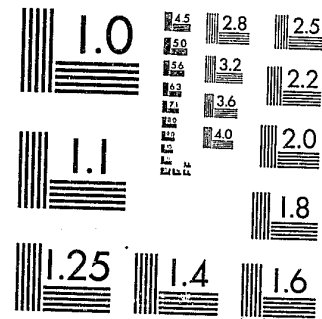


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REMARKS

BY

THE HONORABLE WILLIAM FRENCH SMITH
ATTORNEY GENERAL OF THE UNITED STATES

BEFORE

THE NATIONAL PRESS CLUB

1:00 P.M.
THURSDAY, OCTOBER 22, 1981
NATIONAL PRESS CLUB
WASHINGTON, D.C.

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U.S. Department of Justice
National Institute of Justice

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Although I am delighted to speak here today, it is always a little risky to appear before the press to give a speech or outline some new plan. For example, following Abraham Lincoln's Gettysburg Address, one Chicago newspaper commented:

"The cheek of every American must tingle with shame as he reads the silly, flat, and dish-watery utterances of the man who has to be pointed out to intelligent foreigners as the President of the United States."

Similarly, just one week before the Wright brothers flew their plane at Kitty Hawk, the great New York Times itself branded "airship experiments" a "waste" of "time, and ... money." And, on the same editorial page, the Times also observed: "One does not expect too close an adherence to logic or to law from an assemblage of women." Although I am neither a Lincoln nor an "assemblage of women" -- and the program I outline today may not prove quite as valuable as the airplane -- those editorial precedents give me some pause.

In any event, I intend to present an outline of administrative and legislative actions that this Administration earnestly believes will prove of great benefit in fighting crime.

The comprehensive nature of our package makes it too large to discuss fully in any one speech of bearable length. Tomorrow, however, I will appear before the Senate Judiciary Committee to discuss its many features more fully. In addition, we will then release a detailed list of all its elements.

Before addressing what the package would do, I want to emphasize what it will not do -- and why. It does not require any massive new spending schemes by the federal government. Its breadth and potential effectiveness cannot be measured by accountancy journalism, by adding up the costs of its constituent parts on a ledger. They require careful analysis -- and an appreciation of the many things the federal government has unsuccessfully tried to do in the area of criminal justice thus far.

Judged by the growth of crime, federal efforts to assist state and local governments to fight crime have not succeeded well enough. For more than a decade, the federal government has emphasized direct financial assistance to state and local enforcement through LEAA grants. Since 1969 the federal government has expended some eight billion dollars in that effort. The results are in. They demonstrate that throwing money at crime is not the most basic answer -- and that we must find a better way to help.

The Law Enforcement Assistance Administration began its efforts in 1969. In the last decade, the federal government has increased its total annual spending on criminal justice nearly four-fold. And state and local governments have more than

tripled their spending. Nevertheless, violent crime has nearly doubled. Between 1959 and 1978, annual federal spending on criminal justice rose by more than 1100 percent, yet violent crime increased by almost 500 percent.

There must be a better way to utilize federal resources than those that have been tried thus far. We must more effectively meet the single most important set of law enforcement problems that confront all levels of government in America today -- violent crime and the drug traffic that lies at the root of so much violent crime.

Having recognized the need for new approaches, we have fashioned initiatives that we believe are necessary now. Saying this, however, does not mean that there will be no need in the future for added federal expenditures in the effort to fight crime. It merely means that a due recognition of the need for new laws and new procedures counsels great care in the adding of new expenditures at least until the new approaches are in place and have been tested. Federal funding often gains a life of its own separate from the effectiveness of the programs it supports. Although federal expenditures have resulted in the development of some effective law enforcement tools, we now need to try a new approach before committing any massive additional infusions of federal funds. Naturally, the tremendous need for controlling all government expenditures in an effort to turn around our economy only adds to the need for caution in the funding of federal efforts against crime. Simply put, let's try something new and see how it works. Then, let's increase the funding for

those efforts that are effective and can benefit from enhanced funding.

Following the President's speech to the International Association of Chiefs of Police on September 28, the New York Times editorialized about the fight against crime in the following words, which may prove as accurate as its editorials I cited from 1903:

"No Federal effort to help that fight can have much meaning unless it involves money."

The federal effort, however, already involves a commitment of billions of dollars to criminal justice. It is now time to ensure that this money is being spent in the most effective way possible before launching new spending efforts. It is time for basic changes and innovation before throwing more money into the battle. Innovation could prove more effective than more of the same.

The program we propose is innovative. It is schooled in the failings of the past. It recognizes that the primary responsibility for effectively fighting crime rests on the state and local level. And it therefore emphasizes restructuring the federal effort to assist state and local efforts. The numerous elements of the Administration package would advance four basic goals:

- First, to coordinate the use of federal law enforcement resources with state and local needs and efforts;

- Second, to offer direct federal assistance to state and local efforts;
- Third, to improve the effectiveness of federal efforts themselves; and
- Fourth, to correct the imbalance that has arisen and favors the forces of lawlessness over the forces of law.

Although designed to further those four basic goals, the package is made up of many times that number of elements. Exclusive of the proposed Federal Criminal Code that it incorporates, the program addresses twenty different areas of law enforcement. They include -- to cite some of those areas -- narcotics, bail, corrections, the exclusionary rule, habeas corpus, juveniles, the death penalty, organized crime, victims, and federal assistance to state and local governments.

The proposed Federal Criminal Code by itself presents a very important body of law enforcement improvements. It contains over one hundred significant improvements in federal criminal law. The other twenty areas addressed by our program themselves contain some forty legislative proposals and fifteen administrative initiatives.

The first goal of our crime package is to ensure full federal cooperation with state and local law enforcement -- especially to direct federal resources more effectively against the specific crime problems experienced in different localities. We must reverse the trend in recent years toward federal law enforcement officials deciding their own priorities without fully

consulting state and local officials. Too often, U.S. Attorneys and federal law enforcement entities have taken an elitist approach to their role in enforcing the law. U.S. Attorneys have frequently focused their resources on specific types of cases without consulting local authorities.

For example, in several cities in this country where heroin is a major problem, U.S. Attorneys' offices had been declining prosecution when the amount of heroin involved was perceived as too small. As a result, many cases that could have been dealt with in the federal system were processed through state and local criminal justice systems whose resources and facilities were at the breaking point.

In some cities, local district attorneys must handle 50 times the number of felony cases brought in the U.S. Attorneys' offices next door. Yet some of those district attorneys' offices have no more than two or three times the prosecutorial resources; no speedy trial act to ensure swift justice; and no room in state prisons.

Therefore, I have directed implementation of a program that requires all U.S. Attorneys and other federal law enforcement officials to emphasize close coordination with state and local law enforcement.

In each district, the U.S. Attorney is establishing a Law Enforcement Coordinating Committee. Federal law enforcement officials will meet with the appropriate state and local enforcement officials to identify together the community's most important crime problems upon which federal resources can have an

impact. Next, the U.S. Attorney will coordinate with other federal, state, and local law enforcement officials to develop a plan for using federal resources and jurisdiction to achieve the maximum impact on the most serious crime problems facing that community. The plan will then be put into effect in allocating federal resources. Federal law enforcement already emphasizes five areas: violent crime, drug enforcement, organized crime, white collar crime, and public corruption. Through the new Law Enforcement Coordinating Committees, local communities can ensure a federal emphasis among these areas that will prove most valuable to that community.

These Law Enforcement Coordinating Committees will form the cornerstone of our efforts to increase federal assistance to state and local law enforcement. I have spoken personally with local prosecutors and other local law enforcement officials. If anyone doubts the importance of this new concept in the fight against crime, I suggest they do likewise.

By employing federal resources -- including concurrent jurisdiction -- in response to the specific crime problems that are perceived to be most serious in particular localities, federal law enforcement can and will make a difference in the fight against crime. Through enhanced cooperation -- for example, the cross-designation of prosecutors in both the state and federal systems -- all levels of law enforcement can begin to employ their resources in unison and in accordance with the strengths each can contribute to the fight against crime.

When there is concurrent jurisdiction, cases developed by federal, state, and local investigators could then be presented in the judicial system best suited to the facts, statutes, sanctions, and space on the docket.

The concept of Law Enforcement Coordinating Committees depends upon the existence of federal concurrent jurisdiction to respond with federal resources to the different needs felt in different localities. For example, at least one-third of the federal criminal cases pending at the end of last fiscal year involved an exercise of our concurrent jurisdiction over violent crime or conduct directly related to violent crime.

We are now proposing some expansion of that federal concurrent jurisdiction. For example, the proposed Federal Criminal Code would permit federal prosecution of any violent or serious crime committed during the course of any other federal offense. It would also provide federal jurisdiction over murder for hire, large-scale arson, the leaders of enterprises engaged in organized crime, and those who facilitate or solicit federal crime.

Clearly, the federal government can greatly assist states and localities by directing its law enforcement resources against those problems of greatest local concern. It can also assist state criminal justice systems by ending excessive federal court review of state criminal convictions through federal habeas corpus. Our proposal in this area would provide for broader deference to the state judicial processes without jeopardizing the legitimate protection of fundamental federal rights. It

would reduce the substantial commitment of resources presently required of the states and the federal courts to deal with federal habeas corpus petitions by convicted state prisoners.

Although there are many ways in which our initiatives would assist state and local law enforcement, the measures concerning corrections provide direct and immediate assistance. We have established a Clearinghouse in the U.S Bureau of Prisons to facilitate the transfer to states and localities of surplus federal facilities that could be used as a short-term way to ease the crowded condition of state and local prisons. In fact, the first such transfer occurred just two weeks ago in Watertown, New York. It will not, however, be the last. Indeed, we are seeking legislation to enhance the success of this program and to make federal vocational education funds available to state and local corrections.

Similarly, we have established a National Corrections Academy to improve the training available to state and local corrections officers through the National Institute of Corrections. In addition, other federal training programs are being established to improve the operation of state and local corrections facilities. Last, the Bureau of Prisons is giving emphasis to housing in federal facilities those state prisoners who represent the greatest burdens upon state facilities.

The federal criminal justice system assists the state and local fight against crime in two other important ways. First, state and local governments can devote fewer of their resources to those crimes the federal government attacks

effectively -- such as white collar crime, organized crime, and public corruption. Second, when the federal system reflects the best approaches gleaned through the Nation, it then serves as a model upon which state and local law enforcement can confidently build.

Both of these processes are furthered by improvements in the federal approach to fighting crime. Therefore, many of the initiatives contained in our crime program are aimed specifically at improving the federal system itself -- and would thereby further assist state and local law enforcement.

Perhaps the most important of our initiatives are directed at enhancing the federal effort against drug trafficking and use. We are establishing an Interagency Task Force on Drug Enforcement to bring real coordination to the domestic and international efforts of the Department of State, Treasury, Defense, Transportation, and Justice. In addition, we will seek the necessary legislation to utilize fully the sophisticated resources of the U.S. Navy to detect drug traffic at sea and in the air.

In recent years, under the leadership of its recently retired chief Peter Bensinger, the Drug Enforcement Administration has broken new ground in the fight against drugs. The increasing sophistication of commerce in drugs now requires even greater and more sophisticated efforts. The more substantial resources of the FBI are needed to enhance DEA's activities. Our recent success with Operation Bancoshares demonstrated the value of the FBI's expertise in tracing the

sophisticated money trail typical of drug trafficking today. We are therefore creating a relationship between those two agencies that will allow the FBI to play a larger role in assisting the DEA when the FBI's greater resources and different technical capabilities can have a substantial impact on the drug problem.

In our package there are still other legislative proposals that recognize the significance of drug-related crimes to the overall growth of crime in this country. We are proposing legislation that would permit the responsible use of herbicides against foreign and domestic marijuana crops, for example. In addition, the proposed Federal Criminal Code contains numerous specific provisions directed against drug-trafficking -- such as increased penalties for large-scale trafficking and a mandatory prison term for heroin-trafficking.

Just as the proposed Federal Criminal Code would enhance our ability to fight drug trafficking, it would generally enhance federal law enforcement's ability to combat crime. By simplifying and clarifying federal law across the boards, it would improve the efficiency of federal law enforcement. Its specific provisions also represent an improvement in the substantive reach of federal criminal law and in the procedures to enforce that law.

Our Declaration of Independence itself emphasized the most basic of individual rights secured by government: the right to "Life, Liberty, and the pursuit of Happiness." In the pursuit of other civil rights, we have sometimes shown insufficient regard for this most basic civil right. We have allowed

increasing crime -- and the fear it breeds -- to threaten and confine the pursuit of life, liberty, and happiness by law-abiding Americans.

Nearly fifty years ago the great jurist Benjamin Cardozo wrote:

"Justice, though due to the accused, is due to the accuser also. The concept of fairness must not be strained till it is narrowed to a filament. We are to keep the balance true."

In the years since, however, a growing imbalance has arisen between the tactics available to the lawless and the powers of the law. There has been an ever-growing public perception that the criminal has gained the upper hand over society itself. Too frequently, Congressional failure to act has invited the courts to fashion make-shift approaches that favor the accused over the accuser. More refined and balanced policies could only be fashioned through the legislative process. It is time that was done, and we have therefore proposed various pieces of legislation that would restore the proper balance between the powers of the law and the rights of the lawless.

Foremost among those proposals is modification of the exclusionary rule so that reasonable, good-faith action by law enforcement does not result in release of the lawbreaker. Intended to ensure due process of law, the exclusionary rule too often merely results in a criminal's avoiding punishment due

under law. As Justice Cardozo observed long ago, the criminal should not go free merely because the constable blundered.

Perhaps, the interests of justice would be best served by the complete abolition of the exclusionary rule. The exclusionary rule should at least be modified. Clearly, good-faith efforts by law enforcement, though found technically deficient later, should not result in a court's excluding evidence of crime. At the very least, Congress should begin the process of reform by modifying the rule so that evidence would not be excluded when it was obtained with a reasonable, good-faith belief of conformity with the fourth amendment. Such a judicial construction of the rule already governs in the U.S. Courts of Appeal for the Fifth and Eleventh Circuits.

Reform of the exclusionary rule does not, by any means, exhaust our list of proposals to Congress to restore the balance necessary to succeed in fighting crime. For example, the new sentencing provisions of the proposed Federal Criminal Code add certainty to the judge's responsibilities in the criminal justice system -- and eliminate much of the flexibility that saps the public's confidence and diminishes the deterrent impact of punishment.

Our proposals to reform the bail process would, among other things, allow courts to deny bail to persons who clearly present a danger if released -- or who are likely to jump bail.

Perhaps the most often forgotten persons in the criminal process are the victims of crime. The President has recognized this fact and will appoint a Task Force on Victims of

Crime to correct it. In addition, the proposed Federal Criminal Code itself contains provisions that would protect victims and witnesses from intimidation and would provide a mechanism for restitution to victims through fines imposed upon those who have preyed upon them.

Our proposals would aid in deterring the most serious of crimes. Where appropriate, we are proposing a constitutionally sound death penalty. And we are proposing mandatory prison sentences for the use of firearms in committing a federal felony.

Recognizing the increasing number of crimes committed by young offenders, we are proposing juvenile justice reforms aimed at increasing the likelihood of their being apprehended and punished appropriately.

In order to improve the access of law enforcement agencies to the information they need to combat crime, we are proposing changes in the Tax Reform Act of 1976 and the Freedom of Information Act. Both of these statutes serve laudable goals with which we agree. They also, however, contain some provisions that are very detrimental to the ability of law enforcement to combat crime. By allowing law enforcement greater access to information possessed by the Internal Revenue Service, our proposals should enhance the Department's ability to investigate and prosecute white collar crime, drug trafficking, public corruption, and violent crime. In addition, our proposals would deny criminals access to information that would assist their

illegitimate endeavors or enable them to threaten those who aid in apprehending them.

Last, the proposals we will make contain numerous improvements in the law to combat the menace of organized crime. They enhance our ability to prevent and punish labor racketeering. And they would facilitate criminal forfeiture in racketeering and narcotics trafficking cases. Enhanced forfeiture provisions would make it possible to take more of the incredible profits out of large-scale criminal endeavors.

The comprehensive nature of the program we are embarking upon to combat crime has required me to speak longer than I would normally require an audience to listen -- even an audience whose job is to listen. The breadth of our proposals serve as an important reminder, however, of a very important fact. We have been losing the battle against crime. Tried approaches have proved less than true, and new approaches are needed in all of the areas I have touched upon today.

Previous failures are especially disheartening when they occur in an area of so much importance to the American people. Nevertheless, failure can also provide the impetus to more innovative and more effective approaches.

There is an old story about the great inventor Thomas Edison that we should all keep in mind. An acquaintance once reproved him for having unsuccessfully tried some 1200 different materials as the filament for the incandescent light. He told Edison:

"You have failed 1200 times."

Edison replied:

"I have not failed. I have discovered 1200 materials that won't work."

In the past decades we found many approaches that haven't worked, but we have not necessarily failed in the fight against crime. We will fail only if we do not persevere to find more effective weapons to fight crime without offending the other values basic to our society. I believe that the Administration has succeeded in finding those kinds of new weapons in the extensive set of proposals I have outlined briefly today. In the days and months ahead, I can promise you that we will persevere in our efforts to see them implemented and tested. And we will persevere in the effort to find every acceptable weapon that can aid in diminishing the blight of crime that afflicts our land.

END