore, rejecting the exclusionary rule in New  
 8 York. The decision, of course, was based largely on the  
 9 premise that New York didn't need an exclusionary rule  
 10 because other remedies were adequate to effectuate the  
 11 guarantee against illegal search and seizure.

12 But 35 years later when the exclusionary rule  
 13 is imposed on New York, the Police Commissioner of New  
 14 York says, "It had a dramatic and traumatic effect. It  
 15 created tidal waves and earthquakes." Why? In theory,  
 16 the old DeFore case had only rejected the exclusionary  
 17 rule. It had not expanded lawful police powers one bit.  
 18 What was an illegal search before DeFore was still an  
 19 illegal search. What was a lawful arrest before Mapp  
 20 imposed the exclusionary rule on New York was still a law-  
 21 ful arrest. Why then did Mapp create tidal waves, earth-  
 22 quakes? Why did it necessitate creating new policies?  
 23 What were the old policies like? Why did it necessitate  
 24 holding retraining sessions from top administrators to  
 25 patrolmen? What was the old training like? Was there any

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1 old training in search and seizure?

2 The answers, I think, were supplied by Leonard  
 3 Reisman, then the New York City Deputy Police Commissioner  
 4 in charge of legal matters, who several years after Mapp  
 5 told a group of grumbling detectives, men who had been  
 6 detectives for 10, 20 years, and were saying, "Why do  
 7 we have to learn about search and seizure now?" And he  
 8 explained to them, the reason they had to learn about  
 9 search and seizure now at this late date in their careers,  
 10 quote, "The Mapp case is a shock to us. We had to reorga-  
 11 nize our thinking, frankly. Before this nobody bothered  
 12 to take out search warrants. Although the United States  
 13 Constitution requires warrants in most cases, United  
 14 States Supreme Court had ruled until 1961 that evidence  
 15 obtained without a warrant, illegally, if you will, was  
 16 admissible in state courts. So the feeling was, why  
 17 bother?"

18 This disclosure must have jarred the good  
 19 citizens of New York, who had been led to believe for  
 20 many years that there was no need to exclude illegally  
 21 seized evidence in order to effectuate the constitutional  
 22 guarantee, because other remedies amply sufficed; court  
 23 actions, criminal prosecutions against transgressing  
 24 police, the internal discipline of the police, the eyes  
 25 of an alert public opinion. Cardoza also suggested

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1 another alternative. You could resist the police.  
2 Terrific.

3 All right. In conclusion, if many in law  
4 enforcement responded to the adoption of the exclusionary  
5 rule as if the guarantee against unreasonable search and  
6 seizure had just been written -- and I think they did --  
7 aren't they likely to react to the scrapping of the rule  
8 as if the guarantees had just been deleted? Aren't they  
9 likely to feel once again, if I may quote that St. Paul  
10 detective, once again, "The judiciary is okaying it"?  
11 If law enforcement officials talk as if and act as if  
12 the exclusionary rule were the protection against unrea-  
13 sonable search and seizure, why shouldn't the courts?

14 CHAIRMAN HARRIS: Thank you, Prof. Kamisar.

15 Judge Wilkey, will you join us at the table?

16 JUDGE WILKEY: Thank you.

17 CHAIRMAN HARRIS: We'd now like to address some  
18 questions to both of you. I would like to ask Prof.  
19 Kamisar, you made a point at some length about the dis-  
20 tinction, or making the point that the substantive law,  
21 the content of the law hadn't changed when Mapp was  
22 announced, the law was still the same, and that the police  
23 still should have been trying to answer the subtle ques-  
24 tions that are involved in a stop before they decide to  
25 search. I take it from that that you would not be greatly

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1 offended by an exclusionary rule which only excluded  
2 evidence prospectively. In other words, if there was an  
3 area, a subtle distinction that the court had not yet  
4 spoken to, when they did speak, evidence was only exclu-  
5 ded prospectively, but not in the specific case in which  
6 they are making the pronouncement, since the content of  
7 the law had never been decided by the court.

8 PROF. KAMISAR: Well, this, I think, gets us  
9 into a broader question about my basic view of the body of  
10 the law, and I think I can answer your question in the  
11 broader context. I have, I think, a fairly sensible view  
12 of reasonable grounds and probable cause. And I'm a  
13 little baffled when people say, "If the police acted in  
14 good faith and acted reasonably, both in good faith and  
15 reasonably, let's modify the exclusionary rule so the  
16 evidence comes in." I thought it came in all along. If  
17 the police act reasonably, if they're not negligent, then  
18 it seems to me it shouldn't be a violation of the Fourth  
19 Amendment.

20 And I certainly agree that if the police are  
21 acting pursuant -- for example, take one particular kind  
22 of case, if the police are acting pursuant to a statute  
23 or ordinance other than the one that authorizes search  
24 and seizures itself, but say an ordinance or a statute  
25 dealing with abortion, and they assume the statute is

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1 constitutional, make an arrest or make a search pursuant  
2 to the statute, and they find narcotics, but they were  
3 proceeding lawfully and they weren't violating the law,  
4 they were entitled to assume the statute was constitu-  
5 tional. A couple of years later the statute is struck  
6 down.

7 In my judgment, of course that's a reasonable  
8 search. I mean, I don't see why -- judging from some  
9 recent discussion of the problem, you would think that you  
10 had to prove someone guilty beyond a reasonable doubt.  
11 The linchpin of the Fourth Amendment is reasonableness.  
12 It's always been reasonableness. You're always entitled  
13 to make a few mistakes.

14 And so I guess I would want to retain the  
15 exclusionary rule, at least unless and until we see  
16 working -- not on paper but working -- meaningful alterna-  
17 tives. But I guess that I would find the search or  
18 seizure or arrest lawful more often than you might suspect.

19 And the answer to your question is yes. I would  
20 not object to saying that if the police acted in reliance  
21 on a subtle body of law, or certainly a statute or an  
22 ordinance -- you know, I mean it's hard to answer in the  
23 abstract without a particular fact situation. But  
24 certainly, to take the DeFillippo case, for example, or to  
25 take the case that's mentioned in the Americans for

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1 Effective Law Enforcement statement, the judge in the  
2 wrong county issued a warrant, something like that, I  
3 guess I think there ought to be a certain amount of sub-  
4 stantiality built right into the concept of probable  
5 cause or reasonable grounds.

6 CHAIRMAN HARRIS: You see, Judge Wilkey cited  
7 a case in which the Second Circuit split two to one, or  
8 two on one side, the other unclear, and this is with law  
9 clerks and law degrees and plenty of time. Now, the  
10 question is, would you support the notion that in that  
11 kind of case that the evidence should not be suppressed,  
12 but if the court makes a clear statement about it, there-  
13 after that same conduct could be the basis for suppres-  
14 sion?

15 PROF. KAMISAR: Well, the trouble with that  
16 question is, because some members of the court are against  
17 the exclusionary rule to begin with, they're always going  
18 to dissent. And if you're going to say that whenever  
19 there is a split among the judges of a court the police  
20 can go either way, that is going too far.

21 The point I was trying to make is this. Judges  
22 will split all along about whether you can open a suitcase  
23 or not without getting a warrant, as to whether an anony-  
24 mous phone call is enough to make a search without  
25 corroboration or not. The point is, the police should

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1 have been asking themselves that all along. I mean, if  
 2 you were in New York in 1959 and they were admitting  
 3 illegally seized evidence and you got an anonymous phone  
 4 call, you should be saying, "Listen, can I search some-  
 5 body on that basis? Can I arrest somebody?" The point  
 6 is, they weren't asking themselves that question. The  
 7 point is, the body of law was irrelevant because there  
 8 was no exclusionary rule.

9 I would be perfectly happy to streamline the  
 10 law of search and seizure. In fact, I think the exclu-  
 11 sionary rule did. I think as a result of the exclusionary  
 12 rule many states modernized their law of search and  
 13 seizure, and for example challenged the strange doctrine  
 14 that you couldn't search for mere evidence only. And I  
 15 think as a result that doctrine was knocked out by the  
 16 Supreme Court. And now you can search for mere evidence  
 17 only.

18 I think the "stop and frisk" statutes were  
 19 largely a response to the exclusionary rule. If there  
 20 hadn't been any exclusionary rule, the New York police  
 21 wouldn't care very much whether you could stop and frisk  
 22 on less than probable cause, because they could use the  
 23 evidence anyhow. Because there was an exclusionary rule,  
 24 this matter had to be resolved. And that matter was  
 25 resolved eventually in favor of the police. But if it had

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1 been resolved the other way, if the court said, "You  
 2 can't stop and frisk on less than full probable cause,  
 3 there's no distinction between a stop and frisk and  
 4 a full-fledged arrest and a full-fledged search", that  
 5 would be the body of the law of search and seizure.  
 6 That wouldn't be the exclusionary rule.

7 CHAIRMAN HARRIS: Judge Wilkey.

8 JUDGE WILKEY: Let me see if I can clarify this.  
 9 The level of probable cause to make an arrest or to make  
 10 a search and seizure is a separate issue. And I'm grati-  
 11 fied, from what Prof. Kamisar said, and from what I've  
 12 read in the articles that we wrote for Judicatur magazine  
 13 that he and I are much closer on that than we are on the  
 14 remedy for violation of the Fourth Amendment.

15 It's a separate issue, and I made it clear in  
 16 my two articles in Judicatur that I was not discussing  
 17 the level of probable cause, and I did not originally  
 18 here, but I will now. First, the exclusionary remedy is  
 19 an enforcement tool. There are alternative enforcement  
 20 tools. And one of the surprising things I found in  
 21 Prof. Kamisar's testimony is that the exclusionary rule  
 22 comes from the Fourth Amendment prohibition against  
 23 unreasonable search and seizures by constitutional  
 24 implications.

25 But I submit that nowhere is the remedy for the  
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violations spelled out. And it is not by constitutional implication, and there are several members of the Supreme Court that said so. And I want to correct the record on this, because I'm surprised at Prof. Kamisar's position.

Justice Black said, "The Fourth Amendment does not itself contain any provision expressly precluding the use of such evidence. And I am extremely doubtful that such a provision could properly be inferred from nothing more than the basic command against unreasonable searches and seizures."

There is no implication of what method we choose to enforce the protection of the Fourth Amendment. Now, that was Justice Black in *Mapp v. Ohio* in his concurring opinion. And I would wager that I could find three or four others on the Court within the last decade, Justices Burger, Powell, Blackmun, who have said the same things.

Now, I've suggested here this morning five alternatives, three to be applied by the court, and some of them could be applied immediately. And I've suggested these alternatives to be put into effect simultaneously with the scrapping of the exclusionary remedy.

So what we're talking about on the exclusionary rule is a remedy, and it is not a remedy given from the Constitution, and the Supreme Court has said that it is not from the Constitution, and there are alternatives.

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I have given you five, and I would wager if we would examine the practice in other countries we'd find more. And they would, in my judgment, be put into effect simultaneously with the scrapping of the rule.

Now then, there is the standard of probable cause for valid search and seizure, and that is the substantive law by which the police should govern their conduct. And what is that? The constitutional guarantee is the right of the people to be secure against unreasonable searches and seizures. The search, therefore, is unreasonable in our practice if there is an absence of sufficient probable cause.

So the level of probable cause determines the permissible conduct of the police. Now, Prof. Kamisar and I are in agreement on that. I think we'd also agree on this, that there are hundreds of cases in which the level required, especially by appellate courts, are so high as to appear absurd, silly, fatuous, to lawyers and to laymen alike.

And I'd further point out that the definition of an unreasonable search and seizure, or probable cause, is nowhere found in the Constitution. But on the matter that's been debated up till now, here, no matter what the standard of permissible police conduct is, that's a separate issue, the exclusionary remedy is irrational and

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1 should be abolished because of the four defects that I  
2 outlined, the seven costs to society that I gave you, and  
3 there are probably more, and that our experience in the  
4 law of search and seizure has been distorted for decades  
5 by the use of this irrational rule.

6 Now, I would say that the logical step is to  
7 abolish the rule, substitute one or more of the alterna-  
8 tives which have been suggested by me and by others for  
9 the rule, as the enforcement tool for the Fourth Amendment,  
10 and then let us see for a while what the level of probable  
11 cause should be. Remember, the level of probable cause is  
12 a reasonableness standard.

13 Now, there are two ways to establish a new  
14 standard of probable cause, and this probably should be  
15 more clearly defined than it is now. The first considera-  
16 tion is that unreasonable and probable are precisely the  
17 type standards which Congress is qualified to define.  
18 Congress could define what was a reasonable search and  
19 seizure, what was probable cause, and define it in terms  
20 that come a lot closer to meeting common sense standards  
21 than many of our appellate decisions.

22 The courts could then apply this statutorily  
23 defined standard of probable cause. Now, there is clear  
24 Supreme Court precedent for that in the administrative  
25 search and seizure cases. In the administrative search

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1 and seizure cases, the court has said that Congress can  
2 define what would be a reasonable search and what would  
3 be probable cause to make a search. The most recent case  
4 I know of that is Marshall v. Barlow, which was decided  
5 in May of 1978.

6 So Congress can legislate in this area, but  
7 again, I caution you, not until after we've gotten rid of  
8 the distortions brought about by the exclusionary rule and  
9 replaced it by a more reasonable enforcement tool.

10 Now, secondly, consider this. Unreasonable and  
11 probable are also the type words which juries every day  
12 define in accordance with community standards. For  
13 example, there's reasonable care in negligence. It is  
14 possible that we could leave this to the definition by  
15 juries under the directions by courts. Once freed of the  
16 distortion of this exclusionary remedy, that is that the  
17 guilty criminal will go free if the failure to meet the  
18 standard of search is found, juries could then be trusted  
19 under court instructions to find as in negligence cases  
20 what was reasonable, what was probable cause in the cir-  
21 cumstances of the case.

22 But I caution you again, you can't use that, you  
23 can't trust juries to use that standard now if they know  
24 that the penalty to be assessed if they find there was a  
25 lack of probable cause will be that the criminal will go

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1 free. That distorts all our conclusions in this area.  
 2 I would suggest that it would be particularly useful for  
 3 juries to apply a standard of probable cause or reasonable-  
 4 ness in a mini-trial of the officer after the main crimi-  
 5 nal trial, when the court and the jury are familiar with  
 6 every detail of the case.

7 CHAIRMAN HARRIS: Thank you.

8 Mr. Littlefield.

9 MR. LITTLEFIELD: Judge Wilkey, a number of  
 10 years ago, Dr. Jonas Salk invented or perfected a polio  
 11 vaccine. After that vaccine was in use for a while, there  
 12 was a tremendous reduction in the amount of polio in the  
 13 United States and other places where it was used. Would  
 14 you consider that proof of the effectiveness of the Salk  
 15 vaccine?

16 JUDGE WILKEY: Yes, I think that that certainly,  
 17 in the scientific field there, bears on it, assuming the  
 18 proof of the use of it, et cetera.

19 MR. LITTLEFIELD: Judge, I've lived in this  
 20 community almost all my life. I was born here, practiced  
 21 law here for over 30 years. And I practiced law before  
 22 the exclusionary rule was adopted in California in the  
 23 Kahan case. It was the rule and not the exception that  
 24 policemen kicked in citizens' doors, the doors of citi-  
 25 zens' homes at 3:00 o'clock in the morning, that the

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1 reason to stop an automobile was the age of the automo-  
 2 bile or the ethnic background of the driver. And up  
 3 until the time of the exclusionary rule, that's the way  
 4 the police operated.

5 After the exclusionary rule was adopted, this  
 6 conduct has practically stopped completely. Now, wouldn't  
 7 you say that that was an indication of the effectiveness  
 8 of the exclusionary rule?

9 JUDGE WILKEY: Well, first of all, Mr. Little-  
 10 field, I'll ask you if you think that the effectiveness  
 11 of Jonas Salk's vaccine proves that no other remedy could  
 12 possibly be discovered. And secondly, I will ask you that  
 13 if Jonas Salk's vaccine against polio were proved in case  
 14 after case to lead to a high percentage of cancer, whether  
 15 we'd still be using it.

16 MR. LITTLEFIELD: So you haven't answered my  
 17 question, but you've asked me two, right, sir?

18 JUDGE WILKEY: Now I'll answer your question.

19 MR. LITTLEFIELD: All right, sir.

20 JUDGE WILKEY: Chief Justice Burger said he  
 21 was very doubtful whether the effectiveness, as a deter-  
 22 rent, could be proved by statistics in these cases. I  
 23 have seen numerous studies made, and I don't think I'm  
 24 satisfied with any of them, except for the fact that none  
 25 of the studies that I've seen of the facts before and

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1 after and during have proved that there was a deterrence  
2 by the rule.

3 I call to your attention Judge John Gibbons  
4 of the Third Circuit's article in the Seton Hall Law  
5 Review in 1973, and he explains in great analytical  
6 detail why this would be so.

7 MR. LITTLEFIELD: You mentioned that the exclu-  
8 sionary rule encourages police officers to lie, Judge  
9 Wilkey. Don't you think that a police officer who would  
10 lie in that case would lie in any other case as well?

11 JUDGE WILKEY: The police officer lies more  
12 frequently, perhaps, in the exclusionary rule case, because  
13 he justifies it to his conscience that he is achieving a  
14 greater good, that is, the conviction of an obviously  
15 guilty man. In other cases, the officer will follow the  
16 standards of his profession and tell the truth.

17 MR. LITTLEFIELD: Even though the defendant in  
18 a non-exclusionary rule case would be an obviously guilty  
19 man to the officer as well?

20 JUDGE WILKEY: Officers don't make up things  
21 nearly as much, nearly as often, they don't make up cases  
22 against people, I believe, nearly as often as they will  
23 make up stories about their own conduct to justify a  
24 case that they've already made. In other words, the  
25 dropsy, narcotics case. The officer found the narcotics.

1 That is a truth. It is tangible. It is undeniable.  
2 The man had it. And so to establish that truth, the  
3 officer will resort to what he considers petty lying, as  
4 to whether the man dropped it or whether he reached in  
5 his pocket and took it from him.

6 MR. LITTLEFIELD: Now, we've talked --

7 PROF. KAMISAR: May I just break in for a  
8 second? In the Miranda oral arguments, the spokesman for  
9 the Prosecutors Association told the court, "Please don't  
10 come down with a requirement of warnings, because if you  
11 do, you'll just encourage the police to perjure them-  
12 selves." And it seems to me this argument that, "Leave  
13 us alone or we'll perjure ourselves", is really a fright-  
14 ening kind of argument. And nowhere else in our law can  
15 the targets of the decisions prevail by resisting, you  
16 know. The court doesn't go away and quit because the  
17 school says, "We're going to read the Bible. We're going  
18 to have school prayers."

19 And it seems to me that it's almost an assertion  
20 of raw power; "You guys can't win, so give up, because  
21 no matter what you make us do, we'll just go ahead and say  
22 we did it." Well, that, it seems to me, is all the more  
23 reason why we shouldn't let the police police themselves.

24 JUDGE WILKEY: By the way, I've offered one  
25 alternative to the police policing themselves. But I

1 offered four other alternatives, other people, including  
2 the courts, doing it.

3 MR. LITTLEFIELD: Judge Wilkey, in connection  
4 with that, if there were federal tort action, one of your  
5 suggestions, would that increase, do you think, substan-  
6 tially, the case loads of our federal courts? That's kind  
7 of a concern, I know, today.

8 JUDGE WILKEY: It might, but it also would  
9 reduce the case loads on search and seizure. I'll give  
10 you the comparable experience in England. I read some  
11 10 years ago -- I'm not sure what the statistics are now,  
12 but I read some 10 years ago that there had only been two  
13 search and seizure cases in the high court in England in  
14 this century. And the reason is, of course, that since  
15 the evidence is never excluded in England, no matter how  
16 illegally the acquisition, there has been no purpose to  
17 bring the search and seizure cases.

18 MR. LITTLEFIELD: Incidentally, talking about  
19 the evidence, it is true, isn't it, though, Judge Wilkey,  
20 that in every day and practically every criminal court  
21 in the United States, either state or federal, that  
22 evidence is admitted, that guns are admitted in evidence,  
23 narcotics are admitted in evidence, gambling paraphernalia  
24 is admitted in evidence? It's only where it is an unrea-  
25 sonable search and seizure, or the evidence is illegally

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1 obtained, where it is not admitted in evidence.

2 JUDGE WILKEY: Well, that is true, but you  
3 mentioned the burden on the courts. And think of this.  
4 On a recent survey, 60 percent of all motions made in  
5 criminal trials were motions to suppress tangible objects,  
6 most of which were guns, narcotics or policy slips. And  
7 on the burden on the trial court and the courts of appeal,  
8 33 percent of all cases tried, in 33 percent of all cases  
9 tried, the motion to suppress evidence, the exclusionary  
10 rule was at issue. And I would guarantee you that almost  
11 100 percent -- at least it's our experience in our  
12 Circuit -- 100 percent of the cases involving a motion to  
13 suppress, whether it's successful or unsuccessful, is  
14 appealed.

15 So when we're talking about motions to suppress,  
16 we're talking about the greatest single burden on the  
17 trial courts, on cases that go to trial, 33 percent of the  
18 cases.

19 MR. LITTLEFIELD: Do you believe that community  
20 support is essential for effective law enforcement?

21 JUDGE WILKEY: I certainly do.

22 MR. LITTLEFIELD: Do you think if the police  
23 agencies have a policy of violating the rights of the  
24 citizens, kicking in their doors, stopping them without  
25 any reasonable cause, that they will gain community

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1 support by these activities?

2 JUDGE WILKEY: Why, of course not. And I want  
3 to recall to you the distinction that both Prof. Kamisar  
4 and I have made between the level of probable cause  
5 required for police action and the use of the exclusionary  
6 rule. I don't think any more than Prof. Kamisar does that  
7 if you abolish the exclusionary rule the police should be  
8 allowed to go on a rampage.

9 And pursuant to that thought, I have suggested  
10 five alternatives by which the police would be governed  
11 in their conduct, consistent with reasonableness under the  
12 Fourth Amendment. But the police would be governed in  
13 their conduct without the horrible consequences of the  
14 exclusionary rule, the principal horrible consequence  
15 being that the criminal goes free.

16 MR. LITTLEFIELD: Thank you.

17 CHAIRMAN HARRIS: Mr. Edwards.

18 MR. EDWARDS: I have no questions at this time.

19 CHAIRMAN HARRIS: Chief Hart.

20 CHIEF HART: I don't have a real hard question,  
21 not being a lawyer, being a layman and a policeman. I  
22 understand that Miranda, Mapp v. Ohio, and things that  
23 came down from the courts in the last 30 or 40 years  
24 were to restrict the police, it only brought them in line  
25 with federal agencies, is that so?

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1 JUDGE WILKEY: Mapp v. Ohio in 1961 applied to  
2 the states the exclusionary remedy which had been applied  
3 to the federal courts since 1914. Now, Miranda is a  
4 different thing. Miranda is an induced confession. And  
5 that isn't at issue here in our discussion. Confessions  
6 that are induced unfairly or by pressure are excluded  
7 because they're unreliable. And that's not at issue here  
8 at all.

9 PROF. KAMISAR: Well, if I may just -- I can't  
10 let that go.

11 CHIEF HART: I didn't think so.

12 PROF. KAMISAR: It seems to me that one of the  
13 points that critics of the rule keep making is saying  
14 confessions are different because they're excluded  
15 because they're unreliable. Now, that is not so, and it  
16 had not been so since 1950. Again and again, Frankfurter,  
17 Earl Warren, others, would say, "Look, we don't care  
18 whether the damn confession is true or not. We don't care  
19 whether the guns were found where the guy said the guns  
20 were buried. And we don't care whether the loot was found  
21 where he said. We're throwing out coerced confessions  
22 because the police must obey the law as well as enforce  
23 the law. And it offends our sense of fair play for the  
24 police to hold some guy so many hours and pressure him,  
25 whether it turns out that that confession is true or not."

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1 So you see, there really is a connection  
2 between illegal search and seizure and coerced confessions.  
3 And critics of the exclusionary rule keep saying the only  
4 basis for throwing out confessions is the unreliability,  
5 because in that way they can distinguish search and  
6 seizure. But that simply won't hold up.

7 In the famous stomach-pumping case in 1952 --  
8 go back to 1952 -- they pumped someone's stomach. He  
9 swallowed the heroin. He vomited it up. Well, that's  
10 reliable evidence. You can't do much better than finding  
11 stuff in a guy's own stomach. But the court threw it out  
12 because it said, "Some things offend our sense of fair  
13 play."

14 Now, I'm not saying --

15 MR. LITTLEFIELD: "It shocked the conscience."

16 PROF. KAMISAR: All right. But I'm not saying  
17 that illegal search and seizure is as bad as that. I'm  
18 saying that in that opinion, Frankfurter says specifically,  
19 he analogized specifically to coerced confessions in that  
20 opinion. And he said that it's long since -- no longer  
21 been true for a long time that we throw out coerced con-  
22 fessions simply because they're unreliable. We also throw  
23 them out whether they're reliable or not because we want  
24 to show that we will not accept and approve police methods  
25 in obtaining those confessions.

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1 JUDGE WILKEY: Well, let me straighten this  
2 out a bit. The 1952 case of Rochin v. California, the  
3 stomach pump case, is an exception to the rule on admissi-  
4 bility of evidence. It was true under the common law,  
5 has been true for hundreds of years, actions which shock  
6 the conscience, civilized courts do not accept. And in  
7 my article in "Judicature" I specifically footnoted  
8 Rochin as being an exception to the rule, which every  
9 civilized with us on that.

10 Now then, as to coerced confessions, to my mind,  
11 and I think you will find some Supreme Court Justices  
12 saying the same thing, the rational basis for excluding  
13 them, why we will not take them, is that a confession  
14 under torture is not worth the paper it's written on or  
15 the recording on which it's made. It's not reliable.  
16 And also, we're not going to tolerate police conduct of  
17 torture or trickery. That is unfair. So that is a rein-  
18 forcing reason. But if you wiped out the rationale of the  
19 exclusionary rule on material objects, you would have no  
20 effect on confessions -- and I'm not urging any change  
21 in the rule in regard to confessions whatsoever.

22 PROF. KAMISAR: Well, you know, we're not talking  
23 about torture. We're talking about cases where the police  
24 pretend to bring down the suspect's wife, or cases where --

25 JUDGE WILKEY: Trickery, as I said.

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1 PROF. KAMISAR: But I mean, why accept this  
 2 notion that we're going to throw out the confession, even  
 3 though it's proved reliable; because the police engaged  
 4 in trickery? They may have rounded up 30, 40 -- you  
 5 know, if you look at the old confession cases, they round  
 6 up 30, 40 people and they hold them all incommunicado and  
 7 they question them all, and only one confesses and the  
 8 court throws that out. No one ever said, "What good is  
 9 that doing the 29 other people who were held all weekend?"  
 10 No one says that what the police did was a tort or a  
 11 crime, and there are alternative remedies.

12 Now, it just seems to me that there really is  
 13 a connection. I don't deny that there are some justices  
 14 who would say the only basis ought to be untrustworthiness.  
 15 I'm simply saying that the court, at least in the years  
 16 before Escobedo Miranda, the court, in a number of deci-  
 17 sions, made it clear that that was not the only basis.

18 Now, Chief Hart, we're both from Michigan..  
 19 Your presence reminds me of something that I think is not  
 20 generally realized. In Michigan, because of a peculiar  
 21 interpretation by the Michigan Supreme Court, all through  
 22 the 1960's, Michigan police were allowed, as far as the  
 23 State Supreme Court was concerned, to search for weapons  
 24 or search for narcotics if the person were found outside  
 25 their dwelling house, as many of them were. So strangely

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1 enough, for nine years after Mapp v. Ohio, Michigan,  
 2 because of its peculiar interpretation of its own courts,  
 3 was the only state in America where the police had more  
 4 power to search for weapons and so forth than any other  
 5 state. What happened? Well, that was before your reign,  
 6 I believe, I'm sure. And what happened was, in the late  
 7 1960's when Michigan had the advantage of this anti-  
 8 exclusionary rule provision, the rate of homicide quadru-  
 9 pled, I believe, went way up. The rate of robberies  
 10 went way up. In 1970 the Michigan Supreme Court finally  
 11 said, after being prodded a bit by the federal courts,  
 12 "Well, our peculiar exception is really invalid. It can't  
 13 stand up." So in 1970 Michigan got back in line with  
 14 everybody else. And as is well known, the homicide rate  
 15 in Detroit has improved generally, or certainly has not  
 16 gone up, since the police were deprived of this advantage  
 17 that no other state had.

18 And it seems to me that this is part of a general  
 19 point. This is a Task Force on Violent Crime. We've got  
 20 more business in criminal justice than we can handle.  
 21 We're laying off police. We're forcing people out of  
 22 prisons because they're bursting. There is no doubt that  
 23 all along the way people are not being apprehended, are  
 24 not being kept in because of inadequate staff and so  
 25 forth. It just seems to me that although it is very

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1 tempting to strike some symbolic pose and say, "We're  
2 doing something about it. We're going to change the  
3 exclusionary rule", that that's really misleading, that  
4 there are no rabbits to pull out of a hat. The exclu-  
5 sionary rule's repeal won't cost any money, but it's not  
6 going to change very much.

7 We were led to believe for a long, long time  
8 that the cost was very great. Now, two years ago, a  
9 General Accounting Office study indicated that almost  
10 3,000 federal cases, covering about half of all the  
11 districts, only 1.3 percent of the cases was evidence  
12 excluded, and in half of those cases, the person was  
13 convicted anyhow. The immediate response was, "Well,  
14 yes, what about the cases that were not brought because of  
15 the search and seizure problem?" And that was anticipa-  
16 ted and that was covered. The statement was made that in  
17 only .4 of 1 percent of the cases was the search and  
18 seizure problem a reason for dismissing the case.

19 And I don't think that that's too great a price  
20 to pay, when there are so many other places along the way  
21 where we are losing cases, you know, so many other points  
22 along the way where we're losing cases, and I think that  
23 even though we can disagree about probable cause and  
24 everything else, certainly the Fourth Amendment means  
25 something. It means something. And it means that

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1 sometimes there are greater things that convicting the  
2 guilty. I mean, it's got to mean that much. It's got to  
3 mean that, sure, Judge Wilkey said, "What's the expecta-  
4 tion of privacy with respect to having contraband?"  
5 What is the expectation of privacy with respect to con-  
6 spiring to kill someone? Does that mean we can tap all  
7 the phones? The only case that will get to court is the  
8 case where the police officer heard on the phone conver-  
9 sation someone talking about a crime. But in the process  
10 he will have heard hundreds of other cases where the people  
11 were not conspiring to commit a crime. That's the whole  
12 point of the exclusionary rule, that you only get the case  
13 where the guy is guilty.

14 But as is pointed out, there were many other  
15 cases -- I heard the same thing from John Kaplan, who was  
16 a federal prosecutor, that they were kicking down doors  
17 in Chinatown in California before the exclusionary rule.  
18 So that, sure, you pay a price, sure, you lose some cases.  
19 But that's what the Fourth Amendment has got to mean.

20 JUDGE WILKEY: Let me respond to one aspect of  
21 that that I don't want this Task Force to go away with an  
22 erroneous impression on. I don't know what that statistic  
23 of .4 percent means to a professor of law, but it means  
24 absolutely nothing to a working judge on the bench, whe-  
25 ther it's the trial court of the appellate court. I

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1 referred to that General Accounting Office study, a  
2 moment ago. And when it came out, some of the statistics  
3 which had to do with cases brought, and so on, were  
4 trumpeted by supporters of the exclusionary remedy, like  
5 Prof. Kamisar, as proving the case that it was no burden  
6 on the administration of justice.

7 As I say, I don't know what relevance it has to  
8 his work, but to my work, it had no relevance whatsoever.  
9 The important statistic for working judges for the admini-  
10 stration of justice was that 33 percent of all cases that  
11 go to trial involve an exclusionary rule search and seiz-  
12 ure question. And that is by far the largest issue coming  
13 up. The next highest, I believe, was 16.2 percent  
14 involving confessions.

15 So when we're talking about burden, it is in  
16 the exclusionary rule in cases that go to trial. And the  
17 GAO office did not even cover cases on appeal. In our  
18 circuit, the last statistic was, 86 percent of all convic-  
19 tions are appealed. And I'll tell you that almost  
20 every -- well, every search and seizure question is  
21 appealed.

22 There is one other thing that I want to leave  
23 with you, which was referred to by the Attorney General of  
24 California. The Attorney General of California, nearly  
25 everything he said, I can agree with. There was one

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1 recommendation, though, that he made that has got some  
2 pitfalls and traps in it. He cited the Fifth Circuit  
3 decision recommending or holding in that case that where  
4 good faith had been shown by an officer that the exclu-  
5 sionary rule should not apply.

6 Now, gentlemen, that would fudge the issue  
7 before you. That would duck the issue of the exclusion-  
8 ary rule. It would be like trying to make the Grand  
9 Canyon in two jumps, and it would lead ultimately to  
10 disaster. The application of such a good faith rule would  
11 not work, and since it would be obvious that it wouldn't  
12 work, the people who have been supporting the exclusionary  
13 rule would say, "See, we told you so. Even with a good  
14 faith test for the officer's conduct, it just doesn't work."

15 Now, here's why it won't work. In the first  
16 place, it's obvious that a good faith test of the officer's  
17 conduct puts a premium on ignorance and lack of training.  
18 The rookie policeman will make an honest error more often  
19 than the trained veteran. So you're encouraging the  
20 police not to give their people training so that they can  
21 plead ignorance, ignorance of the law. Supposedly, I was  
22 taught, that's no excuse. But that's what the good faith  
23 test would do.

24 Then secondly, it would put a premium on lying.  
25 Every officer will be tempted to rationalize after the

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1 event that the circumstances were really the way, that he  
 2 now says they are, in order to justify his own good faith.  
 3 And then thirdly, it will make hypocrites out of judges,  
 4 just as they are now. The judge will be tempted to  
 5 believe the officer, even if in his own common sense he  
 6 knows the officer is lying, and he will let the officer  
 7 off and justify the seizure on the basis of the officer's  
 8 good faith.

9 And fourthly, it's just the wrong way to go at  
 10 it. Because the good faith exception leaves applicable  
 11 the conduct of an officer who acts in bad faith. It in  
 12 enshrines the exclusionary rule. The exclusionary rule is  
 13 so irrational a remedy, freeing a known guilty person,  
 14 that there is no justification for that kind of a rule of  
 15 evidence or rule in crime.

16 Also, the good faith offers no protection to  
 17 innocent victims. All of the alternative measures that I  
 18 have suggested offer protection to innocent victims of  
 19 illegal searches. The good faith rule would simply  
 20 enshrine the exclusionary rule, still let the guilty go  
 21 free, and offer no protection to the innocent.

22 CHAIRMAN HARRIS: Let me interrupt here and  
 23 suggest that we move on. We are almost to the end of the  
 24 morning session, and I know Mr. Armstrong and Mr. Carrington  
 25 probably have questions. So let me just move on to

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1 Mr. Armstrong.

2 MR. ARMSTRONG: Prof. Kamisar, we've received  
 3 testimony, particularly from the Administrator of DEA,  
 4 during these hearings. He provided the Task Force members  
 5 with the number of cases that are either on appeal or that  
 6 have been dismissed as a result of the exclusionary rule.  
 7 He broached the problem with DEA as a specialized kind of  
 8 law enforcement effort, where the defendants are really  
 9 target defendants, and their intelligence indicates that  
 10 they are actively involved in the illegal trafficking of  
 11 narcotics.

12 Yet we have that basic problem reported by the  
 13 Administrator. Given that as a practical viewpoint, where  
 14 you have a target defendant whose activities are well  
 15 known from surveillance by DEA agents, don't you think the  
 16 exclusionary rule is a hurdle or obstacle when there are  
 17 instances -- for example, I think I could be corrected, he  
 18 stated, where the search warrant was served on a home  
 19 where the defendant was believed to be residing, and while  
 20 the defendant was not there, in plain view, contraband  
 21 was found. And that case is on appeal now into the --  
 22 I'm not quite sure, maybe Sixth Circuit.

23 PROF. KAMISAR: Well, the example -- the ques-  
 24 tions you raise, I must, at the risk of repeating myself,  
 25 illustrate the point that your quarrel is really with the

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1 content of the law. In other words, I can say, "Well,  
2 let's be sensible and let's say that the narcotics agents  
3 ought to be allowed to stop or search or arrest or do this  
4 or do that" -- or whether one thinks that you need an  
5 arrest warrant to arrest someone in his own home, or you  
6 need a search warrant to arrest someone in a home other  
7 than his own -- I mean, those are all questions of the law  
8 of search and seizure. They don't deal with the exclu-  
9 sionary rule.

10 If we abolish the exclusionary rule, the police  
11 should still be asking themselves -- but they would not.  
12 They would not. You see, your questions, it seems to me,  
13 illustrate that again the exclusionary rule is the Fourth  
14 Amendment. Because whether or not you need a search  
15 warrant to arrest someone at his friend's home, search  
16 warrant to justify the invasion of his friend's privacy,  
17 is a question that has always been there, but people  
18 didn't seem to care about, until the consequences of  
19 exclusion came up. You follow me?

20 Now, for example, I'll give you another example,  
21 take the Mendenhall case. Now, last term, the Supreme  
22 Court confused everybody, almost everybody, by coming down  
23 with two cases involving the Drug Enforcement Administra-  
24 tion. One was Mendenhall and one was Reed. This is the  
25 question of, what do you need to stop someone suspected of

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1 being a drug courier? And in one case they said 'the  
2 fact the woman was the last person off the plane, and  
3 changed airline tickets, and so forth, was enough. In  
4 the other case, in Reed, they said the fact that the two  
5 suspects were apparently trying to avoid being associa-  
6 ted with each other when they left the plane was not  
7 enough. Now, those are questions of the content of the  
8 law of search and seizure. They have nothing to do with  
9 the exclusionary rule. The question is, should the police  
10 be allowed to stop someone simply because he or she is the  
11 last person off the plane and is changing airlines, or not?

12 Now, I would agree with Judge Wilkey and others  
13 in this respect. Ironically, the exclusionary rule in a  
14 sense helps the police, because it would have been much  
15 easier to say in the abstract, if there were no exclusion-  
16 ary rule, to set very, very high standards, and say, you  
17 can't stop someone and ask for his airline ticket without  
18 probable cause, and so forth, but let the evidence in  
19 anyhow. It's because the exclusionary rule is putting  
20 pressure on the courts -- and there is no denial that it  
21 is -- that the courts, it seems to me, if anything, begin  
22 to shrink the body of the law of search and seizure.

23 Now, I wouldn't be surprised, for example, if  
24 a majority of the courts were to say in future years, and  
25 some judges went off on that ground in Mendenhall, let's

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1 not even discuss whether there was reasonable suspicion  
2 to stop this person. The drug agents don't need anything,  
3 because they just approached her. They just chatted with  
4 her. It was not a stop, it was nothing. It was simply  
5 a police-citizen encounter, and that isn't even a seizure  
6 within the meaning of the Fourth Amendment.

7 Now, that whole question of what is a seizure  
8 and what is not a seizure, and what is reasonable suspi-  
9 cion and what is not, has nothing to do with the exclu-  
10 sionary rule. But ironically, from the point of view of  
11 those who favor the exclusionary rule, the pressure to  
12 get in the evidence -- and I mean judges are human, not  
13 just Judge Wilkey, other judges, too. The pressure to  
14 get in the evidence leads them to say, "Well, there was  
15 reasonable suspicion", or, "It wasn't a seizure at all."

16 Now, I had a little debate with Mr. Van de Kamp  
17 in Los Angeles a month ago. He's coming here on something  
18 else. And he made the point, and I guess my answer was,  
19 you know, if I had the choice -- you know, they're shrink-  
20 ing down, they're down-sizing the Fourth Amendment because  
21 of the exclusionary rule. And that's probably true.  
22 But my answer was, and is now, I'd rather have a down-  
23 sized Fourth Amendment mean something than have a great,  
24 big, wonderful, fat, majestic Fourth Amendment that's  
25 inscribed on the walls, that has no flesh and blood.

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1 MR. ARMSTRONG: Thank you, Professor.

2 CHAIRMAN HARRIS: Mr. Carrington.

3 MR. CARRINGTON: Judge Wilkey, I agree 100  
4 percent with you on your thoughts on the exclusionary  
5 rule.

6 JUDGE WILKEY: Thank you.

7 MR. CARRINGTON: I agree with you that the  
8 exclusionary rule should be abolished. If it's an anach-  
9 ronism, then it should be taken out, as an anachronism.  
10 I'm somewhat confused. In your alternative, when you are  
11 having the mini-trial or some other remedy, would you  
12 deny to the officer the defense that he was acting in good  
13 faith and impose a kind of strict liability on him  
14 personally? For example, if the officer happened to fall  
15 between Judge Friendly and Judge Mansfield and Judge  
16 Meskill, would he be able to raise that good faith  
17 defense in the proceeding against himself?

18 JUDGE WILKEY: Good question. Good faith of the  
19 officer would be one of several factors taken into consi-  
20 deration in assessing his penalty. And in the case of  
21 where the officer acted in a way that did not offend the  
22 standards which the general public would like for the  
23 policeman to behave, but he was in error on the law, his  
24 penalty might be a series of courses in the law of search  
25 and seizure, just as we penalize drivers who have

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1 accidents by sending them to driving school.

2 If the officer acted in bad faith, this would  
3 be something that would increase his penalty and the  
4 responsible police authorities ought to be among those  
5 insisting that an increased penalty be imposed.

6 MR. CARRINGTON: Judge, I was a working police  
7 officer for 10 years, both as a federal agent and with the  
8 Chicago and Detroit police departments. And during that  
9 entire time I was an attorney, and during a lot of the  
10 time I was teaching search and seizure. I probably  
11 engaged in some 300 to 500 searches and seizures. And in  
12 many, if not most, of those, I wasn't really sure whether  
13 we were right or not, because the law of search and seiz-  
14 ure is so confoundedly complex.

15 I think to penalize an officer who falls into  
16 the area where the judges can't agree, even by making them  
17 go take extra courses, is a terribly unfair burden. If  
18 he's acting in bad faith, then I definitely think he  
19 should be brought up short. But if he is trying to comply  
20 and it's evident from the factual setting that he's trying  
21 to comply with this incredibly complex body of search and  
22 seizure, I think it's unfair -- I think most people have  
23 addressed this problem by saying that if he was acting in  
24 good faith, by an objective standard, not by his state-  
25 ment, you know, like, do you have the good faith defense

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1 in a civil case, then the officer is not penalized but  
2 the employing entity is penalized.

3 I think if police officers perceive that they're  
4 going to be held personally liable for trying to enforce  
5 the law in good faith, you're going to get an awful lot  
6 less searches and seizures.

7 JUDGE WILKEY: Well, then we get back to what  
8 I mentioned as the community standard of punishment on  
9 these things. It might well be that in a case of -- and  
10 I agree that all of these search and seizure cases are in  
11 a field of very complex law -- it might very well be that  
12 the penalty assessed would be against the employing  
13 entity, and that would go to the benefit of the innocent  
14 victim of the search, and that the officer would go  
15 entirely free, that everyone concerned would understand  
16 that the officer acted in perfect good faith in a diffi-  
17 cult situation, and there would be no blot or blemish on  
18 his record.

19 And that's why I have urged that the question of  
20 the officer's conduct be decided immediately by the court  
21 and the jury that heard the original case, in the case  
22 where there is actually a prosecution, and that it be  
23 decided in accordance with either community standards or a  
24 general definition of reasonableness or probable cause that  
25 might be given by the Congress.

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1 MR. CARRINGTON: Let me make sure I'm clear on  
2 this. You don't object to the contention that if by all  
3 objective criteria the officer was acting in good faith  
4 and fell into the gray area, which I would say is about  
5 80 percent of the area of search and seizure, that that  
6 would certainly be a defense for him, that there would be  
7 no --

8 JUDGE WILKEY: Absolutely. That would be a  
9 defense under any circumstance, and in some circumstances  
10 it might exonerate him entirely. But that's an evaluation  
11 for the individual case, in accordance with standards as  
12 defined.

13 MR. CARRINGTON: Can I close by reading some-  
14 thing that I think bolsters my contention? And this is  
15 very short. On the complexity of the law of search and  
16 seizure. This is a syllabus, which, for the layman, is  
17 where they say how the court stacks up, in their decision  
18 in the Mendenhall case. "Stewart J. submitted,  
19 announced the Court's judgment and delivered an opinion of  
20 the Court with respect to Parts 1, 2(b), 2(c) and 3, in  
21 which Burger C.J. and Blackmun and Powell and Rehnquist J.  
22 joined, and an opinion with respect to Part 2(a) in which  
23 Rehnquist J. joined, judgment in which Burger C.J. and  
24 Blackmun J. joined. White filed a dissenting opinion in  
25 which Brennan, Marshall, Stevens, Justices, joined."

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1 Then they drop a footnote and say, "The Chief Justice,  
2 Mr. Justice Blackmun and Mr. Justice Powell all joined in  
3 all but Part 2(a) of the opinion."

4 If the Supreme Court can't make up their mind,  
5 how is a high school educated police officer going to do  
6 it?

7 That's all I have. No further questions.

8 CHAIRMAN HARRIS: Thank you. I think --

9 PROF. KAMISAR: May I just close by thanking  
10 the Task Force, and pointing out that I must say I had my  
11 doubts about whether this body, like some other bodies,  
12 was interested in stacking the hearings and the witnesses,  
13 but I certainly think that we've demonstrated today that  
14 you let us go at each other -- what's the expression,  
15 tooth and nail. And I don't think I've ever had more  
16 time to present my point of view, even though I may have  
17 had more receptive audiences.

18 CHAIRMAN HARRIS: Well, I think we ought to  
19 close by pointing out that three things are fairly clear;  
20 one, that your points of view are very different, two,  
21 that your styles are very different, and three, that  
22 you're both equally effective spokesmen for differing  
23 points of view. And we really thank you for taking time  
24 from your busy schedules to come here. You've sharpened  
25 the issues for us, and we appreciate both of your

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1 presentations.

2 JUDGE WILKEY: Thank you for permitting us to  
3 appear.

4 CHAIRMAN HARRIS: We will now adjourn, to  
5 reconvene here at 2:00 o'clock. Those of you joining us  
6 for lunch, lunch is served in the Plaza Room on the main  
7 level now.

8 (Whereupon, at 12:35 p.m., the hearing was  
9 recessed for lunch until 1:30 p.m.)

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1 LUNCHEON SESSION

2 (1:30 p.m.)

3 CHAIRMAN HARRIS: Ladies and gentlemen, we're  
4 ready to begin our luncheon program. Let me introduce it  
5 this way. When I was living in San Diego, California, in  
6 the early 70's and late 60's, about this time of the year  
7 when you'd be driving around the streets you'd see an  
8 influx of Arizona license plates, especially around the  
9 beach area. And that was always the cause for some  
10 muttering about, "We're going to have to tolerate the  
11 Arizonans for the summer until they go back home for the  
12 winter."

13 Well, today we have an Arizonan with us, and the  
14 situation is very different. We're delighted to have him  
15 and privileged to have him. Our luncheon speaker, Pete  
16 Dunn, is a three-term member of the Arizona House of  
17 Representatives. He is Chairman of the House Committee on  
18 the Judiciary in Arizona. He is also Chairman of the  
19 Organized Crime Study Oversight Committee. He's a member  
20 of the Joint Juvenile Justice Committee. And he is  
21 Chairman of the Select Committee on Alcohol Abuse. Pete  
22 Dunn is considered to be one of the leading state legis-  
23 lators in the United States in the area of criminal  
24 justice. He has written on it. He has introduced and  
25 written much creative legislation. And without further

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1 ado, I would like to bring him up here to address us  
2 today. Pete Dunn.

3 PRESENTATION BY:

4 PETE DUNN, REPRESENTATIVE,

5 ARIZONA HOUSE OF REPRESENTATIVES.

6 REPRESENTATIVE DUNN: Thank you, Jeff.

7 Gov. Brown, members of the Task Force, ladies  
8 and gentlemen, first of all, the reason so many Arizonans  
9 come to California is so that we can get a chance to get  
10 some of our water back.

11 I am both pleased and honored to have this  
12 opportunity to discuss my views regarding the control of  
13 violent crime in America. No subject is more important  
14 for our consideration. Challenging us more directly than  
15 inflation, health care, education, welfare, or energy,  
16 crime is America's major domestic crisis. It is a social  
17 catastrophe which is quite literally changing the way we  
18 live, undermining our faith in government and civil  
19 society, and corrupting our free markets.

20 Unchecked, it threatens to surely destroy free  
21 society, as our citizens form neighborhood vigilante  
22 committees and turn their homes into armed camps. Let  
23 no one mistake the central reality of this issue. Simply  
24 stated, this free society cannot long survive the crime  
25 rates we are presently suffering. And so the business we

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1 are about today and yesterday at this meeting is at root  
2 the business of preserving freedom.

3 I was first elected to the Arizona State  
4 Legislature in 1976, and presently, as Jeff said, am  
5 Chairman of the House Committee on Judiciary. During my  
6 legislative service, one of my principal focuses has been  
7 on crime control and the criminal justice system. I've  
8 had the opportunity to study the system first-hand from  
9 juvenile arrests through adult post-parole programs. As  
10 a lawyer and legislator, I was involved in the enactment  
11 of a fully revised Criminal Code for our state, one which  
12 replaced a code dating from Arizona's territorial days.

13 As a business man, I have first-hand experience  
14 with the costs and inconvenience of our crime problem, not  
15 only theft and burglary losses and the costs of alarms and  
16 iron bars, but the need to escort our female employees to  
17 their cars at night.

18 Let me begin by sketching for you what I  
19 believe to be the dimensions of the current crisis, at  
20 least as they are seen in my home state, Arizona. Many  
21 people, especially people in Arizona, think high crime  
22 rates are basically traceable to New York, Detroit,  
23 Chicago and St. Louis, the lawless and decadent east.  
24 I always tell them to think again. Arizona's crime rate  
25 is consistently a leader. For many years, my state has

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1 had the highest or second highest rates of crime of any  
2 state in the union. Arizona's combined property crime  
3 rate is 53 percent higher than the national average, and  
4 ranks second among all the states.

5 The crime rate in Phoenix is higher than any  
6 comparable area in the country. The violent crime rate  
7 for Arizona cities is 67 percent higher than the rate for  
8 U.S. cities. In 1979 when the U.S. murder rate was  
9 increasing 9 percent, Arizona's was increasing three times  
10 that amount. Faced with this challenged, how have we  
11 responded? Out of the next 100 crimes committed in  
12 Arizona, only 50 are likely to be reported. Fear of  
13 getting involved, utter lack of confidence in our courts  
14 to either act with dispatch or mete out just punishment  
15 are all reasons for this failure to report.

16 Out of the 50 reported crimes, arrests will  
17 probably take place for only 10 of them. From those 10  
18 offenses resulting in arrests, successful prosecution will  
19 likely be achieved in about seven of those cases. And out  
20 of those seven successful prosecutions, probably one,  
21 and never more than two, will result in even periodic  
22 imprisonment for those guilty of crime.

23 Consider the national dimensions of the problem.  
24 In 1976, the year we celebrated 200 years of American  
25 liberty, there were enough serious crimes to have 20

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1 committed every minute of every day. During the year we  
2 celebrated the meaning of America, our fellow countrymen  
3 were murdered at a rate to allow each to have died every  
4 30 minutes of every hour of every day.

5 Dean Morris has surveyed this bleak landscape  
6 and noted with wry insight, and I quote, "Other nations  
7 may question our claim to be the land of the free, but  
8 they can hardly deny our right to recognition as the  
9 home of the brave."

10 How could we in America come to be locked in  
11 such a dismal prison of crime and violence? Let me, in  
12 agreement with others at this conference, suggest to you  
13 that these wounds are largely self-inflicted. How do I  
14 mean this? First, and perhaps most importantly, there  
15 has been a failure of our social and political leaders,  
16 most notably in Congress, to embrace any consistent ideol-  
17 ogy with regard to crime control. For example, at the  
18 same time we were supposed to be embarking on a new war on  
19 crime, particularly street crime, funded with money from  
20 Washington, we were told that if we could only eliminate  
21 poverty, racism, poor diet or poor housing, we could wipe  
22 out crime. Poverty programs were to be the cure. During  
23 that same time period, of course, America was becoming  
24 more affluent, realized more opportunities for minorities,  
25 was better fed, better housed and better educated than

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1 ever before, and yet we saw an increase in crime, unparal-  
2 leled in our history.

3 The reasons for that increase have little to do  
4 with our failure to establish the utopian great society,  
5 except perhaps to the extent that utopian rhetoric  
6 created too many unrealized dreams. But rather our  
7 failures have a lot to do with our unwillingness, even  
8 our inability, to punish criminal conduct.

9 At the core of our crisis is an abandonment of  
10 a consistent, tough-minded set of moral principles about  
11 crime and its suppression. We have let the apologists of  
12 crime successfully challenge the morality of just punish-  
13 ment, which at the heart of our criminal justice system.  
14 The apologists for now have us on the run. Our investi-  
15 gations are befuddled with Byzantine, and often contra-  
16 dictory, rules. Our courts are hopelessly delayed by  
17 intransigent defendants who subvert the purposes of  
18 speedy trial rules and bring greater chance of acquittal  
19 with every passing day.

20 Our corrections system is torn in opposite  
21 directions simultaneously by policy-making bodies who  
22 mouth the tough rhetoric of punishment, without spending  
23 the money for adequate facilities, and all the while  
24 racing from one new treatment and rehabilitation program  
25 to the next. To create sound public policy, our first

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1 obligation must be to identify in detail these reasons  
2 for our inability to cope with crime, and overcome these  
3 reasons by application of a consistent set of principles.  
4 We need no longer apologize, out of some misdirected  
5 humanitarianism, for defending society and punishing cri-  
6 minals. Our energy must now be directed to protecting  
7 future victim.

8 We must adopt the view that if society makes  
9 rational decisions, adopts reasonable policies, we can,  
10 in our time, substantially reduce the incidence and  
11 impact of crime and its ravages, and that to do so is a  
12 task of our highest priority. Those policies must take  
13 essentially three forms; procedural, jurisdictional and  
14 financial. Let us briefly examine each of those policies.

15 President William McKinley was assassinated  
16 on September 6th, 1901. Less than two months later, on  
17 October 29th, 1901, the assassin was executed. On the  
18 evening of November 16th, 1973, in Phoenix, Arizona,  
19 John Knapp entered the room of his two infant daughters.  
20 By pouring Coleman fuel throughout their bedroom and  
21 lighting a match, he turned their sleeping place into an  
22 inferno. He then returned to bed to lie down while his  
23 children burned. He made no attempt to rescue them, and  
24 held back neighbors from entering the house. The baby  
25 girls died horribly of incineration. Now, almost eight

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1 years after this vicious crime, Mr. Knapp's case is still  
2 pending in the courts.

3 His conviction was affirmed in 1977 by the  
4 Arizona Supreme Court. The U.S. Supreme Court denied  
5 cert in 1978. But with rules of habeas review as they  
6 presently exist, Mr. Knapp has succeeded in extending  
7 the finality of his conviction beyond comprehension.

8 The question reasonably arises, what has  
9 happened in America in the intervening years since the  
10 McKinley assassination to so paralyze our justice system  
11 that it evidences advanced stages of rigormortis? Why  
12 have the demands of the vast majority of Americans for  
13 action against a crime menace that threatens the very  
14 fabric of our social life gone unheeded? "The great and  
15 chief end of men uniting into commonwealth and putting  
16 themselves under government", wrote John Locke, "is the  
17 mutual preservation of their lives, liberties and  
18 estates." There is no plausible excuse for the state,  
19 except to defend the individual.

20 Why is it that we cannot do that, which is the  
21 basic purpose of our government? In part, the answer to  
22 that is because the whole of the criminal justice system  
23 has been turned into a game, a game where a philosopher  
24 wrote, "It is partly of chance, partly of skill, in which  
25 the proper end to be gained is not that of the truth but

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1 that both sides may engage in fair play."

2 Today that game is too often engaged in, as has  
3 been observed by William F. Buckley, Jr., "by decadent  
4 professional enthusiasts whose vision of the purpose of  
5 justice has degenerated into a thoughtless ritual on  
6 behalf of the defendant class." This thoughtless ritual  
7 is evidenced in habeas corpus procedures which allow for  
8 literally endless appeal. The repeated abusive use of  
9 federal habeas corpus to attack state criminal convictions  
10 is undermining whatever integrity is left in our system.

11 Public confidence continues to be shaken by a  
12 system where criminals are caught, convicted and sentenced  
13 but where the judgment rendered may be appealed, cross-  
14 appealed and counter-appealed years after the initial  
15 verdict. Several proposals are now pending in the United  
16 States Congress. The principal among them is S 653  
17 introduced by Senators Thurmond and Chiles. They deserve  
18 careful consideration and support.

19 Nowhere is this thoughtless ritual more evident  
20 than in the law of the exclusionary rule.

21 Again in Arizona, on July 29, 1980, John Doe --  
22 this case is still pending -- left his state licensed  
23 day care center with 9-year-old Tommy, repeating a course  
24 of conduct he had engaged in with horrifying routine. He  
25 took Tommy home with him and molested him for several

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1 hours, all the while photographing himself and his  
2 9-year-old victim. Several days later, Tommy reported  
3 the incident to his mother. She called the police. The  
4 officer concluded that a search of Doe's home was indi-  
5 cated, and filled out an information sheet for the Justice  
6 of the Peace.

7 The information sheet which was attached to the  
8 officer's affidavit indicated that the offense had occur-  
9 red on August 29, 1980. The wrong number had been typed  
10 on the information sheet, so that it read in fact 8-29-80,  
11 and not the correct date of 7-29-80. The officer's  
12 affidavit was correctly dated August 14, 1980. The  
13 warrant was secured, and when executed, the search  
14 revealed not only the photos of Doe and Tommy, but also of  
15 Doe and others.

16 Maricopa County Superior Court concluded that  
17 all the photos and other physical evidence had to be  
18 excluded, because the Justice of the Peace could not have  
19 reasonably concluded from the face of the documents that  
20 there was probable cause to support a search for a crime  
21 that occurred a month in the future. Now the case awaits  
22 the outcome of the prosecutor's decision, and the parents'  
23 decision, to try the matter with only 9-year-old Tommy's  
24 testimony. They must calculate the trauma that that  
25 testimony would cause to the 9-year-old boy. And of

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1 course the photographs, which are perfectly relevant  
2 proofs of guilt, may never be used because of the exclu-  
3 sionary rule.

4 The Chief Justice of the United States, of  
5 which we've heard a great deal this morning about his  
6 transformation on the exclusionary rule, has written that,  
7 "Its function is simple -- the exclusion of truth from  
8 the fact-finding process." Prof. Dallin Oaks noted,  
9 "Only a system with a limitless patience for irrationality  
10 could tolerate the fact that where there has been one  
11 wrong, the defendant's, he will be punished, but where  
12 there have been two wrongs, the defendant's and the  
13 officer's, both will go free."

14 So again, the question reasonably arises, what  
15 can be done? I agree with Justice White of the United  
16 States Supreme Court who wrote, "The rule should be sub-  
17 stantially modified so as to prevent its application in  
18 those circumstances where the evidence at issue was seized  
19 by an officer acting in a good faith belief that his  
20 conduct comported with existing law and having reasonable  
21 ground for this belief. These are recurring situations,  
22 and recurringly evidence is excluded without any realistic  
23 expectation that its exclusion will contribute in the  
24 slightest to the purposes of the rule, even though the  
25 trial will be seriously affected, or the indictment

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1 dismissed."

2       Efforts in the Congress and state legislatures  
3 to modify the application of the exclusionary rule along  
4 Justice White's suggestion must be vigorously supported.  
5 In supporting these efforts, we are not turning our backs  
6 on the important protections of the Bill of Rights, but  
7 rather restoring a sense of moderation and balance to our  
8 criminal justice system.

9       Permit me to sketch for you briefly the finan-  
10 cial context of the solution to our problems in the  
11 criminal justice system by relating some facts about the  
12 State of Arizona's budget. In 1978, total state expen-  
13 ditures in Arizona exceeded \$1 billion, while the total  
14 allocated to the criminal justice system was \$80 million.  
15 Less than 8 percent of the total state budget was spent  
16 on what most citizens would agree to be the government's  
17 most important reason for existence.

18       Total expenditures by all levels of government  
19 in Arizona saw less than 7 percent of that money being  
20 spent on the criminal justice system. While health,  
21 welfare and education are important governmental concerns,  
22 should they overshadow by a ratio of 10 to 1 the impor-  
23 tance we attach to crime control? My suspicion is that  
24 the ratio I have just read would hold for an analysis of  
25 all government expenditures in America.

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1       Put very simply, we must adjust our priorities,  
2 and if necessary reallocate the expenditures of these  
3 public revenues. In this effort, the Federal Government  
4 could turn over money or taxing base to the states for  
5 direct and increased funding of the costs of our criminal  
6 justice system. With the demise of the Law Enforcement  
7 Assistance Administration, measures like House Resolution  
8 3359 and other proposals to make block grants to state  
9 criminal justice programs need to be enacted by the  
10 Congress. There is no alternative. And while the propo-  
11 sition that government should increase spending in these  
12 days of budget cuts is a risky one to advocate, and one  
13 not likely to fall on sympathetic ears, no proposal is  
14 more important. States simply need more money for  
15 prisons and jails, for courts, and for prosecutors,  
16 and for police.

17       We cannot continue this tough talk of mandatory  
18 sentences for crime and continue to be unable, even  
19 assuming we develop the will, to carry out that threat  
20 of punishment because we lack adequate space within our  
21 prison system, or too few courts or too few prosecutors.  
22 States need more money for prisons designed to meet local,  
23 not federally mandated and unrealistic standards. They  
24 need courts which can accommodate a drastically increas-  
25 ing case load.

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1 In 1978, 112,000 serious crimes were reported  
 2 in Maricopa County. That's Phoenix, Arizona. And yet  
 3 we only had 10 criminal division courts to deal with the  
 4 resulting criminal case load. Inadequate and unavailable  
 5 courtroom facilities encourage everyone with a role in  
 6 the system to avoid trial. While plea bargaining often  
 7 serves to protect the public, it is only the credible  
 8 threat of trial and conviction and punishment which gives  
 9 plea bargaining its moral legitimacy.

10 States need more money for local prosecutors.  
 11 In Maricopa County the average deputy county attorney  
 12 carries a case load of 40 to 50 cases at any one time.  
 13 Under the crushing burden of that work load, not only do  
 14 prosecutors burn out, but courts get clogged, victims are  
 15 forgotten, punishment delayed and made uncertain, and in  
 16 the end justice suffers.

17 The question reasonably arises as to where the  
 18 money will come from. Taxpayers will not likely support  
 19 an increase in taxes, as we just learned in Los Angeles  
 20 yesterday. Funds for criminal justice must therefore  
 21 most likely come from reallocation of public revenues.  
 22 Furthermore, any new resources made available to the  
 23 system must be spent with a clearer, more realistic view  
 24 of our priorities.

25 It is estimated that fully 80 to 85 percent of

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1 the roughly \$70 million budget of the Phoenix police  
 2 department is spent on nonrelated criminal activities,  
 3 mostly traffic. Again, I suspect that most if not all  
 4 police departments in America reflect the same priority.  
 5 It is essential that both law enforcement priorities and  
 6 the demands that the public places on law enforcement be  
 7 re-evaluated; perhaps taking our police out of accident  
 8 investigation and minor traffic enforcement is the first  
 9 step.

10 In reassessing and establishing new priorities,  
 11 jurisdictional concepts cannot be forgotten. In determin-  
 12 ing what federal role is appropriate, a sense of these  
 13 jurisdictional concepts is critical. Every level of  
 14 government, federal, state and local, cannot continue to  
 15 assert authority for every problem in the criminal justice  
 16 system. The Federal Government cannot become a policeman  
 17 for every community in America. It can help us build  
 18 prisons, it can help fund the prosecution of career  
 19 criminals, but it cannot take the lead in investigating or  
 20 prosecuting street crime.

21 Such a job is best left to each community where  
 22 law enforcement needs to be reactive and quick. The  
 23 Federal Government can concentrate its direct enforcement  
 24 efforts on sophisticated national and international  
 25 organized criminal syndicates. By doing that it brings

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1 to bear resources that are unavailable at the local level  
 2 for the long, sophisticated and continuing investigations  
 3 of complex crime. Similarly, the states, with the resour-  
 4 ces of state grand juries and statewide investigative and  
 5 prosecutorial jurisdiction, have a direct role to play in  
 6 the investigation and prosecution of white collar and  
 7 organized crime.

8 They have a much less significant role to play  
 9 in the investigation and prosecution of street crime.  
 10 Those problems are better left to be solved by each local  
 11 community with a commitment of resources assisted by the  
 12 state and federal governments.

13 I also favor, and I think it's very critical.  
 14 to the criminal justice system, that we get on with the  
 15 business of restoring and carrying out the death penalty  
 16 in America. Whether we do that through acts of Congress,  
 17 constitutional amendments, or direct rulings by the U.S.  
 18 Supreme Court and an end to the endless appeals, we have  
 19 to restore the death penalty to the criminal justice  
 20 system.

21 Whether the issue is the imposition of the death  
 22 penalty, funding for our criminal justice system, federal  
 23 versus state and local priorities, or the abolition of  
 24 needless procedural barriers to determining guilt and  
 25 innocence, we in America are in a position to move forward

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1 on these important issues. We need no longer apologize  
 2 for the strength of our case, because in preserving  
 3 freedom we follow a just cause. We need a restoration  
 4 of the tough-minded, no-nonsense attitude which allows  
 5 civilized society to deal with those who threaten its  
 6 existence. We need to develop a concern for the victims  
 7 of crime, even as we remain sensitive to constitutional  
 8 rights.

9 Progress, of course, will be slow, but the  
 10 first steps need to be taken and need to be taken now.

11 Thank you very much.

12 CHAIRMAN HARRIS: Thank you very much, Mr. Dunn.  
 13 We enjoyed the remarks.

14 Ladies and gentlemen, that concludes luncheon.  
 15 The meeting and testimony will resume in 10 minutes in  
 16 the main ballroom.

17 (Whereupon, at 2:00 p.m., the hearing was  
 18 recessed, to reconvene at 2:10 p.m.)  
 19  
 20  
 21  
 22  
 23  
 24  
 25

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AFTERNOON SESSION

(2:20 p.m.)

CHAIRMAN HARRIS: We're ready to begin our afternoon session.

Our first witness this afternoon is the Honorable John Van de Kamp, the District Attorney of Los Angeles.

Welcome. We're happy that you could take the time from your schedule to join us, and we're anxious to hear your testimony.

PRESENTATION BY:

HONORABLE JOHN K. VAN DE KAMP,

DISTRICT ATTORNEY, LOS ANGELES COUNTY.

MR. VAN DE KAMP: Thank you, Mr. Chairman.  
Thank you for lunch.

Mr. Chairman, members of the Task Force, I'd like to make some quick generalizations this afternoon and then offer some brief recommendations. First, to generalize for a moment, because I think it has to be said. One of the first obligations of government is to protect life and liberty. It is a fundamental reason why governments are established. When governments fail or falter in fulfilling those obligations, our people suffer and their confidence in our institutions is eroded.

That erosion can lead to extralegal forms of

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conduct, for example in this very community, between 1850 and 1870 we were plagued with vigilantism because our institutions of law and order were weak and ineffective. As a result of that, many of the leading members of this of this community, in that period of time, including mayors, district court judges -- I haven't heard of any public defenders -- but they participated in lynchings and extralegal executions. We had over 50 of them in that period of time. I mention that to make a point. Violent crime in our major cities, as you all know, has increased dramatically in the past two years. In our own community in this particular year our Part 1 crimes continue to increase, albeit at a lesser rate than in 1979 and 1980.

Early figures for the City of Los Angeles in '81 show a four percent increase thus far. Murders are occurring at a rate 12 percent higher than last year's record, with 382 through May 14th as opposed to 296 during the same period last year.

As a result of that crime increase public confidence in our institutions continues to wane. People are scared, they're confused. And while vigilantism has not returned to this community, and I pray it will not, people are arming themselves and they are providing ready consumers for the products of the burgeoning home security industry, oftentimes with ill effects. I was just

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1 handed a few minutes ago a copy of the Los Angeles Times,  
 2 May 29th. A caption on the photograph, "Trapped. Fire-  
 3 men view bars installed on windows of an apartment at  
 4 1145 East 24th Street to keep out intruders. But when  
 5 fire broke out Thursday, a woman, not immediately iden-  
 6 tified, died in the bathroom after trying vainly to pry  
 7 open the bars. The firemen put out the blaze within 10  
 8 minutes."

9 I think that's a commentary on the fact that  
 10 by even protecting themselves people are causing addi-  
 11 tional problems for their own lives.

12 If crime continues to increase, one can expect  
 13 our people to take even more extreme measures than they  
 14 have thus far

15 All of this is by way of preface to say that  
 16 federal, state and local government must commit them-  
 17 selves to a real crime reduction program, a commitment  
 18 that should not change until substantial crime reduction  
 19 has been achieved. To do so will require the following:  
 20 first, front-line defense. By improving deterrence  
 21 through making apprehension and punishment of offenders  
 22 more quick and certain. To do this requires an improve-  
 23 ment in criminal justice resources from police to prison.  
 24 It will also require that we regain the confidence and  
 25 the cooperation of the people we serve.

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1 Second, as black-on-black crime and its problem  
 2 indicates -- and indeed if you're black in this particular  
 3 state your chances of being killed by virtue of a homicide  
 4 are six times that if you're white. As our Hispanic  
 5 gang problem would indicate, social progress in this  
 6 country needs to be accelerated. I think the Governor  
 7 talked about that yesterday. Our fellow citizens, parti-  
 8 cularly minorities in the lower economic underclass can  
 9 no longer be condemned to live lives of frustration and  
 10 rage which erupt in crime.

11 Third, we have to disarm. One need only look  
 12 at the statistics of homicide in this particular state,  
 13 indeed across the nation, but in California, a Bureau of  
 14 Criminal Statistics Report on homicides in 1979 reveals  
 15 the following: 59 percent of the homicides involve fire-  
 16 arms; 77 percent of the homicides are reported to have  
 17 been committed by a friend, acquaintance or relative; 50  
 18 percent of the homicides grew out of arguments. There  
 19 is a picture that emerges there of those homicides. One  
 20 comes to the inescapable conclusion, like it or not, that  
 21 the availability of guns, primarily handguns, fuels the  
 22 homicide rate and the level of violence in this country.

23 If we're serious about reducing those rates,  
 24 we'd better do something about reducing handgun avail-  
 25 ability, and that is best done through federal firearms

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1 legislation.

2 Now, turning now to your own Task Force and  
3 the charge that you've been given, establishment of task  
4 forces or commissions of this sort have oftentimes been  
5 regarded with some cynicism. They're usually considered  
6 as a way to cool off a hot potato. I'm hopeful, though,  
7 that your product will be useful to this new Administra-  
8 tion. I'm hopeful because you've been named at the  
9 beginning of a new Administration, and therefore help it  
10 shape new directions. And I'm hopeful because the  
11 Attorney General had the good sense to name some outstand-  
12 ing people to advise him in this effort.

13 More than anything else, though, this Admini-  
14 stration ---and here we are nearly five, six months into  
15 it -- needs to have a philosophy as to just how far it  
16 wants to be involved in the issue of crime. It can, as  
17 other administrations have done, restrict itself in its  
18 anticrime efforts by hiding behind the argument that its  
19 jurisdiction is limited, that it should limit itself to  
20 federal crimes and clearly federal matters and leave  
21 everything else to state and local government.

22 That's a very tempting path this year, given the  
23 President's attempt to reduce expenditures and taxes and  
24 thereby turn the economy around. Indeed, one Department  
25 of Justice official, who will go nameless, has said the

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1 Administration's anticrime program is the program to turn  
2 the economy around. I hope that does not represent the  
3 national Administration's sole attempt to take on the  
4 crime problem, because as you'll find, that's inadequate.

5 Given the nature of our crime problem, which  
6 affects our people much more directly than many of the  
7 international problems that we're now facing, I urge you  
8 to recommend an expanded federal program aimed at the  
9 three general areas I've just mentioned. Now, most  
10 immediately, the Justice Department and the federal law  
11 enforcement agencies need the resources to carry out their  
12 present responsibilities. The budget cuts recommended  
13 for those agencies appear to represent a statement by the  
14 budget preparers that crime is not of particular signi-  
15 ficance to the President and his advisors. I pray to God  
16 that that is not true.

17 But given your mandate and mine to focus on what  
18 can be done now, with existing resources, permit me to  
19 suggest that the primary federal priority today should be  
20 violent crime, and I would include burglary because it  
21 falls between a couple of stools into that definition, at  
22 the expense of efforts against property crimes. That can  
23 be done within federal jurisdiction by once again going  
24 after bank robbers across the country, by emphasizing the  
25 investigation and prosecution of those engaged in organized

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1 crime, and by a much heavier commitment by the FBI  
2 toward tracking down violent criminals engaged in unlaw-  
3 ful flight to avoid prosecution under 18 U.S. Code 1073.

4 In short, I think most of important of all,  
5 it's violence that our people are most concerned about,  
6 not that they're not concerned about other things as well.  
7 While the work of the Department in the white collar crime  
8 area has been valuable -- and that's an understatement --  
9 if we are to respond to the most pressing needs today with  
10 the resources that you have available, prioritization  
11 toward violent offenses and offenders has to be made,  
12 and that commitment needs to be made very, very clearly.

13 When I speak of existing federal resources, I  
14 think also of some available resources which could be of  
15 help in alleviating local jail and prison problems. As  
16 you know, and I think you've discussed it here, and I  
17 suggested it to Mr. Mese a couple of months ago, there is  
18 a shortage of local jails and state prisons today. In  
19 fact, some of them have been limited in terms of their  
20 capacity on conditions by virtue of federal court orders.  
21 In the years 1975 to 1979 the prison population in the  
22 United States increased one-third, to a total of 314,000  
23 state and federal inmates.

24 At the same time, as you well know, costs of  
25 new prison construction are nearly prohibitive; \$50,000,

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# CONTINUED

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1 plus, per new bed space. Now, meanwhile, the Federal  
 2 Government has a substantial inventory of unused or  
 3 practically unused military reservations, facilities and  
 4 land which might be made available to ease the financial  
 5 burdens on both the Federal Government and the states.  
 6 That property could be loaned out or leased to local  
 7 governments or state governments at low rates, for local  
 8 utilization, permitting states and local governments to  
 9 concentrate their criminal justice expenditures in other  
 10 parts of the system.

11 Also, in order to utilize our total criminal  
 12 justice resources across the country to the maximum, I'd  
 13 suggest that the United States Bureau of Prisons enter  
 14 into agreements with individual state correctional  
 15 directors to notify them when vacant prison bed space is  
 16 available, and make available that space as needed on a  
 17 cost basis to the states to alleviate overcrowding in  
 18 state institutions.

19 I would suggest that the reverse might also be  
 20 tried as well. The goal, of course, is to use the bed  
 21 space across the country to the maximum, to cut down the  
 22 heavy costs of new prison construction to the greatest  
 23 extent possible by better utilization of existing bed  
 24 space. Speaking of incarceration, our own local county  
 25 jail is now so overcrowded that the sheriff has put the

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1 Federal Government on notice that he will no longer house  
 2 federal prisoners there. That will necessitate prisoner  
 3 relocation to other federal prison space here in this  
 4 county, perhaps even as far away as San Diego, or by  
 5 virtue of contract space with other departments.

6 It also points out the need that we have in  
 7 this community for a federal correctional center to serve  
 8 as a holding jail for federal prisoners before adjudi-  
 9 cation, as a holding center for those convicted, and as  
 10 a half-way house for those at the point of release. Such  
 11 a center was in the works for several years but was axed  
 12 by the Carter Administration. I urge that budgeting for  
 13 such a center be considered again and be revived.

14 A metropolitan center falls into the second  
 15 phase of your study, that is, changes and recommendations  
 16 for the future. Let me capsulize some other recommenda-  
 17 tions for the future. First, a federal criminal justice  
 18 subvention program. Such a program, unlike its LEAA  
 19 antecedents, should have a limited focus addressing local  
 20 violent crime problems in keeping with the need to  
 21 prioritize on the violent crime issue. It can fund  
 22 prison and jail construction and development, and leave  
 23 behind, in a sense, a lasting legacy to the work of this  
 24 Administration. It can support local law enforcement  
 25 programs with proven track records. The career criminal

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1 programs of which you have heard in local prosecution  
2 offices is a good example. The Career Criminal Apprehen-  
3 sion programs in police departments work in tandem with  
4 those efforts. They're successful.

5 Here in this area, our anti-gang, so-called  
6 "Hardcore" program in Los Angeles, aimed at prosecuting  
7 and convicting violent gang offenders and leaders, was  
8 first funded by the Federal Government, by Juvenile  
9 Justice Delinquency Planning, a one-year funding proposi-  
10 tion. That program has proved to be a great success.  
11 It is now a key element in our County's anti-gang program.  
12 It was created to combat gang-related violence, and it's  
13 doing it very successfully in a community where we have  
14 had over 300 gang-related homicides during the past year.

15 Another program in this category would be the  
16 Victim Assistance programs aimed at alleviating the prob-  
17 lems of traumatized victims. In short, rather than using  
18 shotgun approach toward criminal justice funding, I'm  
19 suggesting a close targeting approach, more like a rifle  
20 shot.

21 These are the kinds of programs which should be  
22 nurtured and helped along through a federal subvention  
23 program aimed at reducing violence in our society.

24 Second, international drug interdiction. One  
25 area which local law enforcement cannot touch is the

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1 international drug traffic. We get it only after it  
2 arrives. One of the most effective federal programs I've  
3 seen has been DEA's international interdiction program  
4 which appears to have been extremely successful in reduc-  
5 ing the flow of heroin, particularly from Mexico and  
6 other parts of the world. Now, with opium production on  
7 the increase in Pakistan, Afghanistan and Iran, it's  
8 increasingly important that DEA federal narcotics enforce-  
9 ment recieve support to expand that international inter-  
10 diction, because by successful interdiction we will  
11 reduce the amount of those drugs available in the streets  
12 of our metropolitan centers in the United States.

13 So, too, it's important that they join with  
14 local governments in reducing the availability of the  
15 components of PCP, which in recent years has become the  
16 drug of choice in many urban centers. It is, as many of  
17 you know, a drug which oftentimes produces bizarre and  
18 violent behavior. And in this community it is a parti-  
19 cular problem. A report I received today from the Los  
20 Angeles Police Department indicates that during 1980  
21 L.A.P.D. seized 41,645,785 units of PCP, which is an  
22 increase of over 25 million units over that of the  
23 previous year. For any of us engaged in prosecution or  
24 police work, you will see that PCP, or angel dust, as it  
25 is known, is an extreme problem, particularly in the

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1 minority community where it is so available.

2 Now, how do you get a handle on that through  
3 the federal government? One way that we could get a  
4 handle on that better would be to pass federal legisla-  
5 tion which will require licensing and strict control of  
6 the manufacture and sale of piperidine, and other precur-  
7 sors of PCP, which will assure that when sold the precur-  
8 sors are going into chemical channels for legitimate  
9 purposes, and assure that they cannot be diverted for  
10 the manufacture of PCP.

11 Third, legislation. I've written the Attorney  
12 General to urge him to try to salvage a remnant of the  
13 Federal Criminal Code. That code was reflected in S 1722  
14 and H 6915. I don't think I have to tell you that the  
15 work which went into that code over the last, what, 12,  
16 13 years is mind-boggling. Many man years, woman years  
17 have been spent in that effort. The product that was  
18 obtained did not pass, was generally agreed upon as a  
19 good product with some flaws.

20 Why not pass out a consensus code, those issues  
21 that there's nearly unanimous agreement upon, leaving the  
22 issues which have hung up its passage to individual vote?  
23 Now, I know there will be individual legislative propo-  
24 sals submitted. I do recommend revision in federal bail  
25 laws, providing for the consideration of public safety in

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1 bail, particularly with respect to persons charged with  
2 a violent crime or with a record of violent crime. So  
3 too it should be possible to hold a person who has will-  
4 fully jumped bail until such time as the underlying case  
5 has been disposed of.

6 The exclusionary rule, number four, was discus-  
7 sed, I know, this morning, and I do not intend to dwell  
8 on it at great length because I'm sure that Prof. Kamisar  
9 and Judge Wilkey gave you a much better picture than I  
10 could in a short time this afternoon. My comment, I  
11 guess, falls a little bit between the two of them. First  
12 of all, I think we have to agree, and I've heard Prof.  
13 Kamisar pretty well agree that the body of rules which  
14 have grown up out of the exclusionary rule have not lived  
15 up to the expectations of those who framed the rule ori-  
16 ginally.

17 The body of rules which has developed represents  
18 an increasingly technical area of the law which no police-  
19 man can be expected to fully understand or comprehend.  
20 It's time now, in my view, not to abolish the rule,  
21 because it has served a useful purpose in a number of  
22 areas, but it is time to make the rule work, as it was  
23 originally intended to work, to deter unlawful police  
24 law enforcement. It's time to modify and simplify the  
25 rule.

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1 While the courts remain in the driver's seat  
 2 in dealing with that rule, some of the pressures which  
 3 have pushed the courts into developing new rules would  
 4 be diluted if Congress were to develop model rules of  
 5 conduct for federal police, that is, workable, learnable  
 6 rules. So, too, the quest for alternative protections  
 7 for violations of constitutional rights must continue, as  
 8 well as the need to finally determine what the guiding  
 9 philosophy will be for use of the rule.

10 Now, in all likelihood the Justice Department's  
 11 most important role here will be in its arguments to the  
 12 United States Supreme Courts in the years ahead. Of  
 13 particular importance is the Justice Department's approach  
 14 to the ruling of the Fifth Circuit in U.S. v. Williams  
 15 which came down last year, a 13 to 11 en banc decision,  
 16 where the Fifth Circuit held that evidence is not to be  
 17 suppressed when it's discovered by officers in the course  
 18 of action taken in good faith and in the reasonable,  
 19 though mistaken, belief that they are authorized.

20 Now, that modification makes some sense, and if  
 21 followed will serve to focus the rule on deterring inten-  
 22 tional and unjustifiable violations of rights. There is  
 23 much more that could be said here today. In closing I  
 24 would like to re-emphasize one point. People want better  
 25 protection, they deserve it. They are unhappy with the

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1 efforts made thus far. With federal help and with the  
 2 efforts of those in state and local government, we can  
 3 help to develop an attitude in government which is respon-  
 4 sive, an attitude which will spread from the seats of  
 5 government into our streets of our communities and to our  
 6 people, an attitude which says, we're not going to put up  
 7 with this kind of thing any more, and that if we want to  
 8 live safer lives, each one of us has individual obliga-  
 9 tions to meet, and that indeed each body of government  
 10 has major obligations to meet at the same time working  
 11 with one another.

12 There is a movie actor here by the name of  
 13 Iron Eyes Cody who is a real Indian, and maybe a profes-  
 14 sional Indian. And I think he phrased our problem pretty  
 15 well recently at a lunch I attended when he turned to  
 16 God, before lunch, and said, "Make us ready to fight our  
 17 greatest enemy, ourselves."

18 And that's basically where we are today. Thank  
 19 you very much.

20 CHAIRMAN HARRIS: Thank you, Mr. Van de Kamp.  
 21 Questions. Mr. Littlefield.

22 MR. LITTLEFIELD: Mr. Van de Kamp, something  
 23 that concerns me with respect to gun control or handgun  
 24 control is, can we justifiably take the handguns away  
 25 from honest citizens, unless we can guarantee that they

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1 are going to be reasonably safe in their homes and on the  
2 streets?

3 MR. VAN DE KAMP: I think it's nearly impossible  
4 to take them away, and I don't propose that we do that  
5 today. I think we have to get a start on handgun control  
6 by barring the sale of handguns, except in isolated  
7 situations, in the future. And indeed perhaps to stimu-  
8 late people to turn in guns by providing better protec-  
9 tion, or indeed by buying guns from them. But I don't  
10 believe that it's politically palatable or possible to  
11 go out and criminalize the millions of people who have  
12 bought handguns out of fear of their own personal safety.

13 MR. LITTLEFIELD: With respect to Los Angeles  
14 County, would you explain to the members of the Task Force  
15 just what your gang program is doing, the gang program  
16 in your office?

17 MR. VAN DE KAMP: Yes. Essentially our own  
18 program, which works with both special units in the  
19 Sheriffs Department and the Police Department, concen-  
20 trates on significant cases of gang violence involving  
21 both gang leaders and those who are involved in gang kill-  
22 ings where there is an apparent gang-related crime,  
23 usually dealing with homicides or murders, but most of  
24 them deal with homicides. And many of those cases  
25 involve anywhere from one to 10 defendants. And the

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1 thrust of the program, like career criminal programs, is  
2 to work those cases from investigation through trial, and  
3 as a result, in career criminal cases, you get a much  
4 better prosecution result. You're able to work with the  
5 witnesses, relocate the witnesses where there is a fear  
6 for their own safety. We have done that. We have special  
7 money available for that. And we've been able to get  
8 their cooperation. The result has been that we've had a  
9 conviction rate close to 100 percent, which is something  
10 that is far, far different than the usual conviction rate  
11 obtained in the run-of-the-mill handling of criminal  
12 cases.

13 MR. LITTLEFIELD: And in connection with that,  
14 Mr. Van de Kamp, you have vertical representation, so  
15 far as the prosecutors are concerned?

16 MR. VAN DE KAMP: That's right. We try to have  
17 the same prosecutor work from the investigation stage  
18 through trial.

19 MR. LITTLEFIELD: That also is true in the  
20 criminal, career criminal program?

21 MR. VAN DE KAMP: As much as possible, yes.

22 MR. LITTLEFIELD: Thank you.

23 CHAIRMAN HARRIS: Mr. Edwards.

24 MR. EDWARDS: Mr. Van de Kamp, your comments  
25 relative to the interrelationship between drugs and

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1 violent crime were very appropriate. You mentioned that  
2 one of the more effective tools that we have is on the  
3 international scene to interdict at the source point.  
4 I'd like to know your feelings on eradication programs  
5 and the potential that that might have, assuming that  
6 certain amendments can be made to existing legislation.  
7 allowing the use of herbicides. What are your feelings  
8 concerning the eradication programs?

9 MR. VAN DE KAMP: I think it depends a little  
10 bit on your determination as to what is the impact that  
11 the herbicide is going to have on the population involved  
12 in the particular herbicide will be used. If it has a  
13 lasting impact on the population of that particular  
14 country, where it could have strongly negative impact, I  
15 think it may work at cross-purposes. If it does not, if  
16 it can be used successfully to eradicate the drug without  
17 danger to human health, then fine.

18 MR. EDWARDS: Well, I'm thinking specifically  
19 about the program that was effective in Mexico with  
20 paraquat and the resulting amendment that occurred after  
21 that. It seems to me that if we're really going to get  
22 to the drug problem, then we have to establish a mechanism  
23 through both interdiction as well as eradication at the  
24 source point.

25 MR. VAN DE KAMP: I agree with that, you know,  
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1 with the stipulation I've just mentioned. And I'm not  
2 concerned, frankly, that much about -- I'm talking about  
3 the problem of using paraquat on the population that is  
4 there in that particular area. I don't have that much  
5 sympathy for those who use the particular result or the  
6 product, if it's marijuana, here in this country, because  
7 they should understand that, caveat emptor, they're using  
8 a drug, and if paraquat is being used, that indeed there  
9 may be harmful effects by the taking of that drug.

10 MR. EDWARDS: You had also mentioned maximiza-  
11 tion of space utilization within the prisons. Every  
12 place that we have been and the testimony that we have  
13 hard indicates the overcrowding problem, which doesn't  
14 allow us the option of looking to the space utilization  
15 in other areas, in other geographic locations. We have  
16 looked into the use of military bases, and I think that's  
17 possibly a recommendation that will come out of this Task  
18 Force. Do you have anything, any materials that might  
19 help us, in terms of substantiating that there are avail-  
20 able bed spaces in other locations that might be utilized?

21 MR. VAN DE KAMP: Let me answer that in two  
22 ways. First of all, I was looking through the Criminal  
23 Law Reporter last night, and I noticed that the Supreme  
24 Court has accepted a case whereby a prisoner was complain-  
25 ing of his transfer to a federal prison from Vermont,

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1 pursuant to 18 U.S. Code 5003. That provision empowers  
 2 the federal government to contract for the custody, care,  
 3 subsistence, education, treatment and training of state  
 4 prisoners. And the prisoner was complaining that he was  
 5 not being treated in federal prison, and that that viola-  
 6 ted the particular provision. Both the federal government  
 7 and the state of course opposed that. The State of  
 8 Vermont indicated that the state's interest in transfer-  
 9 ring its most recalcitrant prisoners to federal custody  
 10 was so that it could concentrate its resources on a  
 11 community-based approach to corrections.

12 So indeed this kind of program has been utilized  
 13 to a limited extent, and all I'm calling for here, with  
 14 that proposal, in terms of using existing space, is to  
 15 have basically the kind of inventory that most hotels have,  
 16 where you know when they're up to 100 percent, and so  
 17 there may be some ability to cross over between federal  
 18 and state institutions.

19 Now, with respect to federal reservations, I  
 20 can just indicate to you some of our experience here.  
 21 There is an old Air Force base up in Mira Loma right near  
 22 Lancaster which has been used as a state correctional  
 23 institution. It was abandoned. Now it's being reconver-  
 24 ted as a juvenile center, as a detention place, with a  
 25 couple of hundred beds. That is available. That could be

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1 expanded even further, to take as many as 1,000. You  
 2 go south, you can look at Camp Pendleton and El Toro.  
 3 You can look at Fort Irwin out in the desert. You can  
 4 look at Camp Roberts up the coast of California. I know  
 5 that most of those institutions have a great amount of  
 6 unused space. Many of them have barracks facilities  
 7 which are unused except for a very small part of the year,  
 8 space that could be converted at certainly a lot less  
 9 expense than it would take to build a new bed in a maxi-  
 10 mum security institution at \$50,000 to \$75,000 per bed.

11 MR. EDWARDS: Thank you.

12 CHAIRMAN HARRIS: Chief Hart.

13 CHIEF HART: Thank you. Enjoyed your presen-  
 14 tation, by the way. I noticed that, according to your  
 15 stats, 77 percent of your homicides or murders are commit-  
 16 ted by friends and acquaintances. That's true throughout  
 17 America, as a matter of fact. But 23 percent are either  
 18 stranger-to-stranger or execution or street robberies,  
 19 apparently. Do you have any program directed at people  
 20 that commit those 23 percent, other than the laws that  
 21 are on the books? What I'm saying is, do you have a  
 22 deterrent for using the gun, such as extra amount of years  
 23 if you're caught with a gun?

24 MR. VAN DE KAMP: Well, we have a "use a gun,  
 25 go to jail" bill that mandates state prison for those who

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1 use a gun in the commission of a robbery. Of course we  
2 have on the books in California, and thus far it's really  
3 only on the books, a death penalty law for special circum-  
4 stance kinds of cases. So what we do have, as I think  
5 you do in your state, have a "use a gun, go to jail" law.

6 CHIEF HART: In the commission of a felony?

7 MR. VAN DE KAMP: That's right.

8 CHIEF HART: But that's been circumvented, of  
9 course. Judges don't like to be told mandatory sentences.  
10 I --

11 MR. VAN DE KAMP: They have, but I think it's  
12 been relatively effective in this state. Our Supreme  
13 Court has upheld it, after some disagreement and some  
14 delay, but they finally did uphold it, and the law is  
15 being implemented by prosecutors around the state.

16 CHIEF HART: Many of your homicides or murders  
17 are being committed by gang activity?

18 MR. VAN DE KAMP: Yes. In this county, for  
19 example, we had something like 1,700 homicides last year,  
20 over 300 of which were supposedly gang-related.

21 CHIEF HART: Okay. Most Americans get hung up  
22 on the words "homicide" and "murder", and most big cities  
23 are charged with their homicide rate rather than their  
24 murder rate. Would you explain the difference between  
25 a homicide and a murder?

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1 MR. VAN DE KAMP: I guess I'm not sure, what  
2 you're referring to what, statistical differences you're  
3 referring to. We're talking about cases where there's  
4 been a finding -- the Coroner usually handles -- last year,  
5 for example, he had something like 2,300 to 2,400 possible  
6 homicides which were investigated, and finally came out  
7 with a total figure of about 1,700 after excluding sui-  
8 cides and accidental death.

9 CHIEF HART: Okay. That's the only difference  
10 between a homicide and a murder is whether it's acciden-  
11 tal or suicidal?

12 MR. VAN DE KAMP: I think that's the basic  
13 reason, the major definition is whether or not criminal  
14 means had been utilized.

15 CHIEF HART: Well, then we have different defi-  
16 nitions. Most definitions are, any killing of another  
17 human being by a human being, you know, by any means.  
18 Then we get down to murder one and two --

19 MR. VAN DE KAMP: In self-defense -- I don't  
20 think our definition here includes clear self-defense  
21 cases. I don't believe they are reported. But I'll  
22 leave that to -- the Chief is going to follow me, and  
23 he's more closely involved with that reporting, so I don't  
24 want to categorically state something I'm not positive  
25 about.

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1 CHIEF HART: Okay. Well, anyway, most large  
2 cities get stuck with the homicide rate rather than the  
3 murder rate. And of course when you talk about the  
4 murder rate you're talking about murder one, two, and  
5 manslaughter. But a homicide is a killing of any human  
6 being by another for any reason or cause, accidental or  
7 otherwise. So I just wanted to find out, did you have a  
8 different definition in this state than Michigan or other  
9 states.

10 MR. VAN DE KAMP: I think you should address  
11 that to the Chief, because I think he could probably  
12 answer that.

13 CHIEF HART: Okay. But anyway, you have an  
14 opportunity to deter or stop 23 percent of your homicides,  
15 because they happen on the street, other than family,  
16 friends, that happen in the home or at parties, things  
17 of this nature. You're concerned with the violence that  
18 happens out on the street, where people are robbed, mugged,  
19 raped, and held up, and things of that nature.

20 MR. VAN DE KAMP: I'm concerned about the total  
21 level of violence. Indeed, one of the aspects of the  
22 idea of limiting handguns in the future would be that I  
23 think the major impact will be on the total rate of  
24 violence, and particularly the acquaintance kind of kill-  
25 ings. Because the availability of handguns, particularly

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1 in a Friday or Saturday night fight, I think makes it  
2 much more likely that death will occur.

3 CHIEF HART: Well, I'm sure we all are. But  
4 we know, due to the Second Amendment, it's virtually  
5 impossible to take the guns away from Americans if we all  
6 agree, and who's going to give their gun up? Certainly  
7 not the crooks, are not going to give theirs up, you  
8 know. I understand what you're saying, however, the ones  
9 that the police can do something about are the ones, the  
10 23 percent that don't involve domestic quarrels and  
11 arguments.

12 MR. VAN DE KAMP: Yes.

13 CHIEF HART: I'm familiar with what you're say-  
14 ing Detroit, in '67, blacks and whites ran out and bought  
15 guns to protect their homes. And boy, they sure do use  
16 those guns, but they use them on each other. As you  
17 pointed out, when they get in a Saturday night or Monday  
18 morning fight in a bathroom, bedroom, or at a party,  
19 those we can't -- we don't just write them off, but we  
20 have to be honest with ourselves. There isn't too much --  
21 you can't put a cop in every bedroom. But your gang-  
22 related and your executions and street robberies, given  
23 some professionalism and some luck, we can deter some  
24 of those.

25 MR. VAN DE KAMP: Agreed.

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1 CHIEF HART: So I'm sure that your programs,  
2 when you say you have specific targets, your gang detail  
3 that you have --

4 MR. VAN DE KAMP: That's right.

5 CHIEF HART: -- is successful. I'm sure that  
6 they're geared at this kind of thing.

7 MR. VAN DE KAMP: That's right. Drive-by  
8 killings, for example, where you have a traditional situa-  
9 tion, where there's a gang war or an incident that has  
10 provoked violence, you'll have a gang in a car drive by  
11 another car, with a shotgun out the window, and "Whammo."  
12 And then an innocent child who is nearby in a swing gets  
13 shot instead of the person for whom the blast was inten-  
14 ded. I don't know how many cases like that we've seen.

15 CHIEF HART: That's happened in most of our  
16 major cities, and perhaps you could get your plan to us  
17 and we can look at it, and maybe we can advise other  
18 cities.

19 MR. VAN DE KAMP: I might just add one word to  
20 that, Chief. Our county has just developed in a sense a  
21 multifaceted program, because the need is so great. We  
22 have had this great expansion of gang activity, both  
23 black gangs and Hispanic gangs. And we have a major law  
24 enforcement component. I think it's the most important  
25 component of the county's plan, but we also put in a

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1 crisis intervention network that's modeled after the  
2 Philadelphia program that is said to have very success-  
3 fully reduced the level of gang violence in Philadelphia.  
4 There is a far different picture in Philadelphia than we  
5 have here, but it appears to have worked, and so we're  
6 going to try it here.

7 CHIEF HART: Well, I would think if it would  
8 work in Philadelphia it would work any place. They have  
9 institutionalized gangs that have been going on for sev-  
10 eral generations. Okay. Thank you very much.

11 CHAIRMAN HARRIS: Mr. Armstrong.

12 MR. ARMSTRONG: Mr. Van de Kamp, would you give  
13 the staff the address of old Iron Eyes, because I think  
14 he's probably some individual we need to put on a consult-  
15 ing basis. If what he is saying, I think, capsulizes your  
16 address here, is that what we're finding in these hearings  
17 is that oftentimes the federal law enforcement agencies  
18 are working, not in conjunction with the state and local  
19 law enforcement efforts. We've found that to be the case  
20 in many instances. But we've found an experiment in  
21 San Diego, where there is cross-designation of district  
22 attorneys and the United States Attorney's office. During  
23 that hearing it was also mentioned that your office and  
24 the U.S. Attorney's office here in Los Angeles have a  
25 similar arrangement. Can you tell us how that's working?

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MR. VAN DE KAMP: We don't have a cross-designation system here, because there has been some concern here about the potential taint. Under state law here, if there is evidence, let's say obtained by virtue of a federal wiretap that we learn about, we are precluded from state prosecution, using that evidence, and there is some other intelligence problems. And so we've avoided that. But I have to say this about our situation here. I know there is concern in other parts of the country about federa-state cooperation. I think here you have a good model of what can happen around the country. Andrea Ordin is an outstanding United States Attorney. I know she was here at lunch today. Billy Hunter from San Francisco, another outstanding United States Attorney. They have made great efforts to keep in touch with local prosecutors. I pick up the phone anytime I have a problem. Andrea calls me whenever there is a problem over there. And similarly with local law enforcement, she has an outstanding relationship. I know that she was largely instrumental in saving the federal government's bacon when we had a big Iranian demonstration here not too long ago, where the Los Angeles Sheriff's Department came to the aid of the federal government because the federal government was unwilling to protect its own property out here on Wilshire Boulevard.

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Anyway, that's the kind of local federal concern that I think pays off for the federal government, and because it was Andrea Ordin here doing that job, she was able to get through to the right people and get some support that perhaps the federal government didn't deserve, but nonetheless, that kind of cooperation, which needs to go both ways, is very, very important if our federal, state and local government situation is to work out.

Let me just add something on here today. My concern today is that there is a lot of buck-passing going on in the criminal justice field today. I have the feeling after five months that we're not getting anywhere federally, that they're going to retreat behind Mr. Stockman and the budget picture and say, "We don't have any money, so it's a local problem. It's yours to take care of." We see the taxpayers, as they did yesterday, take a position. They were given, certainly, plenty of excuses to do so because of the concern about property taxes and whether or not the tax plan was a just one, saying, "No, we can get that money elsewhere to fund local law enforcement."

But clearly, things have to be done at all three levels. And we cannot wait for the other level of government to do it, to do it all. We all have to

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1 pitch in and play a major role in this. And I think the  
2 federal government has backed away from this in the last  
3 few years. It's not just this Administration. The  
4 previous one did as well. And it's time, I think, given  
5 the national problem, to get into it.

6 Neither political candidate in the national  
7 election addressed the crime issue. I don't see, out-  
8 side of your commission and its hearings, much of an  
9 address thus far by the Department. That address has to  
10 come. This Administration is to be one term -- half  
11 a year has gone by. It's going to be three to six months  
12 before anything really gets off the dime, if indeed they  
13 decide to do something. Time is running out.

14 MR. ARMSTRONG: Your recognition and awareness  
15 of the need for new prisons has come before this Task  
16 Force. Aren't we, though, just buying a little time for  
17 the states to meet their obligation in building these  
18 new facilities that by and large have not been built since  
19 World War II, in many instances? I'll give you an example.  
20 During the 60's we had a baby boom, and we started build-  
21 ing schools in this country. And now in the 70's, the  
22 late 70's and 80's, we have a crime boom, but no one is  
23 advocating building any new penitentiaries.

24 The priority is there. Where do we draw the  
25 funds from? There are certain states, obviously, that

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1 cannot afford to build penitentiaries. California may be  
2 one of those. Do you have any recommendations or ideas  
3 for the Task Force to consider in that area?

4 MR. VAN DE KAMP: I would like to think that  
5 we have a bubble problem right now, that for the next 10  
6 years we may be incarcerating more people, and that  
7 indeed, maybe as an optimist, to think that the crime  
8 problem in the years ahead might be ameliorated. And  
9 it seems to me that every state that has this problem  
10 has to share the problem with the federal government --  
11 or maybe it's vice versa. It's usually a local problem.  
12 But I have to add this. The federal government has also  
13 impacted this. Its immigration policies, for example,  
14 particularly in Miami, have created a criminal problem  
15 there that far exceeds what we have here. Just talk to  
16 the D.A. of Miami to ask how federal immigration policy  
17 has impacted the crime problem there. The rate of  
18 prosecutions I'm sure have been affected as well as the  
19 number of people that they're sending to state prison in  
20 Florida.

21 So federal policies do have an impact on the  
22 prison commitment rate, and indeed, the federal policies  
23 I think bear with it a concurrent responsibility to help  
24 our, particularly during this time when we have the  
25 bubble, that is, an increased number of people being sent

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1 to state prisons around the country.

2 MR. ARMSTRONG: One final question, in the area  
3 of juvenile justice. With the persistent or the repeat  
4 violent offender that comes within the confines of the  
5 juvenile justice system, would you advocate, because of  
6 that person's experience, in the system, that we open  
7 that to the public instead of having it basically a confi-  
8 dential proceeding?

9 MR. VAN DE KAMP: Well, I think the best way  
10 to deal with that is to take the violent offenders as much  
11 as possible over 16 and basically treat them as adults,  
12 and where they get the full panoply of rights that they  
13 get in the adult courts, the jury trial, the terms  
14 available and possible. One of the scandalous things in  
15 this state, for example, is that a person who is tried  
16 as a juvenile for first degree murder on the average  
17 spends 30 to 35 months in the California Youth Authority,  
18 where if they were a couple of years older, or an adult,  
19 if treated as an adult, would be sent, on the average, to  
20 13 years, plus.

21 We have marked disparities between the two  
22 systems and indeed, when we're talking about 16-year-olds  
23 today, we're talking about some of those murderous ele-  
24 ments in our society. And so it seems to me that maybe  
25 the 16-year-old group, especially for those violent

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1 criminals, needs to be a cutoff point. We need to be  
2 able to take those through the adult court where you'd  
3 have the full panoply of rights, but you also have the  
4 public available to witness the proceedings.

5 MR. ARMSTRONG: I'll retract what I just said.  
6 I have one other question. I just read a New York Times  
7 article reviewing a recent book that has been some time  
8 in studying the juvenile justice system in New York City.  
9 The author has proclaimed the juvenile justice system is  
10 a complete failure, and if anything encourages crime  
11 among the people who come within the confines of the  
12 juvenile justice system in that state. Does your exper-  
13 ience here in California as the District Attorney in  
14 Los Angeles -- do you have an opinion about the juvenile  
15 justice system and how it operates here?

16 MR. VAN DE KAMP: Yes, I would make that indict-  
17 ment of our juvenile justice system. I've already men-  
18 tioned one problem I think we have with a particular type  
19 of serious criminal, even though we do have the power now  
20 to seek, and do take a good number of those 16 to 18-year-  
21 olds to the adult court through a special hearing that I  
22 think Mr. Deukmejian might have talked about when he  
23 was here. I think that the system has worked for some  
24 young people. The major defect in the system that many  
25 of us find is that the system does not work early enough,

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1 that is that juveniles get in the system too late.  
 2 There is no intervention by the state in early enough  
 3 time in their criminal careers, basically, to let them  
 4 know that there is a sanction, that there is discipline.  
 5 At the same time, those who work in the juvenile courts  
 6 here I think are responsible and try to do an effective  
 7 job. And for those cases that get inside the system, I  
 8 think they do a pretty good job.

9 But I guess where our major concern is is the  
 10 fact that it takes, because of the counsel and release  
 11 policies that are available to probation and to the  
 12 police, it takes a lot of times before he really even gets  
 13 hauled into juvenile court, and then it takes a couple of  
 14 times in juvenile court before there really is the kind  
 15 of strong warning system that you need to set up for  
 16 young people.

17 The one advantage of the system, though, and I  
 18 want to underscore this, is that it's quick. Where it  
 19 takes on the average 130, let's say, to 220 days to get  
 20 a regular felony adult criminal case through the system,  
 21 it takes roughly, what, 40 to 60 days for a juvenile  
 22 case to wend its way through the system. That is a major  
 23 advantage which I do not want to lose.

24 MR. ARMSTRONG: Thank you, Mr. Van de Kamp.

25 CHAIRMAN HARRIS: Mr. Carrington.

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1 MR. CARRINGTON: Mr. Van de Kamp, I was very  
 2 impressed by the figure you gave as almost 100 percent on  
 3 your special gang programs. I think that you would agree  
 4 with me and with the Chief here, anybody who has ever  
 5 worked gangs, intimidation is probably one of the biggest  
 6 problems, intimidation of victims and witnesses is  
 7 probably one of the biggest problems that confronts the  
 8 investigator and the prosecutor.

9 To achieve a success record like that, how did  
 10 you handle the intimidation problem? I hope this Task  
 11 Force is going to address this in detail in Chicago when  
 12 we cover juvenile, but I'd like to get your experiences  
 13 on it right now, your thoughts.

14 MR. VAN DE KAMP: Through about three different  
 15 means. First of all, because the law enforcement agency  
 16 is working closely with us, there is great personal  
 17 attention being given to the victims, and that is that  
 18 they are dealt with on an individual basis. If there is  
 19 a concern about staying in a particular neighborhood,  
 20 we will make efforts to have them relocated for as long  
 21 as it is necessary, and in our own program we have funding,  
 22 through our Victim Assistance Program in the state of  
 23 California, to provide that kind of relocation. I think  
 24 that is extremely important, because, as you know, cases  
 25 fall apart because if the people are left alone in their

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1 own neighborhoods while the same gang members are out on  
2 bail, then it's bad news.

3 MR. CARRINGTON: Relocation is sort of a  
4 defensive way of approaching the intimidation problem.  
5 Do you have in California sufficient teeth in the law  
6 dealing with intimidation to enforce those laws? I know  
7 they are some of the most difficult laws to enforce. How  
8 about the enforcement process as opposed to the protective  
9 process?

10 MR. VAN DE KAMP: It's very difficult to bring  
11 the victim intimidation laws into play, because of  
12 just strictly evidentiary problems. And I think that the  
13 laws have the teeth in them, the problem is the require-  
14 ment that you have proof beyond a reasonable doubt, which  
15 runs of course throughout criminal law, and the fact that  
16 sometimes the threats are made indirectly, and usually  
17 are made in such a way that no one else is around. It's  
18 usually a one-on-one kind of situation. So we have used  
19 the California state law in this area, and sometimes with  
20 success, but it's usually in cases where the underlying  
21 charges, of course, are far more serious than the intimi-  
22 dation. So in reality, it's really the personal contact,  
23 the protection given, physical protection given to people,  
24 either by having law enforcement around, or the reloca-  
25 tion, that seems to work best.

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1 MR. CARRINGTON: Thank you, sir.

2 CHAIRMAN HARRIS: Mr. Van de Kamp, I just have  
3 one question for you. During your prepared remarks you  
4 said that people want more protection and deserve it.  
5 Let me ask you the question two ways. In light of yester-  
6 day's vote, do they want it? And if they're not willing  
7 to pay for it, do they deserve it? And the other way I  
8 would ask it is, what would you say to Mr. Stockman if he  
9 appears to be reluctant to put federal money into a com-  
10 munity that is not willing to pay its own way?

11 MR. VAN DE KAMP: I think Chief Gates will  
12 follow me, and he has his own view of the election yester-  
13 day. I do not believe that the vote yesterday represents  
14 a vote by the people that is "No" on police. Indeed, if  
15 you ran an item in the ballot, "Should we have more  
16 police in the community?" you would probably get an 85  
17 to 90 percent "Yes."

18 Indeed, in Santa Monica a few months ago there  
19 was such a vote on the ballot, and the funding, I think  
20 it's up to \$3 million, was to come from existing city  
21 resources, without a new tax being imposed. And as I say,  
22 it won overwhelmingly. Last night in Monterey Park there  
23 was a form of a property tax that was a little different,  
24 I believe, from the one that was suggested here in Los  
25 Angeles, and the voters in that smaller community voted

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1 for it almost two to one. There is strong sentiment for  
 2 improving and increasing policing in the state, and I  
 3 don't think the vote yesterday should be misconstrued as  
 4 saying to the contrary. I think the vote yesterday, and  
 5 I think it's subject to analysis as to exactly where the  
 6 vote occurred, can be traced to, I think, an anti-tax  
 7 feeling that people have had, at new taxes, a concern  
 8 about property taxes, that of course we tried to put into  
 9 a place of balance a couple of years ago, and I think a  
 10 lot of concerns that came out of this particular measure  
 11 that bothered people. And I think when people went in  
 12 there to vote, because they knew they would vote their  
 13 own pocketbook, that they took those concerns and were  
 14 concerned enough to say, "Well, no, this is not the way  
 15 to go."

16 What will I say to Mr. Stockman? I would say  
 17 to him simply that you're going to have to readjust your  
 18 priorities to a certain extent. We are not talking in the  
 19 federal system about that much money. Indeed, we are  
 20 increasing our military expenses very, very dramatically.  
 21 Indeed, you may want to use some of that money, which is  
 22 wasted. And if there is any great waste in the federal  
 23 government, you'll find much of it in the military side.  
 24 To provide for, in a sense, a domestic protection policy,  
 25 which indeed I think affects our people just as gravely,

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1 if not more so, than international defense posture.  
 2 That would not mean that we would substantially decrease  
 3 our ability to maintain our national defense, but it will  
 4 certainly permit us to increase our domestic defense.

5 CHAIRMAN HARRIS: Thank you, Mr. Van de Kamp.  
 6 We appreciate your coming here today, and we appreciate  
 7 the time you have taken.

8 MR. VAN DE KAMP: Thank you.

9 CHAIRMAN HARRIS: Our next witness is the  
 10 Honorable Daryl F. Gates, Chief of Police of Los Angeles.  
 11 Chief, welcome, thank you for coming today.

12 PRESENTATION BY:

13 DARYL F. GATES, CHIEF,

14 LOS ANGELES POLICE DEPARTMENT.

15 CHIEF GATES: Good afternoon. I do have a  
 16 prepared statement, which is, I must say, very unlike me.  
 17 Those that know me know that I usually am like, I guess,  
 18 most chiefs of police. We shoot from the hip, or from  
 19 the lip. But this time I prepared something. So if you  
 20 will indulge me, I'll go through it rather quickly. It  
 21 is not long.

22 First of all, of course, I appreciate the  
 23 opportunity to appear before this Task Force, and like,  
 24 I think, everyone else, I do so with the hope that your  
 25 efforts will be rewarded with substantial downturn in

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1 all crimes in all parts of this nation.

2 Certainly Los Angeles has come for an increas-  
3 ing share of crime, particularly the violent variety.  
4 Homicides have been increasing at an alarming rate,  
5 jumping from 427 in 1971 to 1,028 in 1980. Already in  
6 1981 we are 12 percent above the 1980 figure. During the  
7 first seven years of the decade, homicides in Los Angeles  
8 ranged between a low of 400 to a high of 574. Some  
9 years the numbers were up, some years they were down.  
10 However, beginning in 1977 there was a dramatic upward  
11 surge of homicides that has continued on through 1980 and  
12 the first part of 1981. Homicides during this period have  
13 doubled. 517 to 1,028.

14 A brief profile of these homicides might be of  
15 some interest to you. The primary causative factor has  
16 been some kind of dispute, physical or verbal, and that  
17 excludes the domestic disputes. About 32 percent of them.  
18 Gang-related homicides have moved from the fourth highest  
19 cause to now the second highest cause in this city, 20  
20 percent. Homicides committed in connection with robber-  
21 ies continue to increase and are the number three cause,  
22 17 percent. The greatest number of homicide victims are  
23 male blacks, 37 percent. The greatest number of  
24 "within descent" homicides, that is, killed by a person  
25 of the same descent, are black, 94 percent. The greatest

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1 number of "out of descent" homicides, that is, killed  
2 by a person of another descent, are perpetrated by  
3 blacks, 60 percent. Blacks rank higher as both suspects,  
4 56 percent, and victims, 43.6 percent.

5 The primary weapon used in homicides is of  
6 courses the handgun; 40 percent. That's an increase, by  
7 the way of seven percent over 1978. Most homicides  
8 occur on public streets, 40 percent of them. Over half  
9 of all homicides occur on Friday, Saturday or Sunday.

10 Now, I doubt there is anything about this  
11 brief profile of homicides in Los Angeles that is differ-  
12 ent or startling. The most startling aspect, I believe,  
13 is the rapid and unrelenting increase, and the increase  
14 in the rate of gang-related homicides. And I might  
15 digress right there. I know you don't want to spend any  
16 money, but we are in this city toying with the possi-  
17 bility of joining the county in a Philadelphia play type  
18 crisis intervention for gang activity. If you want to  
19 invest about \$1,300,000 in the city, which I think would  
20 be most appropriate, this committee's recommendation to  
21 deal with violent crime could put that \$1,300,000 to work  
22 right now in dealing with about 200 homicides which we  
23 expect this year.

24 Another item of interest regarding our homi-  
25 cides comes out of a special study of a 40 percent sample

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1 of the 1980 homicides. This study suggests that, narcotic-  
2 related activity was involved in over 33 percent of the  
3 total examined. And I think that's rather startling.

4 While the homicide data are not the only, or  
5 even the best, criteria of the crime problem, they have  
6 played a significant role in heightening the fear of  
7 crime in this community. A series of unusually savage  
8 and senseless homicides, coupled with considerable media  
9 coverage, has brought about an unprecedented level of  
10 fear of crime, almost at times bordering on hysteria.

11 Other crime increases, while less dramatic, have  
12 nonetheless added to the overall community concern and  
13 frustration over crime. Robbery has increased 70 percent  
14 from 1970 to '80, rape 25 percent, same period, burglary  
15 36 percent, aggravated assaults, 38 percent, auto theft  
16 34 percent, and theft 31 percent.

17 Again, I understand it would be a first objec-  
18 tive of this Task Force to attempt to focus on what can  
19 be done about the problem of crime within existing  
20 statutory law and existing resources, and secondly to  
21 examine recommendations for necessary and appropriate  
22 changes in federal laws, funding strategies and alloca-  
23 tion of resources that would aid in the federal, state  
24 and local battle against violent crime. For those who  
25 know my long-time opposition to LEAA, it should come as no

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1 surprise when I say that in my judgment crime is, essen-  
2 tially a state and local problem. Unfortunately, the  
3 federal government has for so long a time drained off  
4 such enormous chunks of the available tax dollar that  
5 local and state governments have sought federal financial  
6 help in a search for solutions to an ever-increasing  
7 variety of purely local state problems, including crime.  
8 In addition, the crime problem has been allowed to fester  
9 for such a prolonged period of time, some aspects are  
10 now well beyond the capacity of local state government  
11 to bring under control. To paraphrase Prof. Wilson,  
12 we've trifled with the wicked, made sport of the innocent  
13 and encouraged the calculators for far too long. Justice  
14 does and has suffered, and so do we all.

15 There are some rather straightforward measures  
16 that must be taken if we are to slow the rate of crime  
17 growth. You've heard them all: more sensible bail  
18 procedures, speedy trials for the public, an end to the  
19 endless appeal procedures, making truth relevant and  
20 perhaps even foremost in the criminal proceeding -- that's  
21 a novel thought -- more thorough police work, which may  
22 or may not require more police, greater cooperation  
23 between the police and prosecutors, possibly hiring more  
24 judges, adequate sentencing practices, even if mandatory  
25 sentences must be imposed, and lastly, but an absolute

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1 and essential ingredient to making all of the above  
2 worthwhile, is providing for additional means to separate  
3 criminals from the law abiding.

4 Again, I say, there is nothing new in these  
5 suggestions. What would be new is to put all of these  
6 factors to work in one system on a sustained basis. Now,  
7 that really would be new. Certainly the federal govern-  
8 ment can help in the last indispensable ingredient, that  
9 is, separation centers for the criminal. The cost of  
10 building prisons and maintaining an enlarged prison  
11 population is substantial. Although it is imperative  
12 that we begin to separate more and more of the criminal  
13 element from the law abiding, our present methods of  
14 incarceration make the cost almost prohibitive and bring  
15 about justifiable cries of anguish from our taxpayers.

16 There must be less costly and perhaps even  
17 potentially break-even ways to accomplish this separation.  
18 The scope of the problem is of such a dimension that it  
19 calls for the initiation and sponsorship at the federal  
20 level of possible solutions. My view is that the emphasis  
21 should be on separating that person who fails to live by  
22 society's laws and standards from the other members of  
23 society, separating the lawless from the lawful. I am  
24 not opposed to rehabilitation, where possible. I am not  
25 strong for punishment, although I believe it has its

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1 place in tempering future conduct. I am for separation,  
2 long and short-term, imposed humanely, but with consis-  
3 tency, with certainty, and in some cases with such final-  
4 ity that the message will at last ring loud and clear  
5 that America has reached its tolerance level for crime  
6 and those who commit it.

7 It has been suggested that army camps or federal  
8 lands be used. I think that's a grand idea. Some suggest  
9 that we have too many people in prison today. I think the  
10 Governor told you that we have about 26,000 in our prisons  
11 in the state of California. That seems like a large num-  
12 ber, but let me just remind you that that is less than  
13 .1 percent of the population, one-tenth of one percent  
14 of the population.

15 Now, almost anyone estimates that we're dealing  
16 with perhaps 2, maybe 3 percent of the population that  
17 needs to be separated. We have separated only one-tenth  
18 of one percent. We need to do more if we're going to  
19 solve the crime problem, and in my judgment that is prob-  
20 ably the greatest need in this country today.

21 Narcotics and dangerous drugs; equal in priority  
22 to dealing with inflation, the faltering economy, and to  
23 strengthening our national defense should be combating  
24 the growing American tragedy. The abuse of and the illicit  
25 trafficking in narcotics and dangerous drugs. If abuse

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1 affected only the adult, the mature elements of our  
 2 society, it would be cause for major alarm. The fact  
 3 that it strikes at the very young with ever increasing  
 4 intensity marks it as a national calamity. Each semester  
 5 in department I must place undercover police officers  
 6 in selected high schools in Los Angeles to ferret out  
 7 those who traffic in narcotics and dangerous drugs. Not  
 8 the users, we don't have the time or the manpower for  
 9 that, but the sellers.

10 Last semester we arrested over 300 drug sellers.  
 11 The semester before we arrested over 400, in only 11 high  
 12 schools. In 32 years of police work, the only time I  
 13 have agreed with the American Civil Liberties Union is  
 14 when they say police have no business on school campuses  
 15 posing as students. Our agreement, I must say, stops  
 16 there, for the ACLU say that we have no right to be on the  
 17 campus. I say we not only have a right but we have an  
 18 obligation to be on campus. How can we allow that kind  
 19 of situation to exist in our public schools? What has  
 20 happened to adult control? I talk to parents all the  
 21 time and I ask them that question. How can you as parents  
 22 allow this to go on in your public schools?

23 And it seems to me that the federal government  
 24 has for a very long time utilized federal grants and  
 25 monetary aid to power social engineering. We do it all

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1 kinds of ways. Why not use it to rid schools of the  
 2 evil of drugs and narcotic abuse? Simply require that  
 3 public schools not be a marketplace for drugs or a free  
 4 zone for the abuse of narcotics and dangerous drugs.  
 5 The penalty for noncompliance would be to eliminate  
 6 federal monetary support. The federal government has  
 7 threatened municipal governments and police departments  
 8 for years in that way. And why not do it to the schools?

9 And while you are considering that possibility,  
 10 perhaps the same sanctions can be used to assure the  
 11 school campuses become safe places for students and  
 12 teachers devoid of violence. Those children who wish to  
 13 learn deserve to be protected from drugs and violence. I  
 14 think they have a constitutional right to that, and I  
 15 think it's well within the province of the federal govern-  
 16 ment to withhold funds when schools do not comply.

17 The Attorney General of this state has sued  
 18 local law enforcement, the schools and others to make  
 19 them safe havens. I think he has a good idea, except he  
 20 wants to take it to the courts. You take it to the courts  
 21 and nothing will be solved. They tried it with school  
 22 desegregation, and the courts didn't do a very good job  
 23 there.

24 If the federal government does intend to  
 25 increase future expenditures to aid in solving the crime

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1 problem, it is my judgment that perhaps the biggest  
 2 payoff could come with the development of effective  
 3 education on the evils of drug abuse, education for  
 4 parents, for teachers and for students, an educational  
 5 program powerful enough to confront and defeat the enor-  
 6 mous peer pressure that now brings most youthful drug  
 7 experimentation. Drug education today, while mandatory  
 8 in California, is not doing the job.

9 I also urge this Task Force to support present  
 10 and expanding financing of the Drug Enforcement Agency,  
 11 DEA, and maintaining it as a single-purpose agency. Of  
 12 particular importance is to provide DEA resources to  
 13 local, state and federal cooperative efforts, such as our  
 14 narcotic intelligence network.

15 Amending the posse comitatus doctrine to allow  
 16 the military to provide basic drug-related intelligence  
 17 data regarding the movement of suspicious ships and air-  
 18 craft. There is absolutely no way for law enforcement to  
 19 duplicate the sophisticated military surveillance equip-  
 20 ment and resources of the military. And the taxpayers  
 21 should not be asked to pay for that duplication.

22 And being careful to see that the foreign policy  
 23 of the United States, the direction of the State Department,  
 24 is in concert with DEA, and is not in opposition to the  
 25 eradication of poppy fields and marijuana fields, and the

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1 interdiction of narcotic and dangerous drugs is as close  
 2 to the source as possible.

3 Repeal of the Sen. Percy Amendment that pro-  
 4 hibits the use of federal funds for spraying poppy and  
 5 marijuana fields with paraquat. The law should also  
 6 allow domestic spraying to aid in the elimination of the  
 7 growth of sensamilia fields that are springing up all  
 8 over the United States.

9 Providing a way in which money that is seized  
 10 by local police, in connection with drug-related arrests  
 11 or investigations, can be retained by the local authori-  
 12 ties to fight the narcotic problem. That money could be  
 13 specifically earmarked to be used for that effort. Our  
 14 narcotic officers seize millions of dollars that are  
 15 either unclaimed or abandoned, and we simply turn them  
 16 over to IRS or the federal government. That money should  
 17 stay, I think, with the local governments to fight narco-  
 18 tic problems.

19 And this is, I think, a very innovative idea,  
 20 because I thought of it, and one that won't cost the  
 21 federal government anything and would really solve a  
 22 serious problem that faces most major city police depart-  
 23 ments and some not major city police departments. Allow  
 24 the Federal Reserve Board to issue flash money to local  
 25 police departments. There is a need in this department,

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1 in my department, for flash money of up to \$1 million.  
 2 The FRB could assign that money to local and state police  
 3 agencies without a dollar cost, without affecting the  
 4 economy in any way, because the money would not be placed  
 5 into circulation. Local government cannot afford to take  
 6 that much money out of dividend paying accounts, and it  
 7 is vitally needed in today's big money narcotic and drug  
 8 buys. And I'm serious about that. We are forever needing  
 9 flash money in the amounts of \$500, \$600, \$1 million.  
 10 That money -- the fed has had the proclivity of printing  
 11 money at will. Why not print some money, put it in our  
 12 safe so that we can use it? It won't cost you a nickel.

13 Greater emphasis should be given to the drug  
 14 and narcotic rehabilitation efforts. Recent Temple  
 15 University study clearly indicates the reduction effect  
 16 on crime of keeping narcotic addicts off their habits.  
 17 Particularly, there is a need to make available low cost  
 18 rehabilitative service to the young, the chronic and the  
 19 compulsive poly-drug abusers. Parents and those young  
 20 people looking for a way out of their problem have an  
 21 almost impossible task in finding effective programs  
 22 unless they have the money to spend on private programs  
 23 or the insurance that will cover it.

24 It is suggested that low cost, low interest  
 25 bearing government loans be provided for that purpose.

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1 That won't cost much money, either.

2 Undocumented alien policy. It is imperative  
 3 in seeking solution to the crime problem that the  
 4 federal government adopt a well articulated, comprehensive  
 5 policy as it relates to the undocumented alien, which will  
 6 allow a willingness on the alien's part to identify his  
 7 status without fear of retribution. The present policy  
 8 of Los Angeles Police Department is to avoid reference to  
 9 the undocumented status of persons in the Los Angeles  
 10 area. If people are in need of our help, we help them,  
 11 without any questions asked about their citizen status.  
 12 If they violate the law, we take enforcement action and  
 13 attempt to prosecute them, without reference to their  
 14 citizen status. And while this is a necessary and just  
 15 policy, it leads to an impractical result. The overwhelm-  
 16 ing majority of undocumented aliens are very law abiding,  
 17 but are not aware of our policy, and would likely not  
 18 trust the policy if they were aware of it. Therefore we  
 19 are denied their help and involvement in crime prevention  
 20 efforts as well as in the reporting of crime and assist-  
 21 ing in the prosecution of offenders.

22 Those relatively few who engage in criminal  
 23 activity do so with impunity. They are difficult to  
 24 identify, feel not the slightest compunction or responsi-  
 25 bility to comply with our justice system mandates, and

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1 are too often simply sent back to their native land where  
 2 they are allowed to return to the United States to begin  
 3 their unfettered criminal activity once again. As  
 4 stated, the vast majority of undocumented aliens are  
 5 indeed good, and if I may, good citizens. However, even  
 6 they, when involved in relatively minor brushes with our  
 7 legal system, shun their responsibility because of their  
 8 fear of being turned over to Immigration. Here I make  
 9 reference to traffic accident involvement, traffic cita-  
 10 tions, and other minor offenses, which add to work that  
 11 this already overburdened police department has to do.

12 Many other additional topics, which I could  
 13 address -- frankly, I think the federal law enforcement  
 14 agencies do outstanding work. And their willingness to  
 15 cooperate with local law enforcement has improved markedly  
 16 over the past decade. Where their cooperation is limited,  
 17 it usually relates to limited resources.

18 For example, we hope the FBI, in establishing  
 19 its priorities, does not neglect the problem of violent  
 20 street crime. I know they're moving to more investiga-  
 21 tions of political and white collar types of crime, but  
 22 we need that cooperative effort that has been extended to  
 23 local law enforcement, particularly in the investigation  
 24 of bank robberies, which I've urged Judge Webster to  
 25 continue. And we still get that cooperation, but there is

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1 some indication that that effort is waning.

2 Well, time will not let me discuss many of the  
 3 other significant areas of crime control. You may have  
 4 noticed, I have not proposed anything that costs a great  
 5 deal of money. I've tried to stay within your objectives.  
 6 I think there are other significant areas of crime control  
 7 which I perceive as legitimate reason for federal involve-  
 8 ment. But I would like to close by commending the  
 9 President's efforts to restore a healthy economy to the  
 10 nation. Clearly a great part of our crime is fueled by  
 11 the frustrations of unemployment, compounded by infla-  
 12 tion. While recharging the free enterprise system, con-  
 13 trolling inflation and providing for full employment may  
 14 not be the only solution to our crime problem, it may be  
 15 the single most effective solution.

16 That is the end of my statement.

17 CHAIRMAN HARRIS: Thank you very much, Chief.  
 18 Mr. Littlefield.

19 MR. LITTLEFIELD: Chief, the figures you gave  
 20 us for the homicides, was that for the city of Los Angeles?

21 CHIEF GATES: That's for the city of Los Angeles.

22 MR. LITTLEFIELD: And of course there are  
 23 several million people that do not live in the city but  
 24 live in the county?

25 CHIEF GATES: That's correct.

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1 MR. LITTLEFIELD: So that the actual rate for  
2 the county would be certainly substantially larger than  
3 the figures that you gave us?

4 CHIEF GATES: About 2,500 as I recall.

5 MR. LITTLEFIELD: Yes, sir. Chief, in connec-  
6 tion with the 33 percent on that study which were narcotic-  
7 related homicides, did the narcotics include alcohol  
8 abuse? Or was that a separate --

9 CHIEF GATES: Oh, no. If we included alcohol  
10 abuse, which probably should be included, those figures  
11 would skyrocket. I would make a prediction that they  
12 would be around 70, 75, perhaps 80 percent.

13 MR. LITTLEFIELD: You would agree then that  
14 alcohol abuse is certainly one of the greatest reasons  
15 for violent crime, certainly as far as assaults --

16 CHIEF GATES: No question -- no question about  
17 it.

18 MR. LITTLEFIELD: And, Chief, you've been a  
19 policeman for a long time. Do you think that in the last  
20 10 or 15 or 20 years that the policemen have become more  
21 professional than they were when you started out?

22 CHIEF GATES: Well, you know, we old fellows  
23 always look back and say, we did it much better in our  
24 day. But, yes, there is no question about it. They're  
25 better educated, better trained, in many cases more

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1 dedicated, highly skilled, a great deal of bravery, and  
2 I think perhaps more resourceful.

3 MR. LITTLEFIELD: In connection with the  
4 training, Chief, for a while you had a -- because of our  
5 large Hispanic population -- some sort of a training  
6 program to teach Spanish to all the cadets at the Police  
7 Academy. What's happened to that?

8 CHIEF GATES: We still have the program. As  
9 you know, we reduced our vestibule training from six  
10 months to four months, and in doing that some things had  
11 to give. We did cut down on the teaching of the Spanish  
12 language, but we still teach enough so that an officer  
13 can handle all that he needs to handle in the way of  
14 street usage.

15 MR. LITTLEFIELD: And it was more of a street  
16 Spanish rather than something that someone might learn in  
17 college?

18 CHIEF GATES: Very practical Spanish, yes,  
19 very practical Spanish.

20 MR. LITTLEFIELD: Thanks very much for coming,  
21 Chief.

22 CHAIRMAN HARRIS: Mr. Edwards.

23 MR. EDWARDS: No questions, Chief. I would  
24 like to say that your comments and recommendations pretty  
25 well covered the gamut of a lot of the areas that we're

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1 looking at, from the Task Force standpoint. I found your  
2 comments on the need for flash roll capability a very  
3 good point, very valid point. Some of the other areas  
4 that we are looking at, though, are in concert with your  
5 thoughts, and appreciate very much your comments today.

6 CHIEF GATES: Good.

7 CHAIRMAN HARRIS: Chief Hart.

8 CHIEF HART: Chief Gates, that was a great  
9 speech, and I'm sure all the other chiefs, along with  
10 myself, are saying, "I wish I'd said that."

11 CHIEF GATES: Well, thank you, Bill.

12 CHIEF HART: And I understand shooting from the  
13 hip and shooting from the lip. Usually don't have any  
14 choice. When things happen, in a second they expect a  
15 response. So I appreciate what you said.

16 CHIEF GATES: You understand that.

17 CHIEF HART: Certainly do, sir. I was glad to  
18 hear you say also that you thought that children in  
19 schools had a right to learn, and you didn't have any  
20 problems protecting school property and going on school  
21 property. In the area of confiscations, we're not nearly  
22 as big as L.A., and we spend millions of dollars during  
23 the course of a year. And it would be nice if we were  
24 allowed to keep the confiscations to bankroll the fight  
25 against narcotics. So I congratulate you for giving a

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1 wonderful presentation. It did hit right on line with  
2 what we're trying to do.

3 CHIEF GATES: Thank you.

4 CHAIRMAN HARRIS: Mr. Armstrong.

5 MR. ARMSTRONG: Chief, the other day I asked  
6 your Mayor, Mayor Bradley, if he had any figures relative  
7 to the cost to your department of manhours and actual  
8 overtime pay, if that's involved, of people, of your  
9 detectives, of patrolmen that spend time in court, time  
10 after time, and end up having the case continued. That  
11 was in conjunction with this concern that the Task Force  
12 has on the finality of a judgment in the criminal justice  
13 system. I don't know if you're prepared to answer that,  
14 if you have any figures or if you could just give us some  
15 idea of the cost to the department.

16 CHIEF GATES: If we were to pay for it all,  
17 which we do not, which means when we don't pay for it, we  
18 pay for it in other ways. We have to give the time off,  
19 which means that we take police officers off the street.  
20 It's a very regressive thing because we get an hour in  
21 the court time which we don't get on the street at all,  
22 and then we must give the officer an hour and a half time  
23 off. So it's very, very regressive.

24 But if we were to pay for it, it would cost  
25 about \$10 million. That's just for the continuance time,

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1 where officers do not testify. They are subpoenaed to  
2 court, are there, must be there. Cases are continued,  
3 and they don't -- and ultimately do not testify.

4 MR. ARMSTRONG: In another area, the early  
5 hearings of this Task Force involved the representatives  
6 of LEAA, and they mentioned one of the exemplary projects  
7 as being the sting operations that have taken place with  
8 the help of the federal government. Did Los Angeles  
9 have any experience with sting operations, and if so, did  
10 you find them to be beneficial from the amount of dollars  
11 spent and the amount of crime apprehension that took  
12 place?

13 CHIEF GATES: We didn't engage in sting opera-  
14 tions. We conducted a few minor -- but we haven't used  
15 any federal dollars for that pupose. I have some reser-  
16 vations about sting operations and always have. I'm not  
17 so sure it doesn't stimulate crime rather than solve  
18 crime. If I were convinced that once you captured the  
19 burglar you did something about them, then I might be  
20 satisfied that it was a healthy way to go.

21 I'm not so sure that anything does happen to the  
22 burglar once you do catch them, so if you have a place  
23 that is a receiving center that will pay a decent amount  
24 for the goods that you receive, you stimulate the burglar.  
25 So I'm not so sure it's a good operation, just as I'm not

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1 so sure that most of what LEAA did was good.

2 MR. ARMSTRONG: That's all I have. Thank you  
3 very much, Chief.

4 CHAIRMAN HARRIS: Mr. Carrington.

5 MR. CARRINGTON: Chief Gates, I've asked this  
6 question of almost all of the law enforcement executives  
7 that have appeared before us. You mentioned cooperation  
8 between the Los Angeles Police Department and various  
9 federal agencies. Mayor Bradley also mentioned that it  
10 was very good. Is there a sticking point because of the  
11 Freedom of Information Act? By this I mean are some of  
12 your people, particularly in the secretive crimes area,  
13 narcotics, terrorism and so on, afraid to say front out  
14 even the existence, much less the identity, of an infor-  
15 mant, to a federal agent for fear that the existence or  
16 perhaps even the name, improperly blocked out, might  
17 surface two years from the time, in a Freedom of Informa-  
18 tion report?

19 CHIEF GATES: Well, clearly it has stifled that  
20 flow of information that -- you know, at one time it was  
21 not a free flow coming from federal agencies. You had to  
22 almost squeeze it out of them. And in the last decade  
23 before the Freedom of Information Act, and even after, we  
24 have been able to get information flowing from the federal  
25 government. We now have had to withdraw our information

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1 because of the fear of providing that information that  
2 might involve informants or undercover operatives, and  
3 that information leaking out. In spite of what some  
4 people say are controls, that fear is there, and so it  
5 does stifle the communications.

6 MR. CARRINGTON: Quite often, as you well know,  
7 even if the informant's name is blocked out, the identi-  
8 fication can be gotten to by process of elimination.

9 CHIEF GATES: Oh, sure.

10 MR. CARRINGTON: Just how many people were on  
11 the premises on that given date. I hope that we're  
12 going to address this as a Task Force in Phase II. And  
13 it's my opinion that the only way to deal with it ade-  
14 quately would be to amend the Freedom of Information Act  
15 so there is a blanket protection for any local law  
16 enforcement information. Do you agree with that basic-  
17 ally?

18 CHIEF GATES: I agree wholeheartedly, although  
19 I would go much further. I think there are other things  
20 that need to be placed in that Act, but I agree it needs  
21 to be amended. And it's a way to save some money. It  
22 costs an awful lot of money to operate the federal govern-  
23 ment today.

24 MR. CARRINGTON: Well, like Mr. Edwards, I'm  
25 quite intrigued with this flash money idea. Have you

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1 pursued it at all?

2 CHIEF GATES: Not at all. I thought I would  
3 give you the idea and ask you to pursue it.

4 MR. CARRINGTON: I just wonder if -- obviously  
5 the Federal Reserve isn't going to give you that much  
6 money without at least a receipt. And I think --

7 CHIEF GATES: Oh, we'd be glad to give them a  
8 receipt.

9 MR. CARRINGTON: And I think they'd be afraid  
10 of rip-offs.

11 CHIEF GATES: Well, I think everyone would have  
12 to guard against that. Naturally with that kind of money  
13 lying around, we would, too. But I think very adequate  
14 controls could be established, and I see really not much  
15 danger.

16 MR. CARRINGTON: I wonder if it would be worth  
17 pursuing to see if any one of the high risk companies like  
18 Lloyd's would write a fairly low cost premium on the  
19 stash roll, such as a fidelity bond, or something like  
20 that.

21 CHIEF GATES: I would think that the risk, that  
22 that is something that probably the federal government  
23 could underwrite itself. The risk would be really minimum  
24 risk, and the loss, I would imagine, would be very, very  
25 slight, over a long period of time. We waste than that

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1 in the federal government in a whole variety of ways.

2 MR. CARRINGTON: That's all I have. I thank  
3 you for being here, and I congratulate you for the kind  
4 of department you run.

5 CHAIRMAN HARRIS: Chief, two questions. Why do  
6 you believe it's inappropriate to use undercover agents  
7 posing as students?

8 CHIEF GATES: I didn't say that. What I said  
9 is, I think it's very inappropriate for the police to be  
10 posing as students on school campuses. That's a place  
11 where kids ought to go and be able to learn and not worry  
12 about that type of thing. What I'm really saying is,  
13 it's inappropriate, the environment is such that we have  
14 to do it. We have no desire to be there. It's a terrible  
15 thing, I think, to put our officers under cover, going  
16 to class, making friends, developing trusting, lasting,  
17 supposedly lasting relationships, and then they turn out  
18 to be the narcs. It really cuts against good relation-  
19 ships between young people and the police. I just think  
20 it's an unhealthy thing. But in today's society, in  
21 today's school, I wouldn't stop it for anything, abso-  
22 lutely there is nothing that would keep me from -- short  
23 of a court order, keep me from doing it. And we've  
24 already been through --

25 CHAIRMAN HARRIS: I misunderstood your point.

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1 I thought your point was that you wouldn't use that as  
2 a tactic.

3 CHIEF GATES: Oh, no, no. I've used it for  
4 seven years, and I will continue to use it. I wish I  
5 could expand it. If I had the resources, I'd put them  
6 in every high school in the city.

7 CHAIRMAN HARRIS: One last question. Most  
8 places we go, when we get done with the substantive  
9 recommendations, whichever city, state or local official  
10 we're talking about, pulls you aside and says, "What  
11 about the money?" Now, you've offered what, from a local  
12 point of view, is a rather unique opinion of LEAA. Could  
13 you perhaps tell us the basis for your skepticism about  
14 the value of LEAA?

15 CHIEF GATES: Well, I think LEAA, perhaps in  
16 the beginning, was serving some useful purpose. Inter-  
17 estingly, the things that people objected to most about  
18 LEAA probably did the most good; the bricks and the mortar,  
19 some of the equipment that was provided, that probably  
20 has done more good than anything else LEAA has done.  
21 And that was probably the most objectionable aspect of  
22 LEAA to some.

23 My feeling has been that in the latter years,  
24 LEAA steered completely away from its original purpose,  
25 and that was crime on the streets. It became, as we knew

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1 it would, a way of putting a great deal of control on  
 2 cities and on police departments, the way they hire, the  
 3 standards that they set for themselves. And then lastly,  
 4 the money raised expectations. First of all, you  
 5 engaged in the game of grantsmanship, to see who was  
 6 the most inventive in developing the grant, a beautiful  
 7 idea. Then you raised expectations in the community.  
 8 You started a program, the program looked like it was  
 9 pretty good. The community adopted it, the police depart-  
 10 ment adopted it. And then after a year or two of funding,  
 11 LEAA dropped it, the city then had to pick it up, and  
 12 cities, particularly in the state of California, under  
 13 Proposition 13, are simply in no way capable of picking  
 14 up that additional expense.

15 So I think it raises expectations, it causes  
 16 frustration, and I think in the latter years it has done  
 17 very, very little to deal with the crime problem.

18 CHAIRMAN HARRIS: Chief Gates, thank you very  
 19 much for appearing today. We appreciate your taking the  
 20 time, and your thoughtful views. Thank you.

21 CHIEF GATES: Thank you. And we could use that  
 22 million dollars for our gang problem.

23 CHAIRMAN HARRIS: Our last witness for our  
 24 hearings in Los Angeles, Don Santarelli, is no stranger  
 25 to law enforcement. We are pleased to have him here

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1 today. And in a lot of ways, he is a natural to follow  
 2 the last question, since some consider him the architect  
 3 of LEAA.

4 Mr. Santarelli, we appreciate your taking the  
 5 time to come here, and we know it's an inconvenience to  
 6 your schedule. We're delighted to have you, and we're  
 7 anxiously awaiting your statement.

8 PRESENTATION BY:

9 DONALD E. SANTARELLI,

10 ATTORNEY AT LAW, WASHINGTON, D.C.

11 MR. SANTARELLI: Thank you. If I'm going to be  
 12 an architect, I would rather have been Andrea Paladio,  
 13 but thanks for the compliment. I was a little worried  
 14 when Chief Gates started, to even be in his town, to  
 15 hear the remarks about LEAA, but I'm glad he clarified it.  
 16 It was obviously after my period of employment there.  
 17 Although I noticed that -- I could comment that L.A.P.D.  
 18 was probably the best player of the grantsmanship game  
 19 anywhere in the U.S., and they never returned a dime of  
 20 the tens of millions they got.

21 Well, I feel in a strange role today. It was  
 22 suggested that I offer an overview, or a sort of cleanup  
 23 statement after all the witnesses. I feel a little bit  
 24 like Dr. Reuben must have felt when he sat down to write  
 25 his book, "Everything You Wanted to Know about Sex but"

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1 Were Afraid to Ask." I really don't know what's left  
 2 for me to say, considering some of the excellent testimony  
 3 that you've heard here today. I, too, have a prepared  
 4 statement, which is unusual for me. But my last experi-  
 5 ence by shooting from the lip was a very costly one, so  
 6 I thought that I would at least provide you with what  
 7 was requested, a written statement.

8 It promises to be shorter than the last promise  
 9 to be short. If you would like, I will quickly go  
 10 through the statement and then make myself available for  
 11 questions, because you've really heard some substantive  
 12 testimony today that will go beyond mine.

13 CHAIRMAN HARRIS: Thank you, that sounds like  
 14 a good way to proceed.

15 MR. SANTARELLI: We all know of Mr. Justice  
 16 Holmes' aphorism that the life of the law is experience  
 17 and not logic. We're an experimental society, and law  
 18 is one of our experimental tools, and principal tools.  
 19 Even deTocqueville recognized that way back in 1830 when  
 20 he commented that we made all of our political questions  
 21 into legal questions for adjudication in our courts.  
 22 That's a very significant underpinning for what I am  
 23 going to talk about today.

24 The history of how we have experimented with  
 25 the criminal law is really interesting for us to consider.

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1 In the beginning, our criminal law was very vague, and  
 2 very unprocedural and really not very substantive, either.  
 3 There were just prohibitive statutes, and we followed a  
 4 nonsubstantive due process course, a procedural due  
 5 process course was all it really amounted to.

6 But we reacted to that, and we had this long  
 7 period of unhappiness with this vague and sketchy criminal  
 8 law, so as an experimental society and one given to  
 9 excessive swings, as I think we've always seen in our  
 10 history, we've overlegalized, overcriminalized and over-  
 11 proceduralized our criminal law, which leads us to this  
 12 present state of unhappiness.

13 I think we have to appreciate that while we were  
 14 doing that, things were happening to our society, too.  
 15 It was changing very radically. We'd become a very diffi-  
 16 cult society to deal with in the United States, because  
 17 of the increased tensions that have been as a result of  
 18 our increased urbanization, our increased specialization,  
 19 increase in mobility particularly, breaks down the old  
 20 values that held our communities together, and whereas  
 21 every man in effect was a policeman, in our youth, at  
 22 least in mine and in my community, the fear of your father  
 23 and a report to him for your depredations upon your  
 24 neighbor were far greater deterrent than anything the  
 25 police could ever provide.

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1 I think we have to appreciate where we are now.  
 2 We're no longer there. And no matter how much pulpiting  
 3 we do, no how much talking and speeching and good thinking  
 4 and good statements and good civicing we do, we don't  
 5 have an infrastructure in our society any longer;  
 6 churches, schools, communities, neighborhoods, caring  
 7 groups of people, ethnic neighborhoods, for that matter,  
 8 to enforce social norms and anticrime rules. So we have  
 9 relied entirely of late on government, police, courts and  
 10 corrections. They are really no substitute for the basic  
 11 fabric that made our society strong and lawful.

12 But that does us no good to sit here and lament  
 13 because we are an experimental society, one determined  
 14 to succeed. And therefore we have to use whatever tools  
 15 we have at our availability. Those tools are not always  
 16 pleasant ones, and the ones I'm talking about today are  
 17 definitely not pleasant ones, but there doesn't seem to  
 18 be much left to us. We're not going to recreate community,  
 19 we're not going to recreate churches, we're not going to  
 20 recreate neighborhood schools. We're not going to  
 21 recreate neighborhoods, apparently. And certainly the  
 22 ethnic period of American history is over, cohesive,  
 23 tight, controlling ethnic neighborhoods.

24 So we have got to use what we have left, unfor-  
 25 tunately, police, courts and prisons. We know one thing

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1 above all, that we have experimented excessively with  
 2 reforms and criminal justice. Ever since the 1968 Crime  
 3 Commission report, which I thought the majority view  
 4 was a deplorable cop-out of the problem that we were  
 5 then beginning to see that we were facing, we have exper-  
 6 imented with billions and billions of dollars, seven of  
 7 federal money in LEAA alone, with every program that any-  
 8 body ever thought might work, was not too controversial,  
 9 and certainly not too simple.

10 I myself participated in that process, and  
 11 chalk it up to youth, inexperience. We know what has not  
 12 worked. How many tens of millions of dollars went into  
 13 experiments relating to police manpower improvements?  
 14 And you heard your very own distinguished Chief here  
 15 talk about, "Yes, they are better than ever", and doing  
 16 almost worse than ever, while being better than ever.

17 Have the rates anywhere changed? Have we closed  
 18 more cases than the roughly 20 percent that we're dealing  
 19 with over and over again? Do we incarcerate any more for  
 20 longer periods of time? Do we protect society any better?  
 21 I think the answer is simply, no. What has police  
 22 training done to reduce violent crime? We experimented  
 23 again with tens of billions of dollars, to reduce response  
 24 time, thinking that that was one of the great keys to  
 25 improve law enforcement, and cut it down at the last when

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1 I knew about it to an average of seven minutes. Did not  
2 affect the impact of crime at all. Apparently you have  
3 to be there while it's happening, not seven minutes after  
4 you receive the report.

5 So what is left for us to do? I think the most  
6 significant immediate response that government can make  
7 now, and at the federal level, which is what your prin-  
8 cipal responsibility appears to me to be, is to go immed-  
9 iately after violent offenders with whatever tools we  
10 have now at our disposal, and in particular seek long-  
11 term incarceration of them. I know, as you do, that cor-  
12 rections continues to be a euphemism for what goes on  
13 after the incarceration period, or during the carcera-  
14 tion period, and afterward. We do not correct violent  
15 offenders. We do not understand their psychology, their  
16 psychopathy, or whatever fancy term is applied to the  
17 condition of mind that violent prone people suffer from.

18 Until we do, we must, of course, protect our-  
19 selves. Even the founding fathers understood that the  
20 first order of business of government was to establish  
21 order. And they did so clearly in the first ten amend-  
22 ments, including making bail unavailable to, quote,  
23 "capital offenders". Capital offenders were all violent  
24 criminals. Violent crimes were all capital offenses, in  
25 the 18th and early 19th century. Establishing order by

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1 protecting ourselves.. The first thing we must do is make  
2 sure that every time we have identified a violent prone person,  
3 by conviction, after proof beyond a reasonable doubt, the  
4 highest standard we know in western society, to permit the  
5 laying on of hands for a long period of time, that person  
6 must then suffer incarceration for the purposes of protecting  
7 society, and while we search for the key to curing deviant  
8 conduct, incarcerated for long enough to assure public protec-  
9 tion.

10 And I mean -- and I say it clearly in my state-  
11 ment -- a minimum of 10 years, and probably 15 years. Now,  
12 those statutes don't exist readily on our books, but we do  
13 have statutes that provide for substantial maximum penalties  
14 of 10 years in various assualtive type felony cases. How  
15 often do you see judges sentence at that level? And certainly  
16 with the correctional proliferation of statutory magic, nobody  
17 serves anywhere near the expected time that the public has been  
18 led to believe. And when I get to that point in my statement,  
19 I will clearly say that is one of the statutory changes that  
20 the federal government should seek immediately, and one that  
21 we should exhort the states to seek, and that is long-term,  
22 and I will recommend mandatory minimum periods for violent  
23 offenders. And I know the first cry will be, "But not all  
24 violent offenders are the kind that we fear." It defies my  
25 small intellect to draft a statute which distinguishes, with

1 sufficient precision, and sufficient assuery that the  
2 judiciary will agree with, a statute that defines stranger-  
3 to-stranger crime, and not crime of violence between those  
4 who know each other. I do not want to hear lengthy defenses  
5 about possible familiarity after the event. I'm talking  
6 about public protection as the first order of business.

7 Now, how can the federal government do that effec-  
8 tively? One of the mysteries to me is why the United States  
9 Department of Justice is at this moment sitting on a series  
10 of grants to expand the career criminal program that has  
11 proved so successful. I think we all know what the career  
12 criminal program is by now, in the testimony. The instant  
13 response that the federal government can make is to implement  
14 that system in every federal prosecutor's office, with the  
15 strongest exhortation from the Attorney General that the  
16 federal government identify every one of those persons that  
17 comes into its purview that the studies show have had 10  
18 offenses previous to their apprehension by the federal  
19 system. That's the surveys, the data that I'm at least  
20 proud to have started funding. I'm not proud of some of the  
21 other, but that I am. To identify them, and with the career  
22 criminal program computer list, advance them for prosecution  
23 immediately, and make them a priority, and make them the  
24 priority of the federal effort.

25 And unfortunately, one of the casualties of that

1 priority is a shift from the concentration that I think has  
2 been excessive in the last five years on the glamour of white  
3 collar crime. Let me simply say that I do not support white  
4 collar crime. I do, however, recognize that you have a  
5 difficult job of choosing priorities. In your life and in  
6 the public life, we cannot do everything all at once. What  
7 are you going to do first? And I submit to you, violent  
8 crime must be addressed first. And economic crime, much of  
9 which should not be crime, and is a result of an overzealous  
10 Congress and a political administration or two -- I worked  
11 for one or two myself -- seeking to glamourize that kind of  
12 conduct -- what young Harvard lawyer, fresh out, in a  
13 prosecutor's office, wants to try a dirty rape case or a  
14 simple bank robbery? He'd much rather try a complicated  
15 fraud case with all the wonderful statutory chicanery that  
16 goes on with things like immunity statutes and RICO statutes  
17 and extended punishment statutes and complicated conspira-  
18 cies. It's very attractive to the young intellect.

19 Unfortunately, we can't do it all. And I submit to  
20 you that the concentration of this Administration should be  
21 on using the tools available to it for violent criminals,  
22 and then to seek statutory changes.

23 Now, I have obviously some conundrums, do I not,  
24 with respect to, what do you do with all these new offenders  
25 that the system will suddenly be responsible for? Because

1 in effect you're extending the period of incarceration and  
 2 you don't have the turning door to make those hot beds avail-  
 3 able for the next inmate for 36 months. Well, that's your  
 4 problem. It seems to me rather simple, however. If there  
 5 is a will to do it, to commission the Department of Justice,  
 6 to immediately survey the facilities available to it, between  
 7 minimum and maximum and the range therein, and immediately  
 8 plan for a shift of all offenders who are not violence-prone  
 9 to a minimum or less than maximum security facility, leaving  
 10 maximum security facilities available for violent offenders.

11 And second, to survey the rest of the federal  
 12 government for other facilities that might be converted  
 13 quickly. I notice that we found ample supplies among  
 14 federal military establishments -- I might suggest, in the  
 15 sun belt -- for our recent visitors who caused so much con-  
 16 troversy from the Gulf.

17 Take military bases. How many tens of millions  
 18 will that cost you, compared to the hundreds of millions  
 19 that we have spent and will continue to spend on manpower  
 20 programs, managing violent offenders in society where they  
 21 are free to depredate on their fellow citizens? I think the  
 22 watchword should be, unfortunately -- and I know that we will  
 23 be assaulted for it, at least verbally -- let the price of  
 24 crime be borne by the criminal, and not by the innocent, not  
 25 by the God fearing, dues paying, taxpaying citizen.

1 In effect, we have imprisoned ourselves behind our  
 2 locked doors and our barred windows to give maximum freedom  
 3 to those persons who have already been identified by the  
 4 criminal justice system as prone to violence by conviction  
 5 beyond a reasonable doubt.

6 Now, statutory changes beyond long-term sentences.  
 7 I could give you a laundry list. I do not intend to. You  
 8 are men of integrity and perspicacity. You have heard and  
 9 will continue to hear throughout these hearings a variety of  
 10 laundry lists. I am somewhat offended by long laundry lists,  
 11 because they don't help you achieve the hardest thing you  
 12 have, and that is priorities.

13 I think there are several priorities that are more  
 14 important, in terms of statutory changes, than any others.  
 15 Extended sentences with mandatory minimums, particularly for  
 16 crimes committed with a deadly weapon, crimes of violence.  
 17 Statutory change number one.

18 Statutory change number two, amend the Bail Reform  
 19 Act. I myself bear personal scars that will last forever over  
 20 the fight that we had in 1969 and '70 over the passage of  
 21 the D.C. crime bill which contained in it a significant piece  
 22 of bail reform, then called preventive detention. What it  
 23 did was allow the judge to take into consideration danger to  
 24 the community in establishing conditions of release. We  
 25 were substantially misled by the 1965 Bail Reform Act, and

1 the '68 Crime Commission report, that the whole purpose of  
2 bail was to mandate release. The purpose of bail is also to  
3 protect the community, and in those cases where the evidence  
4 shows the person to be prone to violence, that consideration  
5 should not be denied the judge any more than physical evidence  
6 should be denied in the exclusionary rule to the tryer of  
7 fact, which is another priority I will mention in a moment.

8 And secondarily, to provide that danger to the  
9 community shall be the basis on which a judge, after hearing,  
10 may hold a defendant ordered held pending his trial.  
11 Obviously, civil libertarian considerations should mandate  
12 speedy trials of 30, 60 or 90 days for those cases, and pri-  
13 oritize those over and above others where the defendant is  
14 released on some kind of recognizance.

15 And if you have any trouble with that concept, look  
16 at the 1970 statute. Congress passed it in a most hostile  
17 time, nevertheless. And it has simply not been used as a  
18 model or an example for further experimentation. Wouldn't  
19 Mr. Holmes wonder about us in our experimental society that  
20 we don't want to experiment with bail?

21 And the next priority that I would address is of  
22 course the purpose for this hearing, that I at least was  
23 advised, and that is the exclusionary rule. I have a few  
24 remarks on that in my statement that I would like to  
25 address myself to. I can't add substantively a better analysis

1 than Judge Wilkey has given you of the technical aspects of  
2 the exclusionary rule, its application and its misapplication.  
3 I have long personally been awed by the Judge's command of  
4 this subject, and consider myself a secondary expert and  
5 would say, as they do in Washington, I would like to associ-  
6 ate myself with the remarks from the distinguished gentleman  
7 from the District of Columbia.

8 But I want to add some observations about the  
9 exclusionary rule. There are some of us like Judge Wilkey  
10 who have pioneered for reform of this incredibly absurd pro-  
11 cedure for a long time. The distinguished Frank Carrington,  
12 who sits there with you on that dais, and his organization,  
13 Americans for Law Enforcement, were pioneers and have been  
14 pioneers. Doris Dolan, who is in this audience, and her  
15 predecessor organization and her existing organization, Laws  
16 at Work, with whom I am proud to be associated and to repre-  
17 sent the views of here today, have pioneered in California.  
18 The Attorney General's office here under Evelle Younger,  
19 with whom I worked closely, and Herb Ellingwood, when he was  
20 then an Assistant Attorney General. The tireless efforts  
21 of your then Governor and now President to display the  
22 ridiculousness and the unfairness of the exclusionary rule.  
23 The regular conferences of the judiciary sponsored in this  
24 state by your civic organizations, your Attorney General,  
25 and Doris Dolan and Laws at Work, all of which I have

1 participated in, have worked tirelessly to reveal and  
2 reflect that which Judge Wilkey so adequately presented.

3 I don't think I need to add, except to submit for  
4 the record the resolutions of those various events, including  
5 a resolution adopted in 1973 by the Ninth Circuit Judicial  
6 Conference, before whom I had the privilege of addressing  
7 them on this subject in a debate with the distinguished John  
8 Flynn, a prominent defense lawyer from Arizona. Afterward  
9 there was a vote taken of the conference, and two to one the  
10 conference voted to support my position that the exclusionary  
11 rule should be modified to permit the introduction of ille-  
12 gally seized evidence or improperly seized evidence in those  
13 non-egregious cases.

14 Now, where have we come since then? Can there be  
15 any doubt in our minds as to what the Supreme Court is saying  
16 in Bivens -- not Bivens, but the progeny of Bivens, in  
17 Calandra, in Powell, in Pakas, in Havens and Salvucci? The  
18 concept of intellectual integrity of the exclusionary rule  
19 has been substantially eroded. However, my position that  
20 I would urge upon you is not for the total abolition of the  
21 rule. I am fearful of that because I worry about the  
22 egregious violation. And I'm not satisfied that a civil  
23 remedy that burdens the aggrieved person with the responsi-  
24 bility for bringing a cause of action is a sufficient safe-  
25 guard or sufficient assurance to our communities that the

1 rights protected are involved and that the police will not  
2 take the risk of violation. I refer to the Rochin test, or  
3 the ALI test, which you've heard about, which seemed to have  
4 some validity. But I'm also concerned with the intellectual  
5 problem that I suffer in the exclusionary rule by saying, one,  
6 it is a bad idea, two, I don't seem to have a better system  
7 to assure the protection of the rights that we want to assure.  
8 And that is, to prevent the aggressive and calculated and  
9 willful misconduct of law enforcement, who will simply take  
10 the chance that they will get away with the seizure involved  
11 because of the heinousness of the act.

12 I'm also troubled by a broad application of a  
13 revision of the exclusionary rule to those areas that are not  
14 violent crime. I see a great deal of what I consider the  
15 overreaching of the present Department of Justice. For the  
16 last five years I have seen an extended use of statutes which  
17 I myself helped to draft at another time, because my model  
18 of enforcement was the distinguished Henry Peterson who was  
19 then the Assistant Attorney General for the Criminal Division.  
20 And I have the highest of regard for the present Assistant  
21 Attorney General, Mr. Lowell Jensen, whom I believe to be  
22 a man who has demonstrated over the last 20 years his wisdom  
23 and judgment. But I have seen over the past four and a half  
24 years the stretching, extending use of the power of the Grand  
25 Jury, the immunity statutes. I was involved in a case with

1 17 requests for 17 grants of immunity in a federal misdemeanor  
 2 case. We never intended the immunity statute to be appli-  
 3 cable outside of those serious criminal violations of organ-  
 4 ized crime or serious depredations against society. The  
 5 willy-nilly use of that statute troubles me. The extensive  
 6 application of an imaginative theory of law of the RICO  
 7 statute, to a sheriff in the south for the forfeiture of his  
 8 office. These outlandish and IRS-like stretches of the  
 9 criminal law trouble me. Therefore I cannot sit here and  
 10 support an abolition of the exclusionary rule across the  
 11 board, nor do I support its modification in the case of non-  
 12 Fourth Amendment type seizures. Because I too have learned  
 13 not to trust my government, which I've spent most of my life  
 14 proudly a part of. So I ask you gentlemen when you address  
 15 this question of a modification of the exclusionary rule to  
 16 do so with the greatest of sensitivities to the problems that  
 17 we know could crop up by a careless and across-the-board  
 18 revision of the rule. But the rule must be revised. The  
 19 price of it is simply too high.

20 And the worst price of all, not just the freeing  
 21 of the dangerous, it's the disrepute that the judicial and  
 22 criminal justice system suffers in the eyes of the public.  
 23 What Chief Gates said to you about the Hispanic community is  
 24 applicable to the whole community when it looks at the  
 25 absurd result of exclusionary rule results. So I suggest

1 to you that we are in an unprecedented time for action on  
 2 these recommendations that I've made to you. You have  
 3 never before seen 14 distinguished Democrat senators come to  
 4 a President of the United States and ask for a modification  
 5 of the exclusionary rule, and a variety of other reforms,  
 6 including bail reform, at a time when the United States  
 7 Senate is controlled by the other party, generally men.  
 8 considered agreeable to these thoughts, and at a time when  
 9 the President of the United States, who has established his  
 10 track record of interest in this subject extensively in  
 11 California, and has as his closest advisors the men who were  
 12 pioneers on these reforms.

13 On one hand, be courageous in your recommendations.  
 14 On the other hand, be careful and sensitive in the area of  
 15 the exclusionary rule. One last subject matter which I was  
 16 asked to address today, and that is, what is the proper role  
 17 of the federal government in this difficult problem of violent  
 18 crime? Not an easy question. I cut my teeth on it in 1967  
 19 and '68 after my days as a young prosecutor and then a young  
 20 counsel to the House Judiciary Committee, which wrote the  
 21 1968 LEAA Act. Having then subsequently five years later  
 22 had the helm of LEAA thrust into my -- and I say it openly --  
 23 unwilling hands, I did not expect to learn as much as I did  
 24 in that short period of time.

25 LEAA proved to us the mistake of some basic beliefs

1 that we continue to hold in this society, and that is that  
2 massive federal efforts are good, and massive expenditure  
3 of money is good, and that massive experimentation will  
4 produce somehow out of all of the chaff some kernels of wheat  
5 that are really worth the effort.

6 I probably participated in the expenditure of four  
7 of those billions of dollars that were seven in all. Some  
8 directly and some indirectly, in my previous life at the  
9 Justice Department through a kind of supervisory role for  
10 LEAA responsibilities. And I think in reflection that LEAA  
11 was an excess for several reasons. LEAA would function well  
12 only if it had vigorous leadership and total support from a  
13 President and an Attorney General. We witnessed the opposite  
14 in the last few years.

15 And so I believe, as has now happened, that LEAA  
16 should be reduced to a very small function. And by that I  
17 mean maybe, at the tops, \$100 million. But I believe that  
18 there should be substantial millions around for the necessary  
19 continuous pursuit of models, examples and experimentation and  
20 crisis responses, which the federal government never seems  
21 to have the ability to respond to without going to the  
22 Congress.

23 And at the same time, I think very, very signifi-  
24 cantly, the federal government has the following responsi-  
25 bilities. Leadership. The President and the Attorney

1 General must use their bully pulpit. They must tell the  
2 public what little expertise they can learn from the arms and  
3 legs that constitute the Justice Department and LEAA and its  
4 research and experimentation activities. But above all, they  
5 must lead the public in the reforms necessary and actions  
6 necessary that the public must take to protect itself.  
7 And it must push the Congress to enact those reforms.

8 But second, it has a leadership responsibility to  
9 pass on to the states whatever wisdom it has without coercion.  
10 I agree with Chief Gates. Let me take a moment aside from  
11 this rhetoric to tell you what I observed as an inevitable  
12 impulse of a large federal agency that was authorized to spend  
13 \$1 billion a year in my day at LEAA. Good and well meaning  
14 men and women came to work each day at LEAA with the respon-  
15 sibility of enforcing a statute that was hardly clear because  
16 as usual the Congress compromises all the tough issues and  
17 leaves them to be, quote, "worked out later", either by the  
18 courts or by the executive agency. And the well meaning  
19 employee, too often called a bureaucrat, comes to work and  
20 he sees ambiguities, uncertainties, and as he is an educated  
21 and thoughtful intellectual person, he sees uncertainty in  
22 the words and multiple interpretations. And the first thing  
23 he wants is guidelines to guide his hand. He is not paid to  
24 take risks or to make interpretations or to be subjective  
25 in his judgment. He says, "Santarelli, that's what you're

1 paid to do. You're the political appointee", saying sotto  
 2 voce, "He'll be gone in two years, and I need to cover my  
 3 fanny." And so he says, "Here are my latest thoughts on  
 4 guidelines," which then become regulations, which then  
 5 become ossified, which then become a very comfortable  
 6 function for the government employee to live by. He takes  
 7 no risks, he makes no judgments. He simply follows the rule,  
 8 and what happens is that LEAA becomes a compliance agency,  
 9 not a granting agency. And the job done every day is, "Mr.  
 10 Applicant, does your application comply with my guidelines?  
 11 No. Section B9123(c) has a missing part." That then becomes  
 12 the major function of government. That must be avoided.  
 13 Therefore I suggest that the LEAA function should be small,  
 14 lean, and under the control of the Attorney General.

15 There was an effort in the 1968 statute to put a  
 16 gap between the Attorney General and the LEAA for the purpose  
 17 of troublesome feelings that Attorney Generals would politi-  
 18 cally meddle. I can tell you that the spirit at the time in  
 19 '68 was Ramsey Clark in the Attorney General's office and  
 20 Lyndon Johnson in the White House. And the members of the  
 21 Congress who passed it then, Democrats and Republicans alike,  
 22 said, "We don't trust either of them to not allow political  
 23 considerations to color the granting process." And so LEAA  
 24 was created anomalously as it was.

25 I think we have to take the risk of political

1 system and we have the finest mechanism known to the  
 2 western world, regularly scheduled elections, to change  
 3 leadership. And one of the prices we have to pay for our  
 4 democratic process is trusting government officials to have  
 5 some flexibility in the awarding of grants, the choice of  
 6 programs, or we'll not be, as Justice Holmes must be looking  
 7 down and laughing at us from somewhere from his ethereal  
 8 balcony in the sky that resembles the old Gaiety Vaudeville  
 9 Theater in Washington, no doubt, of which he was so fond, and  
 10 wondering why we're so afraid to experiment, on one hand, and  
 11 not on the other.

12 So I leave you only with the thoughts of my short  
 13 17 years of experience, and they do not match those of the  
 14 more distinguished people that you've heard here, but I am  
 15 privileged to share with you those experiences, and to urge  
 16 you onward quickly to prioritize your choices and make an  
 17 impact. Thank you.

18 CHAIRMAN HARRIS: Thank you, Mr. Santarelli. That  
 19 was an excellent statement. You were last on the program but  
 20 clearly well worth waiting for.

21 Mr. Littlefield, questions?

22 MR. LITTLEFIELD: I don't have any questions, but  
 23 thank you very much, Mr. Santarelli, really an excellent  
 24 presentation. Thank you.

25 CHAIRMAN HARRIS: Mr. Edwards.

1 MR. EDWARDS: I can only repeat what Mr. Littlefield  
2 said. It was an excellent presentation. I have no questions.

3 CHAIRMAN HARRIS: Chief?

4 CHIEF HARRIS: Not because it's late in the day,  
5 it was an outstanding presentation, and I don't have any  
6 questions, either.

7 CHAIRMAN HARRIS: Mr. Armstrong.

8 MR. ARMSTRONG: I've known Mr. Santarelli for a  
9 while. I'm not going to let him off that easy.

10 MR. SANTARELLI: I didn't come all this way not to  
11 do some battle.

12 MR. ARMSTRONG: The discussions of a career  
13 criminal program within the U.S. Attorney's office has come  
14 to the attention of this Task Force and has been debated.  
15 The opponents' theory is that the U.S. Attorneys basically  
16 are on a fast track now with a speedy trial obligation. And  
17 also the identification of the more serious offenders are  
18 generally brought to the attention of the U.S. Attorney's  
19 office by the Bureau. The argument is primarily that there  
20 is not really a need for a career criminal program throughout  
21 the U.S. Attorney's offices. How do you react to that when  
22 you're now proposing that we do make a recommendation to the  
23 Attorney General that such a program be implemented, and that  
24 at least two prior offenses be the target guideline for those  
25 defendants?

1 MR. SANTARELLI: I wouldn't even use two prior  
2 offenses. I would --

3 MR. ARMSTRONG: I think you said 10 --

4 MR. SANTARELLI: Oh, no. I said that's what the  
5 profile of the data that we have collected shows, that by  
6 the time an individual comes into the hands of the feds, he's  
7 got 10 prior offenses at the state level. Incredible fact.  
8 No, I wouldn't wait for the second or the third offense.  
9 I would list in my category in my priorities violent acts,  
10 first offenders included. I say in my statement, I don't  
11 believe there are any first violent offenders. I think there  
12 are only first apprehended. I think the first time the  
13 criminal justice sees them, we're seeing somebody who is  
14 dangerous. Number one. With respect to your question about  
15 implementation, the federal government must do something  
16 immediately. Within its powers it does not have state juris-  
17 diction, it has only federal jurisdiction. I think it should  
18 use that federal jurisdiction whenever somebody comes to  
19 its attention that is worthy of an immediate incarceration.

20 I did not give you a laundry list of statutory  
21 changes, and if I did, one of them would be the Speedy Trial  
22 Act. I think it's a ridiculous statute, ridiculous in its  
23 application and in its inflexibility. And I would seek a  
24 change in that statute, too, to avoid exactly that problem  
25 that you're pointing to, the compulsion upon the system to

1 deal with cases that are not priorities. The statute did  
2 not contemplate -- and I know, I worked for Sam Irvin for  
3 a long time -- did not contemplate a distinction between  
4 violent and nonviolent crime.

5 MR. ARMSTRONG: That's all I have. I would just  
6 comment that the career criminal program that we discussed  
7 previously is also part of your design and blueprint for  
8 justice in the 70's and the 80's. And from a state prosecu-  
9 tor who has benefited directly from LEAA with a career crim-  
10 inal program, I thank you, and I just wish that the federal  
11 government would have more funds available to other state and  
12 local prosecutors so that they could implement a career  
13 criminal program at the local level as opposed to the federal  
14 level.

15 And I think that you probably share that same  
16 opinion.

17 MR. SANTARELLI: Amen.

18 CHAIRMAN HARRIS: Mr. Carrington.

19 MR. CARRINGTON: As is usually the case, Mr.  
20 Santarelli's verbal flourishes leave me somewhat awestruck and  
21 breathless, to the extent that I feel it would be actually  
22 presumptuous of me to ask him a question, so I'll pass.

23 CHAIRMAN HARRIS: Well, I can, Mr. Santarelli. I  
24 have a few questions for you. I'd like to get your judgment  
25 on a few things that we've been talking about. Since you

1 have seen the criminal justice system from inside and out  
2 now, we have been talking about the area of posse comitatus,  
3 and enlisting the military in law enforcement, specifically  
4 airborne and waterborne craft for narcotics interdiction.  
5 Do you have any thoughts on that?

6 MR. SANTARELLI: Being a semi-expert on that  
7 subject, because of my four years' responsibility for the  
8 District of Columbia, has led me to be a defendant in the  
9 May Day cases, yea, until this year, the case being filed in  
10 1970. Thank God the Justice Department defended my interest  
11 in the matter, or I would have been bankrupted defending  
12 myself.

13 The posse comitatus statute is clearly inadequate  
14 and has never been reviewed substantially with an idea of  
15 changing the law. Countless hours are spent at the Department  
16 of Justice with numbers of high level people every time there  
17 is a problem with respect to that; the Department of the Army  
18 and the Assistant Secretary of the Army and the General  
19 Counsel of the Army, and the Deputy Attorney General and his  
20 associate deputies, trying to work out a game plan for each  
21 and every event. An outrage.

22 The reason that no one has ever reviewed it is it's  
23 just simply considered too controversial. My own feeling is,  
24 plunge ahead. That should be reviewed, and a recommendation  
25 to clarify that, and to use the powers of the military.

1 Now, with respect to narcotics interdiction, I  
2 don't know exactly what that means. At least with respect  
3 to the intelligence sharing, I think that that's a viable  
4 consideration.

5 CHAIRMAN HARRIS: Second, with regard to fugitives,  
6 we are considering a recommendation to make the apprehension  
7 of persons who have already been documented to have committed  
8 crimes and are in fugitive status a higher priority. Do you  
9 have any thoughts on whether or not that sounds like a sound  
10 investment of resources?

11 MR. SANTARELLI: Indeed, I do. I consider it one  
12 of the highest priorities. The misdirection of the FBI away  
13 from performing that vital function for the states is somehow  
14 a mistake and should be rectified. It should be one of their  
15 highest priorities. They should be in the fugitive business.

16 CHAIRMAN HARRIS: Third, do you have any thoughts  
17 on a more appropriate -- whether there ought to be a more  
18 appropriate organization of the criminal law enforcement  
19 function within the federal government?

20 MR. SANTARELLI: Do I ever. I don't think we have  
21 enough time to go through all of that. I have made my views  
22 known to the present leadership of the Department of Justice.  
23 And I will go into that with you if you want to. What in  
24 particular are you referring to?

25 CHAIRMAN HARRIS: Well, two areas. As between

1 the Department of Justice and the Treasury Department there  
2 ought to be changes, or whether it is appropriate to have  
3 two cabinet officers involved in law enforcement, and if you  
4 were to recommend changes, for example moving some Treasury  
5 functions to the Justice Department -- well, let me see what  
6 you think about that before I get to the second level.

7 MR. SANTARELLI: I also bear a permanent scar on  
8 that subject. In 1973, for four months I was appointed the  
9 departmental representative on a high level four-man committee  
10 designed to do exactly that. I don't mind telling you the  
11 other members were controversial. One was Bud Krogue and the  
12 other was Ed Morgan, who subsequently served some jail time  
13 for the backdating of the Nixon documents. The fourth was  
14 Mr. Mark Alger, the senior Justice employee of the OMB.  
15 We wrestled with that problem for four months and found  
16 that the recommendations we were prepared to make unacceptable  
17 to our bosses. The Attorney General wanted to have it all  
18 shifted to the Department of Justice, and I think we agreed  
19 with him. The Secretary of the Treasury, who was then Mr.  
20 George Schultz, did not. And the lobbying campaign on Mr.  
21 Nixon produced not much of a change.

22 I would suggest that you look at the records of that  
23 task force in 1973 and utilize what little benefit you might  
24 get from it. It was thoughtfully and carefully done.

25 My own view is that the dichotomy of interest

1 between those two agencies is a hindrance to law enforcement,  
 2 and that the concentration of law enforcement in a single  
 3 agencies is desirable. I myself am troubled to see the  
 4 proliferation of it in other agencies. Yea, even to this  
 5 day, the Fish and Wildlife Service of the Interior Department  
 6 has a bill in Congress to empower it as a general felony  
 7 arrest agency, to go about enforcing the game laws of the  
 8 United States, in the nature of FBI agents or DEA agents.  
 9 And can you imagine the Interior Department officials  
 10 adequately supervising a fully felonized law enforcement  
 11 agency? There isn't a lawyer in the place over there that  
 12 has any criminal law experience. Civil liberties considera-  
 13 tions? I'm terribly concerned about that.

14 I think consolidation is clearly one of the issues  
 15 that you address, although I don't see it as a primary  
 16 priority in the problem of violent crime in America.

17 CHAIRMAN HARRIS: I only have one more question.  
 18 The hour is getting late, so I'll ask you -- I saved an easy  
 19 question for last, and that is gun control. What are your  
 20 views on the handgun situation, and what an appropriate  
 21 attack on handguns ought to be?

22 MR. SANTARELLI: I don't feel that there is an  
 23 appropriate attack on handguns or firearms. I believe that  
 24 before we undertake massive abuse of civil liberties of tens  
 25 of millions of Americans who legitimately own and use sporting

1 and self-defense firearms, we should try something else  
 2 first. We have not tried mandatory penalties of a substan-  
 3 tial nature for the criminal misuse of a firearm. Everybody  
 4 who commits a crime with a firearm should be facing 15 years  
 5 straight time, bang. Then when that doesn't work, begin to  
 6 talk to me about the invasion of the tens of millions -- do  
 7 you know that 21 million Americans paid for a hunting license  
 8 last year? That doesn't include the people who own their  
 9 own farms or veterans of wars, who are exempt under many  
 10 state laws.

11 CHAIRMAN HARRIS: Judge Bell would ask you this  
 12 question if he were here, so I'll ask it in his behalf.  
 13 What would you think of prospectively registering serial  
 14 numbers of guns and not trying to do it retrospectively?

15 MR. SANTARELLI: I think that that is done presently  
 16 under the existing system. Every sale of a firearm, commer-  
 17 cial transaction, is recorded. And every serial number is  
 18 recorded in the transaction. That's the federal firearms  
 19 dealers system. I myself participated in the drafting of that  
 20 statute in 1968. To police individual transactions and to  
 21 require them to be done by some government agency strikes  
 22 me as one of the most incredible excesses of governmental  
 23 function that I could think of. The bureaucracy and the  
 24 unfairness of that process, and the avoidance of it by the  
 25 very persons that you're aiming at, the violent criminal, is

1 just ludicrous.

2 CHAIRMAN HARRIS: Last part of this question.  
3 What about a waiting period, during which time there would  
4 be some verification of the information provided on the sheet  
5 to the dealer?

6 MR. SANTARELLI: Again, we have grappled with that  
7 endlessly in the '68 consideration and reconsideration of the  
8 gun control acts. The workability of that really is a serious  
9 question of reliability. Who checks what about the applicant?  
10 The local chief of police? What available factors does he  
11 have and what constraints are there on him to perform that  
12 duty in a nonsubjective way? No one has satisfactorily  
13 answered that question, and my own intellect is too small to  
14 be able to scale out a program that isn't, again, a massive  
15 federal expenditure and intrusion into privacy.

16 CHAIRMAN HARRIS: Anything further, gentlemen?

17 I think I've given Mr. Armstrong time to think of  
18 another one.

19 MR. ARMSTRONG: I really meant to ask this earlier.  
20 Should we be thinking, in our federal judiciary system,  
21 about appointments for a term, of our federal judiciary,  
22 such as for example eight years, and then to them stand for  
23 confirmation again? Does that seem to be a feasible idea  
24 with creating some accountability in our federal judiciary  
25 system?

1 MR. SANTARELLI: Not without a constitutional  
2 amendment. We experimented considerably in my days in the  
3 Justice Department with the model that the states use in the  
4 process of selecting their judges. We came up with what we  
5 thought was the best model for the District of Columbia  
6 system, and that was a term of years with reappointment  
7 based upon recommendation of a judicial review commission.  
8 That has been changed since then with the D.C. home rule  
9 statute and now is substantially modified.

10 The federal judiciary simply probably politically  
11 bears no tampering. I am more interested in a definition of  
12 the term of good behavior, and the efforts that Congress has  
13 made in the last few years to accomplish that, than I am in  
14 trying to waste political energy -- I use the term pejora-  
15 tively, "waste" -- consume political energy in trying to get  
16 a constitutional amendment on something that doesn't hold out  
17 the prospect of a significant change or improvement.

18 CHAIRMAN HARRIS: Mr. Santarelli, thank you very  
19 much. It's been very useful hearing your views. We appre-  
20 ciate your taking the time and effort to come here today.  
21 Thank you.

22 MR. SANTARELLI: It's an honor to participate in  
23 my old stomping grounds. Thank you for giving me that chance.

24 CHAIRMAN HARRIS: Gentlemen, I think that about  
25 concludes our Los Angeles meeting. I have for each of you

1 a copy of the recommendations that we agreed to yesterday.  
 2 We're redrafting one, only in this respect, on the sentencing  
 3 advocacy -- and I think we'll have it momentarily. On the  
 4 sentencing advocacy, if you recall, Judge Bell asked Alec  
 5 Williams whether in fact the prosecutorial guidelines now  
 6 in effect spoke to that. And in fact there is some. And the  
 7 recommendation will be changed to, "Ask the Attorney General  
 8 to insure that the guidelines already on the books are  
 9 enforced."

10 We will next meet then June 17th in Chicago, and  
 11 unless anyone has any further business, the meeting is  
 12 adjourned.

13 (Whereupon, at 4:30 p.m., the hearing was  
 14 adjourned.)  
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# C E R T I F I C A T E

This is to certify that the attached proceedings  
 in the aforecaptioned matter were held on June 3, 1981  
 and that this is a true and accurate record thereof and  
 that this is the original transcript thereof.

*Neal R. Gross*  
 NEAL R. GROSS